

CHAPTER 8. MERCHANDISE TRUST FUND

§ 501. Application

A. Except as hereinafter provided, no person or legal entity, including a cemetery authority, shall, directly or indirectly, enter into a contract for the sale of personal property or services which may be used in a cemetery in connection with the disposing or commemorating of the memory of a deceased human being, if delivery of such personal property or performance of such services is to be made more than one hundred twenty days after entering into such contract, except as provided in R.S. 8:502(A), 502.1 and 502.2.

B. The provisions of this Chapter shall apply to but not be limited to the sale of burial vaults, grave liners, urns, memorials, vases, foundations, memorial bases, and similar merchandise and related services commonly sold or used in cemeteries, including interment fees. However, the provisions of this Chapter shall not apply to cemetery spaces or the right of use or interment in any cemetery space.

Acts 1974, No. 417, § 1. Amended by Acts 1997, No. 921, § 1. Amended by Acts 2012, No. 98, § 1

§ 502. Payments to trust; amounts required

A.(1)(a) Any cemetery authority or other entity entering into a contract for the sale of such personal property as described in R.S. 8:501 of this Chapter, when the delivery of the personal property within the meaning of R.S. 8:502.1, is made more than one hundred twenty days after entering into such contract, shall deposit seventy percent of the price charged, less sales taxes, for each item of personal property contracted for, contracted for at a discount, or contracted for without charge into a trust fund established for that purpose.

(b) The deposit shall in no event be less than seventy percent of the price charged for such item or one hundred twenty-five percent of the wholesale cost, whichever is greater.

(c) The board shall establish rules and regulations regarding the method of determining wholesale cost.

(2)(a) Any cemetery authority or other entity entering into a contract for the sale of such services as described in R.S. 8:501, when the delivery of the services is made more than one hundred twenty days after entering into such contract, shall deposit seventy percent of the price charged for each service into a trust fund established for that purpose.

(b) For each service contracted for at a discount or contracted for without charge, the deposit shall in no event be less than seventy percent of the highest price charged for such service during the preceding twelve months.

B. If the contract is financed with or sold to a financial institution or entity other than the seller, the contract shall be considered paid in full, both as to time and amount, and the trust requirements shall be satisfied within twenty days after the close of the month of receipt of funds by the cemetery authority or other entity, except as provided in R.S. 8:502.1 and 502.2.

C. The trust fund shall be administered by a trustee in accordance with a written trust instrument.

D. Each deposit herein required shall be paid into the trust fund so established within twenty days after the close of the month of receipt from the purchaser by the cemetery authority or other entity, except that the entire amount required to be deposited based upon the sales price, less sales taxes, shall be so deposited in trust within seven years from the date of the original sale, regardless of whether or not all amounts due therefor shall have actually been paid.

E. Each deposit into any such trust fund shall be identified by the cemetery authority or other entity by furnishing the trustee with the name of the purchaser, the amount of the retail sales price, and the amount of money required to be deposited, together with a copy of the contract of sale. The cemetery authority or other entity shall allocate, not less than annually, to each separate account its share of the total income earned and reported by the trustee, based upon the proportion that the balance in each such account bears to the total balances in all such accounts. The trustee may commingle the deposits in such trust fund for purposes of the management thereof and the investment of funds therein. The cemetery authority or other entity shall keep detailed records of the amount of money deposited from time to time and the income allocated on each account.

F. The trust shall be operated in conformity with R.S. 8:454(B) and 465(A) with respect to the nature and character of the trust and duties of the trustee.

Acts 1974, No. 417, § 1. Amended by Acts 1983, No. 525, § 1. Amended by Acts 2003, No. 502, § 1, eff. Jan. 1, 2004. Amended by Acts 2004, No. 67, § 1. Amended by Acts 2012, No. 98, § 1

§502.1. Determination of personal property delivery

Personal property shall be delivered within the meaning of R.S. 8:501 when any of the following occur:

(1) Actual delivery of the personal property is made to the contract beneficiary.

(2) Delivery of the personal property is made to the cemetery authority or other entity for the contract beneficiary and the personal property is permanently affixed to real property or a mausoleum.

(3) Delivery of the personal property is made to the cemetery authority or other entity for the contract beneficiary with the storage provided by the cemetery authority or other entity, and the cemetery authority or other entity:

(a) Maintains and submits to the board, not less than annually, a merchandise inventory log of all personal property in storage at the date of such report, including a detailed description of all such personal property with the name of the contract beneficiary.

(b) Submits evidence that all stored personal property is insured against casualty, theft, and any loss normally assumed by a compensated depository or bailee for hire.

(c) Permits the board or its designee, at any time, to examine all stored personal property and examine any documents pertaining thereto.

(4) The cemetery authority or other entity has paid its supplier for pre-need personal property, and the supplier has caused such personal property to be manufactured and stored and has caused title to such personal property to be transferred to the contract beneficiary, and has agreed to ship such personal property upon his request or the request of the cemetery authority or other entity.

Added by Acts 1997, No. 921, § 1. Amended by Acts 2012, No. 98, § 1

§ 502.2. Suppliers

No person, firm, or corporation shall be deemed a supplier for purposes of R.S. 8:502.1 unless it does all of the following:

(1) Permanently and unalterably identifies all such personal property with the name of the contract beneficiary.

(2) Submits to the board not less than annually a report of all personal property which has been purchased through a Louisiana cemetery authority or other entity and which at the date of such report was then in storage.

(3) Permits the board or its designee, at any time, to examine stored personal property which was purchased through a Louisiana cemetery authority or other entity and to examine any document pertaining thereto.

(4) Submits evidence of a bond insuring the existing and good title of any personal property due any contract beneficiary purchased through a Louisiana cemetery authority or other entity.

(5) Submits evidence insuring that all personal property purchased through a Louisiana cemetery authority or other entity and being stored by said supplier is insured for casualty, theft, or other loss normally assumed by a compensated depository and/or bailee for hire.

Added by Acts 1997, No. 921, § 1.

§ 502.3. Trust fund exempt from seizure

Except as otherwise provided in this Chapter, the principal of the trust fund and all income therefrom shall be exempt from seizure, under any writ, mandate, or process whatsoever, by the creditors of the beneficiaries, the trustee, the cemetery authority, or any person or other entity providing cemetery merchandise or services for which the trust fund was created.

Added by Acts 2010, No. 18, § 1.

§ 503. Withdrawals from trust

A. The funds shall be held in trust both as to principal and income earned thereon, and shall remain intact, except that the costs of operation of the trust may be deducted from the income earned thereon, until delivery of the personal property is made or the services are performed by the cemetery authority or other

entity or until the death of the person for whose benefit the said contract was made. Upon delivery of the personal property or performance of the services, the cemetery authority or other entity shall certify such delivery or performance to the trustee and the amount of money plus income on deposit with trustee to the credit of that particular contract. Upon such certification, or in case of death prior to such certification, and upon submission of documentation as required by rules and regulations promulgated by the board, the amount of money on deposit to the credit of each particular contract, including principal and income earned thereon, shall be forthwith paid to the cemetery authority or other entity. The trustee may rely upon all such certifications herein required to be made and shall not be liable to anyone for such reliance.

B. If for any reason a cemetery authority or other entity that has entered into a contract for the sale of personal property or services and has made the deposit into the trust fund as herein required to be made cannot or does not provide the personal property or perform the services called for by the contract within a reasonable time after request in writing to do so, the purchaser or his heirs or assigns or duly authorized representative shall have the right to provide such personal property or services, and, having done so, shall be entitled to receive the deposit to the credit of that particular contract. Written instructions to the trustee by the cemetery authority or other entity directing the trustee to refund the amount of money on deposit, or an affidavit by either the purchaser or one of his heirs or assigns or duly authorized representative, stating that the personal property or services were not provided, shall be sufficient authority for the trustee to make refund of the funds on deposit to the person submitting the affidavit. The trustee shall not be held responsible for any such refunds made on account of the cemetery authority's or other entity's written direction or an affidavit submitted in accord with this section. However, nothing herein contained shall relieve the cemetery authority or other entity from any liability for nonperformance of the contract terms.

C. If the cemetery authority or other entity cannot deliver the personal property sold because of a national emergency, the provisions of Subsection B shall be suspended for the duration of said emergency and for fifteen days following the termination thereof.

D. If the purchaser defaults in making payments, the cemetery authority or other entity shall have the right to cancel the contract and to withdraw from the trust fund the entire balance to the credit of the defaulting purchaser's account as liquidating damages. In such event, the trustee shall deliver said balance to the cemetery authority or other entity upon its certification, and upon receiving said certification the trustee may rely thereon and shall not be liable to anyone for such reliance.

Acts 1974, No. 417, § 1. Amended by Acts 2013, No 77, § 1.

§ 504. Payments to purchaser; change of domicile

If after final payment a purchaser moves his domicile to a point that makes delivery of the personal property or services impossible or impractical, the trustee shall refund to the purchaser the principal amount of money on deposit to the credit of that particular contract, less the income earned thereon, which shall be paid to the seller.

Acts 1974, No. 417, § 1.

§505. Annual reports by trustee, final accounting by trustee required

A. Every year after August 15, 1997, the trustee, within ninety days after the close of the cemetery authority's business year, shall file with the board a financial report of the merchandise trust fund, setting forth the principal thereof, the investments and payments made therefrom, and the income earned and disbursed. The board may require the trustee to make such additional financial reports as it deems reasonably advisable.

B. Within sixty days of the resignation of a trustee and transfer of the trust fund to the successor trustee, the resigning trustee shall file with the board a financial report of the merchandise trust fund, setting forth the principal thereof, the investments and payments made therefrom, and the income earned and disbursed from the last reporting period through the date of resignation and transfer of the trust fund to the successor trustee.

Acts 1974, No. 417, § 1. Amended by Acts 1997, No. 921, § 1. Amended by Acts 2014, No. 88, § 1.

§505.1. Annual report by cemeteries or other entities; report filing fee

A. Each cemetery authority or other entity subject to the provisions of this Chapter shall file with the board, no later than six months after the close of the business year, a report setting forth the number of contracts written in the reporting period for the sale of personal property or services for future delivery subject to the provisions of R.S. 8:502 and 502.1(3) and (4), the gross sales, and gross receipts from sales of personal property or services for future delivery upon which deposits were made with the trustee pursuant to R.S. 8:502, and a merchandise inventory log detailing all personal property stored pursuant to R.S. 8:502.1(3), along with evidence that all stored personal property is insured against casualty, theft, and any loss normally assumed by a compensated depositary or bailee for hire.

B. For each contract entered into in the reporting period and subject to the provisions of R.S. 8:502, and 502.1(3) and (4), the cemetery authority or other entity shall pay a report filing fee of not more than ten dollars per contract to cover the cost of the board's reasonable and ordinary expenses. Report filing fees shall be due and payable at the time of the filing of the report. Failure to pay the report filing fees within six months after the close of the business year will result in a late fee of one hundred dollars.

Added by Acts 1997, No. 921, § 1. Amended by Acts 2012, No. 98, § 1

§505.2. Resignation of trustee; orderly transfer of trust fund

Whenever a trustee resigns, the following documentation must be filed with the board to insure an orderly transfer of the trust fund from the resigning trustee to the successor trustee:

(1) A written statement from the cemetery authority or other entity to the present trustee, requesting it resign as trustee of the trust fund, if the trust agreement permits or a written statement from the cemetery authority or other entity accepting the resigning trustee's resignation.

(2) A written statement from the present trustee stating it will resign as trustee of the trust fund; or a written statement from the present trustee advising it wishes to resign as trustee of the trust fund, if the trust agreement permits.

(3) A written statement from the successor trustee, qualified under R.S. 8:454(B)(1), accepting the trust fund.

(4) A final accounting from the resigning trustee and a copy of the transmittal letter forwarding the assets of the trust fund to the successor trustee.

(5) A written statement from the successor trustee acknowledging receipt of the assets of the trust fund. A list of the assets should be contained in the statement.

Added by Acts 1997, No. 921, § 1.

§ 506. Examination by board; expenses

A. The board may examine the business of any cemetery authority or other entity that is engaged in making contracts for the sale of personal property or services as contemplated in this Chapter at the following time or times:

(1) Whenever it deems necessary but at least once every three years.

(2) Whenever the cemetery authority, other entity, or trustee in charge of merchandise trust funds fails to file the reports required by this Chapter.

(3) Whenever the board is requested by verified petition signed by twenty-five individuals purchasing personal property or services alleging that the cemetery authority or other entity is not in compliance with this Chapter, in which case the examination shall be at the expense of the petitioners.

B. The expense of the examination as provided herein shall not exceed two hundred fifty dollars per day for each examiner engaged in the examination, but when the examination requires more than two days, the cost shall be paid by the cemetery authority or other entity in an amount not to exceed a total of five hundred dollars, unless irregularities are found, in which case the cemetery authority or other entity shall pay the full cost of the examination.

C. In making such examination, the board shall:

(1) Have free access to the books and records relating to the merchandise trust funds; their collection and investment, and individual contracts for the sale of personal property or services as described in this Chapter; said books and records shall be made available for examination in the principal office of the cemetery authority, other entity or trustee located within the state of Louisiana.

(2) Inspect and examine the merchandise trust funds to determine their condition and the existence of the investments.

(3) Ascertain if the cemetery authority or other entity has complied with all laws applicable to merchandise trust funds.

Acts 1974, No. 417, § 1. Amended by Acts 1997, No. 921, § 1. Amended by Acts 2012, No. 98, § 1 Amended by Acts 2015, No. 222, § 1.

§506.1. Failure to make required deposits; action

A. If any report filed with, or any examination made by, the board show that the minimum amounts required have not been collected and deposited in the merchandise trust fund, the board shall require the cemetery authority, or other legal entity required to establish a merchandise trust fund, to immediately comply with the requirements of this Title.

B. (1) Upon failure of the cemetery authority, or other legal entity, to comply, the board shall have the authority to institute legal proceedings in the district court, in the parish in which the cemetery is physically located for the purpose of recovering the amounts necessary to satisfy the deficiencies in the merchandise trust fund.

(2) The board may, in addition to the recovery mentioned in Paragraph (1) of this Subsection, recover any and all reasonable costs, fees, and expenses, including but not limited to all examinations, audits, accountant and attorney's fees, administrative proceedings and hearings, and any other costs incurred in the enforcement of the provisions of this Title, and any other provisions of law notwithstanding.

(3) Notwithstanding any other provisions of law, if the board fails to prove that the cemetery authority or other responsible party is not in compliance with the requirements of this Section, then the board shall not recover any costs, fees, or any expenses incurred by it and shall be responsible for paying all reasonable costs, fees, or expenses incurred by the cemetery authority or responsible party who was accused of not being in compliance.

Added by Acts 1991, No. 430, § 2.

§ 507. Nonwaiver of provisions of chapter

Any provision of any contract for the sale of personal property or the performance of services herein contemplated which waives any of the provisions of this Chapter 8 shall be void.

Acts 1974, No. 417, § 1.

§ 508. Penalties

Any cemetery authority or other entity, as defined in this Chapter 8, failing to make the required deposits to the trust fund or otherwise violating the provisions of this Chapter 8 shall be guilty of a misdemeanor, punishable by fine of not less than two hundred dollars or more than one thousand dollars, or by imprisonment of not less than thirty days nor more than one year, or both, and each violation of this Chapter 8 shall constitute a separate offense.

Acts 1974, No. 417, § 1.

§ 509. Trustee's duty of care

The trust shall be administered in conformity with R.S. 8:465 with respect to the nature and character of the trust investments and the duties of the trustee.

Acts 1974, No. 417, § 1. Amended by Acts 1980, No. 428, § 1. Amended by Acts 2004, No. 67, § 1.

§ 510. Exceptions; trust fund transfers

A. The provisions of this Chapter shall not apply to any family burial ground or a religious, fraternal, municipal, state, or federal cemetery, except as otherwise provided in R.S. 8:510(B).

B. (1) Whenever the ownership or management of a cemetery authority or other entity which has created a merchandise trust fund pursuant to the provisions of this Chapter is transferred and by virtue of such transfer becomes a family burial ground or a religious, fraternal, municipal, state, or federal cemetery, the existing merchandise trust fund shall be used only for those purposes set forth in the merchandise trust agreement, or as otherwise permitted by law.

(2) The trustee of any such fund shall be a federally insured financial institution or trust company located in Louisiana and authorized to exercise trust or fiduciary powers under the laws of Louisiana or the United States.

(3) The trust shall be administered in conformity with R.S. 8:465 with respect to the nature and character of the trust investments and the duties of the trustee.

(4) No further contributions shall be required except for payments on those contracts in existence at the time of such transfer.

(5) The provisions of R.S. 8:503, 504, 505, and 509 shall apply to the use and administration of such funds.

Acts 1974, No. 417, § 1. Amended by Acts 1986, No. 113, § 1. Amended by Acts 2004, No. 67, § 1.

§ 511. Nonretroactive effect

Notwithstanding any other provision of the law to the contrary, the provisions of this Chapter shall apply only to contracts that are entered into subsequent to July 31, 1974.

Added by Acts 1986, No. 113, § 1.