

VIRGINIA ACTS OF ASSEMBLY -- 2011 RECONVENED SESSION

CHAPTER 792

An Act to amend and reenact §§ 54.1-2310 and 54.1-2312 of the Code of Virginia and to amend the Code of Virginia by adding a section numbered 54.1-2312.1, relating to Cemetery Board; exemptions; resale of interment right.

[H 2018]

Approved April 6, 2011

Be it enacted by the General Assembly of Virginia:

1. That §§ 54.1-2310 and 54.1-2312 of the Code of Virginia are amended and reenacted and that the Code of Virginia is amended by adding a section numbered 54.1-2312.1 as follows:

§ 54.1-2310. Definitions.

As used in this chapter, unless the context requires a different meaning:

"Advertisement" means any information disseminated or placed before the public.

"At-need" means at the time of death or while death is imminent.

"Board" means the Cemetery Board.

"Cemetery" means any land or structure used or intended to be used for the interment of human remains. The sprinkling of ashes or their burial in a biodegradable container on church grounds or their placement in a columbarium on church property shall not constitute the creation of a cemetery.

"Cemetery company" means any person engaged in the business of (i) selling or offering for sale any grave or entombment right in a cemetery and representing to the public that the entire cemetery, a single grave, or entombment right therein will be perpetually cared for; (ii) selling property or services, vaults, grave liners, urns, memorials, markers, and monuments used in connection with interring or disposing of the remains or commemorating the memory of a deceased human being, where delivery of the property or performance of the service may be delayed more than 120 days after receipt of the initial payment on account of such sale; or (iii) maintaining a facility used for the interment or disposal of the remains and required to maintain perpetual care or preneed trust funds in accordance with this chapter. Such property or services include but are not limited to burial vaults, mausoleum crypts, garden crypts, lawn crypts, memorials, and marker bases, but shall not include graves or incidental additions such as dates, scrolls, or other supplementary matter representing not more than ten percent of the total contract price.

"Compliance agent" means a natural person who owns or is employed by a cemetery company to assure the compliance of the cemetery company with the provisions of this chapter.

"Cost requirement" means the total cost to the seller of the property or services subject to the deposit requirements of § 54.1-2325 required by that seller's total contracts.

"Department" means the Department of Professional and Occupational Regulation.

"Garden crypt" means a burial receptacle, usually constructed of reinforced concrete, installed in quantity on gravel or tile underlay. Each crypt becomes an integral part of a given garden area and is considered real property.

"General funds" means the sum total of specific funds put together in a single fund.

"Grave" means a below-ground right of interment.

"In-person communication" means face-to-face communication and telephonic communication.

"Interment" means all forms of final disposal of human remains including, but not limited to, earth burial, mausoleum entombment and niche or columbarium inurnment. The sprinkling of ashes on church grounds shall not constitute interment.

"Lawn crypt" means a burial vault with some minor modifications for the improvement of drainage in and around the receptacle and is considered personal property.

"Licensee" means any person holding a valid license issued by the Board.

"Marker base" means the visible part of the marker or monument upon which the marker or monument rests and is considered personal property.

"Mausoleum crypt" means a burial receptacle usually constructed of reinforced concrete and usually constructed or assembled above the ground and is considered real property.

"Memorials, markers or monuments" means the object used to identify the deceased and is considered personal property.

"Perpetual care trust fund" means a fund created to provide income to a cemetery to provide care, maintenance, administration and embellishment of the cemetery.

"Prened" means at any time other than either at the time of death or while death is imminent.

"Prened burial contract" means a contract for the sale of property or services used in connection with interring or disposing of the remains or commemorating the memory of a deceased human being, where delivery of the property or performance of the service may be delayed for more than 120 days after the receipt of initial payment on account of such sale. Such property includes but is not limited to

burial vaults, mausoleum crypts, garden crypts, lawn crypts, memorials, and marker bases, but shall not include graves or incidental additions such as dates, scrolls, or other supplementary matter representing not more than ten percent of the total contract price.

"Resale" means the sale of an interment right in a cemetery governed by this chapter to a person other than the cemetery company owning the cemetery in which the right exists by a person other than that cemetery company or its authorized agent. The term "resale" shall not be construed to include the transfer of interment rights upon the death of the owner.

"Retail sales price" means the standard, nondiscounted price as listed on the general price list required by § 54.1-2327.

"Seller" means the cemetery company.

"Seller's trust account" means the total specific trust funds deposited from all of a specific seller's contracts, plus income on such funds allotted to that seller.

"Solicitation" means initiating contact with consumers with the intent of influencing their selection of a cemetery.

"Specific trust funds" means funds identified to a certain contract for personal property or services.

§ 54.1-2312. Exemptions.

A. The provisions of this chapter shall not apply to cemeteries wholly owned and operated by the state or a county, city or town; a church; or a nonstock corporation not operated for profit if the corporation (i) does not compensate any officer or director except for reimbursement of reasonable expenses incurred in the performance of his official duties, (ii) does not sell or construct or directly or indirectly contract for the sale or construction of vaults or lawn, garden or mausoleum crypts, and (iii) uses proceeds from the sale of all graves and entombment rights for the sole purpose of defraying the direct expenses of maintaining the cemetery.

B. The provisions of this chapter shall not apply to any community cemetery not operated for profit if the cemetery (i) does not compensate any officer or director except for reimbursement of reasonable expenses incurred in the performance of his official duties, and uses the proceeds from the sale of the graves and mausoleum spaces for the sole purpose of defraying the direct expenses of maintaining its facilities or (ii) was chartered by the Commonwealth prior to 1857 A.D.

C. The provisions of this chapter regarding preneed burial contracts shall not apply to prearranged funeral plans entered into by licensees of the Board of Funeral Directors and Embalmers.

D. The provisions of the chapter shall not apply to any family cemetery provided that no graves or entombment rights therein are sold or offered for sale to the public.

E. Subject to the requirements of § 54.1-2312.1, the provisions of this chapter shall not apply to the resale of any interment right in a cemetery in the Commonwealth.

§ 54.1-2312.1 Resale of interment right; conditions for resale transaction; contents of transfer form; approval by cemetery company.

A. No person shall participate as a seller in more than four consummated resale transactions in any calendar year except as authorized by this section.

B. Unless exempted by subsection A, no resale transaction shall be valid unless:

1. The resale is at-need;

2. The seller is (i) a funeral director, embalmer, establishment, or service licensed pursuant to Chapter 28 (§ 54.1-2800 et seq.) or (ii) a cemetery company licensed pursuant to this chapter;

3. No more than one interment right is transferred by the transaction;

4. Any merchandise, personal property, or service purchased in the original pre-need transaction is transferred with the interment right;

5. The resale is approved, pursuant to subsection C, by the cemetery company that owns the cemetery in which the interment right exists; and

6. The seller provides written notice to the buyer that the resale transaction is contingent upon (i) approval by the cemetery company that owns the cemetery in which the interment right exists, (ii) payment of the cemetery transfer fee, and (iii) compliance with the provisions of this section.

C. A cemetery company shall approve a resale transaction upon receipt of a valid transfer form that has been acknowledged by the buyer as required by subsection D 6, a reasonable cemetery transfer fee to be set by the cemetery company, and a copy of the bill of sale or other document confirming the resale, provided such approval is consistent with the current rules and regulations of the cemetery company.

D. The transfer form shall be provided by the seller to the buyer at the time of the resale and shall be valid only when signed by the seller, buyer, and cemetery company. At a minimum, the transfer form shall contain the following information:

1. The name and address of each seller and buyer;

2. The valid license number of each seller under Chapter 28 (§ 54.1-2800 et seq.) or under this chapter;

3. A complete description of the location of the property for which the interment right is being sold;

4. A clear disclosure of the cemetery transfer fee;

5. The name, address, and telephone number of the Board and a statement that the Board is the

regulatory agency that handles consumer complaints; and

6. An acknowledgement that the buyer has read, understands, and agrees to abide by the current rules and regulations of the cemetery and its current general price list, as applicable.

The information required to be included in the transfer form by subdivisions 1 through 5 shall be provided by the seller.

E. In the event a resale is not approved by the cemetery company under this section, the resale transaction shall be void and within 30 days the seller shall refund to the buyer any and all moneys paid pursuant to the transaction and the buyer shall return to the seller any merchandise or personal property that was transferred to the buyer by the seller as a part of the resale.