

CHAPTER 2
FUNERAL CONTRACT TRUST FUNDS

Section 1. **Authority**

These rules promulgated by the Insurance Commissioner pursuant to W.S. 26-152 shall be effective 3 June 1977, and with amendments, supersede all previous instructions and regulations.

Section 2. **Definitions**

When used in this article, the term:

(a) “Person” unless the context otherwise requires, means an individual, partnership, firm, joint venture, corporation, company, association, or joint stock association.

(b) “Contract” means any contract, agreement, mutual understanding, series or combination of contracts, agreements, mutual understandings, and any security or other instrument which is convertible into a contract, agreement, or mutual understanding, whereby it is agreed that upon the death of any person a final resting place, personal property, or services of any nature shall be provided, delivered, or performed in connection with the preparation or cremation of such person’s body for final disposition or in connection with the interment, entombment, or other final disposition or such person’s remains or in connection with the memorializing or marking of the decedent, the decedent’s remains, or the final resting place of such remains; but this term shall not include policies of life insurance payable in money which are subject to regulation under other laws of this state, nor shall it include a sale by the owner thereof of a cemetery lot, plot, or grave space, or niche or crypt if, upon receipt of full payment therefore, the purchaser acquires a conveyance of and a vested interest in an existing, specific, and identifiable lot, plot, grave space, niche, or crypt.

(c) “Contract seller” means any person who engages in the business of selling contracts, also called “seller”.

(d) “Contract buyer” means any person who buys a contract from a contract seller, also called “buyer”.

(e) “Decedent” means any person specified or included in the contract upon whose death a final resting place, personal property, or services of any nature shall be provided, delivered, or performed.

(f) “Commissioner” means the Commissioner of Insurance.

(g) “Depository” means a chartered state or national bank, authorized to do business in the state, or any savings and loan association in Wyoming, which is a member of the Federal Savings and Loan Insurance Corporation, with which a contract seller deposits funds received from the sale of contracts and so designated under a depository agreement.

(h) “Depository funds” means money deposited by a contract seller with a depository from a contract buyer in consequence of the sale of a contract representing not less than 100% of the total selling price. In the event the contract buyer is making installment deposits, 100% of each installment shall

become a part of the fund.

(i) “Performer” means the individual, partnership, association, company or corporation named in the pre-need funeral or burial contract who will provide the services enumerated in the contract for the decedent at the time of his death.

(j) “Agent” means any person who receives funds for the benefit of a contract seller, except those persons defined in Section 2, of these regulations.

Section 3. Deposit of Funds with Depository

Not less than 100% of all funds received by the contract seller shall be deposited in the depository or otherwise invested pursuant to Section 4 of these regulations within thirty days after receipt thereof by a contract seller. Such funds shall be deposited under the terms of a depository agreement in a form to be approved by the insurance commissioner. Such funds deposited shall be held pursuant to the provisions of this article. The contract seller, at the time of each deposit of funds, shall make a record of the name of each contract buyer and the amount of the payment made by the contract buyer for which deposit is then being made, and shall keep such record, as to each contract buyer, until three years after the death of the decedent.

Section 4. Investments

The contract seller shall limit his deposits after 1 July 1979 to obligations of the United States of America or of any states thereof; obligations and stock of federal government agencies; demand deposits, savings accounts, certificates of deposit, or shares of savings and loan associations, provided that the contract seller may invest, notwithstanding the limitations of this section, funds in an amount not to exceed in the aggregate the amount of the seller’s bond posted in accordance with Section 10 of these rules, in such types of investments which men of prudence, discretion and intelligence would acquire or retain for their own account. Nothing herein shall affect the validity of any investment made prior to the effective date of this section. The contract seller shall be strictly accountable for the corpus of the funds to the contract buyer. Any checking account, savings account, certificate of deposit or other evidence of investment for credit jointly held in the names of a person (as defined in these regulations) and a licensed embalmer, undertaker, funeral director or other person regularly engaged in selling or furnishing funeral supplies or services (which include any embalming; caskets, cemetery lots, plots, niches, crypts, vaults, markers; cremations or any other thing incident to the ultimate disposal of dead bodies) shall be conclusively presumed to have with it an underlying contract which specifically provides for said services, and shall be construed to be part of a pre-need contract (as defined herein) and subject to these regulations.

Section 5. License to Accept Funds, Application, Records, Annual Report, Investigation of Records

(a) (1) No contract seller or agent shall accept any funds without first securing from the commissioner a license to accept funds. Application for license shall be in writing, signed by the applicant and duly verified on forms furnished by the commissioner. Each application shall contain at least the following information:

(2) The full name and address (both residence and place of business) of the applicant and every

member, officer, and director thereof, if the applicant is a firm, partnership, association or corporation;

(3) A detailed statement of the applicant's assets and liabilities.

(b) Upon receipt of application, the commissioner shall issue a license, unless he shall determine that the applicant has made false statements or representations in such application, or is insolvent, or is not fully authorized to transact business in the State of Wyoming, or has been convicted of fraud, or a crime involving misappropriation or misuse of funds; provided, that any applicant who was engaged in substantially the business described in this article on the effective date of this article may continue to do business, pending action by the commissioner, so long as an application has been filed pursuant to the provisions of the repealed regulation. Every license shall expire on March 31st of each year, but upon application and payment of the fee prescribed in this article may be renewed.

(c) The licensee shall keep accurate accounts, books, and records in this state of all transactions, copies of all contracts, dates and amounts of payments made and accepted thereon, the name and address of each contract buyer; the name of the decedent as to each contract, the name of the depository holding funds received under each contract, and shall make an annual report. Every application shall be accompanied by a fee of fifty dollars, and every annual report shall be accompanied by a fee of ten dollars.

(d) (1) The licensee shall make all books and records pertaining to depository funds available to the commissioner for examination. The commissioner, or a qualified person designated by him may from time to time, during ordinary business hours examine the books, records, and accounts of the licensee with respect to funds received by said licensee and for that purpose may require the attendance of and examine under oath all persons whose testimony he may require. Said examination shall be made in accordance with generally accepted insurance accounting standards.

(2) The cost of the examination shall be borne by the licensee, according to the provisions of the Wyoming Insurance Code pertaining to the examination of insurers.

Section 6. Assets, Income of Depository Funds

Income from deposits shall inure to the benefit of the contract seller and may be withdrawn by him so long as the corpus of the deposit remains intact. (Section) 7 Annual report.

Section 7. Annual Report

Each contract seller shall file an annual report with the commissioner on or before March 1st of each year, in such form as the commissioner may require, stating the names of the depositories with which it has funds on deposit and the amount remaining on deposit in the fund on the preceding December 31st or such other annual and reporting period as the commissioner may establish. Any contract seller which has discontinued the sale of contracts but which still has outstanding contracts shall, nevertheless be required to obtain a renewal of its license, and shall continue to make annual reports to the commissioner until all such contracts have been fully performed by it.

Section 8. Contents of Contracts -- Procedure

(a) At the time the contract is entered into the contract seller shall furnish each contract buyer with a duplicate original of the contract and, if said contract requires services to be performed at a future time by a person other than the contract seller, then the contract seller shall furnish the contract buyer with a copy of the instrument between the contract seller and such person obligated to perform the services agreed upon to be furnished and performed at the price provided in the contract.

(b) The contract seller shall file with the commissioner a master copy of each form of contract offered or sold by such contract seller and a master copy of any form instrument between the contract seller and a person licensed by the state whereby said person agreed to actually perform any services under any contracts offered or sold by the contract seller. In addition, the contract seller shall furnish the commissioner a written instrument on each contract sold, showing the names of all parties, the goods or services sold, the consideration therefor, and the terms of payment.

(c) If any contract contains an agreement for the performer to furnish services at a future time, the contract shall state the name and address of the principal office of the person licensed by the state who will perform such services. If no request for performance of the contract shall have been received by the contract seller from the next of kin or legal representative of the decedent within seventy-two hours after the death of the decedent, then the contract seller shall cause such services to be performed and such goods supplied in the manner provided in the contract, and upon the performance of such services, liability under such contract shall be conclusively deemed terminated.

Any checking account, savings account, certificate of deposit or other evidence of investment for credit jointly held in the names of a person (as defined in these regulations) and a licensed embalmer, undertaker, funeral director or other person regularly engaged in selling or furnishing funeral supplies or services (which include any embalming, caskets, cemetery lots, plots; niches, crypts, vaults, markers; cremations or any other thing incident to the ultimate disposal of dead bodies) shall be conclusively presumed to have with it an underlying contract which specifically provides for said services, and said account etc., shall be construed to be a part of a pre-need contract (as defined herein) and subject to these regulations.

No contract, rider or addendum thereto, shall be offered for sale in Wyoming if such shall fail to provide for the furnishing of specific goods or services or both for a specified amount and no contract, rider or addendum shall contain a clause which provides for the diminution of the value of said goods or services or both or for an increase in the cost of same, contingent upon the happening of a future event or the existence in the future of any condition, economic or otherwise.

(d) In the event of default or termination or cancellation by the contract seller for any reason whatsoever, said contract seller shall forthwith tender to the contract buyer all funds deposited on behalf of the contract buyer in the depository maintained by the contract seller. Said contract seller shall at the same time pay to the buyer all interest which has accrued on said funds as determined by the records of the depository and which otherwise is or was to be the property of the seller. (The fact that these regulations otherwise allow the contract seller to retain the interest shall not abrogate this requirement).

In the event of default or termination or cancellation by the contract buyer, other than by death, the contract seller shall forthwith tender to the contract buyer 80% of all principal funds which are on deposit as aforesaid. Accrued interest may be retained by the contract seller.

(e) All contracts shall contain the words “not insurance” in bold face type on the face of each

contract.

(f) No contract shall restrict any contract buyer who is receiving old age pension benefits from making his contract irrevocable in accordance with the rules and regulations of the State Department of Public Assistance and Social Services.

Section 9. **Disbursements by Depositories**

Disbursements of depository funds discharging any contract shall be made by the depository upon receipt of a document signed by the contract seller verifying that the contract has been fully performed, or is in default or a receipt signed by the contract buyer or his heirs or assigns discharging the contract seller from further obligations under the contract.

Section 10. **Seller's Bond**

Every contract seller shall post with the insurance commissioner a surety bond in an amount of not less than five percent (5%) of all amounts received from all contract buyers or their representatives, whether deposited or invested, such amount to be determined as of the December 31st of the year next preceding, or such greater amount which the contract seller may wish to post, but in no event less than \$10,000. The amount of such bond may not be reduced without the prior written approval of the commissioner. The State of Wyoming shall be named as the obligee in such bond for the benefit of the contract buyers, their heirs, legatees or assigns who are damaged by the loss of any monies paid to the contract seller after their receipt by the contract seller. This bond may consist of cash, demand deposits, savings accounts, certificates of deposit or a corporate surety bond or other such security as the insurance commissioner shall require.

Section 11. **License of Agent**

No agent shall sell contracts in this state without first obtaining from the commissioner a license so to do and paying ten dollars as fee for such license. The commissioner shall not issue such license without requiring an applicant for the license to make proof of good moral character by presenting with his application affidavits from his employer stating that to the employer's best information, knowledge and belief, the applicant is of good moral character. The acts of the agent shall be deemed acts of the employer. The commissioner shall require the applicant to pass a written examination sufficient to ascertain the applicant's knowledge of the industry and the provisions of this article.

Section 12. **Revocation of License**

The commissioner upon ten day's written notice to the license by registered mail stating the contemplated action and the grounds therefore, and upon reasonable opportunity to be heard, and shall revoke any license if he finds that:

(a) The licensee has failed to pay the annual license fee;

(b) The licensee, either knowingly or without the exercise of due care to prevent the same, has violated any provision of this article, or any regulation or order lawfully made pursuant to and within the

authority of this article;

(c) The licensee has violated any provision of W.S. 26.1-196(a).

(d) Any fact or condition exists at the time of the proposed revocation which, if it had existed at the time of the original application for such license, clearly would have justified the commissioner in refusing originally to issue such license.

Section 13. **Suspension of License -- Notice of Revocation, Suspension**

(a) If the commissioner finds that probable cause for revocation of any license exists and that enforcement of this article requires immediate suspension of such license pending investigation, upon three days' notice by certified mail and a hearing, he may enter an order suspending such license for a period not exceeding thirty days.

(b) Whenever the commissioner shall revoke or suspend a license, he shall enter an order to that effect and forthwith in writing notify the licensee of such revocation or suspension by certified mail, which notice shall state the grounds therefor.

Section 14. **Surrender of License**

Any licensee may surrender any license by delivering it to the commissioner with written notice of its surrender, but such surrender shall not affect his civil or criminal liability for acts committed prior thereto.

Section 15. **Default**

As used herein, default shall be construed as failure to perform after written notice from the other party plus thirty days. Proof of mailing shall constitute proof of notice.

Section 16. **Reinstatement of License**

The commissioner may reinstate suspended licenses or issue a new license to a person whose license has been revoked, if no fact or condition then exists which clearly would have justified the commissioner in refusing originally to issue such license.

Section 17. **Violation**

Every individual who shall violate any of the provisions of this article, or make any false and fraudulent report required under the provisions of this article, shall be punishable in accordance with W.S. 26.1-15.

Section 18. **Immunity from Prosecution**

(a) If any person shall ask to be excused from attending or testifying or from producing any books, papers, records, correspondence or other documents at any hearing on the grounds that the testi-

mony or evidence required of him may tend to incriminate him or subject him to a penalty or forfeiture, and notwithstanding shall be directed to give such testimony or produce such evidence, he must nonetheless comply with such direction; but he shall not thereafter be prosecuted or subjected to any penalty or forfeiture for or on account of any transaction, matter or thing concerning which he may testify or produce evidence pursuant thereto; and no testimony so given or evidence produced shall be received against him upon any criminal action, investigation or proceeding.

(b) No such individual so testifying shall be exempt from prosecution or punishment for any perjury committed by him while so testifying and the testimony or evidence so given or produced shall be admissible against him upon any criminal action, investigation or proceeding concerning such perjury, nor shall he be exempt from the refusal, revocation or suspension of any license, permission or authority conferred, or to be conferred, pursuant to the laws of this state.

(c) Any such individual may execute, acknowledge and file in the office of the commissioner a statement expressly waiving such immunity or privilege in respect to any transaction, matter or thing specified in such statement and thereupon the testimony of such person or such evidence in relation to such transaction, matter or thing may be received or produced before any judge or justice, court, tribunal, grand jury or otherwise, and if so received or produced, such individual shall not be entitled to any immunity or privilege on account of any testimony he may so give or evidence so produced.

Section 19. **Licensing Procedure Laws Applicable -- When**

All procedures for the issuance, suspension, or revocation of licenses shall be pursuant to the Wyoming Insurance Code, the Wyoming Administrative Procedure Act and the rules of the Wyoming Insurance Department.

Section 20. **Severability Clause**

If any of the rules and regulations contained herein dealing with a pre-need funeral or burial contract or the application thereof to any person or circumstances are held invalid, the invalidity shall not affect other provisions or application of these rules and regulations which can be given effect without the invalid provision or application, and to this end these rules and regulations are severable.

Section 21. **Repealer**

The regulations of 7 February 1973 relating to pre-need funeral contracts (Funeral Contract Trust Funds) are repealed as of the effective date of these regulations.