

Division of Real Estate & Professional Licensing

Preneed Cemetery Merchandise & Services Trust

Any cemetery association or company in Ohio selling cemetery merchandise and services on a preneed basis must establish a Merchandise and Services Trust. Ohio Revised Code section 1721.211 lays out the requirements for creating, maintaining and reporting a preneed cemetery merchandise and services trust account.

What are Preneed Cemetery Merchandise and Services?

The definition of cemetery merchandise and services includes the sale, on a preneed basis, of items or services customarily sold by a cemetery such as outer burial containers, monuments, markers, urns, other type of merchandise customarily sold by cemeteries, or opening and closing services. [R.C. 1721.211(A)]

What items are not Preneed Cemetery Merchandise and Services?

- Any cemetery merchandise or service sold at-need
- The sale of a burial lot, burial right, interment right, entombment right or columbarium right

Is anyone exempt from this law?

Yes; if the contract pertains to a cemetery owned and operated by a municipal corporation, political subdivision of the state, national cemetery, an established fraternal organization or an established and legally cognizable church or denomination provided that the cemetery, on a voluntary basis, adopts rules and other measures designed to safeguard all money received under a preneed contract. [R.C. 1721.211(O)]

A licensed Funeral Director who sells preneed funeral contracts that contain merchandise and services similar to those listed must report that activity to the Ohio Board of Embalmers and Funeral Directors. [R.C. 1721.211(F)(2)]

Who may be a trustee?

The cemetery may appoint as the trustee a national bank, federal savings association, a licensed trust company or three individuals who reside in the same county as the cemetery. [R.C. 1721.211(C)(2)]

If the cemetery elects to appoint three individuals as the trustees of the trust, they must be bonded, or insured under an insurance policy, such as a crime/dishonesty policy less any deductible, in an aggregate amount no less than one hundred percent of the funds held in trust. [R.C. 1721.211(E)]

How much money should be deposited and when should deposits be made?

The cemetery should deposit the consumer's funds when it receives the final payment on the preneed contract.

For merchandise the cemetery must deposit the greater of either 110% of the seller's actual cost or 30% of the seller's retail price.

For a service the cemetery must deposit 70% of the seller's retail price into the trust.

Deposits must be made within 30 days after the last business day of the month in which the final payment was received. [R.C. 1721.211(D)]

The trustees of the trust are required to maintain records of the amount deposited plus accumulated interest earned by those funds for each consumer.

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Can the deposited funds be invested?

Any funds shall be held and invested only in the ways permitted under R.C. 2109.37 and R.C. 2109.371 or, if provided for in the instrument creating the trust, pursuant to the Ohio Uniform Prudent Investor Act. [R.C. 1721.211(C)(2)]

When can the money be withdrawn and how much can be withdrawn?

Upon receipt of a certified copy of a death certificate or evidence of the delivery of the merchandise or performance of the service (see R.C. 1721.211(K) and (L)), the trustee(s) shall pay to the person entitled to the funds under the contract, the amount deposited for that consumer plus any accumulated interest. The cemetery may not withdraw the retail price currently charged for the merchandise or service. [R.C. 1721.211(H)]

Can a contract be cancelled?

Any preneed cemetery merchandise and services contract may specify that it is irrevocable. However, for the contract to be irrevocable there must be a clear and conspicuous disclosure of irrevocability in the contract and the person entering into the contract must sign a separate acknowledgement of their waiver of the right to revoke. [R.C. 1721.211 (I)]

A consumer may cancel a revocable preneed cemetery merchandise and services contract within seven days of entering into the contract and request and receive from the seller 100% of all payments made under the contract. A consumer wishing to cancel a revocable cemetery merchandise and services contract after that period may do so upon giving not less than 15 days' notice to the cemetery. The amount refunded will be based on the provisions found in R.C. 1721.211(G).

Any preneed cemetery merchandise and services contracts that involve the payment of money shall be in writing and in compliance with the laws and rules of the state. [R.C. 1721.211(J)]

Any contract for preneed services or merchandise entered into with a cemetery not registered under section 4767.03 of the Revised Code is voidable. [R.C. 1721.211(Q)]

What should I report to the Division?

You are required to file a Cemetery Merchandise & Services Fund Annual Report and a Cemetery Merchandise & Services Fund Affidavit both at initial registration and every year with your renewal paperwork. Both forms can be found at the Division's website. www.com.ohio.gov/real. You are also required to provide a copy of the endowment care trust fund agreement at initial registration and any revised trust agreement with your renewal paperwork.

A special note

The General Assembly intended these provisions to be a limitation upon the manner in which a cemetery association or company may accept money in prepayment for cemetery merchandise and services to be delivered or preformed in the future. The purpose of these limitations was to provide safeguards so that preneed cemetery merchandise and services purchased by Ohio consumers would be available at time of need. [R.C. 1721.211(N)]

This flyer is intended for general, informational purposes only and does not include all requirements set out in R.C. section 1721.211. A cemetery association or company should consult with its legal counsel for a more complete understanding of the provisions in R.C. 1721.211.