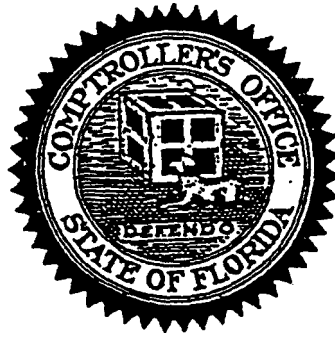


FLORIDA DEPARTMENT OF BANKING AND FINANCE

**FLORIDA
FUNERAL AND CEMETERY SERVICES
ACT AND REGULATIONS**

. CHAPTER 497, FLORIDA-STATUTES



**ROBERT F. MILLIGAN
COMPTROLLER OF FLORIDA**

JANUARY 1996

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CHAPTER 497

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497.001 Short title.—This chapter may be cited as the 'Florida Funeral and Cemetery Services Act.'

History.—s. 1, ch. 59-363; s. 3, ch. 76-168; s. 1, ch. 77-457; ss. 1, 39, 40, ch. 80-228; ss. 2, 3, ch. 81-318; s. 1, ch. 89-8; ss. 38, 122, ch. 93-399.

Note.—Former s. 559.00.

497.002 Purpose and intent-

(1) The Legislature recognizes that purchasers of preneed burial rights or burial merchandise may suffer serious economic harm if purchase money is not set aside for future use as intended by the purchaser and that the failure to maintain cemetery grounds property may cause significant emotional stress. Therefore, it is necessary in the interest of the public welfare to regulate cemetery companies in this state. However, restrictions shall be imposed only to the extent necessary to protect the public from significant or discernible harm or damage and not in a manner which will unreasonably affect the competitive market.

(2) Subject to certain interests of society, the Legislature finds that every competent adult has the right to control the decisions relating to his own funeral arrangements. Accordingly, unless otherwise stated herein, it is the Legislature's express intent that nothing contained in this chapter should be construed or interpreted in any manner as to subject preneed contract purchasers to federal income taxation under the grantor trust rules contained in ss. 671 et seq. of the Internal Revenue Code of 1966, as amended.

History.—ss. 2, 40, ch. 80-228; ss. 2, 3, ch. 81-318; s. 1, ch. 89-8; ss. 37, 122, ch. 93-399.

Note.—Former s. 559.005.

497.003 Cemeteries: exemption: investigation and mediation.-

(1) The provisions of this chapter relating to cemeteries and all rules adopted pursuant thereto shall apply to all cemeteries except for:

(a) Church cemeteries of less than 5 acres which provide only single-level ground burial.

(b) County and municipal cemeteries.

(c) Community and nonprofit association cemeteries which provide only single-level ground burial and do not sell burial spaces or burial merchandise.

(d) Cemeteries owned and operated or dedicated by churches prior to June 23, 1976.

(e) Cemeteries beneficially owned and operated since July 1, 1915, by a fraternal organization or its corporate agent.

(f) A columbarium consisting of less than one-half acre which is owned by and immediately contiguous to an existing church facility and is subject to local government zoning. The church establishing such a columbarium shall ensure that the columbarium is perpetually kept and maintained in a manner consistent with the intent of this chapter. If the church relocates, the church shall relocate all of the urns and remains placed in the columbarium which were placed therein during its use by the church.

(g) Family cemeteries of less than 2 acres which do not sell burial spaces or burial merchandise.

(h) A mausoleum consisting of 2 acres or less which is owned by and immediately contiguous to an existing church or synagogue facility and is subject to local government zoning. The church or synagogue establishing such a mausoleum must ensure that the mausoleum is kept and maintained in a manner consistent with the intent of this chapter and limit its availability to members of the church or synagogue. The church or synagogue establishing such a mausoleum must have been incorporated for at least 25 years and must have sufficient funds in an endowment fund to cover the costs of construction of the mausoleum.

(2) Sections 497.321, 497.325, 497.341, and 497.345 apply to all cemeteries in this state.

(3) All cemeteries exempted under this chapter which are in excess of 5 acres must submit to the following investigation and mediation procedure by the department in the event of a consumer complaint:

(a) The exempt cemetery shall make every effort to first resolve a consumer complaint;

(b) If the complaint is not resolved, the exempt cemetery shall advise the consumer of the right to seek investigation and mediation by the department;

(c) If the department receives a complaint, it shall attempt to resolve it telephonically with the parties involved;

(d) If the complaint still is not resolved, the department shall conduct an investigation and mediate the complaint;

(e) If the department conducts an onsite investigation and face-to-face mediation with the parties, it may charge the exempt cemetery a single investigation and mediation fee not to exceed \$300, which fee shall be set by rule and shall be calculated on an hourly basis; and

(f) If all attempts to resolve the consumer complaint fail, the cemetery shall be subject to proceedings for penalties and discipline under this chapter.

History.—s. 2, ch. 59-363; s. 1, ch. 65-670; s. 3, ch. 76-168; s. 1, ch. 76-251; s. 1, ch. 77-457; ss. 1, 39, 40, ch. 80-228; ss. 2, 3, ch. 81-318; s. 1, ch. 85-202; s. 1, ch. 89-8; ss. 38, 122, ch. 93-399.

Note.—Former s. 559.31.

497.004 Existing companies, effect of this chapter. Cemetery companies existing on October 1, 1993, shall continue in full force and effect but shall be operated in accordance with the provisions of this chapter.

History.—s. 6, ch. 59-363; s. 3, ch. 76-168; s. 1, ch. 77-457; ss. 7, 39, 40, ch. 80-228; ss. 2, 3, ch. 81-318; s. 1, ch. 89-8; ss. 39, 122, ch. 93-399.

Note.—Former ss. 559.25, 559.315.

497.005 Definitions.—As used in this chapter:

(1) "Human remains" means the bodies of deceased persons and includes bodies in any stage of decomposition and cremated remains.

(2) "Cemetery" means a place dedicated to and used or intended to be used for the permanent interment of human remains. A cemetery may contain land or earth interment: mausoleum, vault, or crypt interment: a columbarium or other structure or place used or intended to be used for the interment of cremated human remains: or any combination of one or more of such structures or places.

(3) 'Mausoleum' means a Structure or building which is substantially exposed above the ground and which is intended to be used for the entombment of human remains.

(4) 'Columbarium' means a structure or building which is substantially exposed above the ground and which is intended to be used for the inurnment of cremated human remains.

(5) 'Cemetery company' means any legal entity that owns or controls cemetery lands or property.

(6) 'Grave space' means a space of ground in a cemetery intended to be used for the interment in the ground of human remains.

(7) 'Department' means the Department of Banking and Finance.

(8) 'Belowground crypts' consist of interment space in preplaced chambers, either side by side or multiple depth, covered by earth and sod and known also as lawn crypts, 'westminsters,' or 'turf-top crypts.'

(9) 'Sank of belowground crypts' means any construction unit of belowground crypts which is acceptable to the department and which a cemetery uses to initiate its belowground Crypt program or to add to existing belowground crypt structures.

(10) 'Mausoleum section' means any construction unit of a mausoleum which is acceptable to the department and which a cemetery uses to initiate its mausoleum program or to add to its existing mausoleum structures.

(11) 'Burial right' means the right to use a grave space, mausoleum, or columbarium for the interment, entombment, or inurnment of human remains.

(12) 'Burial merchandise,' 'funeral merchandise,' or 'merchandise' means any personal property offered or sold by any person for use in connection with the final disposition, memorialization, interment, entombment, or inurnment of human remains.

(13) 'Burial service,' 'funeral service,' or 'service' means any service offered or provided by any person in connection with the final disposition, memorialization, interment, entombment, or inurnment of human remains;

(14) 'Casket' means a rigid container which is designed for the encasement of human remains and which is usually constructed of wood or metal, ornamented, and lined with fabric.

(IS) 'Solicitation' means any communication which directly or implicitly requests an immediate oral response from the recipient.

(16) 'Outer burial container' means an enclosure into which a casket is placed and includes, but is not limited to, vaults made of concrete, steel, fiberglass, or copper; sectional concrete enclosures: crypts: and wooden enclosures.

(17) 'At-need solicitation' means any uninvited contact by a licensee or his agent for the purpose of the sale of burial services or merchandise to the family or next of kin of a person after his death has occurred.

(18) 'Monument' means any product used for identifying a grave site and cemetery memorials of all types, including monuments, markers, and vases.

(19) 'Direct disposer' means any person who is registered in this state to practice direct disposition pursuant to the provisions of chapter 470.

(20) 'Final disposition' means the final disposal of a dead human body -whether by interment, entombment, burial at sea, Cremation, or any other means and includes, but is not limited to, any other disposition of remains for which a segregated charge is imposed.

(21) 'Funeral director' means any person licensed in this state to practice funeral directing pursuant to the provisions of chapter 470.

(22) 'Preneed contract' means any arrangement or method, of which the provider of funeral merchandise or services has actual knowledge, whereby the funeral establishment, direct disposer, or certificateholder agrees to furnish funeral merchandise or service in the future.

(23) 'Statutory accounting' means generally accepted accounting principles, except as modified by this chapter.

(24) 'Net assets' means the amount by which the total assets of a certificateholder, excluding goodwill, franchises, customer lists, patents, trademarks, and receivables from or advances to officers, directors, employees, salesmen, and affiliated companies, exceed total liabilities of the certificateholder. For purposes of this definition, the term 'total liabilities' does not include the capital stock, paid-in capital, or retained earnings of the certificateholder.

(25) 'Cremation' includes any mechanical or thermal process whereby a dead human body is reduced to ashes. Cremation also includes any other mechanical or thermal process whereby human remains are pulverized, burned, recremented, or otherwise further reduced in size or quantity.

(26) 'Servicing agent' means any person acting as an independent contractor whose fiduciary responsibility is to assist both the trustee and certificateholder hereunder in administering their responsibilities pursuant to this chapter.

(27) 'Monument establishment' means a facility that operates independently of a cemetery or funeral establishment and that offers to sell monuments or monument services to the public for placement in a cemetery.

(28) 'Community' means the area within a 15-mile radius surrounding the location or proposed location of a cemetery.

(29) 'Net worth' means total assets minus total liabilities pursuant to generally accepted accounting principles.

(30) 'Board' means the Board of Funeral and Cemetery Services.

History.—s. 1, ch. 59-363; s. 1, ch. 85-288; ss. 12, 35, ch. 89-108; s. 210, ch. 71-377; ss. 1, 2, ch. 72-78; s. 1, ch. 76-168; s. 2, ch. 76-251; s. 1, ch. 77-457; ss. 4, 39, 40, ch. 80-238; ss. 2, 1, ch. 81-318; s. 1, ch. 85-18; s. 2, ch. 85-202; s. 1, ch. 89-8; ss. 40, 122, ch. 93-399.

Note.—Former s. 359.32.

497.025 Liability.—The cemetery owners, or the officers or directors of a cemetery company, may be held jointly and severally liable for any income from the care and maintenance trust fund which income is not used directly for the care and maintenance of a cemetery. The department or the receiver or administrator appointed under 's. 497.011 may bring suit in circuit court to recover such funds.

History.—s. 5, ch. 78-407; ss. 22, 40, ch. 80-228; ss. 2, 3, ch. 81-318; s. 1, ch. 89-1; s. 122, ch. 93-399.
 Note.—Repealed by s. 117, ch. 93-399.
 Note.—Former s. 359.4405.

497.101 Board of Funeral and Cemetery Services; membership: **appointment**; terms.-

(1) The **Board of Funeral and Cemetery Services** is created within the Department of Banking and Finance and shall consist of seven members appointed by the Governor; from nominations made by the Comptroller, and confirmed by the Senate. The Comptroller shall nominate three persons for each vacancy on the board, and the Governor shall **fill** each vacancy on the board by appointing one of the three persons nominated by the Comptroller to fill that vacancy. If the Governor objects to each of the three nominations for a vacancy, he shall inform the Comptroller in Writing. Upon notification of an objection by the Governor, the Comptroller shall submit three additional nominations for that **vacancy until** the vacancy is filled.

(2) Two members of the board must be funeral **directors** licensed under chapter 470 who are not associated with a cemetery company through ownership interests or through employment with a company which has an ownership interest in a cemetery. Two members must be owners or operators of a cemetery licensed under this chapter. The remaining three members must be residents of the state who have never been licensed as funeral directors or embalmers and who are in no way connected with a cemetery, the death care industry, or the practice of embalming, funeral directing, or direct disposition. At least one consumer member of the board must be **60** years of age or older. No licensee on the board may be associated by employment or ownership with a funeral establishment or cemetery which is owned partly or wholly by a person, business, corporation, or other entity which is associated with another **licensee** on the board.

(3) The Governor shall appoint members for terms of 4 years, and such members shall serve until their successors are appointed.

History.—s. 41, ch. 93-399.

497.103 Rulemaking authority of board and department -

(1) The board is authorized to adopt **rules** not inconsistent with law as may be necessary to carry out the duties and authority conferred upon the board by this chapter and as may be necessary to protect the health, safety, and welfare of the public. The department is authorized to adopt rules not inconsistent with law as may be necessary to **carry** out the duties and authority conferred upon the department by this chapter and as may be necessary to protect the health, safety, and welfare of the **public**.

(2) The board shall adopt rules which establish requirements for inspection **of** cemeteries.

(3) The board shall adopt **and enforce** rules **govern**ing the operation of **Cemeteries** in this state and arrange for the preparation, publication, and dissemination to the public of these rules and other information and material relevant to the operation of cemeteries.

(4) The department shall examine the financial affairs of any **cemetery** company and any preneed sales certificateholder and charge an examination fee as **prescribed** in s. 497.431.

History.—s. 42, ch. 93-399.

497.105 Department of Banking and Finance: powers and duties.-The Department of Banking and Finance shall:

(1) Adopt rules establishing procedures for the renewal of licenses, registrations, and certificates of authority.

(2) Appoint the executive director of the Board of Funeral and Cemetery Services, subject to the approval of the board.

(3) With the advice of the board, submit a biennial budget to the Legislature at a time and in the manner provided by law.

(4) Develop a training program for persons newly appointed to membership on the board. The program shall familiarize such persons with the substantive and procedural laws and rules **which** relate to the regulation under **this** chapter and with the structure of the department.

(5) Adopt all rules necessary to administer this chapter.

(6) Establish by rule procedures by which the department shall use the expert or technical advice of the board, for the purposes of investigation, inspection, audit, evaluation of applications, other duties of the department, or any other areas the department **may** deem appropriate.

(7) Require **all** proceeding; of the board or panels thereof within the department and **all** formal or informal proceedings conducted by the department or a hearing officer with respect to licensing, **registration, certifica-** **discipline** to be **electronically** recorded in a manner sufficient to ensure the accurate transcription of all matters so recorded.

(8) Select only those investigators approved by the board. Such investigators shall report to and work under the executive director of the board and are responsible for **all** inspections and investigations other than financial examinations.

History.—s. 43, ch. 93-399.

497.107 Headquarters.—The Board of Funeral and Cemetery Services may be contacted through the headquarters of the Department of **Banking and Finance** in the **City of Tallahassee**.

History.—s. 44, ch. 93-399.

497.109 Board of Funeral and Cemetery Services; membership.-

(1) The Board of Funeral and Cemetery Services shall comply with the provisions of this section.

(2) The board shall annually elect from among its number a **chair and a** vice chair.

(3) The board shall hold such meetings during the year as it may deem necessary, one of which shall be the annual meeting. The chair or a quorum **of the** board may call other meetings, and a **quorum is necessary for the** conduct of business by the board. Unless otherwise provided by law, a majority of the members of the board

constitutes a quorum. A vacancy shall occur upon the failure of a member of the board to attend three consecutive meetings of the board or at least half of the meetings of the board during any 12-month period.

(4) Unless otherwise provided by law, a board member shall be compensated \$50 for each day the member attends an official meeting of the board and for each day the member participates in any other business involving the board. The board shall adopt rules defining the phrase 'other business involving the board,' but the phrase may not be defined to include telephone conference calls. A board member is entitled to reimbursement for expenses pursuant to s. 112.061, but travel out of state requires the prior approval of the Comptroller.

History.—s. 45, ch. 93-399.

497.111 Publication of information.—The department and the board may periodically advise licensees, registrants, and certificateholders, through the publication of a newsletter, about information that the department or the board determines is of interest to the death care industry.

History.—s. 46, ch. 93-399.

497.113 Accountability and liability of board members.—

(1) Each board member is accountable to the Governor for the proper performance of his or her duties as a member of the board. The Governor shall investigate any legally sufficient complaint or unfavorable written report received by the Governor or by the department concerning the actions of the board or individual members of the board. The Governor may suspend from office any board member for malfeasance, misfeasance, neglect of duty, incompetence, permanent inability to perform official duties, or commission of a felony.

(2) Each board member, and each past board member serving on a probable cause panel, is exempt from civil liability for any act or omission when acting in an official capacity, and the department or the Department of Legal Affairs shall defend any such member in any action against the board or member of the board arising from any such act or omission. In providing such defense, the department or the Department of Legal Affairs may employ or utilize the legal services of outside counsel.

History.—s. 47, ch. 93-399.

497.115 Board rules; final agency action; challenges.—

(1) The Comptroller shall have standing to challenge any rule or proposed rule of the board pursuant to ss. 120.54 and 120.56. In addition to challenges for any invalid exercise of delegated legislative authority, the hearing officer, upon such a challenge by the Comptroller, may declare all or part of a rule or proposed rule invalid if it:

(a) Does not protect the public from any significant and discernible harm or damages;

(b) Unreasonably restricts competition or the availability of professional services in the state or in a significant part of the state; or

(c) Unnecessarily increases the cost of professional services without a corresponding or equivalent public benefit.

However, there shall not be created a presumption of the existence of any of the conditions cited in this subsection in the event that the rule or proposed rule is challenged.

(2) In addition, either the Comptroller or the board shall be a substantially interested party for purposes of s. 120.54(5). The board may, as an adversely affected party, initiate and maintain an action pursuant to s. 120.63 challenging the final agency action.

History.—s. 48, ch. 93-399.

497.117 Legal and investigative services.—

(1) The Department of Legal Affairs shall provide legal services to the board within the Department of Banking and Finance, but the primary responsibility of the Department of Legal Affairs shall be to represent the interests of the citizens of the state by vigorously counseling the board with respect to its obligations under the laws of the state. Subject to the prior approval of the Attorney General, the board may retain independent legal counsel to provide legal advice to the board on a specific matter. Fees and costs of such counsel shall be paid from the Regulatory Trust Fund.

(2) The Department of Banking and Finance may employ or utilize the legal services of outside counsel and the investigative services of outside personnel. However, no attorney employed or utilized by the department shall prosecute a matter or provide legal services to the board with respect to the same matter.

History.—s. 48, ch. 93-399.

497.119 Mediation.—

(1) Notwithstanding the provisions of s. 497.131, the board may adopt rules to designate which violations of this chapter are appropriate for mediation. The board may designate as mediation offenses those complaints where harm caused by the licensee is economic in nature or can be remedied by the licensee.

(2) After the department determines a complaint is legally sufficient and the alleged violations are defined as mediation offenses, the department or any agent of the department may conduct informal mediation to resolve the complaint. If the complainant and the subject of the complaint agree to a resolution of a complaint within 14 days after contact by the mediator, the mediator shall notify the department of the terms of the resolution. The department or board shall take no further action unless the complainant and the subject each fail to record with the department an acknowledgment of satisfaction of the terms of mediation within 60 days after the mediator's notification to the department. In the event the complainant and subject fail to reach settlement terms or to record the required acknowledgment, the department shall process the complaint according to the provisions of s. 497.131.

(3) Conduct or statements made during mediation are inadmissible in any proceeding pursuant to s. 497.131. Further, any information relating to the mediation of a case shall be subject to the confidentiality provisions of s. 497.131.

(4) No licensee may go through the mediation process more than three times without approval of the department. The department may consider the subject and dates of the earlier complaints in rendering its deci-

tion. Such decision **may** not be Considered a final agency action for purposes Of chapter 120.

History.—s. 50, ch. 93-399.

497.121 Authority to issue citations.-

(1) Notwithstanding the provisions of s. 497.131, the board shall adopt rules to permit the issuance of citations. The citation shall be issued to the subject and shall contain the subject's name and address, the subject's license number if applicable, a brief factual statement, the sections of the law allegedly violated, and the penalty imposed. The Citation must clearly state that the subject may choose, in lieu Of accepting the citation, to follow the procedures under s. 497.131. If the subject **disputes** the matter in the citation, the procedures set forth in s. 497.131 must be followed. However, if the **subject** does not dispute the matter in the citation with the department within **30** days after the citation is served, the citation shall become a final order of the board and shall constitute discipline. The **penalty shall** be a fine or other conditions as established by rule.

(2) The board shall adopt rules designating violations for which a citation may be **issued**. Such rules shall designate as citation **violations those** violations for which there is no substantial threat to the public health, safety, and welfare.

(3) The department shall be entitled to recover the costs of investigation. in addition to any **penalty** provided according to board rule. as part of the penalty levied pursuant to the citation.

(4) A citation must be issued within 6 months after the filing of the complaint that is the basis for the citation.

(5) Service of a citation may be made **by** personal service or **certified** mail. restricted **delivery**, to the **subject** **the subject's** last known address.

—s. 51, ch. 93-399.

497.123 Powers to administer oaths and issue subpoenas.-

(1)(a) The board or the department has the power to issue and to serve subpoenas and subpoenas duces tecum to compel the attendance of witnesses and the production of **all** books, accounts, records, and other documents and materials relevant to an examination or investigation. The department, or its duly authorized representative, has the power to administer oaths and affirmations to any person.

(b) The board or the department may, in its discretion, seek subpoenas or subpoenas duces tecum from any court of competent jurisdiction commanding the appearance of witnesses and the production of books, accounts, records, and other documents or materials at a time and place named in **the** subpoenas; and any authorized representative of the department may **serve** any subpoena.

(2)(a) 'In the event of substantial noncompliance with a subpoena or subpoena duces tecum issued or caused to be issued by the board or the department, the **board** or the department may petition the circuit court or any other court of competent jurisdiction of the county in which the person subpoenaed resides or has its principal place of business for an order requiring the subpoenaed person to appear and testify and to produce such

books, accounts, records, and other documents as are specified in the subpoena duces tecum. The court may grant injunctive relief restraining the person from advertising, promoting, soliciting, **entering** into. offering to enter into, continuing, or completing a contract pursuant to the provisions of this chapter. The court may grant such other relief, including, but not limited to, the restraint, by injunction or appointment of a receiver, of any transfer, pledge, assignment, or other disposition of the person's assets or any concealment, alteration, destruction, or other disposition of books, accounts, records, or other documents and materials as the court deems appropriate, until the person has fully complied with the subpoena duces tecum and the department has completed its investigation or examination. In addition, the court may order the refund of any fees collected in a transaction whenever books and documents substantiating the transaction are not produced or cannot be produced. The department is entitled to the summary procedure provided in s. **51.01 1**, and the court **shall** advance such cause on its calendar. Attorney's fees and any other costs incurred by the department to obtain an order granting, in whole or part, a petition for enforcement of a subpoena or subpoena duces tecum shall be taxed against the subpoenaed person, and **failure** to comply with such order is a contempt of court.

(b) When it appears to the department that the compliance with a subpoena or subpoena duces tecum issued or caused to be issued by the department pursuant to this section **is** essential and **otherwise unavailable** to an investigation or examination, the department, in addition to the other remedies provided for in this section. may **apply** to the circuit court or any other **court of** competent jurisdiction of the county in which the subpoenaed person resides or has its principal place of business for a writ of ne **exeat**. The court shall thereupon direct the issuance of the writ against the subpoenaed person requiring sufficient bond conditioned on compliance with the subpoena or subpoena duces tecum. The court shall cause to be endorsed on the writ a suitable amount of bond upon the payment of which the person named in the writ shall be freed, having a due regard to the nature of the case.

(c) Alternatively, the department may seek a writ of attachment from the court having jurisdiction over the person who has refused to obey a subpoena, who has **refused** to give testimony, or who has refused to produce the matters described in the subpoena duces **t e c u m**.

History.—s. 52, ch. 93-399.

497.125 Evidence; examiner's worksheets, **Investigative** reports, other related **documents**.—In any hearing in which the **financial** examiner acting under authority of this chapter is available for **cross-examination**, any official written **report**, worksheet, or other related paper, or a duly certified copy thereof, compiled, **prepared**, drafted, or otherwise made by the financial examiner, after being duly authenticated by the examiner. **may** be admitted as competent evidence upon the oath of the examiner that the report, worksheet, or related Paper was prepared as a result of an examination of the books

and records of a licensee or other person conducted pursuant to the authority of this chapter.

History.—s. 53, ch. 93-399.

497.127 Injunction to restrain violations.—

(1) The board or the department may bring action through its own counsel in the name and on behalf of the state against any person who has violated or is about to violate any provision of this chapter or any rule or order of the department issued under this chapter to enjoin the person from continuing in or engaging in any act in furtherance of the violation.

(2) In any injunctive proceeding, the court may, on due showing by the board or the department, issue a subpoena or subpoena duces tecum requiring the attendance of any witness and requiring the production of any books, accounts, records, or other documents and materials that appear necessary to the expeditious resolution of the application for injunction.

(3) In addition to all other means provided by law for the enforcement of any temporary restraining order, temporary injunction, or permanent injunction issued in any such court proceeding, the court has the power and jurisdiction, upon application of the board or the department, to impound, and to appoint a receiver or administrator for, the property, assets, and business of the defendant, including, but not limited to, the books, records, documents, and papers appertaining thereto. Such receiver or administrator, when appointed and qualified, has all powers and duties as to custody, collection, administration, winding up, and liquidation of the property and business as are from time to time conferred upon him by the court. In any such action, the court may issue an order staying all pending suits and enjoining any further suits affecting the receiver's or administrator's custody or possession of the property, assets, and business, or the court, in its discretion and with the consent of the chief judge of the circuit, may require that all such suits be assigned to the circuit court judge who appoints the receiver or administrator.

History.—s. 54, ch. 93-399.

497.129 Cease and desist order; civil penalty; enforcement.—

(1) The department or the board has the power to issue and serve upon any person an order to cease and desist and to take corrective action whenever it has reason to believe the person is violating, has violated, or is about to violate any provision of this chapter, any rule or order of the department or the board issued under this chapter, or any written agreement between the person and the department or the board. All procedural matters relating to issuance and enforcement of such a cease and desist order are governed by the Administrative Procedure Act.

(2) Failure to respond to a complaint within the time allowed in s. 120.57 shall constitute a default and shall be grounds for the issuance of a final order to cease and desist.

(3) The department or the board may issue an emergency cease and desist order pursuant to s. 120.59.

(4) For the purpose of enforcing a cease and desist order, the board or the department may file a proceeding in the name of the state seeking issuance of an

injunction or a writ of mandamus against any person who violates any provision of such order. In addition to the foregoing remedies, the board or the department may impose an administrative penalty not to exceed \$5,000 per violation, pursuant to the provisions of chapter 120. If the board or the department is required to seek enforcement of the agency order for a penalty pursuant to s. 120.58, it shall be entitled to collect its attorney's fees and costs, together with any cost of collection.

(5) In addition to or in lieu of any remedy provided in subsection (1), the board or the department may seek the imposition of a civil penalty through the circuit court for any violation for which the board or the department may issue a notice to cease and desist under subsection (1). The civil penalty shall be no less than \$500 and no more than \$5,000 for each violation. The court may also award to the prevailing party court costs and reasonable attorney's fees and, in the event the board or the department prevails, may also award reasonable costs of investigation.

History.—s. 55, ch. 93-399.

Note.—The word "than" was substituted for the word "the" by the editors.

497.131 Disciplinary proceedings.—

(1) The department shall cause to be investigated any complaint which is filed before it if the complaint is in writing, signed by the complainant, and legally sufficient. A complaint is legally sufficient if it contains ultimate facts which show that a violation of this chapter, or of any rule promulgated by the department or board has occurred. In order to determine legal sufficiency, the department may require supporting information or documentation. The department may investigate or continue to investigate, and the department and the board may take appropriate final action on a complaint even though the original complainant withdraws it or otherwise indicates his desire not to cause the complaint to be investigated or prosecuted to completion. The department may investigate an anonymous complaint if the complaint is in writing and is legally sufficient, if the alleged violation of law or rule is substantial, and if the department has reason to believe, after preliminary inquiry, that the alleged violations in the complaint are true. The department may investigate a complaint made by a confidential informant if the complaint is legally sufficient, if the alleged violation of law or rule is substantial, and if the department has reason to believe, after preliminary inquiry, that the allegations of the complainant are true. The department may initiate an investigation if it has reasonable cause to believe that a person has violated a state statute, a rule of the department, or a rule of the board. When an investigation of any person is undertaken, the department shall promptly furnish to the person or his attorney a copy of the complaint or document which resulted in the initiation of the investigation. The person may submit a written response to the information contained in such complaint or document within 20 days after service to the person of the complaint or document. The person's written response shall be considered by the probable cause panel. This right to respond shall not prohibit the department from issuing a summary emergency order if necessary to protect the

public. However, if the Comptroller or his designee and the chairman of the board or the chairman of its probable cause panel agree in writing that such notification would be detrimental to the investigation, the department may withhold notification. The department may conduct an investigation without notification to any person if the act under investigation is a criminal offense.

(2) The department shall expeditiously investigate complaints. When its investigation is complete and legally sufficient, the department shall prepare and submit to the probable cause panel of the board the investigative report of the department. The report shall contain the investigative findings and the recommendations of the department concerning the existence of probable cause. At any time after legal sufficiency is found, the department may dismiss any case, or any part thereof, if the department determines that there is insufficient evidence to support the prosecution of allegations contained therein. The department shall provide a detailed report to the probable cause panel prior to dismissal of any case or part thereof, and to the subject of the complaint after dismissal of any case or part thereof, under this section. For cases dismissed prior to a finding of probable cause, such report is confidential and exempt from s. 119.07(1). This exemption is subject to the Open Government Sunset Review Act in accordance with s. 119.14. The probable cause panel shall have access, upon request, to the investigative files pertaining to a case prior to dismissal of such case. If the department dismisses a case, the probable cause panel may retain independent legal counsel, employ investigators, and continue the investigation and prosecution of the case as it deems necessary.

(3) As an alternative to the provisions of subsections (1) and (2), when a complaint is received, the department may provide a licensee with a notice of noncompliance for an initial offense of a minor violation. The board shall establish by rule those minor violations under this provision that do not endanger the public health, safety, and welfare and which do not demonstrate a serious inability to practice the profession. Failure of a licensee to take action in correcting the violation within 15 days after notice may result in the institution of regular disciplinary proceedings.

(4) The determination as to whether probable cause exists shall be made by majority vote of the probable cause panel of the board. The board shall provide, by rule, that the determination of probable cause shall be made by a panel of its members or by the department. The board may provide, by rule, for multiple probable cause panels composed of at least two members. The board may provide, by rule, that one or more members of the panel or panels may be a former board member. The length of term or repetition of service of any such former board member on a probable cause panel may vary according to the direction of the board when authorized by board rule. Any probable cause panel must include one of the board's former or present consumer members, if one is available, willing to serve, and is authorized to do so by the board chair. Any probable cause panel must include a present board member. Any probable cause panel must include a former or present professional board member. However, any former pro-

fessional board member serving on the probable cause panel must hold an active valid license for that profession. All proceedings of the panel are exempt from the provisions of s. 226.011 until probable cause has been found to exist by the panel or until the subject of the investigation waives his privilege of confidentiality. This exemption is subject to the Open Government Sunset Review Act in accordance with s. 119.14. The probable cause panel may make a reasonable request, and upon such request the department shall provide such additional investigative information as is necessary to the determination of probable cause. A request for additional investigative information shall be made within 15 days from the date of receipt by the probable cause panel of the investigative report of the department. The probable cause panel shall make its determination of probable cause within 30 days after receipt by it of the final investigative report of the department. The Comptroller may grant extensions of the 15-day and the 30-day time limits. If the probable cause panel does not find probable cause within the 30-day time limit, as may be extended, or if the probable cause panel finds no probable cause, the department may determine, within 10 days after the panel fails to determine probable cause or 10 days after the time limit has elapsed, that probable cause exists. If the probable cause panel finds that probable cause exists, it shall direct the department to file a formal complaint against the licensee. The department shall follow the directions of the probable cause panel regarding the filing of a formal complaint. If directed to do so, the department shall file a formal complaint against the subject of the investigation and prosecute that complaint pursuant to the provisions of chapter 120. However, the department may decide not to prosecute the complaint if it finds that probable cause had been improvidently found by the panel. In such cases, the department shall refer the matter to the board. The board may then file a formal complaint and prosecute the complaint pursuant to the provisions of chapter 120. The department shall also refer to the board any investigation or disciplinary proceeding not before the Division of Administrative Hearings pursuant to chapter 120 or otherwise completed by the department within 1 year after the filing of a complaint. A probable cause panel or the board may retain independent legal counsel, employ investigators, and continue the investigation as it deems necessary: all costs thereof shall be paid from the Regulatory Trust Fund. All proceedings of the probable cause panel shall be exempt from the provisions of s. 120.53(1)(d).

(5) A formal hearing before a hearing officer from the Division of Administrative Hearings of the Department of Management Services shall be held pursuant to chapter 120 if there are any disputed issues of material fact. The hearing officer shall issue a recommended order pursuant to chapter 120. If any party raises an issue of disputed fact during an informal hearing, the hearing shall be terminated and a formal hearing pursuant to chapter 120 shall be held.

(6) The board, with those members of the panel who reviewed the investigation pursuant to subsection (4) being excused, shall determine and issue the final order in each disciplinary case. Such order shall constitute

final agency action. Any consent Order or agreed settlement shall be subject to the approval of the Department.

(7) The department shall have standing to seek judicial review of any final order of the board, pursuant to s. 120.68.

(8) Any proceeding for the purpose of summary suspension of a license, or for the restriction of a license, of a licensee pursuant to S. 120.60(8) shall be conducted by the Comptroller or his designee, who shall issue the final summary order.

(9) The department shall periodically notify the person who filed the complaint of the status of the investigation, whether probable cause has been found, and the status of any civil action or administrative proceeding or appeal.

(10) The complaint and all information obtained pursuant to the investigation by the department shall be exempt from s. 119.07(1) until 10 days after probable cause has been found to exist by the probable cause panel or until the regulated professional or subject of the investigation waives his privilege of confidentiality, whichever occurs first. Upon completion of the investigation and written request by the subject, the department shall provide the subject an opportunity to inspect or, at the subject's expense, forward to the subject a copy of the department's investigative file. The subject may file a written response to the information contained in the investigative file. Such response must be filed within 20 days, unless an extension of time has been granted by the department. Nothing in this subsection shall be construed to prohibit the department from providing such information to any law enforcement agency or to any other regulatory agency. This exemption is subject to the Open Government Sunset Review Act in accordance with s. 119.14.

(11) A privilege against civil liability is hereby granted to any complainant or any witness with regard to information furnished with respect to any investigation or proceeding pursuant to this chapter, unless the complainant or witness acted in bad faith or with malice in providing such information.

History.—s. 56, ch. 93-399.

497.133 Disciplinary guidelines.-

(1) The board shall adopt, by rule, and periodically review the disciplinary guidelines applicable to each ground for disciplinary action which may be imposed by the board pursuant to this chapter, and any rule of the board or department.

(2) The disciplinary guidelines shall specify a meaningful range of designated penalties based upon the severity and repetition of specific offenses, it being the legislative intent that minor violations be distinguished from those which endanger the public health, safety, or welfare: that such guidelines provide reasonable and meaningful notice to the public of likely penalties which may be imposed for proscribed conduct: and that such penalties be consistently applied by the board.

(3) A specific finding of mitigating or aggravating circumstances shall allow the board to impose a penalty other than that provided for in such guidelines. If applicable, the board shall adopt by rule disciplinary guidelines to designate possible mitigating and aggravating cir-

cumstances and the variation and range of penalties permitted for such circumstances.

(4) The department must review such disciplinary guidelines for compliance with the legislative intent as set forth in this section to determine whether the guidelines establish a meaningful range of penalties and may also challenge such rules pursuant to ss. 120.54 and 120.56.

(5) The rules provided for in this section shall be promulgated within 6 months after the enactment of the board.

(6) The hearing officer, in recommending penalties in any recommended order, must follow the penalty guidelines established by the board and must state in writing the mitigating or aggravating circumstances upon which the recommended penalty is based.

History.—s. n. ch. 93-399.

497.135 Penalty for giving false information.—In addition to, or in lieu of, any other discipline imposed pursuant to this chapter, the act of knowingly giving false information in the course of applying for or obtaining a license from the department or the board, with intent to mislead a public servant in the performance of his official duties, or the act of attempting to obtain or obtaining a license to practice by misleading statements or knowing misrepresentations constitutes a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

History.—s. 58, ch. 93-399.

497.201 Cemetery companies; license; application; fee,-

(1) No person may operate a cemetery without first obtaining a license from the department, unless specifically exempted from this chapter.

(2) The department may require any person desiring to establish a cemetery company who applies for a license to provide any information reasonably necessary to make a determination of the applicant's eligibility for licensure. Any person desiring to establish a cemetery company shall first:

(a) File an application, which states the exact location of the proposed cemetery, which site shall contain not less than 15 contiguous acres: provide a financial statement signed by all officers of the company which attest to a net worth of at least \$50,000, which net worth must be continuously maintained as a condition of licensure: and pay an application fee of \$5,000;

(b) Create a legal entity: and

(c) Demonstrate to the satisfaction of the board that the applicant possesses the ability, experience, financial stability, and integrity to operate a cemetery.

(3) The department shall determine the need for a new cemetery by considering the adequacy of existing cemetery facilities, licensed and unlicensed, within the community: the solvency of the trust funds of the existing facilities: and the relationship between population, rate of population growth, death rate, and ratio of burials to deaths to meet the projected need for burial spaces for a period of 30 years. In order to promote competition, the department may waive the criteria of this subsection so that each county may have at least six cemeteries operated by different licensees.

(4) If the board finds that the applicant meets the criterii established in subsection (2) and the department determines that a need for the new cemetery in the community exists, the department shall notify the applicant that a license will be issued when:

(a) The establishment Of a cafe and maintenance trust fund containing not less than 350,000 has been certified by a trust company, a state or national bank, or a savings and loan association licensed in this state.

(b) The applicant has filed with the department development plans which are sufficient to ensure the department that the cemetery will provide adequate service to the community and which have been approved by the appropriate local governmental agency regulating zoning in the area of the proposed cemetery.

(c) The applicant holds an unencumbered fee simple title to at least 15 contiguous acres of land.

(d) The applicant has designated as general manager a person who has integrity, 1 year of cemetery experience, and the ability to operate a cemetery,

(e) The applicant has fully developed not less than 2 acres for use as burial space, such development to include a paved road from a public roadway to the developed section.

(f) The applicant has recorded, in the public records of the county in which the land is located, a notice which contains the following language:

NOTICE

The property desaiied herein shall not be sold, conveyed, leased, mortgaged, or encumbered without the prior written approval of the Department of Banking and Finance. as provided in the Florida Funeral and Cemetery Services Act .

Such notice shall be clearly printed in boldfaced type of not less than 10 points and may be included on the face of the deed of conveyance to the licensee or may be contained in a separate recorded instrument which contains a description of the property.

(5) The department shall issue a license to operate a cemetery company to any applicant who, within 12 months after notice that a license may be issued, meets the criteria of subsection (4). With respect to any application for which the department has given notice under subsection (4) on or after January 1, 1984, the board may, for good cause shown, grant up to two extensions of the 12-month period within which the applicant must meet the criteria of subsection (4).

History.—s. 4, ch. 59-363; s. 1, ch. 63-324; s. 2, ch. 65-288; ss. 12, 35, ch. 69-106; s. 3, ch. 72-78; s. 141, ch. 73-333; s. 3, ch. 76-168; s. 3, ch. 78-251; s. 1, ch. 77-457; s. 7, ch. 78-95; s. 1, ch. 78-369; s. 1, ch. 78-407; ss. 3, 39, 40, ch. 80-238; ss. 2, 3, ch. 81-318; s. 3, ch. 85-202; ss. 1, 4, ch. 87-39; s. 1, ch. 89-8; ss. 59, 122, ch. 93-399.

Note.—Former s. 559.33; s. 497.006.

497.205 License not assignable or transferable.-

(1). A license issued to operate a cemetery pursuant to this chapter is not transferable or assignable, and a licensee may not develop or operate any cemetery authorized by this chapter at any location other than that contained in the application for the license.

(2) Any person who seeks to purchase or acquire control of an existing licensed cemetery shall first apply to the board for approval of the proposed change of

ownership. The application shall contain the name and address of the proposed new owner, a financial statement signed by all officers of the company attesting to a net worth of at least \$50,000, and other information required by the board. The board may approve a change of ownership only after it has conducted an investigation of the applicant and determined that the proposed new owner is qualified by character, experience, and financial responsibility to control and operate the cemetery in a legal and proper manner. The department may examine the records of the cemetery company as part of the investigation in accordance with this chapter. The application shall be accompanied by an investigation fee of \$5,000. Upon consummation of the purchase or acquisition of control and upon receipt of all documents required by the board, the department shall issue the new license for that cemetery effective on the date of that purchase or acquisition of control.

History.—s. 18, ch. 59-363; s. 3, ch. 76-168; s. 1, ch. 77-457; ss. 39, 40, ch. 80-238; ss. 2, 3, ch. 81-318; a. 39, ch. 83-215; s. 4, ch. 85-202; 4.1, ch. 89-8; ss. 60, 122, ch. 93-399.

Note.—Former s. 559.47; s. 497.007.

497.209 Application for change of control among existing stockholders or partners; investigation fee.— Any stockholders or partners who intend to acquire control of an existing cemetery company from other stockholders or partners shall first apply to the board for approval for the proposed change of control. The application shall contain the names and addresses of the stockholders or partners seeking to acquire control and a financial statement signed by all officers of the company attesting to a net worth of at least SSO,000. The board may approve the change of control only after it has conducted an investigation of the applicants and determined that such individuals are qualified by character, experience, and financial responsibility to control and operate the cemetery company in a legal and proper manner and that the interest of the public generally will not be jeopardized by the change in ownership and management. The department may-examine the records of the cemetery company as part of the investigation in accordance with this chapter. The application shall be accompanied by an investigation fee of \$2,500.

History.—s. 5, ch. 59-363; s. 2, ch. 63-324; s. 1, ch. 65-288; ss. 12, 35, ch. 69-106; s. 138, ch. 71-355; s. 3, ch. 73-328; s. 3, ch. 76-168; s. 1, ch. 77-457; s. 2, ch. 78-369; ss. 8, 39, 40, ch. 80-238; ss. 2, 3, ch. 81-318; s. 5, ch. 85-202; s. 1, ch. 89-8; ss. 81, 122, ch. 93-399.

Note.—Former s. 559.34; s. 497.008.

497.213 Annual license fees.-

(1) The department shall collect from each cemetery company operating under the provisions of this chapter an annual license fee as follows:

- (a) for a cemetery with less than \$25,000 annual gross safes\$250.
- (b) For a cemetery with at least \$25,000 but less than \$100,000 annual gross sales \$350.
- (c) For a cemetery with annual gross safes of at least \$100,000 but less than \$250,000\$600.
- (d) For a cemetery with annual gross sales of at least 5250.000 but less than \$500,000\$900.
- (e) For a cemetery with annual gross sales of at least SSO0.000 but less than \$750,000\$1,350.

(f) For a cemetery with annual gross sales of at least 3750.000 but less than \$1,000,000.....\$1,750.

(g) For a cemetery with annual gross sales of \$1,000,000 or more\$2,650.

(2) An application for license renewal shall be submitted, along with the applicable license fee, on or before December 31 each year in the case of an existing cemetery company and before any sale of cemetery property in the case of a new cemetery company or a change of ownership Or control pursuant to ss. 497.205 and 497.259. If the renewal application and fee are not received by Oecember 31, the department shall collect a penalty in the amount of \$200 per month or fraction of a month for each month delinquent. For the purposes of this subsection, a renewal application and fee submitted by mail shall be considered timely submitted and received if postmarked by Oecember 31 of the applicable year.

History.—s. 17, ch. 59-363; s. 3, ch. 63-324; s. 1, ch. 65-288; ss. 12, 35, ch. 69-106; s. 1, ch. 76-168; s. 1, ch. 77-457; s. 4, ch. 78-369; ss. 25, 39, 40, ch. 80-238; ss. 2, 3, ch. 81-318; s. 3, ch. 85-202; s. 1, ch. 88-227; s. 1, ch. 89-8; ss. 62, 122, ch. 93-399.

Note.—Former ss. 559.46, 559.345; s. 497.009.

497.217 Department rules; challenges.—The department shall not adopt any rule or approve any cemetery bylaw which unreasonably restricts competition or the availability of services in the state or in a significant part of the state or which unnecessarily increases the cost of services without a corresponding or equivalent public benefit. Any person substantially affected by a rule of the department has standing to challenge the rule under s. 120.54 or s. 120.56. Upon such a challenge, the hearing officer may declare all or part of a rule invalid if the rule:

- (1) Does not protect the public from any significant and discernible harm or damages; -
- (2) Unreasonably restricts competition or the availability of services in the state or in a significant part of the state; or
- (3) Unnecessarily increases the cost of services without a corresponding or equivalent public benefit.

However, there shall not be created a presumption of the existence of any of the conditions cited in this section in the event that the rule or proposed rule is challenged.

History.—ss. 9, 40, ch. 80-238; ss. 2, 3, ch. 81-318; s. 1, ch. 89-8; ss. 89, 122, ch. 93-399.

Note.—Former s. 559.3703; s. 497.012.

497.221 Cease and desist orders.—

(7) The department may issue and serve upon a cemetery company a complaint whenever the department has reason to believe that the cemetery company is violating or has violated any law, department rule, department order, or written agreement entered into with the department.

(2) The complaint shall contain a statement of facts and notice of opportunity for a hearing pursuant to s. 120.57.

(3) If no hearing is requested within the time allowed by s. 120.67, or if a hearing is held and the department finds that any of the allegations in the complaint are true, the department may enter an order directing the ceme-

tery company to cease and desist from engaging in the conduct complained of and to take corrective action.

(4) The failure of a cemetery company to respond to the complaint within the time allowed in s. 120.67 shall constitute a default and shall be grounds for the issuance of a cease and desist order.

(5) A cease and desist order issued pursuant to the provisions of subsection (3) or subsection (4) is effective when reduced to writing and served upon the cemetery company. A consent order is effective as agreed between the parties thereto.

(6) The department may issue an emergency cease and desist order pursuant to s. 120.59.

History.—s. 1, ch. 78-407; ss. 11, 40, ch. 80-238; ss. 2, 3, ch. 81-318; s. 1, ch. 89-8; ss. 89, 122, ch. 93-399.

Note.—Former s. 559.371; s. 497.014.

497.225 Civil penalty.—The department may seek an injunction and assessment of a civil penalty not to exceed \$1,000 for each violation, in a court of competent jurisdiction, against any person who violates a cease and desist order of the department which is final and in effect. Any party subject to the injunction and penalty assessment shall be given notice and opportunity to attend and present evidence in a hearing before the judicial officer. If a licensee fails to pay the penalty within 30 days after receiving notice of the final order imposing the civil penalty, the department may suspend his license until the penalty is paid, in addition to other judicial remedies prescribed by law. Proceedings for suspension under this section shall be in accordance with the provisions of chapter 120.

History.—s. 6, ch. 78-407; ss. 12, 40, ch. 80-238; ss. 2, 3, ch. 81-318; s. 1, ch. 89-8; ss. 89, 122, ch. 93-399.

Note.—Former s. 559.373; s. 497.015.

497.229 Courts; powers.—

(1) In addition to all other means provided by law for the enforcement of a temporary restraining order or an injunction, the circuit court may inipound the property of a cemetery company, including books, papers, documents, and records pertaining thereto, and may appoint a receiver or administrator to prevent further violation of this chapter.

(2) A court-appointed receiver or administrator may take any action to implement the provisions of the court order, to ensure the performance of the order, and to remedy any breach thereof.

History.—ss. 10, 40, ch. 80-238; ss. 2, 3, ch. 81-318; s. 1, ch. 89-8; ss. 89, 122, ch. 93-399.

Note.—Former s. 559.374; s. 497.016.

497.233 Disciplinary proceedings.—

(1) The following acts constitute grounds for which the disciplinary actions in subsection (2) may be taken:

- (a) Violating any provision of this chapter.
- (b) Failing to comply with a rule or lawful order of the department.
- (c) Failing to pay the fees required by this chapter.
- (d) Failing to remit therequired amounts to any trust fund required by this chapter.
- (e) Attempting to procure, or procuring, by bribery or fraudulent misrepresentation, a license to operate a cemetery company.

(f) Having a license to operate a cemetery company revoked, suspended, or otherwise acted against, include

ing having a license denied, by the licensing authority of another jurisdiction.

(g) Being convicted or found guilty in any jurisdiction, regardless of adjudication, of a crime which directly relates to the Operation Of a Cemetery.

(h) Making or filing a report required by this chapter which the licensee knows to be false or willfully failing to make or file a report required by this chapter.

(i) Fraud, deceit, **misrepresentation**, negligence, incompetency, or misconduct in the operation of a **cem-
etery**.

(j) Advertising goods Or services in a manner which is fraudulent, **false**, deceptive, or misleading in form or content.

(k) Making any **false** Or misleading statement of the legal **requirement** as to the necessity of any particular **burial** merchandise or services.

(l) Making any false or misleading statement regarding the sate of services or merchandise in **connec-
tion** with the operation of a Cemetery.

(m) Making any false Of misleading statement **that
natural decomposition Or decay** of human remains can be prevented or **substantially** delayed by use of a sealed or unseated casket or outer burial container.

(n) Soliciting through the use of fraud, undue **influ-
ence**, intimidation, overreaching, or other form of vexa-
tious conduct

(o) Discouraging the purchase of any burial mer-
chandise or **service which is advertised or offered for
sale, with the purpose of encouraging the purchase of
additional or more** expensive burial merchandise or ser-
vice, by **disparaging** its quality or appearance, except that factual statements concerning **features, design, or
construction do not constitute disparagement, or by
suggesting directly or by implication that a customer's
concern for** the price or expressed interest in inexpen-
sive **burial merchandise or services is improper, inappropri-
ate, or indicative of diminished respect or affection for
the** deceased.

(p) **Failing to furnish, for retention, to anyone who
inquires in person about burial rights, burial merchan-
dise, or burial services, before any discussion of selec-
tion, a printed or typewritten list specifying the retail
prices for such rights, merchandise, or services. The Gst
shall itemize each product and service available and
shall include** the name, address, and telephone number
of the **licensee** and statements that the customer may
choose only the items he desires, that he **will** be charged
for **only those items purchased, and that there may be**
extra charges for other items or services such as those
provided by funeral directors or direct disposers.

(q) **Failing to furnish, for retention, to each purchaser
df** burial rights, burial merchandise, or burial services a
written agreement, the form of which has been **previ-
ously approved** by the department, which lists the items
and services purchased together with the prices for **the
items and services** purchased: the name, address, and
telephone number of the licensee; the signatures of **the
customer and the licensee** or his representative; and the
date signed.

(r) Failing to provide to any person, upon request,
a copy of the cemetery bylaws.

(s) Assessing fees and costs **which** have not been
disclosed to the customer.

(2) When the board finds any licensee guilty of any
of the acts specified in subsection (1), it may enter an
order imposing one or more of the following Penalties:

(a) **Denial** of an application for licensure.

(b) Revocation or suspension of a license.

(c) Imposition of an administrative fine not to exceed
\$5,000 for each count or separate offense.

(d) **Issuance** of a reprimand.

(e) Placement of the licensee on probation for a
period of time subject to such conditions as the board
may specify.

(3) **For** Purposes of this section, the acts or **omis-
sions** of any Person **employed** by or under contract to
the licensee shall be treated as acts or omissions of the
licensee.

(4) Any order imposing any **penalty** pursuant to this
section **shall** recite the grounds upon which the penalty
is baaed.

History.—ss. 13, 40, ch. 80-228; ss. 2, 3, ch. 81-318; s. 1, ch. 83-2; ss. 63, 122,
ch. 93-399.

Note.—Former s. 559.375; s. 497.018.

**497237 Care and maintenance trust fund; remedy
of department for noncompliance.—**

(1) **No cemetery company may establish a ceme-
tery, or operate a cemetery if already established, with-
out providing for the future care and maintenance of the
cemetery, for which a we and maintenance trust fund
shall be estabtiied, to be known as "the care and main-
tenance trust fund of ____." The trust fund shall be
established with a trust company operating pursuant to
chapter 660 or with a state or national bank hoiding trust
powers. Trust funds which are with a state Or national
bank or savings and loan association licensed in this
state on October 1, 1993, shall remain in force; however,
when the amount of any such trust fund exceeds the
amount that is insured by an agency of the Federal Gov-
ernment, the cemetery company shall transfer that trust
fund to a trust company operating pursuant to chapter
660 or to a state Ornational bank holding trust powers.**

(2) **The cemetery company may appoint a person to
advise the trustee in the investment of the trust fund.
The board must approve the appointment of the initial
trustee, and any subsequent changes of the trustee
shall also be approved by the board. If a cemetery com-
pany refuses or otherwise fails to provide or maintain an
adequate care and maintenance trust fund in accord-
ance with the provisions of this chapter, the board, after
reasonable notice, shall enforce compliance. However,
a nonprofit cemetery corporation which has been incor-
porated and engaged in the cemetery business prior to
and continuously since t 915 and which has current trust
assets exceeding \$2 million is not required to designate
a corporate trustee. me trust fund agreement shall
specify the following: the name, location, and address
of both the licensee and the trustee, showing the date
of agreement, together with the percentages required
to be deposited pursuant to this chapter.**

(3) **No person may withdraw or transfer any portion
of the corpus Of the care and maintenance trust fund
without** first obtaining written consent from the board.
Funds deposited pursuant to this chapter may not be

loaned to any cemetery company or person who is directly or indirectly engaged in the burial, funeral home, or cemetery business.

(4) The trustee of the trust established pursuant to this section may only invest in investments as prescribed in s. 437.417. The trustee shall take title to the property conveyed to the trust for the purposes of investing, protecting, and conserving it for the cemetery company; collecting income; and distributing the principal and income as prescribed in this chapter. The cemetery company is prohibited from sharing in the discharge of the trustee's responsibilities under this subsection, except that the cemetery company may request the trustee to invest in tax-free investments.

History.—s. 12, ch. 59-363; s. 7, ch. 65-288; ss. 12, 23, ch. 69-106; s. 3, ch. 76-168; s. 5, ch. 76-251; s. 1, ch. 77-457; s. 9, ch. 78-407; ss. 17, 39, 40, ch. 80-228; ss. 2, 3, ch. 81-318; ss. 1, 3, ch. 82-7; s. 1, ch. 89-4; ss. 64, 122, ch. 93-399.

Note.—Former s. 559.41; s. 497.021.

497.241 Disposition of income of care and maintenance trust fund; notice to purchasers and depositors. The net income of the care and maintenance trust fund shall be used solely for the care and maintenance of the cemetery, including maintenance of monuments, which maintenance shall not be deemed to include the cleaning, refinishing, repairing, or replacement of monuments; for reasonable costs of administering the care and maintenance; and for reasonable costs of administering the trust fund. At the time of making a sale or receiving an initial deposit, the cemetery company shall deliver to the person to whom the sale is made, or who makes a deposit, a written instrument which shall specifically state the purposes for which the income of the trust fund shall be used.

History.—s. 13, ch. 59-363; s. 1, ch. 76-168; s. 1, ch. 77-457; ss. 18, 39, 40, ch. 80-228; ss. 2, 3, ch. 81-318; s. 9, ch. 85-202; s. 1, ch. 89-4; ss. 89, 122, ch. 93-399.

Note.—Former s. 559.42; s. 497.022.

497.245 Care and maintenance trust fund, percentage of payments for burial rights to be deposited.—

(1) Each cemetery company shall set aside and deposit in its care and maintenance trust fund the following percentages or amounts for all sums received from sales of burial rights:

(a) For graves, 10 percent of all payments received; however, for sales made after December 31, 1959, no deposit shall be less than \$25 per grave. For each burial right, grave, or space which is provided without charge, the deposit to the fund shall be \$25.

(b) For mausoleums or columbaria, 10 percent of payments received.

(c) For general endowments for the care and maintenance of the cemetery, the full amount of sums received when received.

(d) For special endowments for a specific lot or grave or a family mausoleum, memorial, marker, or monument, the cemetery company may set aside the full amount received for this individual special care in a separate trust fund or by a deposit to a savings account in a bank or savings and loan association located within and authorized to do business in the state; however, if the licensee does not set up a separate trust fund or savings account for the special endowment, the full amount thereof shall be deposited into the care and maintenance trust fund as required of general endowments.

(2) Deposits to the care and maintenance trust fund shall be made by the cemetery company not later than 30 days following the close of the calendar month in which any payment was received; however, when such payments are received in installments, the percentage of the installment payment placed in trust must be identical to the percentage which the payment received bears to the total cost for the burial rights. The entire amount required to be deposited into the trust fund shall be paid within 4 years from the date of any contract requiring such payment, regardless of whether all amounts have been received by the cemetery company. Trust income may be used to pay for all usual and customary services for the operation of a trust account, including, but not limited to: reasonable trustee and custodian fees, investment adviser fees, allocation fees, taxes, and annual examination fees. If the net income is not sufficient to pay the fees and other expenses, the fees and other expenses shall be paid by the certificateholder. Capital gains taxes shall be paid from the corpus.

(3) Any payments made to the care and maintenance trust fund on contracts which are canceled shall be credited against future obligations to the care and maintenance trust fund, provided they have been refunded to the purchaser.

(4) When a cemetery which is exempt from the provisions of this chapter changes ownership so as to lose its exempt status, it shall establish and maintain a care and maintenance trust fund pursuant to this chapter. The initial deposit for establishment of this trust fund shall be \$25 per space for all spaces either previously sold or contracted for sale in the cemetery at the time of conversion or \$50,000, whichever is greater.

(5) In each sales contract, reservation, or agreement wherein burial rights are priced separately, the purchase price of the burial rights shall be the only item subject to care and maintenance trust fund deposits; but if the burial rights are not priced separately, the full amount of the contract, reservation, or agreement shall be subject to care and maintenance trust fund deposits as provided in this section, unless the purchase price of the burial rights can be determined from the accounting records of the cemetery company.

(6) If an installment contract or promissory note for the purchase of a burial space is sold or discounted to a third party, the entire amount due the care and maintenance trust fund shall be payable no later than 30 days following the close of the calendar month in which the contract was sold or discounted.

History.—s. 14, ch. 59-363; s. 8, ch. 65-288; s. 5, ch. 72-72; s. 1, ch. 76-168; s. 1, ch. 77-457; s. 10, ch. 78-407; ss. 20, 39, 40, ch. 80-228; s. 410, ch. 81-259; ss. 2, 3, ch. 81-318; s. 10, ch. 85-202; s. 1, ch. 89-4; ss. 55, 122, ch. 93-399.

Note.—Former s. 559.43; s. 497.023.

497.249 Care and maintenance trust fund: financial reports.—Within 105 days after the end of the fiscal year of the cemetery company, the trustee shall furnish adequate financial reports with respect to the care and maintenance trust fund on forms provided by the department. However, the department may require the trustee to make such additional financial reports as it deems necessary. In order to ensure that the proper deposits to the trust fund have been made, the department shall examine the status of the trust fund of the company on a semiannual basis for the first 2 years of the trust fund's existence.

History.—s. 15, ch. 59-363; s. 1, ch. 65-284; ss. 12, 35, ch. 69-106; s. 3, ch. 76-168; s. 1, ch. 77-457; ss. 21, 39, 40, ch. 80-228; ss. 2, 3, ch. 81-318; s. 1, ch. 89-3; ss. 89, 122, ch. 93-399.
 Note.—Former s. 559.44; s. 497.024

497.253 Minimum acreage; sale or disposition of cemetery lands.-

(1) Each licensee shall set aside a minimum of 15 contiguous acres of land for use by the licensee as a cemetery and shall not sell, mortgage, lease, or encumber that property without prior written approval of the department.

(2) Any lands owned by a licensee and dedicated for use by it as a cemetery, which are contiguous, adjoining, or adjacent to the minimum of 15 contiguous acres described in subsection (1), may be sold, conveyed, or disposed of by the licensee, after obtaining written approval of the department. Any use by the new owner for other purposes than as a cemetery. All of the human remains which have been previously interred therein shall first have been removed from the lands proposed to be sold, conveyed, or disposed of. Any and all titles, interests, or burial rights which may have been sold or contracted to be sold in lands which are the subject of the sale shall be conveyed to and vested in the licensee prior to consummation of any such sale, conveyance, or disposition.

* (3) A licensee may convey and transfer to a municipality or county its real and personal property, together with moneys deposited in trust funds pursuant to this chapter, provided the municipality or county will accept responsibility for maintenance thereof and prior written approval of the department is obtained.

(4) The provisions of subsections (1) and (2) relating to a requirement for minimum acreage shall not apply to any cemetery company licensed by the department on or before July 1, 1965, which owns a total of less than 15 acres of land; however, no cemetery company shall dispose of any land without the prior written consent of the department.

History.—s. 9, ch. 65-284; ss. 12, 35, ch. 69-106; s. 3, ch. 76-168; s. 1, ch. 77-457; s. 12, ch. 78-407; ss. 26, 39, 40, ch. 80-228; ss. 2, 3, ch. 81-318; s. 2, ch. 88-227; s. 1, ch. 89-8; ss. 89, 122, ch. 93-399.
 Note.—Former s. 559.481; s. 497.027.

497.267 Construction of mausoleums and below-ground crypts: preconstruction trust fund; compliance requirement-

(1) A cemetery company shall start construction of that section of a mausoleum or bank of belowground crypts in which sales, contracts for sales, reservations for sales, or agreements for sales are being made within 4 years after the date of the first such sale or 50 percent of the mausoleum or belowground crypts have been sold and the purchase price has been received, whichever occurs first. The construction shall be completed within 5 years after the date of the first sale made. However, extensions for completion, not to exceed 1 year, may be granted by the department for good cause shown. If the units have not been completely constructed at the time of need or the time specified herein, all moneys paid shall be refunded upon request, plus interest earned thereon for that portion of the moneys deposited in the trust fund and an amount equal to the interest that would have been earned on that portion of the moneys that were not in trust.

(2) A cemetery company which plans to offer for sale space in a section of a mausoleum or bank of below-ground crypts prior to construction shall establish a preconstruction trust fund by written instrument. The preconstruction trust fund shall be administered by a corporate trustee and operated in conformity with s. 497.417. The preconstruction trust fund shall be separate from any other trust funds that may be required by this chapter.

(3) Before a sale, contract for sale, reservation for sale, or agreement for sale in a mausoleum section or bank of belowground crypts may be made, the cemetery company shall compute the amount to be deposited to the preconstruction trust fund. The total amount to be deposited in the fund for each unit of the project shall be computed by dividing the cost of the project plus 10 percent of the cost, as computed by a licensed contractor, engineer, or architect, by the number of crypts in the section or bank of belowground crypts. When payments are received in installments, the percentage of the installment payment placed in trust must be identical to the percentage which the payment received bears to the total cost of the contract, including other merchandise and services purchased. Preconstruction trust fund payments shall be made within 30 days after receipt of payment by the cemetery company or its agent.

(4) When the cemetery company delivers a completed crypt acceptable to the purchaser in lieu of the crypt purchased prior to construction, all sums deposited to the preconstruction trust fund for that purchaser shall be paid to the cemetery company.

(5) Each cemetery company may negotiate, at the time of establishment of the preconstruction trust fund, a procedure for withdrawal of the escrowed funds as a part of the construction cost of the mausoleum section or bank of belowground crypts contemplated, subject to the approval of the department. Upon completion of the mausoleum section or bank of belowground crypts, the cemetery company shall certify completion to the trustee and shall be entitled to withdraw all funds deposited to the account thereof.

(6) If the mausoleum section or bank of below-ground crypts is not completed within the time limits set out in this section, the trustee shall contract for and cause the project to be completed and pay therefor from the trust funds deposited to the project's account paying any balance, less cost and expenses, to the cemetery company.

(7) Within 105 days after the end of the fiscal year of the cemetery company, the trustee shall file a financial report of the preconstruction trust fund with the department.

(8) In lieu of the payments outlined hereunder to the preconstruction trust fund, the cemetery company may deliver to the department a performance bond in an amount and by a surety company acceptable to the department.

History.—s. 7, ch. 72-78; s. 3, ch. 76-168; s. 1, ch. 77-457; ss. 27, 39, 40, ch. 80-228; s. 412, ch. 81-259; ss. 2, 3, ch. 81-318; s. 1, ch. 89-3; ss. 66, 122, ch. 93-399.
 Note.—Former s. 559.482; s. 497.029.

497.301 Display of notice of regulation.—

(1) Each cemetery company licensed pursuant to

this chapter shall display in a place that is in clear and unobstructed public view a notice that the place of business is licensed and regulated by the Department of Banking and Finance and that any questions or complaints may be directed to the Department. The notice shall be in a form specified by the department.

(2) The department shall establish and operate a toll-free telephone hotline to receive complaints and provide information relating to the regulation under this chapter.

History.— ss. 14, 40, ch. 80-228; ss. 2, 3, ch. 81-318; s. 1, ch. 89-3; ss. 67, 122, ch. 93-359.

Note.— Former s. 559.377; s. 497.031.

497.305 Cemetery companies; authorized functions.—

(1) Within the boundaries of the cemetery lands it owns, a cemetery company may perform the following functions:

(a) The exclusive care and maintenance of the cemetery.

(b) The exclusive interment, entombment, or inurnment of human remains, including the exclusive right to open, prepare for interment, and close all ground, mausoleum, and urn burials. Each preneed contract for burial rights or service shall disclose, pursuant to board rule, whether opening and closing of the burial space is included in the contract and, if not, the current prices for opening and closing and a statement that these prices are subject to change. Each cemetery which sells preneed contracts must offer opening and closing as part of a preneed contract.

(c) The exclusive initial preneed and at-need sale of interment or burial rights in earth, mausoleum, crypt, niche, or columbarium interment; however, nothing herein shall limit the right of a person owning interment or burial rights to sell those rights to third parties subject to the transfer of title by the cemetery company.

(d) The adoption of bylaw3 regulating the activities conducted within its boundaries, provided that no funeral director licensed pursuant to chapter 470 shall be denied access to any cemetery to conduct a funeral for or supervise a disinterment of human remains. All bylaws provided for herein shall be subject to the approval of the board under the provisions of chapter 120 prior to becoming effective. The board shall not approve any bylaw which unreasonably restricts the use of interment or burial rights, which unreasonably restricts competition, or which unreasonably increases the cost to the owner of interment or burial rights in utilizing these rights.

(e) The nonexclusive preneed and at-need sale of monuments, memorials, markers, burial vaults, urns, flower vases, floral arrangements, and other similar merchandise for use within the cemetery.

(f) The nonexclusive cremation of human remains, subject to provisions of s. 470.025.

(g) The entry into sales or management contracts with other persons. The cemetery company shall be responsible for the deposit of all moneys required by this part to be placed in a trust fund.

(2) A full disclosure shall be made for all fees required for interment, entombment, or inurnment of human remains.

(3) A cemetery company may adopt bylaws establishing minimum standards for burial merchandise or the installation thereof.

History.— s. 8, ch. 7647; ss. 16, 19, 40, ch. 80-228; ss. 2, 3, ch. 81-318; s. 4, ch. 87-39; s. 1, ch. 89-4; ss. 53, 122, ch. 93-359.

Note.— Former s. 559.403, 1, 497.031.

497.309 Records.—

(1) A record shall be kept of every burial in the cemetery of a cemetery company, showing the date of burial and the name of the person buried, together with lot, plot, and space in which the burial was made. All financial records of the cemetery company shall be available at its principal place of business in this state and shall be readily available at all reasonable times for examination by the department.

(2) Notwithstanding the provisions of subsection (1), the board may, upon request, authorize a cemetery company to maintain its financial records at a location other than its principal place of business and may, if necessary, require the company to make its books, accounts, records, and documents available at a reasonable and convenient location in this state.

(3) The board may prescribe the minimum information to be shown in the books, accounts, records, and documents of a cemetery company to enable the department to determine the company's compliance with this chapter.

History.— s. 9, ch. 59-353; s. 4, ch. 65-298; ss. 12, 35, ch. 69-106; s. 3, ch. 76-168; s. 1, ch. 77-457; ss. 13, 39, 40, ch. 80-228; ss. 2, 3, ch. 81-318; s. 1, ch. 89-4; ss. 69, 122, ch. 93-359.

Note.— Former s. 559.38; s. 497.031.

497.313 Other charges.—Other than the fees for, the sale of burial rights, burial merchandise, and burial services, no other fee may be directly or indirectly charged, contracted for, or received by a cemetery company as a condition for a customer to use any burial right, burial merchandise, or burial service, except for:

(1) Charges paid for opening and closing a grave and vault installation.

(2) Charges paid for transferring burial rights from one purchaser to another; however, no such fee may exceed SSO.

(3) Charges for sales, documentary excise, and other taxes actually and necessarily paid to a public official, which charges must be supported in fact.

(4) Charges for credit life and credit disability insurance, as requested by the purchaser, the premiums for which may not exceed the applicable premiums chargeable in accordance with the rates filed with the Department of Insurance.

(5) Charges for interest on unpaid balances pursuant to chapter 687.

History.— s. 70, ch. 93-359.

497.317 Monuments; installation fees.—

(1) No cemetery company may charge a fee for the installation of a monument purchased or obtained from and to be installed by a person or firm other than the cemetery company or its agents.

(2) To verify that a monument is installed on the proper grave in accordance with cemetery bylaws, rules, or regulations, the cemetery company shall mark the place on the grave where the marker or monument is to be installed and shall inspect the installation when

completed. Nothing in this subsection is intended to imply or require that a cemetery company shall have to lay out or engineer a grave site or grave sites for the installation of a marker or monument.

(3) A cemetery company may not require any person or firm that installs, places, or sets a monument to obtain any form of insurance, bond, or surety or make any form of pledge, deposit, or monetary guarantee as a condition for entry on or access to cemetery property.

History.—ss. 19, 40, ch. 80-228; ss. 2, 3, ch. 81-318; s. 11, ch. 85-202; s. 3, ch. 88-227; s. 1, ch. 89-8; ss. 71, 122, ch. 93-399.

Note.—Former s. 559.408; s. 497.043.

497.321 Solicitation of goods or services.—

(1) The board is authorized to adopt rules regulating the solicitation of sales of burial rights, merchandise, or services by licensees.

(2) The board shall regulate such solicitation to protect the public from solicitation which is intimidating, overreaching, vexatious, fraudulent, or misleading; which utilizes undue influence; or which takes undue advantage of a person's ignorance or emotional vulnerability.

(3) The board shall regulate any solicitation which comprises an uninvited invasion of personal privacy. It is the express finding of the Legislature that the public have a high expectation of privacy in their personal residences, and the department by rule shall restrict the hours or otherwise regulate such solicitation in the personal residence of a person unless the solicitation has been previously and expressly requested by the person solicited.

(4) Nothing in this act shall be construed to restrict the right of a person to lawfully advertise, use direct mail, or otherwise communicate in a manner not within the definition of solicitation or to solicit the business of anyone responding to such communication or otherwise initiating discussion of goods and services being offered.

(5) At-need solicitation of sales of burial rights, merchandise, or services is prohibited. No cemetery company or any agent or representative of that company may contact the family or next of kin of a deceased person to sell services or merchandise unless the cemetery company or an agent or representative of the company has been initially called or contacted by the family or next of kin of such person or persons and requested to provide services or merchandise.

History.—s. 38, ch. 80-228; s. 409, ch. 81-259; s. 2, ch. 81-318; s. 4, ch. 85-18; s. 1, ch. 89-8; ss. 72, 122, ch. 93-399.

Note.—Former s. 559.408; s. 497.043.

497.325 Illegal tying arrangements.—

(1)(a) No person authorized to sell grave space may tie the purchase of any grave space to the purchase of a monument from or through the seller or any other designated person or corporation.

(b) Noncemetery licensed persons and firms shall have the right to sell monuments and to perform or provide on cemetery property foundation, preparation, and installation services for monuments. However, a cemetery company may establish reasonable rules regarding the style and size of a monument or its foundation, provided such rules are applicable to all monuments from whatever source obtained and are enforced uniformly as

to all monuments. Such rules shall be conspicuously posted and readily accessible to inspection and copy by interested persons.

(c) No person who is authorized to sell grave space and no cemetery company may:

1. Require the payment of a setting or service charge, by whatever name known, from third party installers for the placement of a monument;

2. Refuse to provide care or maintenance for any portion of a gravesite on which a monument has been placed; or

3. Waive liability with respect to damage to a monument after installation.

where the monument or installation service is not purchased from the person authorized to sell grave space or the cemetery company providing grave space or from or through any other person or corporation designated by the person authorized to sell grave space or the cemetery company providing grave space. No cemetery company may be held liable for the improper installation of a monument where the monument is not installed by the cemetery company or its agents.

(2) No program offering free burial rights may be conditioned by any requirement to purchase additional burial rights or merchandise. Any program offering free burial rights shall comply with s. 817.415.

History.—ss. 19, 32, 40, ch. 80-228; ss. 2, 3, ch. 81-318; s. 12, ch. 85-202; s. 4, ch. 88-227; s. 1, ch. 89-8; ss. 71, 122, ch. 93-399.

Note.—Former s. 559.408; s. 497.044.

497.329 Registration of broken of burial rights.—

(1) No person shall receive compensation to act as a third party to the sale or transfer of three or more burial rights in a 12-month period unless the person pays a registration fee of \$150 and is registered with the department in accordance with this section.

(2) The department, by rule, shall provide for the biennial renewal of registrants and a renewal fee of \$100.

(3) This section shall not apply to persons otherwise licensed or registered pursuant to this chapter.

History.—s. 74, ch. 93-399.

497.333 Disclosure of information to public.—A licensee offering to provide burial merchandise or services to the public shall:

(1) Provide by telephone, upon request, accurate information regarding the retail prices of burial merchandise and services offered for sale by the licensee and disclose, in response to a general telephone inquiry about the licensee's offerings or prices, that price information is available over the telephone.

(2) Fully disclose all available services and merchandise prior to the selection of burial merchandise. The full disclosure required shall identify the prices of all services and merchandise provided by the licensee.

(3) Not make any false or misleading statements of the legal requirement as to the necessity of a casket or outer burial container.

(4) Provide a good faith estimate of all fees and costs the customer will incur to use any burial rights or merchandise purchased.

(5) Provide to the customer, upon request, a current copy of the bylaws of the licensee.

(8) Provide to the Customer, upon the purchase of any burial right, merchandise, or service, a written contract.

(a) The written contract shall be completed as to all essential provisions prior to the signing of the contract by the customer.

(b) The written contract shall provide an itemization of the amounts charged for all services, merchandise, and fees, which itemization shall be clearly and conspicuously segregated from everything else on the written contract.

(7) Provide the licensee's policy on cancellation and refunds to each customer.

(8) In a manner established by rule of the board, provide on the signature page, clearly and conspicuously in boldfaced type larger than the largest type on the rest of the page, the following:

(a) The purchase price.

(b) The amount to be trusted.

(c) The amount to be refunded upon contract cancellation.

(d) The amounts allocated to merchandise, services, and cash advances.

(e) A description of the merchandise covered by the contract to include, when applicable, model, manufacturer, and other relevant specifications.

(f) The toll-free number of the department which is available for questions or complaints.

(g) A statement that the purchaser shall have 30 days from the date of execution of contract to cancel the contract and receive a total refund of all moneys paid.

History.—s. 37, ch. 80-228; s. 2, ch. 81-318; s. 1, ch. 89-2; ss. 75, 122, ch. 93-359.

Note.—Former s. 559.407; a. 497.046.

497.337 Prohibition on sale of personal property or services.—

(7) This section applies to all cemetery companies licensed pursuant to this chapter that offer for sale or sell personal property or services which may be used in a cemetery in connection with the burial of human remains or the commemoration of the memory of a deceased human being and also to any person in direct written contractual relationship with licensed cemetery companies.

(2)(a) Except as otherwise provided in this chapter, no cemetery company shall directly or indirectly enter into a contract for the sale of personal property or services, excluding burial or interment rights, which may be used in a cemetery in connection with disposing of human remains, or commemorating the memory of a deceased human being, if delivery of the personal property or performance of the service is to be made more than 120 days after receipt of final payment under the contract of sale, except as provided in s. 497.417. This shall include, but not be limited to, the sale for future delivery of burial vaults, grave liners, urns, memorials, vases, foundations, memorial bases, and similar merchandise and related services commonly sold or used in cemeteries and interment fees but excluding burial or interment rights.

(b) For the purposes of this section, the term "delivery" means actual delivery and installation at the time of need or at the request of the owner or the owner's agent.

Merchandise is not considered delivered under paragraph (a) if it is stored on the grounds of the cemetery or at a storage facility except for monuments, markers, and permanent outer burial receptacles that are stored in a protected environment and are comprised of materials designed to withstand prolonged, protected storage without adversely affecting the structural integrity or aesthetic characteristics of such permanent outer burial receptacles.

(c) In lieu of deliver/ as required by paragraph (b), for sales to cemetery companies and funeral establishments, and only for such sales, the manufacturer of a permanent outer burial receptacle which meets standards adopted by the board may elect, at its discretion, to comply with the delivery requirements of this section by annually submitting, in writing, evidence of the manufacturer's financial responsibility with the board for its review and approval. The standards and procedures to establish evidence of financial responsibility shall be those in s. 497.423 or s. 497.426, with the manufacturer of permanent outer burial receptacles which meet national industry standards assuming the same rights and responsibilities as those of a certificateholder under s. 497.423 or s. 497.425.

(3) NO nonprofit cemetery corporation which has been incorporated and engaged in the cemetery business prior to and continuously since 1915 and which has current trust assets exceeding 32 million shall be required to designate a corporate trustee.

History.—s. 5, ch. 72-78; s. 3, ch. 75-168; s. 1, ch. 77-457; s. 11, ch. 78-407; ss. 23, 39, 40, ch. 80-228; s. 411, ch. 81-259; ss. 2, 3, ch. 81-318; ss. 2, 3, ch. 82-7; s. 13, ch. 85-202; s. 7, ch. 88-227; s. 1, ch. 89-2; ss. 78, 122, ch. 93-359.

Note.—Former s. 559.441; s. 497.048.

491.341 Burial without regard to 'race or color.—

(1) No cemetery company or other legal entity conducting or maintaining any public or private cemetery may deny burial space to any person because of race or color. A cemetery company or other entity operating any cemetery may designate parts of cemeteries or burial grounds for the specific use of persons whose religious code requires isolation. Church cemeteries may limit burials to church members and their families.

(2) Any cemetery company or other legal entity which violates the provisions of this section commits a misdemeanor of the second degree, punishable as provided in s. 775.083, and each violation of this section constitutes a separate offense.

History.—s. 9, ch. 72-78; s. 3, ch. 75-168; s. 1, ch. 77-457; ss. 31, 39, 40, ch. 80-228; ss. 2, 3, ch. 81-318; s. 1, ch. 89-2; ss. 83, 122, ch. 93-359.

Note.—Former a. 559.52; s. 497.061.

497.345 Abandoned cemeteries; immunity;? actions.-

(f) Notwithstanding any provision of law to the contrary, a county or municipality which has within its jurisdiction an abandoned cemetery or a cemetery that has not been reasonably maintained for a period in excess of 6 months may upon notice to the department, take such action as is necessary and appropriate to provide for maintenance and security of the cemetery. The solicitation of private funds and the expenditure of public funds for the purposes enumerated in this subsection are hereby authorized, provided that no action taken by a county or municipality under this subsection shall

establish an ongoing obligation or duty to provide continuous security or maintenance for any cemetery.

(2) No county or municipality nor any person under the supervision or direction Of the County or municipality, Providing good faith assistance in Securing or maintaining a cemetery under subsection (1), may be Subject to civil liabilities or penalties Of any type for damages to property at the cemetery.

(3) A county or municipality that has maintained or secured a cemetery pursuant to the provisions of subsection (1) may maintain an action at law against the owner of the cemetery to recover an amount equal to the value of such maintenance or security.

History.—s. 7, ch. 78-407; n. 33, 40, ch. 85-228; ss. 2, 3, ch. 81-318; s. 1, ch. 88-300; s. 1, ch. 89-3; ss. 34, 122, ch. 93-399.

Note.—Former s. 559.525; s. 497.071.

497.349 Inactive cemeteries.-

(1) A licensee shall be considered inactive upon the acceptance of the surrender of its license by the department or upon the nonreceipt by the department of the license renewal fees required by s. 497.213(2).

(2) A licensee shall cease all preneed sales to the public upon becoming inactive. At-need sales to the public shall cease within 30 days after becoming inactive.

(3) Any licensee desiring to surrender its license to the department shall first:

- (a) File notice with the department.
- (b) Submit copies of its existing trust agreements.
- (c) Resolve to the department's satisfaction all findings and violations resulting from the last examination conducted.
- (d) Pay all outstanding fines and invoices due the department.
- (e) Submit its current license.

(4) Upon receipt of the notice, the department shall review the licensee's:

- (a) Trust funds.
- (b) Trust agreements.
- (c) Care and maintenance of the cemetery grounds.
- (S) After a review to the department's Satisfaction, the department shall terminate the license.

(6)(a) The care and maintenance trust fund of a licensee shall be held intact and in trust after the licensee has become inactive, and funds in that trust fund shall be disbursed to the cemetery on a regular basis for the upkeep of the grounds.

(b) The merchandise trust fund of a licensee shall be held intact and in trust after the licensee has become inactive, and the funds in that trust fund shall be disbursed in accordance with the requirements of the written contracts until the fund has been exhausted.

History.—s. 85, ch. 93-399.

497.353 Owners to provide addresses: presumption of abandonment abandonment procedures; sale of abandoned unused burial rights.-

(1) For purposes of this section, all owners of burial rights in any cemetery licensed under the provisions of the Florida Funeral and Cemetery Services Act shall have the legal duty to keep the cemetery companies informed in writing of their residence addresses. Cemetery companies shall notify their present burial rights

owners by letter at the owner's last known address and notify all future burial rights owners, in the contract for sale and the certificate of ownership, of the requirement to keep the cemetery company informed in writing of their current residence address.

(2) There is hereby created a presumption that burial rights in any cemetery licensed under this chapter have been abandoned when an owner of unused burial rights has failed to provide the cemetery with a current residence address for a period of 50 consecutive years and the cemetery is unable to communicate by certified letter with said owner of unused burial rights for lack of address. No such presumption of abandonment shall exist for burial rights held in common ownership which are adjoining, whether in a grave space, plot, mausoleum, columbarium, or other place of interment, if any such burial rights have been used within such common ownership.

(3) Upon the occurrence of a presumption of abandonment as set forth in subsection (2), a cemetery may file with the department a certified notice attesting to the abandonment of the burial rights. The notice shall do the following:

(a) Describe the burial rights certified to have been abandoned:

(b) Set forth the name of the owner or owners of the burial rights, or if the owner is known to the cemetery to be deceased, then the names, if known to the cemetery, of such claimants as are heirs at law, next of kin, or specific devisees under the will of the owner;

(c) Detail the facts with respect to the failure of the owner or survivors as outlined in this section to keep the cemetery informed of the owner's address for a period of 50 consecutive years or more; and

(d) Certify that no burial right has been exercised which is held in common ownership with any abandoned burial rights as set forth in subsection (2).

(4) Irrespective of diversity of ownership of the burial rights, a cemetery may include in its certification burial rights in as many owners as are certified to have been abandoned.

(5) The department shall notice and publish the approved abandoned burial rights in the manner provided by s. 717.118.

(6) Within 120 days from the final notice and publication as provided in subsection (5), the department shall notify the cemetery if there has been no claim filed for the burial rights, and the cemetery shall have the right to sell such burial rights at a public sale subject to the approval of the sale price by the department.

(7) Notice of the time and place of any sale held pursuant to the provisions of this section shall be published by the cemetery once in a newspaper of general circulation in the county in which the cemetery is located. such publication to be not less than 30 days prior to the date of sale.

(8) The proceeds derived from any sale shall be disbursed in the following manner: an amount specified in s. 497.245 shall be deposited to the cemetery care and maintenance trust fund; an amount equal to the cemetery company's actual and necessary costs incurred pursuant to this section but not to exceed 10 percent of the selling price of the abandoned burial right shall be

deposited to the Cemetery company's operating **account**; and the balance of the proceeds shall be deposited with the department within 20 days after receipt of said funds. The department shall deposit all funds received pursuant to this subsection in accordance with the provisions of S. 717.123.

(9) Persons or their heirs who were owners of burial rights which were sold under this section shall have the right at any time to obtain equivalent burial rights in the cemetery without further charge. If no burial rights are desired, such persons or their heirs may obtain the amount paid to the department in accordance with the provisions of s. 717.124.

(10) The cemetery shall set aside equivalent burial rights equal to 10 percent of the abandoned burial rights sold under this section for the exclusive use of persons or their heirs who were owners of burial rights which were sold under this section, who have the right at any time to obtain equivalent burial rights in the cemetery under this section.

(11) Persons who purchase burial rights at a sale pursuant to this section shall have the right to sell, alienate, or otherwise transfer said burial rights subject to and in accordance with the rules and regulations of the cemetery and payment of a reasonable transfer fee.

(12) No burial rights reacquired pursuant to this section by a cemetery may be included in determining available inventory of burial spaces or lots in the evaluation of need for new cemeteries pursuant to s. 497.006.

*History.—ss. 2, 4, ch. 87-39; s. 1, ch. 89-8; ss. 86, 122, ch. 93-399.
Note.—Former s. 497.091.*

497.357 Registration of exempt cemeteries.-

(1) All cemeteries in excess of 5 acres located in this state that are exempt from the provisions of this chapter shall be required to register and pay a registration fee of \$25 with the department by filing a report of identification with the department. The department shall maintain such reports as public records. Such registration shall be renewed every 5 years pursuant to a schedule set by board rule.

(2) The report shall be submitted on a form approved by the board, and shall list the name and address of the authorized agent who is responsible for conducting the business of the cemetery and to whom inquiries about the cemetery can be directed.

(3) The board may institute proceedings in any appropriate court for injunctive relief to enforce this section.

History.—s. 87, ch. 93-399.

497.361 Registration of monument establishments.

(1) No person shall conduct, maintain, manage, or operate a monument establishment, unless such an establishment pays a registration fee of \$200 and is registered with the department in accordance with this section.

(2) A monument establishment shall be a physical structure that is located at a specific street address.

(3) No person may engage in the retail sale of monuments or monument services to consumers, unless they are affiliated with a monument establishment, funeral establishment, or cemetery.

(4) The department, by rule, shall provide for biennial renewal of registrants and a renewal fee of \$150.

History.—s. as. ch. 93-399.

497.401 Preneed safes: chapter exclusive; applicability of other laws.—Except as provided in this chapter, preneed funeral merchandise or service contract businesses and preneed burial merchandise or service contract businesses shall be governed by this chapter and shall be exempt from all provisions of the Florida Insurance Code.

*History.—ss. 21, 52, ch. 85-321; ss. 90, 122, ch. 93-399.
Note.—Former s. 639.025.*

497.403 Insurance business not authorized.—

Nothing in the Florida Insurance Code or this chapter shall be deemed to authorize any preneed funeral merchandise or service contract business or any preneed burial merchandise or service business to transact any insurance business, other than that of preneed funeral merchandise or service insurance or preneed burial merchandise or service insurance, or otherwise to engage in any other type of insurance unless it is authorized under a certificate of authority issued by the Department of Insurance under the provisions of the Florida Insurance Code. Any insurance business transacted under this section must comply with the provisions of s. 626.785.

*History.—ss. 22, 52, ch. 85-321; P. 91, 122, ch. 93-399.
Note.—Former s. 639.027.*

497.405 Certificate of authority required.-

(1)(a) No person may sell a preneed contract without first having a valid certificate of authority.

(b) No person may sell services, merchandise, or burial rights on a preneed basis unless such person is authorized pursuant to this chapter to provide such services, merchandise, or burial rights on an at-need basis.

(2)(a) No person may receive any funds for payment on a preneed contract who does not hold a valid certificate of authority.

(b) The provisions of paragraph (a) do not apply to any trust company or to any national or state bank or savings and loan association having trust powers which company, bank, or association receives any money in trust pursuant to the safe of a preneed contract.

(c) The provisions of paragraph (a) do not apply to any Florida corporation existing under chapter 607 acting as a servicing agent hereunder in which the stock of such corporation is held by 100 or more persons licensed pursuant to chapter 470, provided no one stockholder holds, owns, votes, or has proxies for more than 5 percent of the issued stock of such corporation; provided the corporation has a blanket fidelity bond, covering all employees handling the funds, in the amount of \$50,000 or more issued by a licensed insurance carrier in this state; and provided the corporation processes the funds directly to and from the trustee within the applicable time limits set forth in this chapter. The department may require any person claiming that the provisions of this paragraph exempt it from the provisions of paragraph (a) to demonstrate to the satisfaction of the department that it meets the requirements of this paragraph.

(3) No person may obtain a certificate of authority under this chapter for the ~~preneed~~ sale of ~~services~~ unless such person or its agent, in the case of a corporate entity, holds a ~~license~~ as a funeral establishment or cemetery company or registration as a direct disposal establishment under chapter 470.

*History.—*s. 4, ch. 28211, 1953; s. 24, ch. 11-1; s. 5, ch. 65-393; ss. 13, 35, ch. 69-106; s. 3, ch. 77-428; s. 2, ch. 81-318; ss. 3, 31, 32, ch. 83-316; s. 3, ch. 88-139; ss. 92, 122, ch. 91-359.

Note.—Former s. 639.09.

497.407 Certificate of authority: annual statement; renewal.-

(1) An application to the board for a certificate of authority shall be accompanied by the statement and other matters described in this section in the form prescribed by the board. Annually thereafter, within 3 months after the end of its fiscal period, or within an extension of time therefor, as the board for good cause may grant, the person authorized to engage in the sale of preneed contracts shall file with the department a full and true statement of his financial condition, transactions, and affairs, prepared on a basis as adopted by rule of the board, as of the preceding fiscal period or at such other time or times as the board may provide by rule, together with information and data which may be

required by the board.

(2) The statement shall include the following:

(a) The types of preneed contracts proposed to be written.

(b) The name and **address of** the place of business of the person offering to write preneed contracts.

(c) Evidence that the person offering the statement:

1. Has the ability to discharge his **liabilities** as they become due in the normal course of business and has sufficient funds available during the calendar year to **perform** his obligations under his contract:

2. Has complied with the trust requirements for the **funds received under contracts** issued by himself as hereinafter described;

3. Has disbursed interest, dividends, or accretions earned by trust funds, in accordance with this chapter **and** rules promulgated thereunder; and

4. Has complied with this chapter and any rules of the board and the department.

(d) Any other information considered necessary by the board to meet its responsibilities under this chapter.

(3) If the person is an individual, the statement shall be sworn by him; if a firm or association, by all members thereof; or, if a corporation, by the president and **secretary** thereof.

(4) The fee payable to the department for issuance of the original certificate of authority and each annual renewal thereof shall be set by the board at an amount not to exceed \$500 and shall accompany each application for an original certificate and, thereafter, each annual statement. The fee shall be payable to the Regulatory Trust Fund under the Division of Finance.

(5) Upon the board being satisfied that the statement and matters which may accompany it meet the requirements of this chapter and of its rules, it shall issue or renew the certificate of authority if upon investigation by the board it appears that the principals, including directors, officers, stockholders, employees, and

agents of such person, are of good moral character and have reputations for fair dealing in business matters.

(6) The certificate of authority shall expire annually on June 1, **unless** renewed, or at such other time or times as the board may provide by rule.

(7) An application for an initial certificate of authority or for the annual renewal of the certificate shall disclose the existence of all preneed contracts for service or merchandise funded by any method other than a method permitted by this chapter, which contracts are known to the applicant and name the applicant or his business as the beneficiary upon the death of the purchaser of the preneed contract. Such disclosure shall include the name and address of the contract purchaser, the name and address of the institution where such funds are deposited, and the number used by the institution to **identify** the account. With respect to contracts entered into before January 1, 1983, the board may not deny or refuse to renew a certificate of authority solely on the basis of such disclosure. The board may not require **the** purchaser of any such contract to liquidate the account if such account was established before July 1, 1965. The **board** may use the information disclosed to notify the contract purchaser and the institution in **which** such funds are deposited should the holder of a certificate of authority be unable to fulfill the requirements of the contract.

(8) On or before April 1 of each year, the certificateholder shall file with the board in the form prescribed by the board a full and true statement as to the activities of any trust established by it pursuant to **this** chapter for the preceding calendar year.

(9) In addition to any other penalty that may be provided for under this chapter, the board may levy a fine not to exceed \$50 a day for each day the **certificateholder** fails to file its annual statement, and the board may levy a fine not to exceed \$50 a day for each day the **certificateholder fails to file the** statement of activities of the trust. Upon notice to the certificateholder by the board that **the certificateholder** has failed to file the annual statement or the statement of activities of the trust, the certificateholder's authority to sell preneed contracts shall cease while such default continues. The board shall deposit all sums collected under this section to the credit of the **Regulatory Trust Fund under the Division of Finance**.

(10) To facilitate **uniformity in financial statements** and to facilitate department analysis, the board may by rule adopt the form for financial statements approved by the National Association of Insurance Commissioners or its successor organization and may by rule require each certificateholder to submit to the board all or part of the information contained in the financial statement in a computer-readable form compatible with the electronic data processing system of the department.

*History.—*s. 5, ch. 28211, 1953; ss. 6, 7, ch. 65-393; ss. 13, 35, ch. 69-106; s. 4, ch. 77-428; s. 169, ch. 79-164; s. 246, ch. 79-400; a. 2, ch. 81-318; ss. 4, 31, 32, ch. 83-316; s. 2, ch. 85-89; s. 4, ch. 88-139; ss. 93, 122, ch. 91-359.

Note.—Former s. 639.10.

497.409 Approval of forms.-

(1) Preneed contract forms and related forms shall be filed with and approved by the board. The board may not approve any preneed contract form that does not provide for sequential prenumbering thereon.

(2) Specific disclosure regarding the certificateholder's ability to select either trust funding or the financial responsibility alternative as set forth in s. 497.423 or s. 497.425 in connection with like receipt of preneed contract proceeds is required in the preneed contract.

History.—s. 5, 12, ch. 33-316; 1, 5, ch. 38-129; ss. 34, 122, ch. 93-399.
Note.—Former s. 539.105.

497.411 Nonconforming contracts.—Any preneed contract that requires the moneys paid to the seller or trustee to be placed in trust and fails to comply with s. 497.417 shall comply with and be construed under s. 497.429.

History.—s. 5, 17, ch. 38-129; ss. 95, 122, ch. 93-399.
Note.—Former s. 539.107.

497.413 Preneed Funeral Contract Consumer Protection Trust Fund.—

(1) There is hereby created in the department the Preneed Funeral Contract Consumer Protection Trust Fund to be administered and regulated by the board.

(2) Within 30 days after the end of each calendar quarter, for each preneed contract written during the quarter and not canceled within 30 days after the date of the execution of the contract, each certificateholder utilizing s. 497.417 or s. 497.429 shall remit the sum of \$2.50 for each preneed contract having a purchase price of \$1,500 or less, and the sum of \$5 for each preneed contract having a purchase price in excess of \$1,500; and each certificateholder utilizing s. 497.423 or s. 497.425 shall remit the sum of \$5 for each preneed contract having a purchase price of \$1,500 or less, and the sum of \$10 for each preneed contract having a purchase price in excess of \$1,500.

(3) In addition to the amounts specified in subsection (2), each remittance shall contain such other additional information as needed by the board to carry out its responsibilities under this chapter and as prescribed by rule of the board.

(4) All funds received by the board or the department pursuant to this section shall be deposited into the Preneed Funeral Contract Consumer Protection Trust Fund.

(5) The amounts remitted for deposit into the Preneed Funeral Contract Consumer Protection Trust Fund shall not be deemed proceeds from the sale of a preneed contract within the meaning of this chapter.

(6) Upon the commencement of a delinquency proceeding pursuant to chapter 631 against a certificateholder, the board may use up to 50 percent of the balance of the trust fund not already committed to a prior delinquency proceeding solely for the purpose of providing restitution to preneed contract purchasers and their estates due to a certificateholder's failure to provide the benefits of a preneed contract or failure to refund the appropriate principal amount by reason of cancellation thereof. The balance of the trust fund shall be determined as of the date of the delinquency proceeding.

(7) In any situation in which a delinquency proceeding has not commenced, the board may, in its discretion, use the trust fund for the purpose of providing restitution to any consumer, owner, or beneficiary of a preneed contract or similar regulated arrangement under this chapter entered into after June 30, 1977, if, after investi-

gation, the board determines that the certificateholder has breached the preneed contract by failing to provide benefits or an appropriate refund, or that a provider, who is a former certificateholder or an establishment which has been regulated under chapter 470, has sold a preneed contract and has failed to fulfill the arrangement or provide the appropriate refund, and such certificateholder or provider does not possess adequate funds to provide appropriate refunds. Such monetary relief shall be in an amount as the board may determine and shall be payable in such manner and upon such conditions and terms as the board may prescribe. However, any restitution made pursuant to this subsection shall not exceed, as to any single contract or arrangement, the lesser of the gross amount paid under the contract or 4 percent of the uncommitted assets of the trust fund, and the total of all restitutions made to all applicants under this subsection in a single fiscal year shall not exceed the greater of 30 percent of the uncommitted assets of the trust fund as of the end of the most recent fiscal year or \$120,000. The department may use moneys in the trust fund to contract with independent vendors pursuant to chapter 287 to administer the requirements of this subsection.

(8) All moneys deposited in the Preneed Funeral Contract Consumer Protection Trust Fund together with all accumulated income shall be used only for the purposes expressed in this section and shall not be subject to any liens, charges, judgments, garnishments, or other creditor's claims against the certificateholder, any trustee utilized by the certificateholder, any company providing a surety bond as specified in this chapter, or any purchaser of a preneed contract. No preneed contract purchaser shall have any vested rights in the trust fund.

(9) If restitution is paid to a preneed contract purchaser or his estate in accordance with this section, the amount of restitution paid shall not exceed the gross amount of the principal payments made by the purchaser on its contract.

(10) Whenever the board makes payments from the trust fund to a purchaser or its estate, the board shall be subrogated to the purchaser's rights under the contract, and any amounts so collected by the board shall be deposited in the Preneed Funeral Contract Consumer Protection Trust Fund.

(11) No person shall make, publish, disseminate, circulate, or place before the public, or cause, directly or indirectly, to be made, published, disseminated, circulated, or placed before the public, in a newspaper, magazine, or other publication, or in the form of a notice, circular, pamphlet, letter, or poster, or over any radio station or television station, or in any other way, any advertisement, announcement, or statement which uses the existence of the Preneed funeral Contract Consumer Protection Trust Fund for the purpose of sales, solicitation, or inducement to purchase any form of preneed contract covered under this chapter.

(12) Notwithstanding the fee structure in subsection (2), the department shall review the status of the trust fund annually, and if it determines that the uncommitted trust fund balance exceeds \$1 million, the board may by rule lower the required payments to the trust fund to an amount not less than \$1 per preneed contract.

History.—ss. 7, 17, ch. 88-123; s. 67, ch. 89-260; s. 1, ch. 92-97; ss. 96, 122, ch. 93-399.

Note.—Former s. 639.108.

497.415 Ownership of proceeds received on contracts.-

(1) Subject to the provisions of this chapter, all funds paid pursuant to a preneed contract by a purchaser to a certificateholder shall be the sole property of, and within the full dominion and control of, said certificateholder.

(2) Subject to the provisions of this chapter, the relationship between the purchaser of a preneed contract and a certificateholder shall be deemed for all purposes as a debtor-creditor relationship.

History.—ss. 2, 17, ch. 88-139; ss. 97, 122, ch. 93-399.

Note.—Former s. 639.109.

497.417 Disposition of proceeds received on contracts.-

(1) Any person who is paid, collects, or receives funds under a preneed contract for funeral services or merchandise or burial services or merchandise shall deposit in this state an amount at least equal to the sum of 70 percent of the purchase price collected for all services sold and facilities rented; 100 percent of the purchase price collected for all cash advance items sold; and 30 percent of the purchase price collected or 110 percent of the wholesale cost, whichever is greater, for all merchandise sold. The wholesale cost shall be based upon the **certificateholder's stated wholesale cost** for the calendar year during which the initial deposit to the preneed trust fund for the preneed contract is made. **Such deposits shall be made within 30 days after the end of the calendar month in which payment is received, under the terms of a revocable trust instrument entered into with a national or state bank or savings and loan association having trust powers or a trust company. The trustee shall take title to the property conveyed to the trust for the purpose of investing, protecting, and conserving it for the certificateholder; collecting income; and distributing the principal and income as prescribed in this chapter. The certificateholder is prohibited from sharing in the discharge of these responsibilities, except that the certificateholder may request the trustee to invest in tax-free investments and may appoint an adviser to the trustee. The trust agreement shall be submitted to the board for approval and filing. The funds shall be held in trust, both as to principal and income earned thereon, and shall remain intact, except that the cost of the operation of the trust or trust account authorized by this section may be deducted from the income earned thereon. The contract purchaser shall have no interest whatsoever in, or power whatsoever over, funds deposited in trust pursuant to this section. In no event may said funds be loaned to a certificateholder, an affiliate of a certificateholder, or any person directly or indirectly engaged in the burial, funeral home, or cemetery business. Furthermore, the certificateholder's interest in said trust shall not be pledged as collateral for any loans, debts, or liabilities of the certificateholder and shall not be transferred to any person without the prior written approval from the department and the trustee which shall not be unreasonably withheld. Even though the**

certificateholder shall be deemed and treated as the settlor and beneficiary of said trust for all purposes, all of said trust funds are exempt from all claims of creditors of the certificateholder except as to the claims of the contract purchaser, his representative, the board, or the department.

(2) Except as provided in s. 497.337, the delivery of funeral merchandise before the death of the person for whom it is purchased does not constitute performance or fulfillment, either wholly or in part, of any preneed contract entered into after July 1, 1977.

(3) The trustee shall make regular valuations of assets it holds in trust and provide a report of such valuations to the certificateholder at least quarterly. Any person who withdraws appreciation in the value of trust, other than the pro rata portion of such appreciation which may be withdrawn upon the death of a contract beneficiary or upon cancellation of a preneed contract, shall be required to make additional deposits from his own funds to restore the aggregate value of assets to the value of funds deposited in trust, but excluding from the funds deposited those funds paid out upon preneed contracts which such person has fully performed or which have been otherwise withdrawn, as provided for in this chapter. The certificateholder shall be liable to third parties to the extent that income from the trust is not sufficient to pay the expenses of the trust.

(4) The trustee of the trust established pursuant to this section shall only have the power to:

(a) Invest in investments as prescribed in s. 215.47 and exercise the powers set forth in part IV of chapter 737, provided that the board may by order require the trustee to liquidate or dispose of any investment within 30 days after such order.

(b) Purchase from an insurance company, licensed by this state, life insurance policies or annuity contracts not to exceed the aggregate amount of \$250,000 on any one individual life.

(c) Borrow money up to an aggregate amount of 10 percent of trust assets, at interest rates then prevailing from any individual, bank, insurance company, or other source, irrespective of whether any such person is then acting as trustee, and to create security interests in no more than 10 percent of trust assets by mortgage, pledge, or otherwise, upon the terms and conditions and for such purposes as the trustee may deem advisable.

(d) Commingle the property of the trust with the property of any other trust established pursuant to this chapter and make corresponding allocations and divisions of assets, liabilities, income, and expenses.

(5) The certificateholder, at his election, shall have the right and power, at any time, to revert in it title to the trust assets, or its pro rata share thereof, provided it has complied with s. 497.423 or s. 497.429. Notwithstanding anything contained in this chapter to the contrary, the certificateholder, via its election to sell or offer for sale preneed contracts subject to this section, shall represent and warrant, and is hereby deemed to have done such, to all federal and Florida taxing authorities, as well as to all potential and actual preneed contract purchasers, that s. 497.423 or s. 497.429 is a viable option available to it at any and all relevant times. If in the certificateholder's opinion it does not have the ability to select the

financial responsibility **alternative** of s. 497.423 or s. **497.425**, then it shall **not** have the right to sell or **solicit** contracts pursuant to **this** section.

(6) **This** section, as amended by s. 6 of chapter **83-316**, Laws of Florida, applies **only** to preneed contracts entered into on or after October 1, 1963.

History.—s. 3, ch. 28211, 1963; s. 2, ch. 65-393; s. 1, ch. 77-438; s. 247, ch. 79-400; s. 2, ch. 81-318; ss. 6, 31, 32, 33, ch. 83-316; s. 9, ch. 88-139; s. 68, ch. 89-360; ss. 38, 122, a 93-399.

Note.—Former s. 639.11.

497.419 Cancellation of, or default on, preneed contracts.—

(1) A purchaser, by providing written notice to the **certificateholder**, may **Cancel** a preneed contract within **30** days of the date that the contract was executed provided that the burial rights, merchandise and services have not yet been used. Upon providing such notice, the purchaser shall be entitled to a complete refund of the amount paid, except for the amount allocable to any burial rights, merchandise or **services** that have been used, and shall be released from all obligations under the contract. This subsection shall apply to all items that are purchased as **part** of a preneed contract, including burial rights, regardless of whether such burial rights are purchased as part of a preneed contract or **purchased** separately.

(2) A purchaser, by providing written notice to the certificateholder, may **cancel** the services, facilities, and cash advance **items portions** of a preneed contract at any time, and shall be entitled to a full refund of the purchase price allocable to such items. Any accumulated earnings allocable to **such** preneed contract shall **be** paid to the certificateholder upon such cancellation.

(3) **Subject** to paragraphs (a) and (b) a purchaser may cancel the merchandise portion of a preneed contract by providing written notice to the certificateholder, and shall be entitled to a full refund of the purchase price allocable to the specific item or items of merchandise that the certificateholder cannot or does not deliver in accordance with this subsection.

(a) Such refund shall be provided only if at the time that the certificateholder **is** required to fulfill its obligations under the preneed **contract** the certificateholder does not or cannot comply with the terms of the contract by actually delivering the **merchandise**, within a reasonable time, depending upon the nature of the merchandise purchased, after having been requested to do so.

(b) In order to fulfill its obligations under the preneed contract, a certificateholder may elect either or both of the following options:

1. Subcontract with a person located outside the certificateholder's market area to provide the merchandise: or

2. Provide other items of equal or greater quality.

(4) Each certificateholder shall provide in conspicuous type in its contract that the contract purchaser may cancel the contract and receive a full refund within 30 days of the date of execution of the contract. The failure to make such provision shall not impair the contract purchaser's right **to** cancellation and refund as provided in this section.

(5) Upon breach of contract or failure of the **certifi-**cateholder **to** provide funeral merchandise or services

under a preneed contract, the **contract purchaser shall be entitled** to a refund of all money **paid** on the contract. Such refund shall be made within 30 days after receipt by the certificateholder of the contract purchaser's **written** request for refund.

(6) If a purchaser is **90** days past due in making payments on a preneed contract, the contract shall be considered to be in default, and the **certificateholder** shall be entitled to cancel the contract, withdraw all funds in trust allocable **to** merchandise items, and retain such funds as liquidated damages. Upon making such withdrawal, the **certificateholder** shall return all funds in trust allocable to services, facilities, or cash advance items to the purchaser, provided that the certificateholder has provided the purchaser with 30 days' written notice of its intention to exercise any of its rights under this provision.

(7) No preneed contract shall restrict any contract purchaser who is an applicant for, or a recipient of, **supplemental** security income, aid to families with dependent children, or Medicaid from making his contract irrevocable.

(8) **This** section, as amended by s. 7 of chapter **83-316**, Laws of Florida, applies **only** to preneed contracts entered into on or after October 1, **1983**.

(9) Persons who purchase merchandise or burial rights pursuant to this chapter shall have the right to sell, alienate, or otherwise transfer the merchandise or burial rights subject to and in accordance with rules adopted **by** the board.

History.—s. 3, ch. 28211, 1963; s. 10, ch. 65-393; s. 6, ch. 77-438; s. 1, ch. 78-276; s. 2, ch. 81-318; s. 2, ch. 82-159; ss. 7, 31, 32, 33, ch. 83-316; s. 10, ch. 88-139; ss. 93, 122, ch. 93-399.

Note.—Former s. 639.13.

497.421 Payment of funds upon death of named **beneficiary.—Disbursements** of funds discharging any preneed contract shall be made **by** the trustee to the certificateholder upon receipt of a certified copy of the death certificate of the contract beneficiary and **evidence** satisfactory to the trustee that the preneed contract **has** been fully performed. In the event of any contract default by the contract purchaser, or in the event that the funeral merchandise or service or burial merchandise or service contracted for is not provided or is not desired by the heirs or personal representative of the contract beneficiary, the trustee shall return, within **30** days after its receipt of a written request therefor, funds paid on the contract to the certificateholder or to its assigns, subject to the provisions of s. 497.419.

History.—s. 9, ch. 28211, 1963; s. 11, ch. 65-393; s. 7, ch. 77-438; s. 2, ch. 78-276; s. 1, 2 a 81-318; a. 9, 31, 32, ch. 83-316; s. 11, ch. 88-139; ss. 100, 122, ch. 93-399.

Note.—Former a. 639.14.

497.423 Evidence of financial responsibility as alternative to trust **deposit.—**

(1) In lieu of depositing funds into a trust as required by s. **497.417(1)** or s. 497.429, a certificateholder may elect annually, at its discretion, to comply with this section by filing annually a **written request** with, and receiving annual approval from, the board.

(2) No certificateholder shall utilize this section unless it has filed annually a written request with, and received approval by, the board.

(3) The certificateholder receiving approval from the board to comply with this section shall maintain compliance with this section at all times during the period this election is in effect.

(4) The certificateholder's request to be governed by this section shall be in the form prescribed by the board and shall be accompanied by, in addition to other information that the board may require by rule, the surety bond, the audited financial Statements, and proof of the other requirements specified in this section, all as described in this section.

* Bonds

(5) For each 12-month period, or any part thereof, in which this section is applicable, the electing certificateholder shall maintain a bond, issued by a surety company admitted to do business in this state, in an amount at least equal to the sum of all amounts not currently in trust, an amount equal to the total purchase price for all installed preneed contracts where the total purchase price has not been collected, excluding those amounts already in trust, all amounts the certificateholder intends to remove from trust if the board approves the certificateholder's request to comply with this section, and an amount equal to 70 percent of the total purchase price for each preneed contract the certificateholder expects to sell in the year for which the certificateholder is electing to comply with this section. The surety bond shall be conditioned in such a manner to secure the faithful performance of all conditions of any preneed contracts for which the certificateholder was required to have covered by the amount of the bond, including refunds requested pursuant to ss. 497.419 and 497.421. The surety bond shall also guarantee the financial responsibility of such certificateholder against its default arising out of any of its preneed contracts. The terms of the surety bond shall cover liabilities arising from all moneys received by the electing certificateholder from preneed contracts for which the certificateholder was required to have covered by the amount of the bond during the time the bond is in effect, and the liability of the surety shall continue until the contracts thereunder are fulfilled. The bond shall be in favor of the state for the benefit of any person damaged as a result of purchasing a preneed contract from the certificateholder. The aggregate liability of the surety to all persons for all breaches of the conditions of the bonds shall in no event exceed the amount of the bond. The per preneed contract liability shall not exceed the amount of the funds received by the certificateholder per preneed contract during the effective period in which the bond is issued. The bond shall be filed and maintained with the board.

(6) The amount of the surety bond shall, upon order of the board, be increased if, in the board's discretion, it finds such increase to be warranted by the volume of preneed contracts handled, or expected to be handled, by the certificateholder. The surety bond shall be in a form to be approved by the board, and the board shall have the right to disapprove any bond which does not provide assurance as provided in, and required by, this section.

(7) The bond shall be maintained unimpaired for as long as the certificateholder continues in business in this state and continues to utilize this section. Whenever the

certificateholder notifies the board that it no longer desires to be governed by this section and furnishes to the board satisfactory proof that it has discharged or otherwise adequately provided for all of its obligations to its preneed contract purchasers covered by the bond, such as by evidence satisfactory to the board demonstrating that s. 497.417 or s. 497.429 has been complied with, the board shall release the bond to the entitled parties, provided said parties acknowledge receipt of same.

(8) No surety bond used to comply with this section shall be canceled or subject to cancellation unless at least 60 days' advance notice thereof, in writing, is filed with the board, by the surety company. The cancellation of the bond shall not relieve the obligation of the Surety company for claims arising out of contracts issued or otherwise covered before cancellation of the bond. In the event that notice of termination of the bond is filed with the board, the certificateholder insured thereunder shall, within 30 days of the filing of the notice of termination with the board, provide the board with a replacement bond or with evidence which is satisfactory to the board demonstrating that s. 497.417 or s. 497.429 has been fully complied with. If within 30 days of the notice of termination with the board no replacement bond acceptable to the board or no evidence satisfactory to the board demonstrating that s. 497.417 or s. 497.429 has been complied with is filed with the board, the board shall suspend the license of the certificateholder until the certificateholder files a replacement bond acceptable to the board or demonstrates to the satisfaction of the board that it has complied with s. 497.417 or s. 497.429.

(9) In lieu of the surety bond, the board may provide by rule for other forms of security or insurance.

(10) Every certificateholder electing to be governed by this section shall have its financial statements, submitted to the department pursuant to s. 497.407, audited by an independent public accountant certified pursuant to chapter 473. The financial statements shall contain, in accordance with generally accepted accounting principles, for two or more consecutive annual periods, the following:

(a) The certified public accountant's unqualified opinion or, in the case of a qualified opinion, a qualified opinion acceptable to the board, and:

1. A balance sheet
2. A statement of income and expenses; and
3. A statement of changes in financial position.

(b) Notes to the financial statements considered customary or necessary for full disclosure and adequate understanding of the financial statements, financial condition, and operation of the certificateholder. The notes shall include a schedule, based upon statutory accounting principles, indicating that the certificateholder which has held a certificate pursuant to this chapter for less than 10 years has a current ratio of no less than 3 to 1 of current assets to current liabilities and net assets of at least \$600,000 or that the certificateholder which has held a certificate pursuant to this chapter for 10 years or more has a current ratio of no less than 2 to 1 of current assets to current liabilities and net assets of at least \$400,000.

(c) An indication that the Certificateholder has sufficient funds available to perform the obligations under all its preneed contracts.

(i) 1) The board may require that the audited financial statements be prepared on a Calendar-year basis.

(12) The electing certificateholder shall provide the board interim unaudited financial statements on a quarterly basis demonstrating financial Compliance with this section.

(13) In lieu of subsections (4) through (11), a certificateholder with net assets of at least \$25,000 may request to comply with this section by providing a written guarantee from a qualified guaranteeing organization. If the certificateholder so elects, the Certificate holder's requests to be governed by this section shall be in the form prescribed by the board and shall be accompanied by, in addition to other information the board may require by rule, a written guarantee approved by the board as meeting the requirements of this section from a qualified guaranteeing organization, acceptable to the board, which:

(a) Is either a certificateholder or servicing agent.

(b) Is a corporation formed under the laws of this state or of another state, district, territory, or possession of the United States.

(c) Has been in operation for 10 or more years.

(d) Submits to the board its annual financial statements audited by an independent public accountant certified pursuant to chapter 473. The financial statements shall contain, in accordance with generally accepted accounting principles, for two or more consecutive annual periods, the following:

1. The certified public accountant's unqualified opinion or, in the case of a qualified opinion, a qualified opinion acceptable to the board, and:

a. A balance sheet;

b. A statement of income and expenses; and

c. A statement of changes in financial position.

2. Notes to the financial statements considered customary or necessary for full disclosure and adequate understanding of the financial statements, financial condition, and operation of the certificateholder. The notes shall include a schedule, based upon statutory accounting principles, indicating that the guaranteeing organization has a current ratio of no less than 2 to 1 of current assets to current liabilities and net assets of at least \$250,000.

(e) Has sufficient funds available to perform the obligations under its guarantees.

(f) Has complied with subsections (5), (6), (7), and (8), except that the bond shall be maintained by the guaranteeing organization in the minimum aggregate principal amount of \$1 million.

(g) Has principals, including directors, officers, stockholders, employees, and agents that are of good moral character and have reputations for fair dealing in business matters, both as determined by the board.

History.—s. 12, 17, ch. 88-139; s. 101, 122, ch. 93-399.
Note.—Former s. 639.145.

497.425 Alternatives to deposits under s. 497.417.

(l)(a) As an alternative to the requirements of s. 497.417 that relate to trust funds, a certificateholder may

purchase a surety bond in an amount not less than the aggregate value of outstanding liabilities on undelivered preneed contracts for merchandise and services. For the purpose of this section, the term 'outstanding liabilities' means the gross replacement or wholesale value of the preneed merchandise and services. The bond shall be made Payable to the State of Florida for the benefit of the board and all purchaser: of preneed cemetery merchandise or services. The bond must be approved by the board.

(b) The amount of the bond shall be based on a report documenting the outstanding liabilities of the certificateholder and shall be prepared by the certificateholder using generally accepted accounting principles and signed by the certificateholder's chief financial officer.

(c) The report shall be compiled as of the end of the certificateholder's fiscal year and updated annually. The amount Of the bond shall be increased or decreased as necessary to correlate with changes in the outstanding liabilities.

(d) If a certificeteholder fails to maintain a bond pursuant to this section, the certificateholder shall cease the Sale of preneed merchandise and services.

(2) Upon prior approval by the board, the certificateholder may file a letter of credit with the board in lieu of a surety bond. Such letter of credit must be in a form, and is subject to terms and conditions, prescribed by the board. It may be revoked only with the express approval of the board.

(3)(a) A buyer of preneed merchandise or services who does not receive such services or merchandise due to the economic failure, closing, or bankruptcy of the certificateholder must file a claim with the surety as a prerequisite to payment of the claim and, if the Claim is not paid, may bring an action based on the bond and recover against the surety. In the Case of a letter of credit or Cash deposit that has been filed with the board, the buyer may file a claim with the board.

-(b) In order to qualify for recovery on any claim under paragraph (a), the buyer must file the claim no later than 1 year after the date on which the certificateholder closed or bankruptcy was filed.

(c) The board may file a claim with the surety on behalf of any buyer under paragraph (a). The surety shall pay the amount of the claims to the board for distribution to claimants entitled to restitution and shall be relieved of liability to that extent.

(d) The liability of the surety under any bond may not exceed the aggregate amount of the bond, regardless of the number or amount of claims tiled.

(e) If the total value of the claims filed exceeds the amount of the bond, the surety shall pay the amount of the bond to the board for distribution to claimants entitled to restitution and shall be relieved of all liability under the bond.

(4) The certificateholder shall maintain accurate records of the bond and premium payments on it, which records shall be open to inspection by the board.

(5) For purposes of this section, a preneed contract is a contract calling for the delivery of merchandise and services in the future and entered into before the death of the prospective recipient.

(6) This act does not relieve the certificateholder or other entity from liability for nonperformance of contractual terms unless the certificateholder cannot deliver the merchandise or services because of a national emergency, strike, or act of God.

(7) The board may require the holder of any assets of the certificateholder to furnish written verification of the financial report required to be submitted by the certificateholder or other entity.

(6) Any preneed contract which promises future delivery of merchandise at no cost constitutes a paid-up contract. Merchandise which has been delivered is not covered by the required performance bond or letter of credit even though the contract is not completely paid. The certificateholder may not cancel a contract unless the purchaser is in default according to the terms of the contract. A contract sold, discounted, and transferred to a third party constitutes a paid-up contract for the purposes of the performance bond or letter of credit.

(9) Each contract must state the type, size, and design of merchandise and the description of service to be delivered or performed.

(10) A purchaser and a certificateholder who are parties to a preneed contract executed prior to July 2, 1988, may enter into an amended preneed contract which is made subject to this section.

(11) The board may adopt forms and rules necessary to implement this section, including, but not limited to, rules which ensure that the surety bond and line of credit provide liability coverage for preneed merchandise and services.

History.—ss. 8, 10, ch. 88-227; s. 1, ch. 89-8; s. 34, ch. 91-222; ss. 77, 122, ch. 93-399.

Note.—Former s. 497.0484.

497.427 Existing merchandise trust funds; proof of compliance with law.—The certificateholder shall present to the board prior to the implementation of the alternatives provided in s. 497.425 documentation which demonstrates that the existing merchandise trust fund complies with the law and that the elected alternative plan conforms to the requirements of this chapter.

History.—ss. 9, 10, ch. 88-227; s. 1, ch. 89-8; ss. 78, 122, ch. 93-399.

Note.—Former s. 497.049.

497.429 Alternative preneed contracts.—

(1) Nothing in this chapter shall prevent the purchaser and the certificateholder from executing a preneed contract upon the terms stated in this section. Such contracts shall be subject to all provisions of this chapter except:

- (a) Section 497.409(2).
- (b) Section 497.415.
- (c) Section 497.417(1), (3), and (5).
- (d) Section 497.419(1), (2), and (5).
- (e) Section 497.421.
- (f) Section 497.423.
- (g) Section 497.425.

(2) The contract must require that a trust be established by the certificateholder on behalf of, and for the use, benefit, and protection of, the purchaser and that the trustee must be a national or state bank or savings and loan association having trust powers or a trust company with the same powers of investment as provided elsewhere in this chapter.

(3) The contract must require that the purchaser make all payments required by the contract directly to the trustee or its qualified servicing agent and that the funds shall be deposited in this state, subject to the terms of a trust instrument approved by the board. A copy of the trust instrument shall be made available to the purchaser, at any reasonable time, upon request.

(4) The contract or trust instrument shall expressly state that the certificateholder does not have any dominion or control over the trust or its assets, except to the extent that subsection (6) applies, until such time as the preneed contract is entirely completed or performed.

(5) The trust instrument shall prohibit the trustee from distributing any appreciation on the trust to any person and shall require that the trustee accumulate the entire net income of the trust, or its pro rata share thereof. The accumulated net income shall be distributed to the certificateholder upon cancellation or performance of the contract.

(6) The contract and trust instrument may provide that the certificateholder may receive a current distribution of not more than 10 percent of all funds paid or collected by the trustee and may further provide for liquidated damages during the first 3 years after the execution of the contract of not more than 10 percent of all the funds paid on the preneed contract, except that no liquidated damages shall apply for cancellation within 30 days of the date of execution of the contract.

(7) Disbursement of funds discharging any preneed contract shall be made by the trustee to the person issuing or writing such contract upon receipt of a certified copy of the death certificate of the contract beneficiary and evidence satisfactory to the trustee that the preneed contract has been fully performed. In the event of any contract default by the contract purchaser, or in the event that the funeral merchandise or service contracted for is not provided or is not desired by the purchaser or the heirs or personal representative of the contract beneficiary, the trustee shall return, within 30 days after its receipt of a written request therefor, funds paid on the contract to the contract purchaser or to his assigns, heirs, or personal representative, subject to the lawful liquidation damage provision in the contract.

(8) The contract shall provide, in conspicuous type, that the purchaser may receive a federal income tax informational statement, pursuant to the grantor trust rules of ss. 67T et seq. of the Internal Revenue Code of 1986, as amended, from the trustee reflecting all of the income earned by the trust; and, accordingly, the purchaser should seek the advice of an independent tax professional for the tax impact upon the purchaser as a result of executing the preneed contract.

(9) The contract may provide that the certificateholder may cancel the contract, but only in the event that the purchaser is more than 60 days in default of the terms of the contract; and, unless subject to the provisions of s. 497.419(6), must provide that the purchaser, or his representative, has the right, at any time prior to the performance of the contract, to cancel the preneed contract and revert title to all the funds paid on the preneed contract, except for applicable liquidated damages, and the certificateholder's rights in the net income of the trust.

(10) The **contract or trust** agreement may require the trustee to invest in solely tax-free investments.

(11) In the event the **parties** execute a contract pursuant to this section, the purchaser shall be deemed, and treated for all purposes, as the **settlor** of the trust established thereunder.

(12) The trustee shall make regular valuations of assets it holds in **trust** and provide the purchaser and the board a report of such valuations at least annually,
History.—s. 13, 17, ch. 88-139; ss. 102, 122, ch. 93-399.
 Note.—Former s. 639.149.

497.431 Examinations and investigations.—The department shall, ~~as often~~ ^{as often} as it may deem necessary but at least once every ~~3 years~~ ^{3 years}, examine the business of any person writing ~~preneed contracts~~ ^{preneed contracts} and any guaranteeing organization existing under this chapter to the extent applicable in the same manner as is provided for ~~examination~~ ^{examination} of insurance ~~companies~~. The examination shall be at the expense of the person or organization examined as provided in this section **and shall** be made by the designated representative Or **examiner** of the department. The written report of each such examination, when completed, shall be **filed** in the office of the board and, when so filed, shall constitute a public record. Any such person or organization being examined **shall produce**, upon request, all records of the company or Organization. The designated representative of the board may at any time examine the records and affairs of any such person or organization, whether in connection with a **formal** examination or not. The board may waive the examination requirements of **this section** if the certificateholder or guaranteeing organization **submits** audited financial statements. The department may charge an examination fee prescribed by rule, but such fee may not exceed **\$300** per &hour day for each examiner. Such examination fee shall be **calculated** on an hourly basis and shall be rounded to the nearest hour. For out-of-state travel, the licensee **shall also pay** the **travel** expense and per diem subsistence allowance provided for state **employees** under s. 112061.

History.—s. 10, ch. 28211, 1953; s. 12, ch. 65-393; ss. 13, 35, ch. 69-106; s. 8, ch. 77-438; s. 3, ch. 78-278; s. 1, ch. 80-135; s. 2, ch. 81-318; ss. 9, 31, 32, ch. 83-316; s. 14, ch. 88-139; ss. 103, 122, ch. 93-399.
 Note.—Former s. 639.15.

497.433 Denial, refusal to renew, **revocation**, or suspension of certificate of authority;—

(1) The board shall deny, refuse to renew, suspend, or revoke the certificate of authority of a person to issue preneed contracts upon a determination that any one or more of the following grounds exist and are applicable to such person:

(a) Lack of one or more of the **qualifications** for the certificate of authority.

(b) Material misstatement, misrepresentation, or fraud in obtaining the certificate of authority or in attempting to obtain the certificate of authority.

(c) Use of the certificate of authority to circumvent the provisions of this chapter.

(d) Misrepresentation of any preneed contract.

(e) Fraudulent or dishonest practice in the conduct of business under the certificate of authority.

(f) Failure to maintain the funds received from contracts in the unimpaired state, disbursed income on, and

appreciation of, trust or escrowed funds, as described in s. 497.417.

(g) Upon proper request, **failure** to cancel a contract or refund that part of the amount **paid** on the contract as required by s. 497.419.

(h) Failure to secure the release, **upon** the death of a **beneficiary**. Of the entire amount received on a contract as required by s. 497.421.

(i) **Refusal** to produce records in connection with the business.

(j) Revocation, suspension, or denial of licensure to Sell preneed **contracts** by a licensing authority of another jurisdiction.

(k) **Being** convicted or found guilty of, or entered a plea of **nolo** contendere to, regardless of adjudication, a crime in any jurisdiction which directly relates to the sale of preneed contracts.

(l) Solicitation by the certificateholder or his agents, **employees**, or representatives through the use of fraud, undue influence, intimidation, overreaching, or **any** other form of vexatious conduct.

(m) Failure to comply with, or violation of, any **proper** order or rule of the board or the department, or violation of any provision of this chapter.

(n) Refusal to remove anyone serving as a trustee under any provision of this chapter if the trustee is not acting in accordance with, or is violating, any proper order or **rule** of the board or the department, or is violating any provision of this chapter.

(2) The board may deny, refuse to renew, suspend, or revoke the certificate of authority of a person to issue preneed contracts upon a determination that the person has violated any **provision** of this chapter or rule or order of the board or the department for which suspension is not mandatory.

(3) A **suspension or revocation** of the **certificate** of authority shall be by order of the board. A **person** whose certificate of authority has been suspended or revoked may not solicit or write any new business in this state during the period of any such suspension or revocation.

(4) In its discretion, the board may cause notice of any such suspension or revocation to be published in one or more newspapers of general circulation published in this state.

(5) The suspension of a certificate of authority shall be for such period, not to exceed 1 year, as is fixed **by** the board in the order of suspension, unless the board shortens or rescinds such suspension or unless the order upon which the suspension is based is modified, rescinded, or reversed.

(6) During the period of suspension, the person whose certificate of authority has been suspended shall file the annual statement and pay license fees as required under this chapter as if the certificate had continued in full force.

(7) Upon expiration of the suspension period, if within such period the certificate of authority has not **otherwise** terminated, the certificate of authority of the person whose certificate of authority has been suspended shall automatically be reinstated unless the board finds that the causes of the suspension have not been removed or that such person is otherwise **not** in compliance with the requirements of this chapter. If **not**

so reinstated automatically. the Certificate of authority shall be deemed to have **expired** as of the end of the suspension **period** Or **upon** the **failure** of the person whose certificate of authority has been suspended to continue the certificate during the suspension period, **whichever event first OCCURS.**

History.—s. 11, ch. 26211, 1953; s. 13, ch. 85-393; ss. 11, 13, 35, en. 69-106; s. 9, ch. 77-429; a. 2, ch. 81-318; Y. 10, 31, 32, ch. 83-316; s. 13, ch. 88-139; s. 9, cl. 91-110; ss. 104, 122, ch. 93-399.

Note.—Former s. '3.16.

497.435 Administrative **fine** in lieu of revocation or suspension of certificate of authority.-

(1) If the board finds that one or more grounds exist for the **discretionary** suspension or **revocation** of a certificate of authority issued under this chapter, it may, in lieu of such suspension or **revocation**, impose a **fine** upon the certificateholder in an amount not to exceed \$1,000 for each **nonwillful** violation and in an amount not to exceed **\$10,000** for each willful violation.

(2) The board may grant not more than 30 days from the date of the order for the payment of any **fine.**

(3) The fine shall be deposited into the Regulatory Trust Fund under the Division of Finance.

History.—ss. 13, 32, ch. 83-316; ss. 104, 122, ch. 93-399.

Note.—Former s. 639.162.

497.437 Dissolution or liquidation.-Any dissolution or liquidation of a certificateholder **shall** be under the supervision of the board, which **shall** have **all** powers with respect thereto granted to it under the laws of the state with respect to the dissolution and liquidation of companies pursuant to chapter 631, as applicable.

History.—ss. 12, 32, ch. 83-316; s. 16, ch. 88-139; ss. 106, 122, ch. 93-399.

Note.—Former s. 639.165.

497.439 Preneed **sales agents.**-

(1) All individuals who offer preneed contracts to the public, or who execute preneed contracts **on behalf of** a certificateholder, including all individuals who offer, sell, or sign contracts for the preneed sale of burial rights, **shall** be registered with the board as preneed sales agents, pursuant to this section, unless such individuals are licensed as funeral directors pursuant to this chapter.

(2) All preneed sales agents and funeral directors acting **as preneed** sales agents must be affiliated with the **certificateholder** that they are representing.

(3) A certificateholder **shall** be responsible for the activities of all preneed sales agents and all funeral directors acting as preneed sales **agents, who are affiliated** with the certificateholder and who perform any type of preneed-related activity on behalf of the **certificateholder.** In addition to the preneed sales agents and funeral directors acting as preneed sales agents, each certificateholder shall also be subject to discipline if its preneed sales agents or funeral directors acting as **pre-need-sales** agents violate any **provision** of this chapter.

(4) A preneed sales agent and a funeral director acting as a preneed sales agent **shall be authorized** to sell, offer, and execute preneed contracts on behalf of all entities owned or operated by its sponsoring certificateholder.

(5) An individual may begin functioning as a **pre-need** sales agent as soon as a **completed** application for

registration, as set forth in subsection (7), is sent to the department.

(6) The qualifications for a preneed sales agent are as follows:

(a) The applicant must be at least 18 years of age.

(b) The applicant must be in good standing with the board.

(c) The applicant must not have any felony or misdemeanor convictions that relate to any activity regulated by this chapter.

(7) An application for **registration** as a preneed sales agent shall be submitted to the department **with an application fee of \$100** by certified mail, return receipt requested, by the certificateholder on a form that has been approved by the board and shall contain, at a minimum, the following:

(a) The name, address, social security number, and date of birth of the applicant and such other information' as the board may reasonably require of the applicant.

(b) The name, address, and license number of the sponsoring certificateholder.

(c) A representation, signed by the applicant, that the applicant meets the requirements set forth in subsection (6).

(d) A representation, signed by the certificateholder, that the applicant is authorized to **offer, sell,** and sign preneed contracts on behalf of the certificateholder, and that the **certificateholder** has trained the applicant in the provisions of this chapter relating to preneed sales as determined by the board, the provisions of the **certificateholder's** preneed contract, and the nature of the merchandise, services, or burial rights sold by the **certificateholder.**

(e) A statement indicating whether the applicant has any type of working relationship **with any other certificateholder or insurance company.**

(8) An individual may be registered as a **preneed** sales agent on behalf of more than one **certificateholder,** provided that the **individual** has received the written consent of **all such** certificateholders.

(9) A certificateholder who has registered a preneed sales agent **shall** notify the department **within 30 days** after such individual's status as a preneed sales agent **has** been terminated.

(10) Upon receipt of an **application** that complies with all of the requirements of subsection (7), the department shall register the applicant. **The department shall by rule** provide for biennial renewal of registration and a renewal fee of \$150.

History.—s. 107, ch. 93-399.

497.441 **Acceptability of funeral and burial merchandise.** -Each person who engages in preneed sales of funeral or burial merchandise shall determine, and notify the purchaser in writing prior to the completion of the contract, that the merchandise being considered **for** purchase will be accepted in the cemetery of the purchaser's choice. The failure to comply with this chapter shall nullify the agreement, and all moneys paid in shall be returned, notwithstanding the existence of any **liquidated** damages provision pursuant to s. 497.419(2).

History.—s. 13, ch. 77-429; s. 2, ch. 81-318; ss. 21, 31, 32, ch. 83-316; ss. 108, 122, ch. 93-399.

Note.—Former s. 639.21.

497.443 Unfair methods of competition and unfair or deceptive acts of **practices** prohibited.-No person shall engage in this State in any trade practice which is defined in this chapter as, or determined pursuant to s. 497.445 to be, an unfair method of competition or an unfair or deceptive act or practice.

History.—s. 22, n. ch. 83-316; ss. 109, 122, ch. 93-399.
Note.—Former s. 639.22.

497.445 Unfair methods of competition and unfair or deceptive acts or practices defined.-Unfair methods of competition and unfair or deceptive acts or practices are defined as the following:

(1) **MISREPRESENTATION AND FALSE ADVERTISING OF PRENEED CONTRACT.**-Knowingly making, issuing, or circulating, or causing to be made, issued, or circulated, any estimate, illustration, circular, statement, sales presentation, omission, or comparison which:

(a) Misrepresents the benefits, advantages, conditions, or terms of any preneed contract.

(b) Is misleading, or is a misrepresentation as to the financial condition of any person.

(c) Uses any name or title of any preneed contract misrepresenting the true nature thereof.

(d) Is a misrepresentation for the purpose of inducing, or tending to induce, the lapse, forfeiture, exchange, conversion, or surrender of any preneed contract.

(2) **FALSE INFORMATION AND ADVERTISING GENERALLY.**-Knowingly making, publishing, disseminating, circulating, or placing before the public, or causing, directly or indirectly, to be made, published, disseminated, circulated, or placed before the public:

(a) In a newspaper, magazine, or other publication;

(b) In the form of a notice, circular, pamphlet, letter, or poster;

(c) Over any radio or television station; or

(d) In any other way;

an advertisement, announcement, or statement containing any assertion, representation, or statement which is untrue, deceptive, or misleading with respect to any preneed contract.

(3) **OEFACTION.**-Knowingly making, publishing, disseminating, or circulating, directly or indirectly, or aiding, abetting, or encouraging the making, publishing, disseminating, or circulating of, any oral or written statement, or any pamphlet, circular, article, or literature, which is false or maliciously critical of, or derogatory to, any person and which is calculated to injure such person.

(4) **FALSE STATEMENTS AND ENTRIES.**-Knowingly:

(a) Filing any false statement with any supervisory or other public official;

(b) Making, publishing, disseminating, or circulating any false statement;

(c) Delivering any false statement to any person;

(d) Placing any false statement before the public;

(e) Causing, directly or indirectly, any false statement to be made, published, disseminated, circulated, delivered to any person, or placed before the public; or

(f) Making any false entry of a material fact in any book, report, or statement of any person.

(5) **UNFAIR CLAIM SETTLEMENT PRACTICES.**-

(a) Attempting to settle a claim on the basis of a material document which was altered without notice to, or without the knowledge or consent of, the contract purchaser or his representative or legal guardian.

(b) Making a material misrepresentation to a contract purchaser or his representative or legal guardian for the purpose and with the intent of effecting settlement of a claim or loss under a prepaid contract on less favorable terms than those provided in, and contemplated by, the prepaid contract; or

(c) Committing or performing with such frequency as to indicate a general business practice any of the following acts:

1. Failing to adopt and implement standards for the proper investigation of claims;

2. Misrepresenting pertinent facts or prepaid contract provisions relating to issues on coverage of funeral merchandise or services or burial merchandise or services;

3. failing to acknowledge and act promptly upon communications with respect to claims;

4. Denying claims without conducting reasonable investigations based upon available information;

5. Failing to affirm or deny coverage of a claim upon written request of a contract purchaser or his representative or legal guardian within a reasonable time; or

6. Failing to provide promptly a reasonable explanation to a contract purchaser or his representative or legal guardian of the basis, in the prepaid contract in relation to the facts or applicable law, for denial of a claim or for the offer of a compromise settlement.

(6) **FAILURE TO MAINTAIN PROCEDURES FOR HANDLING COMPLAINTS.**-Failing to maintain a complete record of every complaint received since the date of the last examination. For purposes of this subsection, the term "complaint" means any written communication primarily expressing a grievance.

(7) **DISCRIMINATORY REFUSAL TO ISSUE A CONTRACT.**-Refusing to issue a contract solely because of an individual's race, color, creed, marital status, sex, or national origin.

History.—ss. 21, 32, ch. 83-316; ss. 110, 122, ch. 93-399.
Note.—Former s. 639.23.

497.447 Prohibited practices: hearings, witnesses, appearances, production of books, and service of process.-

(1) Whenever the board has reason to believe that any person has engaged, or is engaging, in this state in any unfair method of competition or any unfair or deceptive act or practice as defined in s. 497.445 or is engaging in the sale of preneed contracts without being properly licensed as required by this chapter, and that a proceeding by the board in respect thereto would be in the interest of the public, the board shall conduct or cause to have conducted a hearing in accordance with chapter 120.

(2) The board or a duly empowered hearing officer shall, during the conduct of such hearing, have those powers enumerated in s. 120.58; however, the penalties for failure to comply with a subpoena or with an order directing discovery shall be limited to a fine not to exceed \$1,000 per violation.

(3) A statement of charges, notice, or order or other process under this chapter may be served by anyone duly authorized by the department, either in the manner provided by law for service of process in civil actions or by certifying and mailing a copy thereof to the person affected by such statement, notice, or order or other process at his or its residence or principal office or place of business. The verified return by the person so serving such statement, notice, or order or other process, setting forth the manner of the service, shall be proof of the service: and the return postcard receipt for such statement, notice, or order or other process, certified and mailed as provided in this subsection, shall be proof of service of the statement, notice, or order or other process.

History.—s. 25, 32, ch. 83-318; a. 27, ch. 85-52; ss. 111, 122, ch. 93-399.
Note.—Former s. 639.23.

497.515 **Additional prohibited acts.**—In addition to the acts set forth elsewhere in this chapter, the following acts are prohibited:

(1) Requiring lot owners or current customers to make unnecessary visits to the cemetery company office for the purpose of solicitation.

(2) Soliciting that overreaches and takes advantage of a customer's ignorance or emotional vulnerability.

(3) Failing to disclose all fees and costs the customer may incur to use the burial rights or merchandise purchased.

(4) Failing to provide a detailed description in the written contract of all burial merchandise purchased.

(5) Failing to honor cancellations and issue refunds as provided by s. 497.419.

(6) Misrepresenting any burial merchandise or service when offered for sale to the public.

(7) Failing to obtain written authorization from the family or next of kin of the deceased prior to disinterment, disinterment, or disinterment.

History.—s. 81, ch. 93-399.

497.517 **Attorney's fees.**—

(1) In any civil litigation resulting from a transaction involving a violation of this chapter, the court may award to the prevailing party, after judgment in the trial court and exhaustion of any appeal, reasonable attorney's fees and costs from the nonprevailing party in an amount to be determined by the trial court.

(2) Any award of attorney's fees or costs shall become a part of the judgment and shall be subject to execution as the law allows.

(3) **Subsections (1) and (2) shall not apply to any action initiated by the department.**

History.—s. 4, ch. 78-407; ss. 28, 40, ch. 80-228; ss. 2, 3, ch. 81-318; s. 1, ch. 89-2; ss. 82, 122, ch. 93-399.

Note.—Former s. 539.505; s. 497.057.

497.519 **Penalties.**—Any officer or director, or person occupying similar status or performing similar functions, of a certificateholder which fails to make required deposits to any trust fund required by this chapter; any director, officer, agent, or employee of a certificateholder who makes any unlawful withdrawal of funds from any such account or who knowingly discloses to the department or an employee thereof any false report made pursuant to this chapter; or any person who willfully violates any of the provisions of this chapter commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

History.—s. 12, ch. 65-288; s. 558, ch. 71-136; s. 8, ch. 72-78; s. 3, ch. 76-168; s. 1, ch. 77-457; s. 13, ch. 78-407; ss. 29, 39, 40, ch. 80-228; ss. 2, 3, ch. 81-318; s. 1, ch. 89-2; ss. 79, 122, ch. 93-399.

Note.—Former s. 559.51; s. 497.054.

497.525 **Disposition of fees and penalties.**—All fees and penalties collected pursuant to this chapter shall be deposited in the Regulatory Trust Fund of the department.

History.—ss. 25, 40, ch. 80-228; ss. 2, 3, ch. 81-318; s. 1, ch. 89-2; ss. 89, 122, ch. 93-399.

Note.—Former s. 559.491; s. 497.019.

497.527 **Civil remedies.**—Any person may bring a civil action against a person or company violating the provisions of this chapter in the circuit court of the county in which the alleged violator resides or has his or its principal place of business or in the county wherein the alleged violation occurred. Upon adverse adjudication, the defendant shall be liable for actual damages or \$500, whichever is greater. The court may, as provided by common law, award punitive damages and may provide such equitable relief as it deems proper or necessary, including enjoining the defendant from further violations of this chapter.

History.—ss. 30, 40, ch. 80-228; ss. 2, 3, ch. 81-318; s. 1, ch. 89-2; ss. 80, 122, ch. 93-399.

Note.—Former s. 559.501; s. 497.056.

497.529 **Civil liability.**—The provisions of this chapter are cumulative to rights under the general civil and common law, and no action of the department may abrogate such rights to damages or other relief in any court.

History.—ss. 30, 32, ch. 83-318; ss. 112, 122, ch. 93-399.

Note.—Former s. 639.30.

Appellant president of Florida cemetery company convicted of failure to make required contributions to care and maintenance trust fund of cemetery, may introduce evidence to negate intent, but proof of appellant's assignment of note and mortgage to trust fund prior to sales for which appellant failed to remit required contributions is not relevant to this issue. *Coffin v. State*, 374 So. 2d 504 (1979).

In appeal of president of Florida cemetery company convicted of failure to make required contributions to care and maintenance trust fund of cemetery, any alleged standardless discretion vested in Department of Banking and Finance because of control over size of trust fund and contributions thereto is irrelevant to appellant's conviction. *Coffin v. State*, 374 So. 2d 504 (1979).

3D-30.002 Trust Fund; Multiple Items; Lump Sum Contracts.

Specific Authority 20.05(5), 497.011 FS. Law Implemented 497.021, 497.023 FS. History—New 3-22-63, Repealed 2-17-73, Renumbered from 3-8.02 to 3D-30.02 on 9-8-75, Formerly 3D-30.02.

3D-30.003 Deficiencies in Trust Funds.

Specific Authority 20.05(5), 497.011 FS. Law Implemented 497.011, 497.021, 497.023 FS. History—New 3-22-63, Renumbered from 3-8.03 to 3D-30.03 on 9-8-75, Amended 9-29-75, Formerly 3D-30.03, Repealed 10-23-87.

3D-30.004 New Cemetery Company; Establishment; Approval Required by County Commissioners.

Specific Authority 20.05(5), 497.011 FS. Chapter 22-78, Laws of Florida, Law Implemented 497.006, 603.60 FS. History—New 3-22-63, Repealed 2-17-73, Renumbered from 3-8.04 to 3D-30.04 on 9-8-75, Formerly 3D-30.04.

3D-30.005 New Cemetery; Suitability of Site.

No application for authority to organize a cemetery may be considered until proponents furnish the Department of Banking and Finance evidence that in the opinion of the local health authorities the proposed site is suitable for the intended use. Proponents may be required to furnish a statement from a qualified person or persons that land or site is suitable or can be made suitable. In case land or site is not presently suitable, plans and specifications, as well as estimated costs to correct the unsatisfactory condition of the land or site shall be furnished.

Specific Authority 20.05(5), 497.011 FS. Law Implemented 497.006 FS. History—New 3-22-63, Renumbered from 3-8.05 to 3D-30.05 on 9-8-75, Formerly 3D-30.05.

X3-30.006 Accounting Procedures.

Specific Authority 20.05(5), 497.011(1) FS. Law Implemented 497.023, 497.042, 559.482 FS. History—New 6-16-73, Renumbered from 3-8.06 to 3D-30.06 on 9-8-75, Formerly 10-30.06, Transferred to 3F-7.014.

3D-30.007 Percentage Deposits Required on Turf Tops, Lawn Crypts, Etc.

Specific Authority 20.05(5), 497.011 FS. Law Implemented 559.38, 497.023 FS. History—New 7-20-73, Renumbered from 3-6.07 to 3D-30.07 on 9-8-75, Formerly 3D-30.07, Transferred to V-7.002.

30-30.008 Grave Spaces; Definition Limited.

Specific Authority 20.05(5), 170.33(2)(a), 497.011 FS. Law Implemented 497.003(6) FS. History—New 7-20-73, Renumbered from 3-8.04 to 3D-30.08 on 9-8-75.

Amended 1-27-81, Formerly 3D-30.08, Transferred to 3F-4.001.

3D-30.009 Safekeeping of Records.

Specific Authority 20.05(5), 497.011 FS. Law Implemented 497.035 FS. History—New 7-20-73, Renumbered from 3-8.09 to 3D-30.09 on 9-8-75, Amended 5-22-76, Formerly 3D-30.09, Transferred to 3F-4.001.

3D-30.010 Written Contracts Required. Written contracts on all sales must be made between the cemetery company and the purchaser which contracts shall state the sales prices, terms and other pertinent information relative to the transaction. Such contracts shall be serially numbered and filed by the cemetery company in numerical sequence. All sales shall be entered into a sales journal numerically. Any additional purchases or deletions made by a customer more than 30 days subsequent to the original sale must be shown on a separate contract and shall be assigned a separate serial number which number shall be the current unrec'd number in consecutive order. The sales contract form, in order to meet the approval of the Department, must contain a full disclosure and itemization of each item or service purchased and a statement that a charge for opening and closing of a burial space is not included and will require an extra charge unless otherwise indicated. The contract must conform to the statutory requirements of Chapter 520, Part 11, if the sale is for the purchase of burial merchandise or services and financed as a retail installment transaction. A copy of the sales contract form must be approved by the Department prior to use by the cemetery.

Specific Authority 20.05(5), 170.33(2)(a), 497.011(1) FS. Law Implemented 497.018(1)(q), 497.035, 497.022, 497.023(7), 497.048(1), (3)(a), (7), (12), (13), 497.029(3), Chapter 520, Part 11 FS. History—New 7-20-73, Renumbered from 3-8.10 to 3D-30.10 on 9-8-75, Amended 5-10-76, 1-27-81, Formerly 3D-30.10.

3D-30.011 Accounts Receivable Records.

Account receivable records pertaining to each individual purchaser shall be assigned the same serial number as shown on the purchaser's contract and shall be maintained in numerical sequence. They shall contain the name and address, deferred payment price, date of payment, retail price of each item, wholesale price plus 10% of merchandise by item, schedule of payments and percentage required to be deposited in the care and maintenance and merchandise trust funds from each payment.

Specific Authority 20.05(5), 170.33(2)(a), 497.011(1) FS. Law Implemented 497.035, 497.022, 497.023(6), 497.029(3), 497.048(12) FS. History—New 7-20-73, Renumbered from 3-2.11 to 3D-30.11 on 9-8-75, Amended 1-27-81, Formerly 3D-30.11.

3D-30.012 Receipt and Delivery of Pre-need Merchandise; Documentation Required.

Specific Authority 20.05(5), 497.011 FS. Law Implemented 497.035, 497.042 FS. History—New 7-20-73, Renumbered from 3-8.12 to 3D-30.12 on 9-8-75, Amended 9-25-75, Formerly 3D-30.12, Transferred to 3F-7.003.

3D-30.013 Receipt of Initial Payment on Merchandise Contracts; Documentation Required.

Specific Authority 20.03(3), 170.33(1)(a), 497.011 FS. Law Implemented 497.033, 497.046 FS. History—New 7-20-73, Renumbered from 3-5.13 to 3D-30.13 on 9-5-73, Amended 4-8-81, 6-16-81, Formerly 3D-30.13, Transferred to 3F-5.001.

3D-30.014 Delivery of Merchandise; Forms and Certificates Required.

Specific Authority 20.03(3), 497.011 FS. Law Implemented 497.033, 497.048 FS. History—New 7-20-73, Renumbered from 3-5.14 to 3D-30.14 on 9-5-73, Amended 1-27-81, Formerly 3D-30.14, Transferred to 3F-7.004.

3D-30.015 Procedures for Licensing a New Cemetery.

Specific Authority 497.011(1) FS. Law Implemented 497.006, 497.021, 497.023, 497.048 FS. History—New 9-29-73, Amended 6-21-77, 6-21-78, 11-2-78, 1-27-81, Formerly 3D-30.15, Amended 10-23-91, Transferred to Jf. J. 004.

ANNOTATIONS

Standing

Existing cemetery has standing to participate in hearings to license new facility which will overlap existing facility. Concern that new cemetery will diminish sales and therefore contributions to perpetual fund for maintenance is within zone of interest protected by licensing statute. Boca Raton Mausoleum, Inc. v. Department of Banking and Finance, App. (1st) 311 So. 2d 1060 (1987).

College bordering on proposed site of cemetery and taxpayer concerned about impact of road maintenance have no standing. Traffic congestion, nonconducive atmosphere, and possible effect of diminished maintenance on community in general are not within zone of interest. Id.

Purchasers of crypts in existing cemetery have same type of injury as cemetery, but court refused to state whether the injury had sufficient immediacy to warrant standing for individual purchasers. Id.

Validity

District court rejected appellant's argument that the 1987 amendment to Section 497.006(3), Florida Statutes, invalidated Rule 3D-30.015, F.A.C. Statute did not supersede administrative rule and did not abolish the requirement that the Department determine the need for new rules based on its nonrule community definition. Pershing Industries, Inc. v. Department of Banking and Finance, 391 So. 2d 991 (Fla. App. 1 Dist. 1991), 14 FALR 403 (1991).

3D-30.016 Procedure for Licensing Existing Cemeteries.

Specific Authority 497.011(1) FS. Law Implemented 497.011, 497.031, 497.021, 497.009 FS. History—New 9-29-73, Amended 1-2-78, 1-27-81, Formerly 3D-30.16, Amended 10-23-91, Transferred to 3F-5.003

3D-30.017 Procedure for Licensing Transferred Cemeteries.

Specific Authority 497.011(1) FS. Law Implemented 497.006(1), 497.008 FS. History—New 9-29-73, Amended 11-2-78, 1-27-81, Formerly 3D-30.17, Amended 10-23-91, Transferred to 3F-5.006.

3D-30.018 Procedures for Licensing a Cemetery Sales Organization, Management Organization, or Cemetery Broker.

Specific Authority 20.03(3), 197.011 FS. Law Implemented 339.331 FS. History—New 9-29-73, Repealed 9-17-81, Formerly 3D-30.18.

3D-30.019 Conversion Procedures.

Specific Authority 497.011(1) FS. Law Implemented 491.006, 497.039 FS. History—New 9-29-73, Amended 1-27-81, Formerly 3D-30.19, Amended 10-23-91, Transferred to 3F-5.007.

3D-30.020 Cemetery Advertising.

Specific Authority 20.03(3), 497.011(1) FS. Law Implemented 497.031 FS. History—New 8-22-76, Amended 1-27-81, Formerly 3D-30.20, Transferred to 3F-9.001.

3D-30.021 Care and Maintenance of Existing Cemetery.

Specific Authority 20.03(3), 197.011 FS. Law Implemented 497.021, 497.023 FS. History—Amended 3-10-76, Formerly 3D-30.21, Transferred to 3F-6.002.

3D-30.022 Sold or Discounted Installment Contracts or Promissory Notes.

Specific Authority 20.03(3), 497.011 FS. Law Implemented 497.006, 339.39, 339.40, 497.023(3), 339.49, 497.009 FS. History—New 11-16-77, Repealed 9-17-81, Formerly 3D-30.22.

3D-30.023 Cemetery By-laws.

Specific Authority 497.011(1) FS. Law Implemented 497.033(1) FS. History—New 11-2-78, Formerly 3D-30.23, Transferred to 3F-6.003.

3D-30.024 Merchandise Trust Fund: Deposits.

Where the total purchase price is paid in full in 180 days (cash sales) and the cemetery delivers the merchandise within the 120 day period no deposit shall be required to the merchandise trust fund. Any sale whereby payments are made on the installment basis for a period of more than 180 days then the deposits shall be made in accordance with Section 497.048(3)(b), F. S. The percentage payment shall be computed by dividing the deferred payment price into the total wholesale price plus 10 percent. This percentage will then be applied to all payments received including the downpayment to determine the amount to be deposited in the merchandise trust fund. The percentage payments required to be deposited on each payment shall be carried out two places and the amount of deposit required may be rounded off to the nearest dollar as long as the total amount required to be deposited has been made when the contract has been fully paid.

Specific Authority 20.03(3), 170.33(1)(a), 497.011(1) FS. Law Implemented 497.048(1), (2), (3) FS. History—New 4-8-81, Formerly 3D-30.24.

3D-30.025 Defaults on Sold or Discounted Installment Sales Contracts or Promissory Notes.

(1) Default by the purchaser on installment sales contracts or promissory notes shall not entitle the Cemetery Company to take credit for the amount deposited to the Care and Maintenance Trust Fund, unless the amount deposited has been returned to the purchaser.

(2) **Installment sales contracts or promissory notes** that include **pre-need** burial merchandise **defaulted** by the purchaser shall entitle the **cemetery company** to withdraw the amount deposited in the **Merchandise Trust Fund**.
Specific Authority 20.05(5), 497.011(1), 120.53(2)(a) FS. Law Implemented 497.048(7), 497.022 FS. History—New 1-27-81. Formerly 3D-30.25.

m-30.026 **Charge for Installation and Maintenance of Marker or Monument**. Each cemetery company shall establish a fee for the installation and maintenance of a marker or monument. Said fee shall be the actual cost to the cemetery company to install and maintain markers or monuments but shall not exceed \$35 per square inch. Each cemetery shall be prepared to justify to the department that the fee charged does not exceed the actual cost to the cemetery including the actual labor costs, the overhead charges, any location and lay out costs, any material costs, any equipment depreciation on equipment used either in installation or maintenance, employee benefit costs, etc.
Specific Authority 20.05(5), 497.011(1), 120.53(2)(a) FS. Law Implemented 497.023(3) FS. History—New 1-27-81. Formerly JPJO.26.

3D-30.027 **Cancellation of Contracts**.
Specific Authority 20.05(5), 120.53(2)(a), 497.011(1) FS. Law Implemented 497.048(6), (7) FS. History—New 1-29-61. Formerly 3D-30.27. Transferred to 3F-8.002.

3D-30.028 **Examination Fees**. The Department shall charge 5250 per eight hour day for each examiner engaged in an examination of any cemetery company, person writing preneed contracts or guaranteeing organization under Chapter 497, F.S. Such examination fee shall be calculated on an hourly basis and shall be rounded to the nearest hour. For out-of-state travel, the licensee shall also pay the travel expense and per diem subsistence allowance provided for state employees in Section 112.061, F.S. Time spent on the examination shall include travel time and time spent completing the examination report on or off premises.
Specific Authority 497.103(1), 497.105(5) FS. Law Implemented 497.431 FS. History—New 7-14-81. Formerly JPJO.28. Amended 3-22-95.

3D-30.029 **Request for Additional Information - Applications**.
Specific Authority 120.53(1)(b), 497.011(1), (2) FS. Law Implemented 120.60(2), 497.006(2)(a), 497.008 FS. History—New 12-22-81. Formerly 3D-30.29. Transferred to 3F-5.008.

3D30.030 **Performance Bond - Mausoleums or Below-Ground Crypts**.
Specific Authority 120.53(1)(b), 497.011(1)(a) FS. Law Implemented 497.029(8) FS. History—New 12-22-81. Amended 3-24-82. Formerly 3D-30.30. Transferred to 3F-7.005.

3D-30.031 **Merchandise Trust Funds — Status of Accounts**.
Specific Authority 20.05(5), 497.011(1)(a) FS. Law Implemented 497.048(1), (3), (6), (8) FS. History—New 11-15-83. Formerly 3D-30.31. Transferred to 3F-7.007.

3D-30.032 **Merchandise Trust Funds - Withdrawal of Principal and Income Earned Thereon**.
Specific Authority 497.011(1)(a) FS. Law Implemented 497.048(6) F S History—New 8-26-83. Formerly 3D-30.32. Amended 1-4-88. Transferred to JF-7.008.

3D-30.033 **Cemetery Company Rules**.

(1) A cemetery company may establish rules related to monuments, monument dealers, and monument installers.

(2) For purposes of this rule, the word "monument" shall mean: any memorial structure, marker or other physical evidence designed and installed with the intent to permanently identify a gravesite and its occupant.

(3) Cemetery company rules that relate to monuments, monument dealers and monument installers are limited in scope and subject matter to include only:

(a) The size of a monument;

(b) The style of a monument;

(c) The foundation of a monument;

(d) A requirement that the monument dealer or monument installer present proof of licensure by the county in which the cemetery is located; and

(e) Requirements regarding public liability insurance and motor vehicle liability insurance.

(4) Any cemetery company rule related to monuments, monument dealers or monument installers not within the permissible subject matter and scope set forth above shall be considered by the Department to be a cemetery bylaw that requires Department approval before implementation.

Specific Authority 497.011(1)(a) FS. Law Implemented 497.005(18), 497.012, 497.044(1), 497.033(1), (3) FS. History—New 4-16-86. Amended 4-26-88.

3D-30.034 **Residential Solicitations**.

Specific Authority 497.011(1)(a), 497.012, 497.043(1), (2), (3) FS. Law Implemented 497.012, 497.043(3) FS. History—New 4-16-86. Transferred to 3F-9.002.

3P30.035 **Wholesale Purchase Price**.

Specific Authority 497.011(1)(a) FS. Law Implemented 497.048 FS. History—New 1-1-90. Transferred to 3F-7.006.

3D-30.036 **Criteria for Filing a Letter of Credit in Lieu of the Merchandise Trust Fund**.

Specific Authority 497.011(1)(a), 497.0484(12) FS. Law Implemented 497.0484(2), 497.049 FS. History—New 3-20-91. Transferred to 3F-7.011.

X3-30.037 **Reporting Requirements for Cemetery Companies Filing an Initial Application to Utilize a Letter of Credit or Surety Bond in Lieu of the Merchandise Trust Fund**.

Specific Authority 497.011(1)(a), 497.0484(12) FS. Law Implemented 497.0484, 497.049 FS. History—New 3-20-91. Transferred to 3F-7.009.

3D30.038 **Reporting Requirements for Cemetery Companies Utilizing a Surety Bond or Letter of Credit in Lieu of the Merchandise Trust Fund**.

Specific Authority 497.011(1)(a), 497.0484(12) FS. Law Implemented 497.0484 FS. History—New 3-20-91. Transferred to JF-7.010.

BOARD OF FUNERAL AND CEMETERY SERVICES

CHARTER 3F-1
ORGANIZATION AND GENERAL INFORMATION

- 3F-1.001 Organization and General Information Concerning the Board of Funeral and Cemetery Services.
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3F-1.001 Organization and General Information Concerning the Board of Funeral and Cemetery Services.

(1) Throughout these rules the Board of Funeral and Cemetery Services may be referred to as the "Board" and the Department of Banking and Finance may be referred to as the "Department".

(2) The Board of Funeral and Cemetery Services is located within the Department of Banking and Finance and consists of seven members appointed by the Governor and confirmed by the Senate. Two members of the Board are to be funeral directors licensed under Chapter 470, Florida Statutes; two members are to be owners or operators of a cemetery licensed under Chapter 497, Florida Statutes; the three remaining members are to be consumer members who are residents of Florida one of which must be at least 60 years of age.

(3) The agency head of the Board shall be the collegial body consisting of all seven members of the Board, who shall be appointed to four-year terms. Each member shall serve until the member's successor is appointed. The agency head is responsible for certifying applicants as eligible for licensure by the Department, establishing agency policy, promulgating all rules, and issuing all orders consistent with law to carry out the Board's delegated authority.

(4) The mailing address of the principle office of the Board is The Capitol, Tallahassee, Florida 32399-0350. The telephone number of the Board is (904) 488-4348. The board office shall be open to the public during normal business hours which are from 8:00 a.m. to 5:00 p.m. on weekdays, excluding holidays. The executive director of the Board is the Board's agent for service of process, at the principal office of the Board described above, for all matters relating to the Board. The Board may be contacted through its principle office at the address described above or at any regional office of the Department.

(5) The executive director shall be the official custodian of all Board records which shall be open to public inspection under the supervision of the executive director during normal business hours. When an inspection request involves extensive records, the executive director may require that the inspection be conducted by appointment to ensure

the orderly and efficient operation of the office. All records shall be available for inspection by the public except those records made confidential by law. Copies of public records shall be provided to any person at cost.

(6) All board proceedings shall be open to the public unless specifically provided otherwise by law.

Specific Authority 120.53 FS. Law Implemented 120.53 FS. History—New 3-14-94.

3F-1.002 Statutes and Rules Affecting the Board.

(1) The Board shall be governed by, and shall regulate the funeral and cemetery services industry in accordance with, the statutory provisions of Chapter 120, and Chapter 497, Florida Statutes.

(2) The rules of the Board shall be published in Chapter 3F, Florida Administrative Code.
Specific Authority 120.W FS. Law Implemented 120.53 FS. History—New 3-14-94.

3F-1.003 Quorum.

(1) Four members of the Board shall constitute a quorum.

(2) The Board shall not meet to transact any business or take any official action unless a quorum is present.

(3) A quorum shall not be required for panels and committees of the Board to meet or for workshops.

Specific Authority 110.53 FS. Law Implemented 120.53 FS. History—New 3-14-94.

3F-1.004 Officers.

(1) At its initial meeting and at every annual meeting which shall be held in May in Tallahassee, the Board shall elect, by majority vote, a Chairman who shall serve as the Board's presiding officer and a Vice Chairman, who shall serve as presiding officer in the absence of the Chairman.

(2) As presiding officer, the Chairman shall designate the time and place of all board meetings, preside at all board meetings to ensure that they are conducted in an orderly manner and in accordance with applicable law, appoint members to committees and panels as is necessary to enable the Board to carry out its duties, designate the presiding members of such committees and panels, and sign all final orders of the Board.

(3) The Chairman and Vice Chairman shall serve in their respective positions until their successors are elected.

(4) In the event that both the Chairman and Vice Chairman are unavailable, the member with the most seniority shall serve in their absence.

Specific Authority 120.53 FS. Law Implemented 120.53 FS. History—New 3-14-94.

3F-1.005 Support Staff; Executive Director; Board Attorney.

(1) The Department shall provide all necessary administrative support staff which shall be under the direction and supervision of the Board's executive director who shall be appointed by the Department subject to the approval of the Board.

(2) The Department shall also provide all necessary investigative and prosecutorial services

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as arc necessary for the Board to carry out its duties.

(3) The Department of Legal Affairs shall provide an assistant attorney general who shall serve as the Board's attorney and shall attend all board meetings as well as all committee and panel meetings to provide such legal counsel as may be required.

(4) The board attorney shall assist the Board in drafting its orders and rules and shall from time to time make recommendations to the Board regarding the need for rulemaking and other matters that may come before the Board.

Specific Authority 120.53 FS, law Implemented 120.53 FS. History—New 3-14-94.

CHAPTER 3F-2
MEETINGS

- 3F-2.001** Meetings; Workshops: Notice of Meetings and Workshops; Agendas.
- 3F-2.002** Probable Cause Panel: Determination of Probable Cause: Access to Panel Records and Meetings; Additional Investigation; Outside Prosecutor.
- 3F-2.003** Other Official Board Business.

3F-2.001 Meetings; Workshops; Notice of Meetings and Workshops; Agendas.

(1) In addition to its annual meeting, the Board shall hold such other meetings or workshops during the year as it deems necessary to carry out its duties. The Chairman shall have authority to call and schedule the time and place of the Board's meetings and workshops. Four or more members of the Board shall also have authority to call meetings of the Board by filing written requests with the executive director, in which case the executive director shall schedule the meeting to be held in Tallahassee.

(2) All meetings and workshops of the Board shall be noticed and open to the public.

(3) The administrative support staff, under the direction of the executive director, shall, make and keep minutes of all proceedings of the Board and shall record all votes of members present at all meetings. The support staff shall also tape record all meetings and workshops of the Board.

(4) All decisions of the Board shall be made by majority vote in open meetings of those members who are present when such vote is called for by the Chairman after the Chairman determines there is no further discussion on the matter to be voted on. If a board member or a person whose substantial interests may be adversely affected by the Board's vote requests further discussion of the matter to be voted on, the Chairman may grant the request, but in the interest of due process of law and administrative efficiency, the Chairman may put a reasonable time limit on such further discussion.

(5) Except in the case of emergency meetings, the Board shall give at least seven days public notice of any meetings or workshop by publication in the Florida Administrative Weekly.

(6) The notice of meeting or workshop shall state:

(a) The date, time, and place of the proceeding.

(b) A brief description of the purpose of the proceeding.

(c) That a copy of the agenda for the proceeding may be obtained by writing to the Board's principal office at the address described in Rule 3F-1.001(4).

(7) For the purposes of this rule, a meeting is limited to a gathering of at least a quorum of the Board for the purpose of conducting public business by members of the collegial body constituting the agency head.

(8) For purposes of this rule, a workshop is a

gathering where members of the Board may be present, or where persons designated by the Board are meeting for the specific purpose of rule drafting. No official votes are to be taken or policy adopted at any workshop. The administrative support staff under the supervision of the executive director, shall record the workshop proceedings. The Chairman of the Board may designate the executive director or the Board's attorney to preside at any workshop.

(9) The executive director at the direction of the Chairman shall cause an agenda for every meeting and workshop to be prepared and to be made available to be received at least seven days prior to such meeting or workshop by any person in the state who requests a copy and pays the reasonable cost of the copy.

(10) The agenda shall list all items to be considered at the meeting or workshop in the order they are to be considered. After the agenda has been prepared and made available to the public, then only for good cause stated in the record, may items on the agenda be changed or considered out of their stated order with the approval of the person designated to preside. Notification of such change shall be at the earliest practicable time.

(11) All matters involving the exercise of agency discretion and policy-making shall be listed and appropriately summarized on the agenda. Additions to the agenda of items such as "old business," "new business," "other business," or "other matters which may come before the Board," or similar terms shall be for consideration of solely ministerial or internal, administrative matters which do not affect the interests of the public. However, in the event an unanticipated matter comes before the Board at a regularly scheduled meeting, the Board may discuss the matter without making a final decision and it may direct the executive director or the board attorney to review the matter and to make a recommendation regarding such matter at a future meeting of the Board. Such recommendation shall be included in the agenda of the future meeting.

Specific Authority 120.53 FS. Law Implemented 120.53 FS. History—New 3-14-94.

3F-2.002 Probable Cause Panel; Determination of Probable Cause; Access to Panel Records and Meetings; Additional Investigation; Outside Prosecutor.

(1) The chairman shall appoint two members of the Board, including one consumer member and one professional member, to serve on the probable cause panel (hereinafter referred to as the "panel").

(2) Pursuant to s. 497.131, Florida Statutes, the Department shall investigate every legally sufficient complaint. Upon completion of its investigation, the Department shall submit to the panel its investigative report together with all supporting documentation, evidence, and exhibits. The Department shall also provide the panel with any exculpatory evidence obtained in its investigation.

(3) Within 30 days after receiving the Department's investigative report and related materials the panel shall meet in closed session to determine whether probable cause exists to believe that a violation of Chapter 497, FS., has occurred. The executive director shall cause the minutes of the panel's meetings to be prepared and transcribed and all deliberations of the panel to be tape recorded. Upon a finding of probable cause, the panel shall direct the Department to file a formal complaint against the violator.

(4) The determination of probable cause shall be made by majority vote of the panel. If the panel cannot determine the existence of probable cause, the presiding member of the panel shall so advise the general counsel of the Department in writing. Thereafter, the responsibility of determining the existence of probable cause in that case shall be vested in the Department.

(5) For purposes of this rule "probable cause" means an apparent state of facts found to exist upon reasonable inquiry which would induce a reasonably prudent person to believe that the accused person has committed the offense charged.

(6) If a member of the panel has personal knowledge of a complaint or a prior relationship with the person or company which is the subject of the complaint, such member need not abstain from voting on the existence of probable cause unless such knowledge or relationship significantly impedes such member's ability to render an impartial decision. In such event, the member shall state on the record the reasons for his inability to render an impartial decision and the presiding member shall notify the general counsel of the Department of the member's inability to render an impartial decision as to the existence of probable cause.

(7) The panel may request that the Department provide additional investigative information or materials as may be needed to assist the panel in determining whether probable cause exists in a case.

(8) The investigative report and related materials including the record of the panel's meeting are exempt from Chapter 19, Florida Statutes, and shall be kept confidential. This exemption shall expire for any case in which probable cause is found.

(9) Except in those cases where the panel is reconsidering a finding of probable cause or where the accused has waived confidentially, the meetings of the panel are exempt from Chapter 286, F.S., and need not be noticed. The board attorney shall attend all meetings of the panel and shall instruct the members as to their responsibilities under the law.

(10) The members of the panel shall not discuss any USC, except on the record and in the presence of each other at a duly convened panel meeting. However, the individual members of the panel may contact, the executive director for the purpose of acquiring administrative assistance in such matters as obtaining legible copies of investigative reports

or related materials or in scheduling panel meetings and may contact the Board attorney regarding general questions about the panel's procedures and responsibilities. After finding probable cause in a case the members of the panel shall be recused from participating in the Board's consideration of such case and shall absolutely refrain from discussing any matter of the case with any other board members.

(II) Besides the members of the panel, the following persons shall have access to and, upon the written request of the executive director or the board attorney, shall receive copies of all investigative records, reports, related materials, including closing orders and all other departmental and panel documents regarding any complaint or disciplinary case, and all meetings of the panel:

(a) The executive director.

(b) Administrative support staff designated, in writing by the executive director.

(c) The board attorney and co-counsel of the board attorney.

(d) Department personnel involved in investigating or prosecuting complaints.

(12) Every legally sufficient complaint investigated by the Department shall be brought to the panel to determine whether there is probable cause to believe that a violation has occurred. If the Department determines that it should dismiss a case or that a complaint is not legally sufficient it shall advise the panel of such complaint and shall file a summary of the investigation done on the complaint and a statement explaining why the complaint is not legally sufficient or (if it is legally sufficient) why it is being dismissed. Thereafter, the panel shall proceed in accordance with s. 497.131, FS.

(13) Until such time as the Chairman appoints a probable cause panel, the Department shall make determinations of probable cause.
Specific Authority 120.33, 497.103 FS Law Implemented 120.33, 497.131 FS. History—New 3-14-94.

3F-2.003 Other Official Board Business.
Pursuant to Section 497, 109, Florida Statutes, other board business for purposes of this section is defined as:

(1) Meetings of committees, appointed by the Chairman of the Board;

(2) Probable Cause Panel meetings;

(3) Meetings of a Board member with Department staff or contractors of the Department, at the Department's request;

(4) Meetings attended by a board member where the attendance and participation of the board member at the meeting has been:

(a) Requested or approved by the Department; and

(b) The Board member's participation at the meeting is related to the Board's authority as set forth in Chapter 497, Florida Statutes.

(5) All activity of Board members, if authorized by the Board, when grading, proctoring, or reviewing examinations given by the Department:

(6) All participation in Board authorized meetings with professional associations of which the Board member is a member or invitee. This would include all meetings of national associations of registration Boards of which the Board is a member as well as Board authorized participation in meetings of national or professional organizations involved in educating, regulating or reviewing the profession over which the Board has

statutory authority:

(7) Any and all other activities which are Board approved and which are necessary for Board members to attend to protect the public health, safety and welfare, through the regulation of which the Board has statutory authority.

Specific Authority 497.103 F.S. Law Implemented 497.109 F.S. History—New 4-23-94, Amended 6-16-94.

**CHAPTER 3F-3
RULEMAKING PROCEDURES;
DECLARATORY STATEMENTS**

- 3F-3.001** Rulemaking Procedures.
- 3F-3.002** Declaratory Statements.
- 3 F-3.003** Decisions Determining Substantial Interests.

3F-3.001 Rulemaking Procedures. The Board adopts the model rules of procedure in Chapter 28-3, F.A.C., as its rules of procedure for rulemaking.

Specific Authority 120.53 FS. Law Implemented 120.53 FS. History—New 3-14-94.

3F-3.002 Declaratory Statements.

(1) The Board adopts the model rules of procedure in Chapter 28-4, F.A.C., as its rules of procedure for disposition of declaratory statements.

(2) In granting a petition for declaratory statement, the Board shall, if there is no hearing on

the petition, accept the petitioner's description of his particular set of circumstances as given. However, any misstatement of or change in such circumstances may cause the declaratory statement to be void.

Specific Authority 120.565 FS. Law Implemented 120.565 FS. History—New 3-14-94.

3F-3.003 Decisions Determining Substantial Interests. To the extent it is not inconsistent with the statutes and rules governing the conduct of the Board, as described in Rule 3F-1.002, the Board adopts the model rules of procedure in Chapter 28-S, F.A.C., as its rules of procedure for all proceedings at which substantial interests are determined by the Board. This rule does not apply to any investigative proceedings preliminary to board action.

Specific Authority 120.53 FS. Law Implemented 120.53 FS. History—New 3-14-94.

CHAPTER 3F-4
ORDERS

- 3F-4.001 Final Orders.
- 3F-4.002 Time for Payment of Civil Penalties.

3F-4.001 Final Orders.

(1) All final orders of the Board shall be in writing and **signed** by the current Chairman. **Final orders shall be effective** upon filing with **the clerk of the Board** as designated by the executive director or with the clerk **of the Department**.

(2) Copies of the final order in every proceeding shall be **served** on each party participating in **the proceeding** and to the board attorney.

(3) At any time, the Board may authorize **the** executive director to sign final orders.

Specific Authority 120.33 FS. Law Implemented 120.33 FS. History—New 3-14-94.

3F-4.002 Time for **Payment** of Civil Penalties.

(1) In cases where **the** Board **imposes** a civil penalty for violation of Chapter 497, Florida Statutes, or of the rules promulgated thereunder, **the** penalty shall be paid within 30 days of **its** imposition by order of **the** Board unless otherwise approved by **the** Board.

(2) Penalties may be **paid** by check payable to the Department and shall be deposited in **the** regulatory Trust Fund.

Specific Authority 120.33 FS. Law Implemented 120.33 FS. History—New 3-14-94.

CHAPTER 3F-5
APPLICATION AND LICENSURE

- 3F-5.001 Effectiveness of Cemetery Licenses Valid on September 30, 1993.
- 3F-5.0015 Certificates of Authority.
- 3F-5.0016 Certificate of Authority; Financial Requirements.
- 3F-5.002 Application for Certificate of Authority.
- 3F-5.003 Application for Registration of a Preneed Sales Agent.
- 3F-5.0031 Definition of Good Standing With the Board of Funeral and Cemetery Services.
- 3F-5.0035 Termination of a Preneed Sales Agent.
- 3F-5.004 Procedures for Licensing a New Cemetery.
- 3F-5.005 Procedure for Licensing Existing Cemeteries.
- 3F-5.006 Procedure for Licensing Transferred Cemeteries.
- 3F-5.007 Conversion Procedures.
- 3F-5.008 Request for Additional Information - Applications.

3F-5.001 Effectiveness of Cemetery Licenses Valid on September 30, 1993. Unless revoked or otherwise restricted, any cemetery license valid on September 30, 1993 shall remain in effect for purposes of authority to sell preneed contracts under Chapter 497, Florida Statutes, until May 31, 1994.

Specific Authority 497.103(1) F.S. Law Implemented 497.405, 497.407 F.S. History—New 4-23-94.

3F-5.0015 Certificates of Authority.

(1) No person or entity may sell a preneed contract for burial or funeral services, merchandise, or ash advances that does not have a valid certificate of authority.

(2) For purposes of a corporation qualifying for a certificate of authority pursuant to Section 497.405(3), Florida Statutes, by use of a corporate agent, such corporate agent must have common ownership in excess of 50% of the voting stock with the certificate of authority holder or applicant. If the applicant or certificate of authority holder is a not-for-profit corporation, then it must have common membership with any corporate agent through which it plans to sell preneed contracts in accordance with Section 497.405(3), F.S.

(3) Nothing herein shall prohibit a corporate certificateholder from selling preneed contracts through corporate subsidiaries or other entities with common ownership in excess of 50% of the voting stock or common membership in the case of not-for-profit corporations, so long as such entities are made known to the Board prior to any such preneed sales provided:

(a) the Board determines that the certificateholder will be legally liable for the acts and liabilities of such entity arising out of its sales; and

(b) the financial condition of the selling entity or subsidiary when viewed in the aggregate with the financial condition of the certificateholder does not impair the ability of the certificateholder to qualify for or retain a certificate of authority.

Specific Authority 497.103 F.S. Law Implemented 497.405(3) F.S. History—New 10-15-95.

3F-5.0016 Certificate of Authority; Financial Requirements.

(1) A Certificate of Authority holder or applicant must meet the following requirements on an annual basis, demonstrating its ability to discharge its liabilities as they become due in the normal course of business and must have sufficient funds available to perform its obligation under its existing preneed contracts.

(2) A Certificate of Authority holder or applicant must submit its most recent year-end financial statements (including a balance sheet and income statement), with the Certificate of Authority application and annually thereafter as provided in Chapter 497.407(1), F.S. The financial statements must be prepared on the accrual basis of accounting or the income tax basis of accounting. If the income tax basis is used, a schedule must accompany the financial statements disclosing the effect of any material departures from accrual basis accounting. The financial statements may omit notes to financial statements and the statement of cash flows.

(3) Financial statements must demonstrate the following:

(a) a ratio of at least one to one of current assets to current liabilities, after excluding loans to principals or stockholders or both, and

(b) a positive net worth after excluding loans to principals or stockholders or both.

(4) In the case of a Certificate of Authority holder or applicant offering preneed sales through a subsidiary agent, as provided in Rule 3F-5.0015, the Certificate of Authority holder or applicant shall execute a guarantee agreement with respect to any contract obligations resulting from preneed sales of such a selling agent.

(5) If the Certificate of Authority holder or applicant does not meet the financial requirements in (3) above, the entity may, within thirty (30) days of notification by the Board, voluntarily submit to the Board additional evidence or agree to additional oversight as to its meeting the requirements of (1) above and as a condition of receiving and retaining a certificate of authority. Such additional evidence or oversight agreement shall include as appropriate:

(a) agreement to submit monthly financial statements of the entity

(b) agreement to submit quarterly financial statements of the entity

(c) appraisal of the entity's property or broker's opinion of value of entity's assets

(d) credit report of the entity or its principal owners

(e) subordination of debt agreement from the entity's principal owners

(f) indemnification/subrogation agreement binding the entity and principal owners

(g) guarantee agreement for the entity from its principal owners

(h) written explanation of past financial activity

(i) submission of a twelve month projected plan for financial recovery

(j) submission of previous Department examination reports

(k) 100% voluntary trusting agreement by the entity. Upon the Board's review of such additional information or agreements, submitted within the thirty (30) day time period, as stated above, the Board may issue a Certificate of Authority if such information or agreement results in the Board determining that the applicant or certificateholder meets the requirements of Sections 497.405 and 407, F.S.

Specific Authority 497.103 FS. Law Implemented 497.405, 497.407 FS. History—New 3-21-95.

3F-5.002 Application for certificate or Authority.

(1) Each entity desiring to obtain a certificate of authority shall apply to the Board by submitting the following:

(a) a completed application for Certificate of Authority, Form DBF-COA-1, effective 2-7-95, and a Historical Sketch of Principals, Form DBF-HS-1, effective 4-25-94, which are hereby incorporated by reference and available by mail from the Department of Banking and Finance, Division of Finance, The Capitol, Tallahassee, Florida X399-0350. The application and historical sketch must be completed and signed within thirty (30) days prior to receipt by the Board; and

(b) an application fee of \$500 which shall be the fee for the annual period beginning June 1 of each year or any part thereof;

(2) The Historical Sketch of Principals shall be completed by any person with power to direct the management or policies of the applicant.

(3) Request for Additional Information. Any request for additional information will be made by the Executive Director of the Board within thirty (30) days after receipt of the application by the Board. The additional information must be received by the Board within forty-five (45) days from the date of request. Failure to respond to the request within forty-five (45) days from the date of request shall be construed by the Board as grounds for denial for failure to complete the application, and the application shall be denied pursuant to Section 120.60(2), Florida Statutes.

(4) Upon approval of the application, a certificate of authority will be issued for the remainder of the period.

(5) For purpose of s. 497.407(5), FS., an applicant's principals (including directors, officers, stockholders owning more than 10% of the voting stock of the applicant, and other persons who can direct the management of the applicant) shall appear to be of good moral character if they:

(a) have ever been convicted of, or pled guilty to, a crime involving fraud, perjury, embezzlement, tax evasion, or other crime of moral turpitude;

(b) have never filed false information with any governmental agency and

(c) have never demonstrated any act or nature that constitutes a lack of honesty or financial responsibility. However, such act or conviction shall not create an irrebuttable presumption that a person is not of good moral character. The Board shall take into consideration evidence of such person's efforts at rehabilitation and law abiding behavior during the three (3) years preceding the filing of the application.

Specific Authority 197.101, 497.407(1) FS. Law Implemented 497.405, 497.407 FS. History—New 2-5-94. Amended 2-7-95.

3F-5.003 Application for Registration of a Preneed Sales Agent.

(1) Each person desiring to obtain registration as a preneed sales agent for a certificateholder shall apply to the Board by submitting the following by certified mail:

(a) a completed application for Registration of a Preneed Sales Agent, Form DBF-PNS-1, effective 4-25-94, which is hereby incorporated by reference and available by mail from the Department of Banking and Finance, Division of Finance, The Capitol, Tallahassee, Florida 32399-0350. The registration must be completed and signed by an authorized representative of the certificateholder within thirty (30) days prior to receipt by the Department;

(b) a non-refundable application fee of \$100 which shall be the fee for the biennial period beginning March 1 of each even numbered year or any part thereof.

(2) Request for Additional Information. Any request for additional information will be made by the Department within thirty (30) days after receipt of the application by the Department. The additional information must be received by the Department within forty-five (45) days from the date of request. Failure to respond to the request for additional information within forty-five (45) days from the date of request shall be construed by the Board to be grounds for denial of the application for failure to complete the application, and the application shall be denied pursuant to Section 120.60(2), Florida Statutes.

(3) Amendment of Registration. An applicant may amend the registration as to those factors generally within the control or selection of the applicant, once, as a matter of course, at any time within thirty (30) days from its receipt for filing. Otherwise, the registration may be amended only with prior permission from the Department. Any unapproved requests to make changes filed at any time after the registration has been received shall be deemed by the Board to be grounds for denial, and a new registration, accompanied by the appropriate fee, shall be required.

(4) **Withdrawal of Registration.** An applicant, or sponsoring certificateholder, can request withdrawal of a registration prior to a determination of the application being made by the Board of Funeral and Cemetery Services by submitting a written request that the registration be withdrawn.

(5) **Denial of Registration.** The Department shall notify the applicant at the address of the sponsoring certificateholder of the Board's intent to deny the application. Upon receipt of the notification, the applicant shall cease conducting business as a preneed sales agent. Upon receipt of the notification, the certificateholder will use due diligence to stop the preneed sales agent from conducting business as a preneed sales agent on behalf of the certificateholder. If a request for a hearing has not been received within twenty-six (26) days of the date of the notification, the application shall be denied.

(6) **Refunds.** If the registration is withdrawn or denied, the application fee is non-refundable.

(7) Upon approval of the application, a registration will be issued for the remainder of the biennial registration period effective the later of the date the application was received or the date the last deficiency on the application was resolved.

(8) A separate registration is required for each different certificateholder represented by the applicant.

3F-5.0031 Definition of Good Standing With the Board of Funeral and Cemetery Services.

(1) A person applying for registration pursuant to Section 497.439, FS., shall be deemed to be in good standing with the Board of Funeral and Cemetery Services if:

(a) The individual has not, at the time of application, been penalized for and is not under investigation for one or more of the following disciplinary actions by a licensing authority of any state, territory or country that is involved in regulating the cemetery or funeral home industries:

1. Revocation of a license or registration

2. Suspension of a license or registration

3. Probation of a license or registration for an offense involving fraud, dishonest dealing, or an act of moral turpitude.

(b) The individual has not been convicted or found guilty of, or entered a plea of nolo contendere to, regardless of adjudication, any felony or misdemeanor related to any activity regulated by Chapter 497, F.S., or their predecessors or another crime involving fraud, dishonest dealing, or an act of moral turpitude. Nevertheless, no applicant who has any felony or misdemeanor conviction that relates to any activity regulated by Chapter 497 shall be eligible for registration.

(c) The individual has not been disciplined by any governmental agency for an act that relates to fraud, dishonest dealing, or an act of moral turpitude.

(2) Except as otherwise provided in paragraph (1)(b) above, violations of the foregoing shall not be deemed to be a bar to registration if any of the following are shown:

(a) Sufficient time has elapsed since the prior disciplinary action, criminal conviction or guilty plea such that the applicant is substantially unlikely to pose any threat to the public through the ordinary course of his duties as a preneed sales agent.

(b) Steps taken by the applicant to insure the non-occurrence of similar actions in the future.

(c) Restitution of any damages suffered by any client or victim of the applicant's actions.

(d) The lack of any recurrent actions by the applicant.

(e) The action was the result of negligence rather than any wrongful intent.

Specific Authority 497.103 FS. Law Implemented 497.439(6)(b) FS. History—New 4-23-95.

3F-5.0035 Termination of a Preneed Sales Agent Within thirty (30) days of any termination of any registered preneed sales agent, the certificateholder shall give written notice to the Department. The notice shall contain:

(1) The effective date of termination, the name, and registration number of the preneed sales agent;

(2) The name, license number, and business location of the certificateholder where the preneed sales agent was working;

(3) Signature of an authorized agent of the certificateholder.

Specific Authority 497.103 FS. Law Implemented 497.439(9) FS. History—New 5-29-96.

3F-5.004 Procedures for Licensing a New cemetery.

(1) Any legal entity wishing to establish a cemetery should review the requirements of the Florida Cemetery Act (Chapter 497, Florida Statutes) and applicable rules and regulations before filing a formal application for permission to start a cemetery in the State of Florida. The following should then be completed and submitted to the Board:

(a) Application To Organize A New Cemetery Company, Form DBF-F-34, effective October 23, 1991, which is hereby incorporated by reference;

(b) Historical Sketch of Proponents, Form DBF-F-31, effective October 23, 1991, which is hereby incorporated by reference;

(c) Current Financial Statement, Form DBF-F-32, effective October 23, 1991, which is hereby incorporated by reference, of each proponent;

(d) Creation of a legal entity to conduct the cemetery business;

(e) The proposed financial structure of the cemetery;

(f) A map showing location of proposed site and other cemeteries located in the area:

(g) A non-refundable application fee in the amount of ~~(\$5,000)~~. Upon receipt of the above-completed documents and application fee, the Department will conduct an investigation to determine the need for a new cemetery.

(2) If the Department determines a need for a cemetery in the area of the proposed site as required by Section 497.201(3), F.S., the applicant shall be notified that the following additional information must be prepared and submitted:

(a) Legal description of the property including a statement as to the number of acres contained therein:

(b) Development plans for proposed cemetery;

(c) Written approval from the governing zoning authority. If no zoning board for such authority exists, written approval must be obtained from a majority of the adjacent property owners;

(d) Written approval from the Local Board of Health or other such agency having jurisdiction;

(c) A certified report from a registered testing laboratory establishing the water table of the property;

(f) Designation of a general manager who shall be a person of good moral character having not less than one year's experience in the cemetery business in Florida.

(3) If a certificate of authorization is issued the following will be required:

(a) Establishment of a "Care and Maintenance Trust Fund";

(b) Certification from Trustee of deposit of \$25,000 in "Care and Maintenance Trust Fund";

(c) Establishment of a "Merchandise Trust Fund";

(d) Certification from an Attorney or Title Company that the proposed acreage is free and clear from any financial encumbrances and submit a copy of deed showing notice required by Section 497.006, F.S., has been recorded;

(e) Full development, ready for burials, of not less than two acres, including, but not limited to, a paved road from a public roadway to said developed section;

(f) Completion of an Application To Transact Cemetery Business, Form DBF-F-33, effective October 23, 1991, which is hereby incorporated by reference and a license fee of \$250, refundable if license is not issued;

(g) Upon completion of the above requirements and on investigation of the cemetery grounds by the Department, a cemetery license will be issued to transact business for that year.

(h) Denial of Application. If the Board intends to deny an application, the provisions of Chapter 120, P.S., shall prevail. If the application is denied, written notice thereof will be given to the applicant and upon written request for a hearing thereon received within 21 days after receipt of notice of denial, a hearing may be held. Such hearing will be conducted in accordance with Chapter 120, Florida Statutes, and Chapter 28-6 of the Model Rules of Procedure.

(4) Criteria for licensing a new cemetery.

(a) In making its determination as to the need for an additional cemetery company for the general benefit of the public, the Department shall not increase the available inventory of burial spaces beyond the expected need for a period of 30 years from the date of application.

(b) In the investigation to determine need for a new cemetery the Department shall consider the following criteria:

1. The community in which the cemetery is to be located shall be defined for the purpose of seeking authority to organize a cemetery pursuant to Chapter 497, F.S., as the smallest area contiguous to the proposed cemetery from which approximately seventy-five percent of sales of burial spaces are expected to be derived.

2. After the community area is determined, the Department shall consider the adequacy of the existing facilities by obtaining from all profit, non-profit, religious, and municipal cemeteries that would also derive the majority of their sales from the same community as the applicant, the number of burial spaces available in ground burials, lawn crypts, mausoleums, including contemplated mausoleum structures in which sales have been made, requiring construction within five years from date of sale, plus unplatted reserve acreage as stated on the annual report of cemetery estimated at 1200 burial spaces per acre.

3. The population, its rate of growth, the death rate, and the ratio of burials to deaths shall be determined from latest statistical information available for the community in which the proposed cemetery is to be located.

(5) All forms herein are hereby incorporated by reference and available by mail from The Department of Banking and Finance, Division of Finance, The Capitol, Tallahassee, Florida 32399-9350.

Specific Authority 497.103 FS. Law Implemented 497.201, 497.237, 497.245, 497.337 FS. History—New 9-29-75, Amended 6-21-77, 6-21-78, 11-2-78, 1-27-81, Formerly 3D-30.15, Amended 10-23-91, Formerly 3D-30.015.

3F-5.005 Procedure for Licensing Existing Cemeteries. Existing cemeteries at the time of the 1959 adoption of the Florida Cemetery Act shall continue in full force and effect but shall file the following with the Board:

(1) An Application To Organize A New Cemetery Company, Form DBF-F-34, effective October 23, 1991, which is hereby incorporated by reference. This application shall be accompanied by a non-refundable application fee of 55,000.

(2) A map showing location of cemetery.

(3) Legal description of the property including a statement as to the number of acres contained therein.

(4) Establish a care and maintenance trust fund. The initial deposit shall be an amount equal to 310.00 per space for all spaces either sold or contracted for sale or \$25,000.00 whichever is greater.

(5) **Historical Sketch of Proponents.** Form DBF-F-31, effective October 23, 1991, which is hereby incorporated by reference, of each proponent.

(6) **Current Financial Statement.** Form DBF-F-32, effective October 23, 1991, which is hereby incorporated by reference, of each proponent.

(7) **Completion of an Application To Transact Cemetery Business.** Form DBF-F-33, effective October 23, 1991, which is hereby incorporated by reference. Form DBF-F-33 shall be accompanied by a license fee based on the cemeteries' last fiscal year sales pursuant to Section 497.009, Florida Statutes.

(8) If the application is denied, written notice thereof will be given to the applicant and upon written request for a hearing thereon received within 21 days after receipt of notice of denial, a hearing may be held. Such hearing will be conducted in accordance with Chapter 120, Florida Statutes, and Chapter 3F-3 of these rules.

(9) All forms herein are hereby incorporated by reference and available by mail from The Department of Banking and Finance, Division of Finance, The Capitol, Tallahassee, Florida, 32399450.

Specific Authority 497.103 F.S. Law Implemented 497.103, 497.301, 497.237, 497.213 F.S. History—New 9-29-73, Amended 11-2-78, 1-27-81, Formerly 3D-30.16, Amended 10-23-91, Formerly 3D-30.016.

3F-5.006 Procedure for Licensing Transferred Cemeteries.

(1) **Application.** When a person, a group of persons or a corporation proposes to purchase or acquire control of an existing cemetery company either by purchasing the outstanding capital stock of any cemetery company, or the interest of the owner or owners, and thereby to change the control of said cemetery company, such person shall file an Application For Authority To Acquire Control Of An Existing Cemetery Company, form DBF-F-35, effective October 23, 1991, which is hereby incorporated by reference. This application shall be accompanied by a non-refundable application fee of \$5,000.

(2) **Supporting Data.** The following items shall accompany the above application:

(a) Copy of sales agreement;

(b) Copy of articles of incorporation;

(c) **Historical Sketch of Proponents.** Form DBF-F-31, effective October 23, 1991, which is hereby incorporated by reference, of each proponent;

(d) **Current Financial Statement.** Form DBF-F-32, effective October 23, 1991, which is hereby incorporated by reference, of each proponent;

(e) **Completion of an Application To Transact Cemetery Business.** Form DBF-F-33, effective October 23, 1991, which is hereby incorporated by reference. Form DBF-F-33 shall be accompanied by a license fee based on the cemeteries' last fiscal year sales pursuant to Section 497.009, Florida Statutes;

(f) Existing license must be returned to the Board for cancellation. No license is transferable or assignable;

(g) A map showing land platted for burials.

(3) **Conditions.** Any deficits must be cleared by present owner to trust funds or a written statement waiving a final examination must be signed by the purchaser; thereby making him responsible for any deficits to the trust fund.

If a new trustee is appointed, a copy of the trust agreement must be approved by the Department before the trust fund is transferred.

(4) **Investigation.** The Department shall investigate the following conditions:

(a) Character, reputation, financial standing, business qualifications and motives of the new proponents;

(b) Legal entity;

(c) Capitalization;

(d) Whether money is due any of the trust funds, unless waived;

(e) Current financial statement for each proponent;

(f) Biographical sketch for each proponent.

(5) **Issuance of license.** If the department finds that the proposed owner or owners of the existing cemetery company has in good faith complied with all lawful requirements, it shall issue a new cemetery license.

(6) **Denial of License.** If the department intends to deny an application, the provisions of Chapter 120, F.S., shall prevail. If the application is denied, written notice thereof will be given to the applicant and upon written request for a hearing thereon received within 21 days after receipt of notice of denial, a hearing may be held. Such hearing will be conducted in accordance with Chapter 120, Florida Statutes, and Chapter 28-6 of the Model Rules of Procedure.

(7) All forms herein are hereby incorporated by reference and available by mail from The Department of Banking and Finance, Division of Finance, The Capitol, Tallahassee, Florida, 32399-0350.

Specific Authority 497.103 F.S. Law Implemented 497.201(1), 497.209 F.S. History—New 9-29-73, Amended 11-2-78, 1-27-81, Formerly 3D-30.17, Amended 10-23-91, Formerly 3D-30.017.

3F-5.007 Conversion Procedures. When a municipal, church owned, fraternal or community and non-profit association cemetery converts to a cemetery company as defined in Section 497.005, F.S., then said cemetery shall file the following with the department:

(1) An Application To Organize A New Cemetery Company, Form DBF-F-34, effective October 23, 1991, which is hereby incorporated by reference. This application shall be accompanied by a non-refundable application fee of \$5,000.

(2) A map showing the location of cemetery.

(3) A map showing land that has been platted for burials.

(4) Legal description of the property including a statement as to the number of acres contained therein.

(5) Establish and maintain a care and maintenance trust fund. The initial deposit for establishment of this trust fund shall be an amount equal to \$50.00 per space for all spaces either previously sold or contracted for sale in said cemetery at the time of conversion or \$30,000 whichever sum is greater.

(6) Copy of sales agreement.

(7) Historical Sketch of Proponents. Form DBF-F-31, effective October 23, 1991, which is hereby incorporated by reference, of each proponent.

(8) Current Financial Statement. Form DBF-F-32, effective October 23, 1991, which is hereby incorporated by reference, of each proponent.

(9) Completion of an Application To Transact Cemetery Business, Form DBF-F-33, effective October 23, 1991, which is hereby incorporated by reference. Form DBF-F-33 shall be accompanied by a license fee based on the cemetery's last fiscal year sales pursuant to Section 497.009, Florida Statutes.

(10) Investigation: The Department shall investigate the following conditions:

(a) Character, reputation, financial standing; business qualifications and motives of the proponents;

(b) Legal entity;

(c) Capitalization;

(d) Current financial statement of each proponent;

(e) Biographical sketch of each proponent.

(11) If the application is denied, written notice thereof will be given to the applicant and upon written request for a hearing thereon received within 21 days after receipt of notice of denial, a hearing may be held. Such hearing will be conducted in accordance with Chapter 120, Florida

Statutes, and Chapter 28.6 of the Model Rules of Procedure.

(12) All forms herein are hereby incorporated by reference and available by mail from The Department of Banking and Finance, Division of Finance, The Capitol, Tallahassee, Florida, 32399-0350.

Specific Authority 497.101 FS. Law Implemented 497.201, 497.213 FS. History—New 9-29-75, Amended 1-27-81, Formerly JO-JO.19. Amended 10-23-91, Formerly JO-JO.01 9.

3F-5.008 Request for Additional Information - Applications, Rules 3 F-5004, 3F-5.005, 3F-5.006 and 3F-5.007 provide methods, procedures and supporting documentation for the licensing of new cemeteries, existing cemeteries, transferred cemeteries and for conversion procedures. All information the applicant wants to present in order to support the application should be submitted with the original filing. The required exhibits in the application forms are not intended to limit the applicant's presentation of any of the requirements, but merely represent the minimum information to be filed. Additional information must be submitted within 60 days after a request therefore if, specifically requested by the department within 30 days after receipt of the application. Failure to respond to such request within 60 days after the date of the request may be construed by the department as grounds for denial of an application in accordance with the provisions of Section 120.60(2), Florida Statutes, and the file may be closed, unless good cause is shown that it remain open. Should the file be closed pursuant to these provisions, the applicant shall be duly notified. (See Rule 3-3.012(1)(a) and (3), F.A.C.)
Specific Authority 497.103 FS. Law Implemented 120.60(2), 497.201(2)(a), 497.209 FS. History—New 12-22-81, Formerly JP30.29, JD40.029.

**CHAPTER 3F-6
PRACTICE AND PROCEDURES**

3F-6.001	Grave Spaces; Definition Limited.
IF-6.002	Care and Maintenance of Existing Cemetery.
3F-6.003	Cemetery By-laws.
3F-6.004	Safekeeping of Records.
3F-6.005	Records.
3 F-6.006	Inspection of Cemeteries.
3F-6.007	Criteria for Burial: Disinterment; Reinterment.

3F-6.001 Grave Spaces; Definition Limited. "Grave space." according to the definition in Section 497.005(6), FS, means a space of ground in a cemetery intended to be used for the interment in the ground of the remains of a deceased person. Said definition is not altered or modified because of the dimensions of the space or whether vertical or horizontal to be the natural contour of the ground or whether the remains or cremains of more than one person occupy the same excavation.
Specific Authority 20.05(3), 120.53(2)(a), 497.103 FS. Law Implemented 497.005(6) FS. History—New 7-20-73. Renumbered from 3-8.08 to 3D-30.08 on 9-8-75. Amended 1-27-81. Formerly 3D-30.08, 3D-30.008.

* **3F-6.002 Care and Maintenance of Existing Cemetery.** The cemetery shall be maintained in a reasonable condition which shall include leveling of the grounds where interments have been made, removal of all debris, mowing and edging, resulting in a well kept appearance at all times..
Specific Authority 20.05(3), 497.103 FS. Law Implemented 497.237, 497.241 FS. History—Amended 5-10-76. Formerly 3D-30.21, 3D-30.021.

3F-6.003 Cemetery By-laws Each cemetery company may adopt by-laws defining its operational procedures. Any by-laws in existence as of July 1, 1978 shall be effective upon being filed with the Board. By-laws created or amended after July 1, 1978 shall be filed with the Board and advertised by the Board placing notice in the Florida Administrative Weekly. Comments may be submitted or a hearing requested by substantially affected parties. Upon review of the by-law(s), comments or finding of facts, if any, the Board shall approve such by-law(s) if they are reasonable.
Specific Authority 497.103 FS. Law Implemented 497.305(3) FS. History—New 11-2-78. Formerly 3D-30.23, JDJO.023.

* **3F-6.004 Safekeeping of Records.** All burial records referenced in Section 497.309, F.S., and those contracts under the jurisdiction of the Department and the Board of Funeral and Cemetery Services which have not been audited by the Department must be filed and kept in a secure manner. For purposes of this rule, "secure" means:
(1) a vault or fire-proof container with a properly certified fire resistant capability of at least one hour; or
(2) a computer readable media backed up by diskette, or optical disk, or tape which is stored at an off-site location; or
(3) microfilm backed up by a security roll stored at an off-site location; or

(4) a duplicate copy of the records referenced in this rule are kept at an off-site location. Records that are deemed "secure" at an off-site location shall be updated quarterly.

Specific Authority 20.05(3), 497.103 FS. Law Implemented 497.103, 497.309 FS. History—New 7-20-73, Renumbered from J-E.09 to 3D-30.09 on 9-8-75. Amended 8-22-76. Formerly 3D-30.09, JD10.009. Amended 3-21-95.

3F-6.005 Records. The following records shall be made available to the Department for the purposes of examinations or inspections:

- (1) License and Certificate of Authority;
- (2) Registration for Preneed Agents;
- (3) Notice to Consumers;
- (4) Price Disclosure List;
- (5) Advertising file;
- (6) By-Laws and Rules and Regulations;

(7) Financial and accounting records, including financial statements, general ledger, accounts receivable, accounts payable and cash receipts, journals, receipt books and invoices;

- (8) Preneed Contracts;
- (9) Other contracts, including at need sales and contracts for burial rights;
- (10) Burial Records;
- (11) Lot ownership records;
- (12) Procedures for handling complaints as referenced by 497.445(6), F.S.;
- (13) Mortgages on the property;
- (14) Preneed Funeral Contract Consumer Protection Trust Fund remittances and supporting documentation;
- (15) Record of cancellation requests and refunds given;
- (16) List of current preneed sales agents;
- (17) Detailed maps of the cemetery; and
- (18) Procedure manuals.

These records will be available for review at the licensed facility or an alternative site if approved by the Board pursuant to Section 497.309(2), F.S.
Specific Authority 497.103 FS. Law Implemented 497.309, 497.431 FS. History—New 1-21-91.

* **3F-6.006 Inspection of Cemeteries.** Inspection of cemeteries will be performed by the Department as often as necessary but not year. Such inspections shall—
(1) maintenance of the grounds and mausoleums

- (2) posting of licenses and notices
- (3) safekeeping of records
- (4) progress of construction when preconstruction sales have been made
- (5) availability of price disclosure lists
- (6) confirmation of preneed merchandise and service contracts.

Specific Authority 497.103(2) FS. Law Implemented 497.103(2) FS. History—New 3-21-95.

3F-6.007 Criteria for Burial; Disinterment; Reinterment.

(1) A cemetery shall not be required to perform a burial, interment, entombment, or inhumment, until it has received proper authorization. Such authorization shall consist of the following:

(a) an original completed burial transit permit;
(b) an authorization, either orally or in writing, according to either cemetery by-laws or written operating procedures of the cemetery, from the individual(s) who own the burial rights for the burial space in which the burial is to take place; and
(c) an authorization, in writing, according to either cemetery by-laws or written operating procedures of the cemetery, from the individual or individuals who, at the time the disinterment is to be made, have the right to authorize the burial of the decedent.

(2) The cemetery may charge such burial storage fees, opening and closing fees and removal and reinstallation monument fees as are set forth on the cemetery's Price Disclosure Sheet effective at the time of providing the service, unless the monument is removed and re-installed by a registered monument installation establishment.

(3) The disinterment and reinterment of human remains shall require the physical presence of a licensed funeral director, unless the reinterment is to be made in the same cemetery.

(4) A cemetery shall not be required to perform a disinterment until it has received proper authorization. Such authorization shall consist of the following:

(a) An original disinterment permit and burial transit permit, unless the reinterment is to be made in the same cemetery;

(b) Written authorization from the individual or individuals who currently own the burial (interment) rights for the burial space from which the disinterment of the decedent is to take place; and

(c) Written authorization from the individual(s) who, at the time the disinterment is to be made, would be permitted to authorize the burial of the decedent.

(J) Unless the cemetery is provided with all of the documentation, the cemetery need not perform the disinterment unless and until it receives a court order instructing it to do so.

(6) The removal of human remains from a designated temporary storage area to a place of permanent burial shall not be considered a disinterment or reinterment.

(7) The cemetery may charge such transfer fees, disinterment fees, opening and closing fees and monument removal and reinstallation fees as set forth on the cemetery's Price Disclosure Sheet in effect at the time the service is provided, unless the monument is removed and reinstalled by a registered monument installing establishment.

Specific Authority 497.103 F.S. Law Implemented 497.303(1)(b), 497.309(1), 497.313(1), 497.317, 497.315(7) FS. History—New 3-21-95.

CHAPTER 3F-7
TRUSTS AND TRUST FUNDS

IF-7.001	Care and Maintenance Trust Fund Deposits.
3 F-7002	Percentage Deposits Required on Turf Tops, Lawn Crypts, ECC.
3F-7.003	Receipt and Delivery of Pre-need Merchandise: Documentation Required.
3F-7.004	Delivery of Merchandise: Forms and Certificates Required.
3F-7.005	Performance Bond - Mausoleums or Below-Ground Crypts.
3F-7.006	Wholesale Purchase Price.
3F-7.007	Merchandise Trust Funds - Status of Account.
3F-7.008	Merchandise Trust Funds - Withdrawal of Principal and Income Earned Thereon.
3F-7.009	Reporting Requirements for Cemetery Companies Filing an Initial Application to Utilize a Letter of Credit or Surety Bond in Lieu of the Merchandise Trust Fund.
3F-7.010	Reporting Requirements for Cemetery Companies Utilizing a Surety Bond or Letter of Credit in Lieu of the Merchandise Trust Fund.
3F-7.011	Criteria for Filing a Letter of Credit in Lieu of the Merchandise Trust Fund.
3F-7.012	Criteria for Filing a Surety Bond - in Lieu of the Merchandise Trust Fund.
3F-7.0125	Alternative Form of Security for Permanent Outer Burial Receptacle Manufacturers.
3F-7.013	Procedures for Filing Claim with the Board.
3F-7.014	Accounting Procedures.
3F-7.015	Trust Agreements and Trustees.
3F-7.016	Duties and Powers of Trustee; Authorized Investments.
3F-7.017	Trust Fund Deposits; Funeral and Burial Services and Merchandise Pre-need Contract Payments.
3F-7.020	Treatment of Trusts Under Chapters 497 and 639, F.S.

3F-7.001 Care and Maintenance Trust Fund Deposits.

(1) The cemetery company is obligated to pay into the Care and Maintenance Trust Fund ten percent (10%) of the purchase price of burial rights as outlined in section 497.425, FS.

(2) Ten percent (10%) of the down payment and ten percent (10%) of each payment allocated to burial rights shall be paid to the trust fund until the full obligation is fulfilled; however, the full amount due the care and maintenance trust fund must be deposited within 4 years from the date of any contract requiring such payment.

(3) If the contract does not provide for the allocation of payments as anticipated in paragraph (2) above, such payments shall be allocated as follows:

(a) For deferred payment contracts the sales price of burial rights shall be divided by the total sales price.

(b) This percentage will then be applied to all payments received including the down payment and the value of credits given to determine the amount to be deposited in the care and maintenance trust fund.

(c) The percentage payments required to be deposited on each payment shall be carried out two places and the amount of deposit required may be rounded off to the nearest dollar as long as the total amount required to be deposited has been fully deposited when the contract has been fully paid.

(4) One hundred percent (100%) of all special endowments must be set aside in special trust account or deposited in the care and maintenance trust fund. If a contract provides for a separate amount to be paid for care and maintenance, it shall be considered a special endowment. In such cases, the cemetery company shall pay the required percentage on the sum paid for the right and the amount of the endowment.

(5) If the contract contains terms which require a greater deposit to the care and maintenance trust fund or a more timely deposit, the terms of the contract shall prevail.

Specific Authority 20.05(8), 120.53(8), 497.103 FS. Law Implemented 497.237, 497.241, 497.245, 497.249 FS. History—New 1-22-63. Amended 4-20-63, Renumbered from 3-8-01 to 3D-30.01 on 9-8-75. Amended 1-27-81. Formerly 3D-30.01, 3D-30.001, Amended 2-1-95.

3F-7.002 Percentage Deposits Required on Turf Tops, Lawn Crypts, Etc. The percentages required to be deposited in the care and maintenance fund for crypts commonly known as turf tops, lawn crypts, Westminster, and similar types, shall be computed in the same manner and at the same rate as a mausoleum if the crypt is above or partially above the natural contour of the land, unless: (1) it is covered by at least fifteen inches of earth and sod and has a surrounding grade or slope of 90 degrees greater than thirty degrees from the top of the earth and sod to the natural contour of the ground; or, (2) the base of a triangle created by the fill extends at least twice the distance from the crypt as the crypt and earth covering extends above the normal contour of the ground.

Specific Authority 20.05(5), 497.103 FS. Law Implemented 559.38, 497.245 FS. History—New 1-20-73. Renumbered from 3-8-07 to 3D-30.07 on 9-8-75. Formerly 3D-30.07, 3D-30.007.

3F-7.003 Receipt and Delivery of Pre-need Merchandise; Documentation Required. Upon receipt and delivery of pre-need merchandise, each contracting cemetery shall prepare a certification (Form DBF-F-27) to the department, attaching same to the numerically filed copy of the contract. This certification shall show the name of the cemetery, contract number, and descriptive information applicable to the merchandise and

services such as manufacturer, material, and style or type. The certification shall also contain a statement by the seller that the merchandise is free of any and all encumbrances and that title is therewith conveyed to the purchaser along with a statement as to where the merchandise was delivered.

Specific Authority 20.05(3), 497.103 FS. Law Implemented 497.309, 497.337 FS. History—New 7-20-73, Renumbered from 3-8-14 to 10-J0-12 on 9-8-75, Amended 9-29-75, Formerly 10-10-12, 10-30.012.

3F-7.004 Delivery of Merchandise; Forms and Certifiata Required. Upon delivery of merchandise for which there have been funds deposited in the merchandise trust fund pursuant to a merchandise trust remittance trust form, the cemetery company shall execute a merchandise trust of delivery and a request for payment form. The original shall be delivered to the trustee and a copy shall be filed in numerical sequence or attached to the numerical filed contract. This form shall show: (1) the name of the cemetery, name of trustee, name and address of purchaser, contract number, amount and date of deposit, and a description of the merchandise and services as shown on the merchandise trust remittances form; (2) a certification by the cemetery that the merchandise has been delivered and services, if any, performed; and (3) a request for the trustee to pay to the cemetery the amount of the deposit plus earnings less proportionate cost incurred (Form DBF-V-29).

Specific Authority 20.05(3), 497.103 Fs. Law Implemented 497.309, 497.337 FS. History—New 7-20-73, Renumbered from 3-8-14 to 10-30.14 on 9-8-75, Amended 1-17-81, Formerly 10-30.14, 10-30.014.

3F-7.005 Performance Bond - Mausoleums or Below-Ground Crypts.

(1) As provided by Section 497.257(8) a cemetery may furnish the Board with a performance bond whenever such cemetery contemplates the sale of spaces in a section of a mausoleum or bank of below-ground crypts prior to the construction of such facilities. Such bond shall be in lieu of the payments outlined in Section 497.257(3), F. S. An approved form of such bond is hereby adopted by the Board and designated as form DBF-F43 and titled "Performance Bond - Mausoleums or Below-ground Crypts." No sale of such spaces, where a bond is being given the Department in lieu of the payments provided by Section 497.257(3), F. S., shall take place prior to the delivery of such bond to the Department and receipt of written acceptance thereof by the cemetery or its agent.

(2) The amount of such bond shall be as determined by the Board. For a Section 497.257(8) bond determination, the cost of construction of a mausoleum or bank of below-ground crypts shall be determined by the Department on the basis of certified estimates of the design architect and two or more bids for such construction from contractors licensed to do business in the State of Florida.

(3) To be acceptable to the Board, the surety company on such bond shall be licensed to do

business in the State of Florida and shall have been in business in this state with a record of successful operations for a period of at least five years prior to the execution of the bond and such surety company shall not be exposed on any one risk in an amount exceeding ten (10) percent of its surplus to policy-holders. Such surety company shall have at least the following minimum ratings in Best's Key Rating Guide or other similar such rating service or publication.

Bond Amount	Policy Holder's Rating	Required Financial Rating
0 to 100,000	B	class VII
100,000 to 500,000	A	Class VIII
500,000 to 750,000	A	class IX
750,000 to 1,000,000	A	Class X
1,000,000 to 1,500,000	A	Class XI
1,500,000 or more	A	Class XII

Specific Authority 120.531(b), 497.103 FS. Law Implemented 497.257(8) FS. History—New 12-22-81, Amended 3-24-82, Formerly 10-30.30, 10-30.030.

3F-7.006 Wholesale Purchase Price.

(1) Each licensed cemetery shall, prior to July 1st of each year, compile a list which includes the wholesale purchase price for each item of merchandise and each service which the cemetery will provide for the subsequent twelve month period. The listed price shall be used to determine the amount to be deposited into the merchandise trust fund pursuant to a. 497.048(3)(a), FS.

(2)(a) For merchandise, the listed wholesale purchase price shall be the amount charged by the supplier on an invoice for the item as of June 1, of the current year.

(b) If the cemetery manufactures merchandise, the listed wholesale purchase price of that merchandise shall be the average cost charged by manufacturers to other cemeteries in the immediate vicinity.

(c) If an invoice is not available, then the listed wholesale purchase price shall be the manufacturer's catalogue price, or the manufacturer's written statement of the wholesale purchase price, as of June 1, of the current year.

(3) For services, the listed wholesale purchase price shall be the actual costs incurred by the cemetery, in providing the services. The actual costs incurred shall be determined by the cemetery, and shall include the cost of labor, employee benefits, overhead and other expenses incurred in providing the service. The cemetery shall maintain documentation which clearly details how the list price was determined.

(4) Invoices and other documentation used to establish the listed wholesale purchase price shall be maintained at the cemetery.

Specific Authority 497.103 FS. Law Implemented 497.337 FS. History—New 3-1-90, Formerly 10-30.035.

3F-7.007 Merchandise Trust Funds - Status of Accounts. A merchandise trust fund created in uniformity with the requirements of the Florida Cemetery Act is in the nature of a master account ("the Fund") used for its various purposes and is

made up of commingled individual accounts deposited into the Fund in connection with the individual contracts between the cemetery company and its customers. Each of these accounts are to be established and retained in the Fund together with any income it might earn until certain events shall occur and it is determined to whom the principal of the account plus any earnings should be distributed. Under the Florida Cemetery Act, the principal of the account plus any earnings may be paid to the cemetery company upon the delivery of the merchandise or performance of the services or to the purchaser or his legal representative in the event that the cemetery company does not deliver the merchandise or perform the services when needed.

The principal and any accrued earnings or losses in such separate account is to be held in suspense until the final determination is made to which party the account will be paid.

At the time of withdrawal of the amount in the account, either the seller, cemetery company, or the purchaser or his representative is entitled to not only the principal amount deposited in the account, but also any accrued earnings on the account from the time of the deposit until the time of withdrawal. *Specific Authority 20.03(5), 497.103) FS. Law Implemented 497.337 FS. History—New 11-13-83. Formerly 3D-30.31, 3D-30.031.*

3F-7.008 Merchandise Trust Funds - Withdrawal of Principal and Income Earned Thereon.

(1) Upon compliance with the applicable statutes and rules, a cemetery company is entitled to be paid the principal and income earned thereon to the credit of the particular contract. In the event the cemetery company cannot or does not provide the personal property or perform the services called for by the contract after written request to do so, upon compliance with the applicable statutes and rules, the purchaser or his heirs or assigns or duly authorized representative shall be entitled to the deposit to the credit of the particular contract. The deposit to the credit of the particular contract is the principal and the income earned thereon to the credit of the particular contract.

(2) At the time of withdrawal a cemetery company shall take reasonable steps to evaluate the income derived from that particular contract. A cemetery company may determine the income earned to the credit of a particular contract by use of a formula which averages the yield for all contracts in any particular year. However, a cemetery company may not use any formula if:

- (a) it creates an unfair result;
- (b) it is used as a guise to make unauthorized withdrawals;
- (c) a more accurate formula is reasonably available; or
- (d) it results in accelerated or excessive withdrawals.

Specific Authority 497.101 FS. Law Implemented 497.337 FS. History—New 8-26-85. Formerly 3D-30.32. Amended 1-4-88. Formerly 3D-30.032.

3F-7.009 Reporting Requirements for Cemetery Companies Filing an Initial Application to Utilize a Letter of Credit or Surety Bond in Lieu of the Merchandise Trust Fund.

(1) A cemetery company which chooses to purchase a surety bond or letter of credit in lieu of establishing or utilizing a merchandise trust fund must file a report of outstanding liabilities which report must demonstrate by the following information that the existing merchandise trust fund has been operated in conformance with Chapter 497, F.S.

(a) An itemized listing in numerical order of all contracts which have an existing outstanding liability to the merchandise trust fund as described in Section 497.048(3)(a), F.S., and Rule 30-30.024, Florida Administrative Code;

(b) The purchaser's name;

(c) A brief description of the merchandise for which a liability exists;

(d) The total liability to the merchandise trust fund of merchandise and services and the liability which has accrued to the merchandise trust fund based upon payments received;

(e) A numerical listing of contracts for which a full or partial withdrawal from the merchandise trust fund was made containing the following information:

1. the purchaser's name;
2. the amount withdrawn;
3. the date of withdrawal;
4. the date of cancellation; and
5. a statement from the corporate trustee verifying all principal amounts deposited to and withdrawn from the trust fund.

(2) The report shall be filed with the Department in the following manner:

(a) The report must be signed by the cemetery company's chief financial officer;

(b) The report shall accompany the cemetery company's application on Form DBF-C-1, Application to Use a Letter of Credit or Surety Bond, to the Board for approval of the USC of a surety bond or letter of credit pursuant to Section 497.425, Florida Statutes, and Rules 3F-7.011 and 3P7.012.

(3) "Outstanding liabilities" means the gross replacement or wholesale value of the preceed merchandise or services which includes all undelivered merchandise and all unperformed services.

Specific Authority 497.103, 497.425 F S Law Implemented 497.423, 497.427 FS. History—New J-20-91. Formerly 3D-30.037.

3F-7.010 Reporting Requirements for Cemetery Companies Utilizing a Surety Bond or Letter Of Credit in Lieu of the Merchandise Trust Fund.

(1) A cemetery company which chooses to utilize a surety bond or letter of credit in lieu of maintaining a merchandise trust fund must file a report of outstanding liabilities to accompany the application as provided for in Rules 3F-7.012 and 3F-7.011. This report shall be used to determine

the amount of the surety bond or letter of credit and shall contain the following information in sequential order:

(a) An itemized listing in numerical order of all contracts sold during or subsequent to 1972 which have an existing outstanding liability for undelivered merchandise or services:

(b) The purchaser's name:

(c) A brief description of the merchandise for which a liability exists:

(d) The total liability to the cemetery for all undelivered merchandise or services which were sold during or subsequent to 1972:

(2) The report shall be filed in the following manner:

(a) The report must be signed by the cemetery company's chief financial officer.

(b) The report shall be compiled annually and must be submitted to the Board within one hundred five (105) days from the end of the cemetery company's fiscal year:

(3) "Outstanding liabilities" means the gross replacement or wholesale value of the preneed merchandise or services which includes all undelivered merchandise and all unperformed services.

(4) The cemetery company's obligation to file this report with the Board shall end upon the cemetery company ceasing the use of a surety bond or letter of credit.

Specific Authority 497.101. 497.425 FS. Law Implemented 497.425 FS. History—New 1-20-91. Formerly 1D-30.038.

3F-7.011 Criteria for Filing a Letter of Credit in Lieu of the Merchandise Trust Fund.

(1) As provided by Section 497.425(2), Florida Statutes, in lieu of utilizing a merchandise trust fund or purchasing a surety bond, a cemetery company may obtain a letter of credit.

(2) For approval, the cemetery company shall submit to the Board Form DBF-C-I. Application to Use a Letter of Credit or Surety Bond which is hereby incorporated by reference (effective 3-20-91) and available from the Department of Banking and Finance, Division of Finance, The Capitol, Tallahassee, Florida 323999350 and meet the following criteria:

(a) The cemetery company must file with its application the report which demonstrates its existing merchandise trust fund complies with Section 497.048 as set forth in Rule 3F-7.009, Florida Administrative Code:

(b) The amount of the letter of credit shall be based on a report of outstanding liabilities as set forth in Rule 3F-7.010. The report shall be compiled and updated annually. The amount of the letter of credit shall be increased as necessary to correlate with changes in the outstanding liabilities.

(c) The letter of credit shall state the name of the cemetery company as the purchaser.

(d) The letter of credit shall be made payable to the State of Florida for the benefit of the Board and all purchasers of preneed cemetery merchandise or services.

(e) The letter of credit shall only be issued by a state or national bank, credit union, or savings and loan association.

(f) The letter of credit shall be irrevocable for a thirty-six month period from the date of issuance; and

(g) The letter of credit cannot name the following as collateral:

1. The initial fifteen acres licensed as cemetery property pursuant to Section 497.253, Florida Statutes, and any contiguous land in which human remains are interred;

2. Any other areas of actual burial;

3. Any area subject to preneed sale;

4. Mausoleums;

5. Lawn Crypts; and

6. Columbaria.

(3) The issuer of the letter of credit must agree to give the Board and the cemetery company at least ninety (90) days written notice if the issuer of the letter of credit intends not to renew it at the time of expiration. The Cemetery company must agree that upon receipt of the notification that the letter of credit will not be renewed, the cemetery company shall within eighty (80) days:

(a) Secure another letter of credit;

(b) Purchase a surety bond; or

(c) Establish a merchandise trust fund with an initial deposit which shall include:

1. The wholesale purchase price + 10% of all merchandise or services which were included in the letter of credit;

2. The wholesale purchase price shall be determined at the time the merchandise trust fund is established.

(4) The cemetery company shall agree that all preneed sales of burial rights and merchandise must cease if at the end of this eighty (80) day period an alternative method of trusting is not established. Failure to do so shall constitute a violation of Sections 497.048 and 497.0484, Florida Statutes.

(5) The Board shall deny an application to use a letter of credit in lieu of the merchandise trust fund if the application is incomplete or if the report as set forth in Rule 3F-7.009 shows the existing merchandise trust is not in compliance with the law.

Specific Authority 497.103. 497.425 FS. Law Implemented 497.425, 497.427 FS. History—New 1-20-91. Formerly 3D-30.036.

3F-7.012 Criteria for Filing a Surety Bond In Lieu of the Merchandise Trust Fund.

(1) As provided by Section 497.0484(1)(a), Florida Statutes, in lieu of utilizing a merchandise trust fund a cemetery company may purchase a surety bond.

(2) For approval the cemetery company shall submit to the Board Form DBF-C-I. Application to Use a Letter of Credit or Surety Bond, hereby incorporated by reference (effective 3-20-91) and available from the Department of Banking and Finance, Division of Finance, The Capitol, Tallahassee, Florida 32399-0350 and meet the following criteria:

(a) The cemetery company must file with its application the report which demonstrates its existing merchandise trust fund complies with Section 497.048 as set forth in Rule 3F-7.009, Florida Administrative Code; and

(b) The amount of the bond shall be based on a report documenting the outstanding liabilities of the cemetery company as prescribed by Section 497.048(1)(b), Florida Statutes, and set forth in Rule 3F-7.010; however, should no liabilities exist, a minimum of \$250,000 will be the initial amount.

(3) The report shall be updated annually as required by Section 497.425(1)(c), F.S.

(4) An approved form of the surety bond is hereby adopted by the Board, designated as Form DBF-C-2. Surety Bond hereby incorporated by reference and is available from the Department of Banking and Finance, Division of Finance, The Capitol, Tallahassee, Florida 32399-0350.

(5) The surety company or its agent, on such bond shall be licensed to do business in the State of Florida, and shall have been in business in this state with a record of successful operations for a period of at least five (5) years prior to the execution of the bond.

(6) The surety company must agree to give the Board and the cemetery company at least ninety (90) days written notice if the surety company does not intend to renew the surety bond at the time of expiration. The cemetery company must agree upon receipt of the notification that the surety bond will not be renewed, the cemetery company shall within eighty (80) days:

(a) Purchase another surety bond;

(b) Secure a letter of credit; or

(c) Establish a merchandise trust fund with an initial deposit which shall include:

1. The wholesale purchase price + 10% of all merchandise or services which were included in the letter of credit or surety bond;

2. The wholesale purchase price shall be determined at the time the merchandise trust fund is established.

(7) The cemetery company shall agree that all prepaid sales of burial rights and merchandise must cease if at the end of this eighty (80) day period an alternative method of trusting is not established. Failure to do so shall constitute a violation of Sections 497.048 and 497.0484, Florida Statutes.

(8) The Board shall deny an application to use a surety bond in lieu of the merchandise trust fund if the application is incomplete or if the report as set forth in Rule 3F-7.009 shows the existing merchandise trust is not in compliance with the law.

Specific Authority 497.103, 497.425 FS. Law Implemented 497.425 FS. History—New 1-20-91. Formerly 3D-30.039.

3F-7.0125 Alternative Form of Security for Permanent Outer Burial Receptacle Manufacturers.

(I) Pursuant to sections 497.423(9) and 497.337(2)(c), Florida Statutes, manufacturers of permanent outer burial receptacles shall be

permitted to utilize the alternative form of security as provided in Section 497.337(2), F.S., and this rule, in connection with the sale of permanent outer burial receptacles sold to pre-need sellers in Florida. For purposes of this rule, a "permanent outer burial receptacle" as referred to in Section 497.337(2)(c), F.S., has the same meaning as an "outer burial container," as defined in Section 497.005(16), F.S.

(2) The alternative form of security available to all permanent outer burial receptacle manufacturers who supply permanent outer burial receptacles to pre-need sellers in Florida, shall be in compliance with Chapter 497, and shall provide for an Alternative Manufacturers' Trust, together with a Manufacturers' Delivery Surety/Guarantee, defined as follows:

(a) Alternative Manufacturers' Trust

1. An Alternative Manufacturers' Trust (trust) may be established in the State of Florida by a permanent outer burial receptacle manufacturer or the Manufacturers' Delivery Surety/Guarantor which trust shall be authorized to do business in Florida and shall be subject to interpretation, jurisdiction and venue in Florida under all applicable Florida laws. The trustee shall, with the Board's approval, be selected by the manufacturer or the Manufacturers' Delivery Surety/Guarantor.

2. Each deposit to the trust in connection with a pre-need sale of its product, shall be accounted for separately by the trustee and shall provide for quarterly valuation and pro-rata allocation of trust fund earnings and expenses during the period to each then outstanding trust account or sub-account;

3. The amount deposited as a result of each pre-need sales transaction will be made directly payable to the trust and shall be equal to one-hundred (100%) percent of the then existing manufacturer's wholesale price. The funds shall remain in the trust until such time as they become available for disbursement under Chapter 497 which disbursements shall be limited to the following:

a. the payment of trust expenses as provided in Chapter 491;

b. the refund of a trust deposit, which, in the event a pre-need contract purchaser elects to cancel his or her pre-need contract, shall be made to the manufacturer for delivery to the pre-need seller;

c. the payment by the trustee to the manufacturer after delivery at the time of need, upon submission to the trustee of a fully completed invoice for property delivered. Payment by the trustee out of the trust to the manufacturer shall be limited to the lesser of the manufacturer's list price at the time of need or to the specific amount of funds in the trust allocated to the specifically identified account or sub-account relating to the invoices submitted;

d. the payment to the Department or Board in order to reimburse the Department or Board in the event the Department or Board is required to make payment in order to complete delivery at the time of need in response to purchaser's claim, where the

manufacturer has failed to make delivery of the permanent outer burial receptacle and the Manufacturers' Delivery Surety/Guarantor has not performed pursuant to its Manufacturers' Delivery Surety/Guarantee;

(b) **Manufacturers' Delivery Surety/Guarantee**- in addition to the trust provided by this rule, a Manufacturers' Delivery Surety/Guarantor shall execute and deliver to the pre-need seller a Manufacturers' Delivery Surety/Guarantee which shall provide:

1. In the event that the manufacturer shall for any reason whatsoever not be able to deliver the permanent outer burial receptacle at the purchaser's time of need, then in such event (prior to disposition of funds from the trust), the Manufacturers' Delivery Surety/Guarantor shall deliver the permanent outer burial container at the time of need for the lesser of its then existing list price, or that portion of the trusted funds allocated to the specific trust account or sub-account.

2. In the event the Manufacturers' Delivery Surety/Guarantor operating under this rule shall be unable to effect delivery or its operations for any reason discontinued, the trust shall continue in operation but the Department shall take over as trustee for the trust. The trust shall no longer accept deposits on pre-need contract sales and all funds deposited in connection with all prior and outstanding contracts in which delivery was effected shall remain in trust until the terms of all outstanding contracts have been fully satisfied.

(c) **Manufacturers' Delivery Surety/Guarantor Qualification.**

1. In order for any Manufacturers' Delivery Surety/Guarantor to be considered for approval by the Board under this rule, such Manufacturers' Delivery Surety/Guarantor shall be affiliated with a manufacturer doing business in Florida.

2. Any Manufacturers' Delivery Surety/Guarantor approved by the Board who wishes to utilize this rule shall:

a. obtain a certificate of approval from the Board to act as a Manufacturers' Delivery Surety/Guarantor and to establish an Alternative Manufacturers' Trust for the receipt of funds in Florida in connection with the sale of permanent outer burial receptacles sold on a pre-need basis;

b. submit its financial statements to the Board on an annual basis pursuant to sections 497.23(10)-(13), FS;

c. file a copy of all forms, certificates, guarantees and trust agreements and all changes or modifications thereof, to the Board, for review as to legal sufficiency, and

d. guarantee to the pre-need seller pursuant to this rule that its permanent outer burial receptacle products will be available for delivery at any time of need.

3. The Manufacturers' Delivery Surety/Guarantee shall at all times assure an equivalent or better product will be delivered at the time of need. The Manufacturers' Delivery Surety/Guarantee shall include as an exhibit, a list of the Manufacturers' Delivery

Surety/Guarantors' product line. Said exhibit shall be updated on an annual basis with the Board by the approved manufacturer. With regard to the manufacturers' wholesale or selling price, the manufacturer shall also file, on an annual basis, any changes in its wholesale or selling price with the Board.

Specific Authority 497.103, 497.337(2)(c) FS. Law Implemented 497.337(2)(c) FS. History—New 6-13-95.

3F-7.013 Procedures for Filing Claim with the Board. A buyer of preneed merchandise or services who does not receive such services or merchandise due to the economic failure, closing, or bankruptcy of the cemetery company which has submitted a surety bond or letter of credit to the Department in lieu of utilizing a merchandise trust fund may file a claim with the Board as provided by Section 497.0484(3)(a), Florida Statutes. The purchaser of preneed merchandise or services must file the claim in the following manner:

(1) Submit to the Board Form DBF-C-3, Surety Bond or Letter of Credit Claim Form, which is hereby incorporated by reference (effective 3-20-91) and available at the Department of Banking and Finance, Division of Finance, The Capitol, Tallahassee, Florida X399-0350;

(2) Attach a copy of the cemetery contract for merchandise or services which is the subject of the claim and provide documentation evidencing the purchaser's payment for the merchandise or services; and

(3) Submit evidence that the purchaser has made reasonable attempt to have the cemetery company deliver the merchandise or perform the service.

Specific Authority 497.103, 497.422 FS. Law Implemented 497.425(3)(a) FS. History—New 3-20-91, Formerly 3D-30.040.

3F-7.014 Accounting Procedures. The Department shall have the power to prescribe records and bookkeeping procedures relative to the trust funds required under the Florida Cemetery Act.

Specific Authority 20.05(3), 497.103 FS. Law Implemented 497.24, 497.337, 539.482 FS. History—New 6-16-72, Renumbered from 3-8.06 to 3D-30.06 and 9-3-75, Formerly 3D-30.06, 3D-30.006.

3F-7.015 Trust Agreements and Trustees.

(1) Any trust company operating pursuant to Chapter 660, FS., or a state or national bank holding trust powers or a savings and loan association holding trust powers shall be considered a Trustee qualified to serve as a Trustee of a preneed trust under s. 497.417 or 497.429 or a pre-construction trust under 497.257, FS.

(2) Any trust company operating pursuant to Chapter 660, FS., or a state or national bank holding trust powers shall be considered a Trustee qualified to serve as Trustee of a Care and Maintenance Trust under 497.237, FS.

(3) All Trust Agreements and all amendments thereto must be submitted to and approved by the Board of Funeral and Cemetery Services.

(4) Each Trust Agreement must provide for.

(a) Resignation of the Trustee
 (b) Replacement of Trustee by Trustor/Settlor/Grantor
 (c) Transfer of assets of the Trust
 (5) Transfer of assets of any trust must be made only to a qualified Trustee as set forth in subsection (1) or (2) above, and only after written notice to the Department and the Board of the name, address, and location of the successor trustee; the effective date of the selection thereof; and the transfer of the assets which must be certified to by the replaced or resigned Trustee to which shall be attached a receipt thereof from the Successor Trustee.
Specific Authority 497.103 F.S. Law Implemented 497.237 F.S. History—New 4-25-94.

3F-7.016 Duties and Powers of Trustee; Authorized Investments.

(1) Each trustee serving pursuant to a trust agreement approved by the Board shall be responsible for the administration of the trust and the investment of its assets in a manner consistent with Chapter 497.

(2) The duties and responsibilities of the trustee shall not be shared with the certificateholder that established the trust or discharged to any third party associated with investment decisions. An advisor to the trustee may be appointed by the certificateholder, however the recommendations of such advisor shall not be binding on the trustee and the trustee's liability shall not be diminished or abrogated in any way as a result of following the advice of the advisor.

(3) The certificateholder or the advisor appointed by the certificateholder is authorized to request the trustee to invest trust assets in whole or in part, in tax-free investments. An investment advisor is authorized to make non-binding recommendations to the trustee concerning specific investments.

(4) The trustee shall have the powers set forth in part IV of Chapter 737, F.S., to the extent they are not inconsistent or do not conflict with Chapter 497, F.S.

(5) The trustee shall have the power to invest the trust assets in those investments set forth in section 215.47, F.S., however, there shall be no limitation on the portion of the trust assets that are allocated to tax-free investments pursuant to a request as stated in paragraph (3) of this rule.

(6) If the trustee chooses to purchase life insurance policies or annuity contracts pursuant to section 497.417(4)(b), F.S., such policies or contracts shall:

(a) be purchased from an insurer authorized to transact business in the State of Florida and who shall be a member insurer of the Florida Life and Health Insurance Guaranty Association;

(b) have a face value of at least an amount equal to the preneed trust funds applied toward its purchase; and

(c) not be a term life policy.
 Prior to the purchase of such a policy or contract, the trustee shall assure there exists, within the trust assets, sufficient liquidity to fund the reasonably

anticipated refunds of cancelled preneed contracts. Any shortfall of sufficient liquidity which may arise to make refunds for cancelled preneed contracts shall be reimbursed by the certificateholder to the trust corpus.

Specific Authority 497.103 F.S. Law Implemented 497.417 F.S. History—New 8-9-94.

3F-7.017 Trust Fund Deposits: Funeral and Burial Service and Merchandise Preneed Contract Payments.

(1) All payments paid toward any preneed funeral or burial service or merchandise contract shall be trusted pursuant to Section 497.417 or Section 497.429 unless such merchandise or service is sold by a cemetery company and such merchandise is delivered or such service performed within 120 days after receipt of the final payment in accordance with section 497.337, F.S. This section shall not apply to preneed contracts sold pursuant to Sections 497.423 or 497.425, F.S.

(2) If the contract payments are made in deferred installments for merchandise and services which are not intended to be delivered as provided in paragraph (1) above, then the funds paid on each installment shall be allocated in the manner set forth in the contract.

(3) If the contract does not provide for the allocation of payments as anticipated in paragraph (2) above, such payments shall be allocated as follows:

(a) Funds collected for preneed services or merchandise contracts which comply with Section 497.417, F.S., shall be deposited in trust as follows: 70 percent of funds collected for services; 100 percent of funds collected for cash advance items; and 30 percent of funds collected or 110 percent of wholesale cost, whichever is greater, for merchandise, for deferred payment contracts the sales price for each portion of the contract (services, cash advances and merchandise) shall be divided by the deferred payment price to arrive at the percentages for each portion of the contract. These percentages shall be applied to payments received to determine the amount to be deposited in trust. Once the total liability to the trust is fulfilled, no further deposits need be made to the trust.

(b) Funds collected for preneed services or merchandise contracts which comply with Section 497.429, F.S., shall not require allocation. The contract purchaser must make all payments to the Trustee or its servicing agent. The certificate holder (seller) may receive a distribution of 10 % of funds collected by the Trustee. Once the total liability to the trust is fulfilled, no further deposits need be made to the trust.

(4) In the event that funds deposited into trust exceed the amount required by the contract or these rules, the certificate holder may withdraw the excess funds upon establishing that the total liability to the fund will equal the total corpus on deposit and the funds on deposit can be allocated and balanced on a contract-by-contract basis.

(5) Monthly reports shall be maintained showing the monies received and monies trusted an

a contract-by-contract basis. The report shall also reflect the total monies received and trusted and that such trust deposits reconcile with the total monthly contract obligations.

Specific Authority 497.103 F.S. Law Implemented 497.333(d), 497.337, 497.417, 497.423, 497.425, 497.429 F.S. History—New 2-1-91.

3F-7.020 Treatment of Trusts Under Chapters 497 and 639, FS.

(1) An "old Chapter 497, FS., merchandise trust" is defined as a trust created and approved on or before September 30, 1993, pursuant to Chapter 72-78, Laws of Florida, or as thereafter amended, for the deposit of proceeds from pre-October 1, 1993, contracts for burial services or related merchandise.

(2) A "new Chapter 497, FS., pre-October 1, 1993, trust" is defined as a trust created and approved on or after October 1, 1993, pursuant to Chapter 93-399, Laws of Florida, or as thereafter amended, for the deposit of proceeds from pre-October 1, 1993, contracts for funeral services, burial services, or related merchandise.

(3) A "Chapter 639, FS., funeral trust" is defined as a trust created and approved on or before September 30, 1993, pursuant to Chapter 77-438, Laws of Florida, or as thereafter amended, for the deposit of proceeds from pre-October 1, 1993, contracts for funeral services or related merchandise.

(4) The Board shall have jurisdiction over all old Chapter 497, FS., merchandise trusts, new Chapter 497, FS., pre-October 1, 1993, trusts, Chapter 639, FS., funeral trusts, and all other trusts created pursuant to Chapter 497, FS., in existence on October 1, 1993, or created thereafter.

(5) All Chapter 639, FS., funeral trusts shall retain the same trustee powers and trust provisions as authorized by Chapter 639, FS., on September 30, 1993, as to all pre-October 1, 1993, contracts entered into prior to September 30, 1993, even though said contracts do not pay out until after October 1, 1993.

(6) Each certificateholder, settlor or trustor may change the trustee of any Chapter 639, FS., funeral trust as provided in Chapter 497, FS., (1993). Nevertheless, the trust provisions and trustee powers shall remain as they were in the Chapter 639, FS., funeral trust agreement and related documents.

(7) A settlor or trustor may transfer assets from one Chapter 639, FS., funeral trust upon the approval of the Board provided:

(a) The terms of the receiving trust do not violate any terms and conditions of the contracts or rights of the contract purchaser which provide the funds to be transferred;

(b) The certificateholder or the trustee, as appropriate, acknowledges in writing its responsibility under the trust and contract documents including its ability to segregate contracts by type to ensure that proper payment is made upon the death of the beneficiary or proper refund is made upon annulment of a contract; and

(c) The Board determines that such transfer will not impair the rights of the contract purchaser.

(8) No post-October 1, 1993, pre-October 1, 1993, contract may be trusted under a Chapter-639, FS., funeral trust. Except as provided in subsection (9) of this rule, pre-October 1, 1993, contracts dated prior to October 1, 1993, which have not been completely paid by the contract purchaser shall continue to be trusted to the proper Chapter 639, FS., funeral trust or the appropriate old Chapter 497, FS., merchandise trust.

(9) A settlor or trustor may submit a new trust agreement for approval by the Board and transfer thereto assets from a Chapter 639, FS., funeral trust or assets from an old Chapter 497, FS., merchandise trust so long as all trust provisions and trustee powers are in conformity with chapter 497, FS. All such transfers shall be approved by the Board provided that the terms set forth in Subsection (7)(a) through (c) of this rule are complied with.

(10) In all Chapter 639, FS., funeral trusts or old Chapter 497, FS., merchandise trusts where compliance with the provisions of Chapters 215 or 497, FS., would result in a potential financial loss to the trust assets, any such sale or transfer of assets, that would result in the potential loss must be first approved by the Board according to a submitted plan of sale or transfer.

(11) All new Chapter 497 funeral trust agreements and other trusts created pursuant to Chapter 497, FS., submitted for approval of the Board must be in conformity with all provisions of Chapter 497, FS., as now existing or as hereinafter amended.

(12) All cemetery and maintenance trust fund agreements existing prior to October 1, 1993, shall remain effective, but all of the provisions of Chapter 497, FS., shall immediately apply to these trust agreements and the trustee powers shall be those provided in Chapter 497, FS.

(13) All cemetery pre-construction trust fund agreements existing prior to October 1, 1993, shall remain effective but all of the provisions of Chapter 497, FS., shall immediately apply and the trustee's powers shall be those provided in Chapter 497, FS., except:

(a) the allocation of investments therein need not be in compliance until September 30, 1993;

(b) the trust formula on contracts dated prior to October 1, 1993, shall be the formula in effect on September 30, 1993; and

(c) the trust formula on contracts dated after October 1, 1993, shall be in conformity with Chapter 497, FS.

(14) If an asset is transferred from one trust to another as provided herein, then the asset in its entirety including any income derived therefrom must be transferred to the successor trust.

Specific Authority 497.103 F.S. Law Implemented 497.237, 497.241, 497.245, 497.249, 497.237, 497.415, 497.417, 497.419, 497.421, 497.429 F.S. History—New 1-1-93.

CHAPTER 3F-8
CONTRACTS

3 F-8.00 I	Receipt of Initial Payment on Merchandise Contracts: Documentation Required.
3 F-8.002	Cancellation of Contracts.
3F-8.003	Cancellation of Pre-Need Contracts: Reasonable Time Defined.
3F-8.004	Preneed Contracts: Miscellaneous Provisions.

3F-8.001 Receipt of Initial Payment on Merchandise Contracts: Documentation Required. Within thirty (30) days after the end of the month the initial payment on a contract for merchandise is received, the contracting cemetery shall attach to the numerically filed copy of the contract a completed merchandise trust remittance form. Said form shall show the name of the cemetery company; contract number, name of the trustee; name and address of purchaser, retail sales price; descriptive information applicable to the merchandise and services such as material, style or type. The form shall also contain a certification by the seller attesting to the completeness and accuracy of the statement and it shall state in dollars and cents the amount deposited for the contract to the merchandise trust fund. A copy of this form shall be promptly furnished to the purchaser and to the trustee. In lieu of furnishing the purchaser a copy of the merchandise trust remittance form, as stated above, the contracting cemetery may fulfill the requirements of this rule by furnishing the purchaser a copy of a contract containing the information required by statute and the following legend, "For any merchandise sold for future delivery, the cemetery shall deposit in a merchandise trust fund an amount of money equal to 110% of the wholesale cost, in conformance with Florida statutes." A copy of the merchandise trust remittance form appears in Chapter 3-2 of these Rules as form DBF-F-28. If the cemetery is acting as trustee it shall comply with this rule but will not be required to submit the merchandise trust remittance form to the trustee.

Specific Authority 20.03(5), 120.53(1)(a), 497.103 FS. Law Implemented 497.309, 497.337 FS. History—New 7-20-73, Renumbered from 3-8.13 to 3D-30.13 on 9-8-75, Amended 4-8-81, 6-18-81, Formerly 3D-30.13, 3D-30.013.

3F-8.002 Cancellation of Contracts.

(1) In the event there is an intentional violation of the act by the Cemetery Company, the procedure provided in paragraphs (a) through (e) will apply.

(a) Any person who is a purchaser in a contract for the purchase of cemetery merchandise subject to the merchandise trust provisions of Section 497.048(7), FS., shall start cancellation proceedings in writing as follows:

1. The purchaser shall list his name, present address and phone number together with the date of the contract entered into, the purchase price for

the specific merchandise called for in the contract and the cemetery's name and address.

2. The purchaser shall detail the intentional violation of the specific provisions of Chapter 497 which were violated by the cemetery.

3. A showing of how the violation of the specific provision of Chapter 497 relates to either the negotiation of the contract, the sale of cemetery merchandise made under contract, or the performance of the cemetery under the contract.

4. This written request for uncancellation is to be delivered to the cemetery involved and a copy sent to the Department.

(b) Upon receipt of such a request for cancellation, the cemetery shall do either of the following things:

1. Accommodate the purchaser within 30 days from the receipt of the request for refund by returning to said purchaser the entire amount actually paid in such contract.

2. Transmit a copy of said request for refund together with a statement of the facts as known by the cemetery to the department with a request to determine the sufficiency of the purchaser's showing, with a copy of both the request for refund and the statement of the cemetery being supplied to the purchaser.

(c) The department shall within 60 days determine the sufficiency of the purchaser's showing and so advise both the cemetery and the purchaser. The department may consider information provided by the cemetery, any additional information provided by the purchaser and any information developed by its own investigation.

(d) In the event that the department determines that the showing is sufficient for refund, then within 30 days of the receipt of said statement the cemetery shall refund the amount determined by the department to the purchaser.

(e) In the event that the department shall determine that the purchaser's showing is insufficient for refund, the parties shall be left to resolve the matter themselves.

(2) A cemetery shall be permitted to cancel any contract only wherein the purchaser is in default pursuant to the terms of the contract.

(3) The right of the purchaser to cancel contracts on certain merchandise are set out in the following paragraphs.

(a) In the event a contract between a cemetery company and a purchaser contains provisions for the purchase of a casket, vault or other similar merchandise, a purchaser may make a request for cancellation and the 70% refund of the sales price of said casket, vault or similar merchandise so long as the contract or the portion which applies to the casket, vault or similar merchandise has not been used by the purchaser or the purchaser has signed a statement accepting the delivery of the merchandise and authorized the cemetery as agent to store the items until needed.

(b) Any contract which has been fulfilled is not cancellable by the purchaser, that is to say, if burial rights are sold in spaces wherein merchandise is in

place, then the contract is not subject to the trusting requirements of the merchandise trust and therefore, it is not subject to the 70% refund cancellation provision.

(c) If however, at the time of execution of the contract, the casket, vault or similar merchandise is not in use or delivery accepted, then the contract is subject to the cancellation provisions and 70% refund. Whenever the casket, vault or similar merchandise is delivered so that the cemetery is entitled to the proceeds from the merchandise trust then the contract shall still be cancellable and the 70% refund provision is applicable until the merchandise is used or the purchaser signs a receipt for the property and authorizes the cemetery to store such merchandise until needed.

(d) For purposes of this section, the acceptance of delivery shall be null and void unless the merchandise so accepted is unencumbered and the purchaser has full right of possession on demand.

(4) The delivery of a bronze memorial marker or monument to a manufacturer for storage until time of need shall constitute delivery of said marker, memorial or monument, provided the purchaser has acknowledged acceptance and authorized such delivery.

Specific Authority 20.05(5), 120.33(2)(a), 497.103 FS. Law Implemented 497.337 FS. History—New 1-29-81. Formerly 3D-30.27, 3D-30.027.

3F-8.003 Cancellation of Pre-Need Contracts; Reasonable Time Defined. For purposes of Section 497.419(3)(a), Florida Statutes, a reasonable time for delivering merchandise consisting of "caskets" as defined by Section 492.005(14), FS, and "outerburial containers" as defined by Section 490.005(16), FS, shall be 24

hours from the time the purchaser or agent require that the certificateholder deliver the merchandise. The certificateholder shall record the date and time that the request for delivery is received from the purchaser or agent in a log kept for that purpose. In the event a certificateholder fails to maintain such log and record a request for delivery, then the date and time of such request shall be the date and time designated by the purchaser or agent.

Specific Authority 497.103 FS. Law Implemented 497.419(3)(a) FS. History—New 4-25-94.

3F-8.004 Preneed Contracts; Miscellaneous Provisions.

(1) Funds received on a preneed contract must be credited to the specific contract, and all calculations regarding deposits to trusts or refunds to purchasers must be based on the amount paid by the purchaser or his representative.

(2) An overpayment on a preneed contract shall be refunded to the purchaser within 30 days of discovery by the certificateholder. The trustee shall release funds due to overpayment upon written request from the certificateholder.

(3) Misapplied or unidentified preneed funds shall be transferred to the correct preneed account immediately upon discovery, and shall be considered deposited timely if the funds were deposited in the trust in accordance with section 497.417, FS.

(4) Preneed accounts which are under or over trusted due to computer or manual calculations must be corrected immediately upon discovery, on contract per contract basis.

Specific Authority 497.103 FS. Law Implemented 497.415, 497.417, 497.419 FS. History—New 3-20-95, Amended 6-15-95.

CHAPTER 3F-9
ADVERTISING AND SOLICITATION

3F.9.001 Cemetery Advertising.
3F.9.002 Residential Solicitations.

3F-9.001 Cemetery Advertising. Each cemetery will maintain a **file** of all brochures and related documents delivered to prospective customers and copies of all advertising actually printed or published. The license shall display in a place that is in clear, and unobstructed **view** a notice containing substantially **the** following: **Notice** - This cemetery is licensed and regulated by the Department of Banking and Finance. Any questions or complaints **may** be directed to the Department of Banking and Finance, **1401 The Capitol**, Tallahassee, Florida **32301**, Telephone **904-487-2583**.

*Specific Authority 20.05(5), 497.103 F S .
Implemented 497.301 F.S. History—New 6-22-76.
Amended 1-27-81. Formerly 1DJO.20. 3D-30.020.*

3F-9.002 Residential Solicitations.

(1)-For purposes of this rule, residential solicitation shall **mean**: "a telephone call to, or an

in-person visit at any place a person defines as his or her home."

(2) No cemetery company officer, director, employee, or agent shall initiate, conduct, or attempt to conduct a **pre-need** residential solicitation, for the purpose of selling or other transfer of burial rights, merchandise, or services, after the hour of **9:30** p.m. and before the hour of 9:00 a.m. of the next calendar day except upon the prior express request of the person solicited.

(3) No cemetery company officer, director, employee, or agent shall knowingly initiate, conduct, or attempt to conduct pre-need residential solicitation, for the purpose of selling or other transfer of burial rights, merchandise, or services, of any person, or of any family of any person, who **is** suffering ill health except upon the prior express **request** of the **person** solicited.

*Specific Authority 497.103, 497.115, 497.321 F.S. Law
Implemented 497.115, 497.321 F.S. History—New
4-M-66. Formerly JPJO.034.*

* CHAPTER 3F-10
PRENEED FUNERAL CONTRACT
CONSUMER PROTECTION TRUST FUND

- 3F-10.001** Preneed Funeral Contract
Consumer Protection Trust
Fund.
- 3F-10.002** Disbursement From the Preneed
Funeral Contract Consumer
Protection Trust Fund.

3F-10.001 Preneed Funeral Contract Consumer Protection Trust Fund. The amounts required to be remitted by a Certificateholder to the Preneed Funeral Contract Consumer Protection Trust Fund, pursuant to the provisions of Section 497.413, Florida Statutes, shall be determined in accordance with the following criteria:

(1) A preneed contract or arrangement shall be deemed to be written within the meaning of Section 497.413, FS., when a preneed contract or arrangement is executed by both the purchaser and the Certificateholder or its agent. A remittance for a preneed contract or arrangement dated within a specific quarter shall be submitted in the report for such quarter.

(2) "Purchase Price" means the total price charged by a Certificateholder to a consumer for a preneed contract or arrangement for funeral or burial merchandise, service or cash advance items; regardless of any payments made by the purchaser. The term "purchase price" does not include the amounts for burial, entombment or inurement rights.

(3) If funeral or burial merchandise, services or cash advance items are included in a contract with other items as a unique product and the purchase price of such items are not itemized on the contract, the amount due the Preneed Funeral Contract Consumer Protection Trust Fund, shall be determined from the retail prices of comparable items shown on the retail price list of the certificateholder.

(4) Assessments required to be remitted pursuant to Section 497.413, Florida Statutes, shall not be payable from funds subject to the trust provisions of Sections 497.417 and 497.429, Florida Statutes, nor shall they be included in a preneed contract and passed on to the purchaser.

(5) Contracts cancelled within thirty days of execution as provided by Section 497.413, Florida Statutes, shall not be counted as a contract sold for purposes of determining the amount to be remitted to the Preneed Funeral Contract Consumer Trust Fund.

(6) If a contract is cancelled after thirty days of execution, the certificateholder shall not be entitled to credit the remittance for that contract against future remittance unless such contract is immediately rewritten.

(7) All remittances shall be sent with the Preneed Funeral Contract Consumer Protection Trust Fund Remittance Form. This form, DBF-TFR-1, effective May 23, 1994, is incorporated herein by reference, and shall be available from the Department of Banking and

Finance, Division of Finance, Board of Funeral and Cemetary Services, Capitol, Tallahassee, Florida. **32399-0350. Checks** should be made payable to the Department of Banking and Finance. Remittances should be submitted to the board office within 60 days following a calendar quarter.

(8) The remittance form must be attested to by the President of a corporation, a partner if a partnership, the owner if a sole proprietor, or by an authorized representative of the Certificateholder who may make such attestation upon written authorization by the Certificateholder as if the Certificateholder had made such attestation himself. Such written authorization must be maintained by the certificateholder as a permanent part of its records.

(9) NO Certificateholder is entitled to a refund of its contribution to the Preneed Funeral Contract Consumer Protection Trust Fund. A Certificateholder who overpays the amount due to the Preneed Funeral Contract Consumer Protection Trust Fund may make the necessary adjustments in future reports, provided the adjustment is adequately disclosed and includes a reasonable explanation therefor. If a preneed contract's purchase price is adjusted or revised in good faith and not for the purpose of circumventing the payment of assessments, after the date the contract is originally written, then such event shall be considered inconsequential to the original deposit, and accordingly, there shall be no need to re-report the transaction hereunder.

Specific Authority 497.103, 497.413 FS. Law Implemented 497.413 FS. History—NewS-23-94.

3F-10.002 Disbursement From the Preneed Funeral Contract Consumer Protection Trust Fund. The purpose of the Preneed Contract Consumer Protection Trust Fund is to provide restitution to preneed contract purchasers and their estates due to a certificateholder's failure to provide the benefits of a preneed contract or failure to refund the appropriate principal amount by reason of cancellation thereof. All restitution to be paid from the Preneed Funeral Contract Consumer Protection Trust Fund shall be subject to review and approval of the Board. Amounts disbursed from the Preneed Funeral Contract Consumer Protection Trust Fund shall be determined in accordance with the following criteria:

(1) The Board shall determine to its satisfaction that the Certificateholder or preneed contract seller does not possess the financial means to deliver or provide the prearranged merchandise or services. Such determination shall include the following:

(a) Review of delinquency proceedings pursuant to Chapter 631 against a Certificateholder;

(b) Review of bankruptcy proceedings in Federal court;

(c) Review of Trust Accounts held by or entered into by the Certificateholder;

(d) Review of all assets held by the Certificateholder.

(2) Requests for restitution shall be submitted on the Preneed Funeral Contract Consumer

Protection Trust Fund Request for Disbursement form, DBF-TFD-I, effective May 23, 1994, which is incorporated herein by reference and available from the Department of Banking and Finance. All requests for restitution from the Preneed Funeral Contract Consumer Protection Trust Fund shall be accompanied by a copy of the Preneed contract and documentation which verifies the total funds paid on preneed contract, and that the applicant has not defaulted in the terms of the contract. In addition, the person requesting restitution shall provide written documentation that the Certificateholder or provider has failed to provide the benefits of the preneed contract or has failed to refund the appropriate principal amount by reason of cancellation.

(3) The Board and Department shall have the right to review, investigate, or request additional documentation from any person regarding any request for restitution, in order to determine the validity and correct amount of restitution, if any, to be made to the contract purchaser or his estate.

(4) Restitution may only be obtained from the Preneed Funeral Contract Consumer Protection

Trust Fund if adequate funds are not available in the Certificateholder's or Non/Certificateholder's preneed trust fund or in the possession of the Certificateholder or Non/Certificateholder. Should a portion of the refund amount be reimbursed from the Preneed Trust, or other funds held by the Certificateholder or Non/Certificateholder, the Board shall only authorize restitution for the remaining balance due to the purchaser.

(5) The Board shall determine the amount of such restitution. However, the amount of any restitution shall not exceed the gross amount of the principal payment paid by the purchaser on the preneed contract.

(6) Nothing in this rule shall be construed to apply to insurance policies sold to fund prearranged burial plans. The Department shall, at all times, retain jurisdiction in determining whether a contract purchased constitutes a preneed contract as defined by Chapter 497 or a prearranged burial plan funded by an insurance policy.

Specific Authority 497.103, 497.413(7) FS. Law Implemented 497.413(7) FS. History—NewS-23-94.

CHAPTER 3F-11
DISCIPLINARY GUIDELINES

- 3F-11.001** Disciplinary Guidelines.
3F-11.002. Minor Violations: Notice of Non-Compliance.
3F-11.003 Citations.

3F-11.001 Disciplinary Guidelines. Pursuant to Section 497.233 and 497.433, Florida Statutes, listed below is a **range** of disciplinary guidelines from which disciplinary penalties will be imposed upon **licensees** guilty of violating Chapter 497, Florida Statutes. **The** disciplinary guidelines are based upon a single-act violation of each provision listed. Multiple acts of the violated provisions or a combination of violations may result in a higher penalty than that for a single, isolated violation. For purposes of this rule, **the** order of penalties, ranging from **lowest** to highest, is: reprimand, fine, probation, suspension, and revocation. Nothing in this rule shall preclude any **discipline** imposed upon a licensee pursuant to a stipulation or settlement, **agreement**, nor shall **the** ranges of penalties set forth in this rule preclude the Department from **issuing** a letter of **guidance** when appropriate.

(1) AS provided in Section **497.233(2)(e)**, Florida Statutes, the **Board** may, in addition to other disciplinary penalties, place a licensee on probation. **The** placement of the **licensee** on probation shall be for such a **period of time** and subject to such conditions as the **Board** may specify.

(2) **The** minimum penalty for below listed sections is a reprimand and/or a fine up to **\$1,000.00 per** act or separate offense. The maximum penalties are as listed:

- | | | |
|----------|----------------|---------------------|
| (a) | 497.205(1) | - Probation |
| (b) | 497.213(1) | - Probation |
| (c) | 497.213(2) | - Revocation |
| (d) | 497.233(1)(b) | - Revocation |
| (e) | 497.233(1)(c) | - Revocation |
| (f) | 497.233(1)(d) | - Revocation |
| (g) | 497.233(1)(e) | - Revocation |
| (h) | 497.233(1)(f) | - Revocation |
| (i) | 497.233(1)(g) | - Revocation |
| (j) | 497.333(1)(h) | - Revocation |
| (k) | 497.233(1)(i) | - Revocation |
| (l) | 497.233(1)(j) | - Suspension |
| (m) | 497.333(1)(k) | - Suspension |
| (n) | 497.233(1)(l) | - Suspension |
| (o) | 497.333(1)(m) | - Suspension |
| (p) | 497.333(1)(n) | - Suspension |
| (q) | 497.333(1)(o) | - Suspension |
| (r) | 497.333(1)(p) | - Probation |
| (s) | 497.233(1)(q), | |
| (r), (s) | | - Probation |
| (t) | 497.237 | - Revocation |
| (u) | 497.022 | - Suspension |
| (v) | 497.245(1) | - Probation |
| (w) | 497.245(2) | - Probation |
| (x) | 497.245(3) | - Probation |
| (y) | 497.245(6) | - Probation |
| (z) | 497.024 | - Probation |
| (aa) | 497.026 | - Probation |
| (bb) | 497.027(1) | - Probation |

- | | | |
|----------|----------------|---------------------|
| (cc) | 497.027(2) | - Probation |
| (dd) | 497.027(3) | - Probation |
| (ce) | 497.027(4) | - Probation |
| (ff) | 497.257(1) | - Probation |
| (gg) | 497.257(2) | - Probation |
| (hh) | 497.257(3) | - Probation |
| (ii) | 497.257(5) | - Probation |
| (jj) | 497.257(7) | - Probation |
| (kk) | 497.301(1) | - Fine |
| (ll) | 497.305(1)(c) | - Probation |
| (mm) | 497.305(2) | - Probation |
| (nn) | 497.309 | - Revocation |
| (oo) | 497.317 | - Probation |
| (pp) | 497.321 | - Suspension |
| (qq) | 497.325 | - Suspension |
| (rr) | 497.333(1) | - Probation |
| (ss) | 497.333(2) | - Suspension |
| (tt) | 497.333(3) | - Suspension |
| (uu) | 497.337(2)(a), | |
| (b), (c) | | - Probation |
| (vv) | 497.048(3)(a) | - Probation |
| (ww) | 497.048(3)(b) | - Probation |
| (xx) | 497.048(3)(c) | - Probation |
| (yy) | 497.048(3)(d) | - Probation |
| (zz) | 497.048(3)(e) | - Revocation |
| (aaa) | 497.048(4) | - Probation |
| (bbb) | 497.048(6)(a) | - Probation |
| (ccc) | 497.048(7) | - Probation |
| (ddd) | 497.048(8) | - Revocation |
| (eee) | 497.048(11) | - Probation |
| (fff) | 497.048(12) | - Probation |
| (ggg) | 497.425(1)(a) | - Probation |
| (hhh) | 497.425(1)(b) | - Probation |
| (iii) | 497.425(1)(c) | - Probation |
| (iii) | 497.425(1)(d) | - Probation |
| (kkk) | 497.425(4) | - Probation |
| (lll) | 497.425(7) | - Probation |
| (mmm) | 497.425(8) | - Probation |
| (nnn) | 497.425(9) | - Probation |
| (ooo) | 497.427 | - Probation |
| (ppp) | 497.341 | - Revocation |
| (qqq) | 497.353(10) | - Suspension |

(3)(a) In the **presence of aggravating** of mitigating circumstances which is **supported** by clear and convincing evidence, the Board shall be entitled to deviate from the above guidelines in **imposing discipline** upon a **licensee**.

(b) Aggravating or mitigating circumstances may include, but are not limited to, the following:

1. The severity of the violation.
2. **The degree** of harm to the **consumer** or public.
3. **The number of times** the violations previously **have been committed** by the licensee.
4. **The disciplinary history** of the licensee.
5. **The status** of the licensee at **the time the violation was committed**.

Specific Authority 497.103, 497.133 F.S. **Law Implemented** 497.2001, 497.205, 497.209, 497.233, 497.217, 497.241, 497.245, 497.249, 497.253, 497.257, 497.301, 497.309, 497.317, 497.321, 497.333, 497.341, 497.423 F.S. **History—New** J-20-91. **Formerly** 3D-30.111.

3F-11.002 Minor Violations; Notice of Non-Compliance.

(1) Pursuant to section 497.131(3), F.S., the Department may **issue notice of non-compliance** to

a certificateholder, licensee, or registrant for an initial offense of a minor violation. Failure of the person, to whom a notice of non-compliance is issued, to take corrective action which is set forth in the notice of violation, within 15 days of the receipt of the notice may result in further disciplinary action.

(2) The following violations are minor violations for which the Department may issue a notice of non-compliance:

(a) Failure to display a license, in violation of section 497.301, FS.

(b) Unintentional failure to timely remit required amounts to a trust fund, in violation of section 497.233(1)(d), FS.

(c) Failure to provide any person, upon request, with a copy of the cemetery bylaws, in violation of section 497.233(1)(f), FS.

(d) Failure to obtain written consent from the Board before withdrawing or transferring any portion of the corpus of the care and maintenance fund, except for apical gains taxes, in violation of section 497.237(3), FS.

(e) Failure to meet the construction time frames, preconstruction trust fund establishment, or trust fund deposits, pursuant to section 497.257(1)-(8), FS.

(f) Failure to have records available at all reasonable times for examination by the Department, in violation of section 497.309, FS.

(g) Establishing a condition for entry or access to a cemetery, in violation of section 497.317(3), FS.

(3) The Department shall not issue a notice of non-compliance for a violation of the same provision of the law to the same licensee, registrant or certificateholder, within a three-year period.

Specific Authority 497.103, 497.131(3) FS. Law Implemented 497.131(3) FS. History—New 8-9-94, Amended 10-25-94.

3F-11.003 Citations.

(1) Pursuant to Section 497.121, F.S., the Board sets forth in this rule those violations for which there is no substantial threat to the public health, safety, and welfare. The Department shall have the authority to issue citations for the violations set forth herein. Prior to the issuance of the citations, the Department must confirm that the violation has been corrected or is in the process of being corrected. For each violation, there is a range of fines to be imposed depending upon whether the violation is the first, second, or third violation of the particular provision within the previous three (3) year period.

(2) The following violations with accompanying fines and conditions may be disposed of by citation:

(a) For each of the following violations, a range of fines is to be imposed depending upon whether the citation is the first, second, or third violation of the particular provision by the certificateholder, licensee or registrant. For each of the violations listed under this part, the fine to be imposed for the first violation shall be \$50.00, the fine to be imposed for the second violation shall be \$100.00, and the

fine to be imposed for the third violation shall be \$400.00.

1. Failing to display license, as provided in Section 497.301, F.S.

2. Unintentionally failing to remit the required amounts to any trust fund required by Chapter 497, as provided in Section 497.233(1)(d), F.S.

3. Failing to provide to any person, upon request, a copy of the cemetery bylaws, as provided in Section 497.233(1)(f), F.S.

4. Failing to meet preconstruction trust fund establishment requirements, or preconstruction trust fund deposit requirements, as provided in Section 497.257(1)-(8), F.S.

5. Failing to have all financial records available at all reasonable times for examination by the Department, as provided in Section 497.309, FS.

6. Establishing a condition for entry on or access to cemetery property, as provided in Section 497.317(3), FS.

(b) For each of the following violations, a range of fines is to be imposed depending upon whether the citation is the first, second, or third violation of the particular provision by the certificateholder, licensee or registrant. For each of the violations listed under this part, the fine to be imposed for the first violation shall be \$100.00, the fine to be imposed for the second violation shall be \$200.00, and the fine to be imposed for the third violation shall be \$300.00.

1. Discouraging the purchase of any burial merchandise or burial service which is advertised or offered for sale, with the purpose of encouraging the purchase of any additional or more expensive burial merchandise or service, as provided in Section 497.233(1)(p), FS.

2. Failing to furnish, for retention, a printed or typewritten list of retail prices for burial rights, burial merchandise, or burial services, as provided in Section 497.233(1)(p), FS.

3. Assessing fees and costs which have not been disclosed to the customer as provided in Section 497.233(1)(s), F.S.

4. Requiring the payment of a setting or service charge, by whatever name known, from third party installers for the placement of a monument, as provided in Section 497.325(1)(c) 1., F.S.

5. Refusing to provide care or maintenance for any portion of a grave on which a monument has been placed, as provided in Section 497.325(1)(c) 2., FS.

6. Attempting to waive liability with respect to damage to a monument after installation, where the monument or installation service is not purchased from the person, cemetery company or other entity authorized to sell or to provide grave space, as provided in Section 497.325(1)(c) 3., F.S.

7. Conditioning any program offering free burial rights by any requirement to purchase additional burial rights or burial merchandise, as provided in Section 497.325(2), FS.

8. Failing to disclose all fees and costs the customer may incur to use the burial rights or burial merchandise purchased, as provided in Section 497.315(3), FS.

9. Failing to disclose information to the public, as provided in Section 497.333(1), (2), (4), (5), (7), or (8), F.S.

(c) For each of the following violations, a range of fines is to be imposed depending upon whether the citation is the first, second, or third violation of the particular provision by the certificateholder, license, or registrant. For each of the violations listed under this part, the fine to be imposed for the first violation shall be \$200.00, the fine to be imposed for the second violation shall be \$400.00, and the fine to be imposed for the third violation shall be \$1600.00.

1. Failing to furnish, for retention, to each purchaser of burial rights, burial merchandise, or burial services a written agreement, the form of which has been approved by the Board, as provided in Section 497.233(I)(q), F.S.

2. Failing to set aside and to deposit in the care and maintenance trust fund the required percentages or amounts of payments received from sales of burial rights, as provided in Section 497.245(1), F.S.

3. Failing to meet the time requirements for deposits to the care and maintenance trust fund, as provided in Section 497.245(2), F.S.

4. Attempting to sell grave space tied to the purchase of a monument from or through the seller or any other designated person or corporation, as provided in Section 497.325(1)(a), F.S.

5. Failing to disclose information to the public, as provided in Section 497.333(3) or (6), F.S.

6. Requiring lot owners or current customers to make unnecessary visits to the cemetery company office for the purpose of solicitation, as provided in Section 497.515(1), F.S.

7. Soliciting that overreaches and takes advantage of a customer's ignorance or emotional vulnerability, as provided in Section 497.515(2), F.S.

8. Failing to provide a detailed description on the written contract of all burial merchandise purchased, as provided in Section 497.515(4), F.S.

9. Failing to honor cancellations and to issue refunds, as provided by Sections 497.419, F.S. and 497.515(5), F.S.

10. Misrepresenting any burial merchandise or burial service when offered for sale to the public, as provided in Section 497.515(6), F.S.

11. Failing to obtain written authorization from the family, next of kin, or other legally authorized representative, as defined in Chapter 470, of the deceased prior to disinterment, disinterment, or disinterment, as provided in Section 497.515(7), F.S.

12. Failing to comply with the filing and remittance of fees requirements, as provided in Section 497.413(2), F.S.

13. Engaging in any misrepresentation, false advertising, presentation of false information, unfair claim settlement practices, failing to maintain procedures for handling complaints, or discriminatory refusal to issue a contract, as provided in Section 497.445, F.S.

14. Failing to obtain written consent from the Board before withdrawing or transferring any portion of the corpus of the care and maintenance trust fund, as provided in Section 497.237(3), F.S.

15. Failing to meet the construction timeframes, as provided in Section 497.257(1)-(8), F.S.
Specific Authority 497.103, 497.121 F.S. Law Implemented 497.121 F.S. History—New 1-24-95.

CHAPTER 3F-12
MONUMENTS

3F-12.001 Installation of Monuments.

3F-12.001 Installation of Monuments.

(1) A cemetery shall require that any person engaged in the retail sale of monuments or monument services to consumers who wishes to install, place or set a monument provide the cemetery with proof that the person has a valid registration with the Department. If a cemetery wishes to require proof that a monument dealer has obtained all necessary local or occupational licenses, then the cemetery shall require the monument dealer to make such an affirmative representation in the contract between the cemetery and the monument dealer.

(2) Pursuant to 497.305(3), F.S., a cemetery may adopt bylaws setting forth minimum standards for monuments installed in the cemetery which can include the style and size of a monument or its foundation, the content and material of which the monument and/or foundation is to be constructed, the locations or gardens in which different monuments may be installed, the manner of installation of either a flat or upright monument, the specific location on the grave for the installation of either flat or upright monuments, the requirements for the removal and replacement of monuments in the path that any installation equipment must take to install a specific monument, and the clean-up necessary after installation. In all cases, the cemetery must comply with its own minimum standards. Nothing in this rule shall be construed to allow a cemetery to have exclusive rights to monument construction or installation within the cemetery or any part of the cemetery, except for inscriptions in community mausoleums.

(3) As the cemetery is the only entity holding the records of the ownership of the burial (interment) rights it may require that a person prior to delivering a monument for installation in the cemetery shall submit an application to the cemetery showing the foundation, design, style, size and material of the monument to be purchased. The application shall be accompanied by a sketch of the proposed monument with the proposed lettering showing the family name, the location of the first names of the deceased and/or others, dates and any other items planned to be a part of the monument. If it so requires the cemetery must either approve or disapprove the application, in writing, and provide notice to such person, postmarked within 5 working days of the date that the completed application was received by the cemetery, if it does not do so, the application will be deemed to be approved. The cemetery shall require the written approval of the owner(s) of the burial (interment) rights or next of kin which may be on the application form submitted by the installer prior to scheduling installation.

(4) The cemetery is the scheduling agent for all activities conducted within the cemetery. The scheduling of burials takes priority over all other

activities. The cemetery shall schedule the installation of a monument within two (2) working days of the date requested by the installing person provided all the proper authorizations and other requirements have been delivered to and approved by the cemetery. The time of installation must be set so that the installation and the clean up can be accomplished prior to the normal closing time of the cemetery. The foregoing shall be subject to change by the cemetery in the event it received notification of a death of an owner of burial rights located in such a location that the installation of the monument would interfere with the burial.

(5) In the event a burial is taking place and in the determination of the cemetery the installation of a monument will be considered an interference with the burial, the installing persons shall be required by the cemetery to withdraw until the funeral being conducted has concluded and those in attendance have left the cemetery at which time the installation of the monument may be continued.

(6) Prior to the initiation of the monument installation the cemetery shall mark the place on the grave where the monument is to be installed by placing a flag, or other marker, thereon. Nothing in this rule is intended to imply or require that a cemetery shall have to lay out or engineer a grave site for the installation of a monument. If the cemetery is requested by the monument installer to engineer the grave site, the fee for such service shall be disclosed on the cemetery's price list.

(7) After installation, the cemetery shall inspect the installation. If the installation is improper and not in compliance with the cemetery's operating procedures, the installing person shall be notified in writing postmarked within three (3) working days after installation of the manner in which the installation is not in compliance and the installing person shall have 15 days from the date of notification, in which to make the correction. In the event that the correction is not made within the said 15 days, the cemetery has the right to correct the installation and charge the installing person a reasonable charge for making the correction.

(8) The cemetery shall not be liable for improper installation of monuments not installed by the cemetery.

(9) Nothing in this rule shall be construed as requiring a cemetery to replace stolen monuments or portions thereof; or to replace or repair monuments that are damaged due to vandalism or other causes beyond the cemetery's control.

(10) A cemetery shall not require any person or firm that installs, places, or sets a monument to obtain any form of insurance, bond, or surety or make any form of pledge, deposit, or monetary guarantee as a condition for entry on or access to cemetery property.

(11) In the event that the cemetery has approved a monument sketch or made written representations to the monument establishment which is not according to the records of the cemetery, the cemetery shall be solely responsible to correct or replace the monument.

(R. 2/95)
3F-12.001

DEPARTMENT OF BANKING AND FINANCE

V. 1, p. 654

Specific Authority 497.101 F.S. *Law Implemented*
497.241, 497.305(3), 497.317, 497.361 F.S. *History—New*
1-24-95.

Chapter FD 1

LICENSES AND PERMITS

- m 1.01 Authority and **intent**.
- m 1.02 Examination **applications**.
- m 1.03 Examination grade.
- m 1.035 Examination **review**.
- m 1.04** Two academic **years** of instruction.
- m 1.05 Mortuary school.

- m 1.06 Roof of academic training.
- m 1.07 Apprenticeship credit.
- FD 1.08 **Permits**.
- m 1.09** **Preparation rooms**.
- m 1.10** Requirements for renewal; restoration of licenses.
- m 1.11 Renewal of Wisconsin **licenses** of out-of-state funeral directors.

Note: **Chapter FDE 1** was renumbered chapter FD I under s. 13.93 (2m) (b) 1. Stats., Register, September, 1993, No. 453.

FD 1.01 Authority and intent. This chapter is adopted pursuant to authority of ss. 15.08 (5) (b), 227.11 and 445.03, Stats., to clarify and establish licensure criteria for funeral directors and funeral establishments.

History: Cr. Register, July, 1988, No. 391, eff. 8-1-88.

FD 1.02 Examination applications. Applications for taking the examination for a funeral director must be on file at least 30 days before the date of the examination. The board may accept applications after the 30-day limit if the circumstances warrant such procedure.

Note: Application forms are available upon request to the board office located at 1400 East Washington Avenue, P.O. Box 8935, Madison, Wisconsin 53708.

Note: An otherwise qualified applicant with a disability shall be provided with reasonable accommodations.

History: Cr. Register, June, 1978, No. 270, eff. 7-1-78; renum. from FDE 2.01, Register, July, 1988, No. 391, eff. 8-1-88; am., Register, November, 1998, No. 515, eff. 12-1-98.

FD 1.03 Examination grade. (1) To pass the initial licensure examination each applicant shall receive a grade determined by the board to represent minimum competence to practice. The board shall determine the passing grade after consultation with subject matter experts who have reviewed a representative sample of the examination questions and available candidate performance statistics, and shall set the passing grade for the examination at that point which represents minimum acceptable competence in the profession.

(2) The release of grades or the issuance of a funeral director license may be denied if the board determines that an applicant violated the rules of conduct of the examination or otherwise acted dishonestly.

History: Cr. Register, July, 1988, No. 391, eff. 8-1-88; r. and recr., Register, November, 1998, No. 515, eff. 12-1-98.

FD 1.035 Examination review. (1) An applicant who fails the state board examination may request a review of that examination by filing a written request with the board within 30 days of the date on which the examination results were mailed.

(2) Examination reviews are by appointment only.

(3) The time for review shall be limited to 4 hours.

(4) An applicant may not be accompanied during the review by any person other than the proctor.

(5) An applicant shall be provided with a copy of the questions, a copy of the applicant's answer sheet and a copy of the master answer sheet.

(6) An applicant may review the examination in the presence of a proctor. An applicant shall be provided with a form on which to write comments, questions or claims of error regarding any items in the examination. Bound reference books shall be permitted. An applicant shall not remove any notes from the area. Notes shall be retained by the proctor and made available to the applicant for use at a hearing, if desired. The proctor shall not defend the examination nor attempt to refute claims of error during the review.

(7) An applicant may not review the examination more than once.

History: Cr. Register, November, 1998, No. 515, eff. 12-1-98.

FD 1.04 Two academic years of instruction. To meet the requirements of 2 academic years of instruction specified in s. 445.045 (1) (d), Stats., an applicant must submit to the board an official transcript of courses from a college or university recognized by the north central association of colleges and secondary schools, showing that the applicant has completed at least the semester credit hours shown below in the following areas:

	Minimum Semester Credit Hours
(1) English & Speech	6
(2) Social Sciences such as:	12
(a) Psychology	
(b) History	
(c) Sociology	
(d) Political Science	
(e) Economics	
(3) Natural Sciences such as:	15
(a) Anatomy	
(b) Physiology	
(c) Chemistry	
(d) Microbiology	
(e) Biology	
(f) Bacteriology	
(4) Business Studies	13
(5) Electives	14
TOTAL -	60

History: Cr. Register, June, 1978, No. 270, eff. 7-1-78; r. and recr. (4), r. (5) and renum. (6) to be (5), Register, June, 1979, No. 282, eff. 7-1-79; am. Register, January, 1980, No. 289, eff. 2-1-80; renum. from FDE 2.03 and am., Register, July, 1988, No. 391, eff. 8-1-88.

FD 1.05 Mortuary school. The following shall be accepted as compliance with s. 445.045 (1) (e), Stats. The candidate shall have satisfactorily completed 9 months or more instruction in a prescribed curriculum in funeral service education offered by an educational institution accredited by the American board of funeral service education or otherwise deemed to be equivalent by the funeral directors examining board.

History: Cr. Register, June, 1978, No. 270, eff. 7-1-78; renum. from FDE 2.04 and am. Register, July, 1988, No. 391, eff. 8-1-88; correction made under s. 13.93 (2m) (b) 6., Stats., Register, December, 1989, No. 408

FD 1.06 Proof of academic training. The following shall be accepted by the board as proof that the academic training requirements of s. 445.095 (1) (a), Stats., concerning registration as an apprentice funeral director or embalmer have been met: A signed statement by the registrar of any college or university recognized by the north central association of colleges and secondary

schools that the applicant has successfully completed one academic year of instruction in the college or university or has an equivalent education which will permit admission to the college or university with sophomore status.

History: Cr. Register, June, 1978, No. 270, eff. 7-1-78; r. (2), Register, January, 1980, No. 289, eff. 2-1-80; renum. from FDE 2.05 and am. Register, July, 1988, No. 391, eff. 8-1-88.

FD 1.07 Apprenticeship credit. An apprentice certified under s. 445.095 (1), Stats., shall be granted credit toward the term of his or her apprenticeship for a period of employment of no less than 40 hours in each of 2 consecutive weeks. However, credit for a shorter period of employment may be approved if an apprentice submits evidence satisfactory to the board that an exception be made.

History: Cr. Register, November, 1983, No. 335, eff. 12-1-83; renum. from FDE 2.135, Register, July, 1988, No. 391, eff. 8-1-88.

FD 1.08 Permits. (1) Before opening for business, and every 2 years thereafter, a funeral establishment operator shall obtain a permit from the board through application upon a form furnished by the board. An original permit may not be granted to an operator of a funeral establishment without an inspection. No permit may be granted to a funeral establishment which does not meet requirements in s. 445.01, Stats.

(2) Prior to granting a permit to a licensed funeral establishment following a change in ownership, the board shall review the application to determine if an inspection is necessary.

(3) A funeral establishment permit is not transferable from one premises to another or from one operator to another.

Note: Application forms are available upon request to the board office located at 1400 East Washington Avenue, P.O. Box 8935, Madison, WI 53708.

History: Cr. Register, June, 1978, No. 270, eff. 7-1-78; am. (1), renum. (2) to be (3) and am., cr. (2), Register, May, 1983, No. 329, eff. 6-1-83; cr. (4), Register, July, 1986, No. 367, eff. 8-1-86; renum. from FDE 2.10 and r. (4), Register, July, 1988, No. 391, eff. 8-1-88.

FD 1.09 Preparation rooms. (1) Every installation used for embalming operations must contain a floor area of not less than 100 square feet per embalming table and must be used solely for this purpose. It must be isolated by walls or adequate partitions. The walls and furniture must be constructed of material that is easily washed and disinfected. The installation must be equipped with hot and cold running water supply under pressure and in a quantity sufficient for the operations performed therein as well as for cleaning the room. Waste water must flow into the main sewer if available or into an adequate septic tank. Hand washing facilities should be easily accessible.

(2) All preparation rooms in funeral establishments must be equipped with adequate sanitary facilities so that no health hazards are produced as a result of embalming operations performed therein

(3) All preparation rooms shall be equipped with a ventilating system capable of expelling gases or fumes to the outside at a point so as not to create a nuisance, and shall also be equipped with a hard surface, metal or porcelain top embalming table, a set of essential embalming instruments and a supply of disinfectants.

History: Cr. Register, July, 1988, No. 391, eff. 8-1-88.

FD 1.10 Requirements for renewal; restoration of licenses. (1) To renew a funeral director license a licensee shall, by January 1 of each even-numbered year following initial licensure, provide all of the following to the board:

(a) An application for renewal on a form provided by the department.

(b) Evidence that the licensee has, during the biennial period immediately preceding application, completed the continuing education requirements specified in s. FD 4.03.

(c) A fee in the amount required under s. 440.08 (2) (a), Stats.

(2) A licensee who fails to meet the requirements of sub. (1) by the renewal date shall cease and desist from practicing as a funeral director. A licensee who fails to meet the requirements of sub. (1) and who applies for renewal less than 5 years after the expiration date of his or her license may renew by furnishing the following to the board:

(a) An application for renewal on a form provided by the department.

(b) Evidence that the licensee has completed at least 15 hours of continuing education during the previous 2 year licensure period as required under s. 445.06, Stats., and s. FD 4.03.

(c) The renewal fee specified in s. 440.08 (2) (a) and (3) (a), Stats.

(3) A funeral director who files an application for renewal more than 5 years after the expiration date of his or her license may be reinstated by filing with the board an application and fees specified in s. 440.08 (2) and (3) (a), Stats. The board may also require demonstration of competence by various methods, including, but not limited to, written or oral examination, documentation of funeral directing work in other jurisdictions, or documentation of current education or experience in the field. Any examination or education required under this section shall not be more extensive than the educational or examination requirements for an initial credential from the board.

(4) The time limitations prescribed in this section shall not include the service period of a funeral director as an active member of the U.S. armed forces.

History: Cr. Register, September, 1993, No. 453, eff. 10-1-93; r. and recr. (1) and (2), am. (3), Register, November, 1998, No. 515, eff. 12-1-98.

FD 1.11 Renewal of Wisconsin licenses of out-of-state funeral directors. (1) **INTENT.** The intent of the board in adopting this section is to clarify the board's interpretation of s. 445.06, Stats., that a licensee seeking renewal of a funeral director's license who is doing business at a legally operating funeral establishment in a jurisdiction outside the state of Wisconsin and who meets all other requirements for license may obtain a funeral director's license.

(2) **RECOGNIZED FUNERAL ESTABLISHMENT.** For purposes of renewal of licenses under s. 445.06, Stats., "recognized funeral establishment" means any building or part of a building used and held out to the public as being used in the care and preparation for burial and transportation of dead human bodies or for holding or conducting of funeral services.

History: Renum. from FD 2.12 and am. (2), Register, November, 1998, No. 515, eff. 12-1-98.