

16-321. Same; cemetery merchandise trust fund; establishment; deposit of moneys; quarterly reports; distributable earnings; fees. (a)

Any cemetery corporation entering into any preneed merchandise contract shall establish and maintain a cemetery merchandise trust fund under K.S.A. 16-322, and amendments thereto. The primary purpose of the cemetery merchandise trust fund is to maintain the corpus of the trust fund with the goal that the growth of the corpus will be at least equal to the wholesale costs of the preneed cemetery merchandise or preneed burial products or services, at the time of delivery or need.

(b) All preneed cemetery merchandise contracts shall be in writing.

(c) A cemetery corporation entering into a preneed merchandise contract that allows the purchaser to make installment payments shall be entitled to retain all purchaser payments until an amount equal to 25% of the purchase price of preneed cemetery merchandise is received, and thereafter, shall deposit 100% of each payment into the cemetery merchandise trust fund until the funding requirement has been deposited.

(d) If a cemetery corporation enters into an installment preneed merchandise contract that includes burial spaces, any payment received from the purchaser shall be allocated first to the permanent maintenance fund as required by K.S.A. 2016 Supp. 17-1301c and K.S.A. 17-1311, and amendments thereto. Once the burial spaces have been paid in full, then the preneed cemetery merchandise and preneed burial products or services shall be funded as required by subsection (c).

(e) Deposits to the cemetery merchandise trust fund shall be made within 30 days following the end of each calendar month after the moneys are received.

(f) Within 30 days following the end of each quarter, the cemetery corporation shall provide the trustee and the secretary of state a report detailing the transactions of the previous quarter. The report shall be in a form and manner approved by the secretary of state and shall include the following:

(1) All sales of preneed cemetery merchandise, preneed burial products and preneed services.

(2) All verified deliveries of preneed cemetery merchandise, preneed burial products and preneed services along with any request for distribution from the trustee.

(3) If no sales or deliveries transpired during the reporting quarter, the report shall be filed showing zero sales or zero deliveries.

(g) Within 30 days following the end of each quarter, the trustee shall provide the secretary of state a report of all deposits to and distributions from the cemetery merchandise trust fund. The report shall be in a form and manner approved by the secretary of state and shall include the total amount of the deposits, distributions and the name and contact information of the trust officer in charge of the account.

(h) At least annually, as of December 31, the trustee of the merchandise trust fund shall allocate the distributable earnings to all preneed cemetery merchandise, preneed burial products or services for which funds are then held in a cemetery merchandise trust fund. The trustee may, at the request of the cemetery, allocate the distributable earnings on a regular basis more often than annually and in which case the calculation of the distributable earnings shall be filed quarterly on December 31, March 31, June 30 and September 30 of each year in a form and manner approved by the secretary of state.

(i) The cemetery corporation shall provide the secretary of state a copy of all trust instruments. The cemetery corporation shall obtain prior written approval from the secretary of state before the trust instrument shall be terminated, transferred or amended. The cemetery corporation shall provide the secretary of state copies of any amendments to the trust instrument before the amendments shall become effective.

(j) Fees not to exceed \$30 may be charged and collected by the secretary of state on each preneed merchandise contract for preneed cemetery merchandise, preneed burial products or services sold on or after January 1, 2011. Any such fees shall be forwarded on a quarterly basis to the secretary of state, in a form and manner approved by the secretary. The secretary of state shall promulgate rules and regulations fixing the fees to be charged and collected. On and after the effective date of this act any such fees collected shall be deposited in the cemetery maintenance and merchandise fee fund in the state treasury.

History: L. 1982, ch. 96, § 2; L. 2011, ch. 78, § 6; L. 2014, ch. 118, § 2; July 1.