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Title 46

PROFESSIONAL AND OCCUPATIONAL STANDARDS

Part XIII. Cemetery Industry

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Title 46
PROFESSIONAL AND OCCUPATIONAL STANDARDS
Part XIII. Cemetery Industry

Chapter 1. General Provisions

§101. Authority

A. These rules are adopted and promulgated by authority of, and in accordance with, the Administrative Procedure Act, R.S. 49:950 et seq., and the Louisiana Revised Statutes, title 8, less and except the Louisiana Unmarked Human Burial Sites Preservation Act, as those laws may from time-to-time be amended.

AUTHORITY NOTE: Promulgated in accordance with R.S. 8:67.

HISTORICAL NOTE: Promulgated by the Department of Commerce, Cemetery Board, LR 1:519 (December 1975), amended by the Office of the Governor, Cemetery Board, LR 39:2739 (October 2013).

§103. Definitions

A. There is incorporated herein by reference all of the definitions set forth and contained in R.S. 49:950 et seq., and in title 8, Louisiana Revised Statutes. The following words and terms, when used in these rules, shall have the following meanings.

Administrative Procedure Act—R.S. 49:950 et seq., as the same may from time-to-time be amended.

Board—the Louisiana Cemetery Board.

Derivative and Hedge Transactions or Investments—an agreement, option or instrument, or any series or combination thereof, to make or take delivery of, or assume or relinquish, a specified amount of one or more underlying interests, or instead to make a cash settlement, or that has a price, yield, level, performance, value, or cash flow which is based primarily on that of one or more underlying interest. The term includes, but is not limited to, options (calls and puts), not otherwise permitted to be held by a trust under the provisions of title 8 or these rules, and any other substantially similar instruments. The term does not include a collateralized mortgage obligation, another asset-backed security, a principal-protected structured security, a floating rate security, an instrument that a trust is otherwise permitted to invest in or receive by a trust under the provisions of title 8 and these rules.

Fair Market Value—the undiscounted price of a comparable cemetery space, right of interment, merchandise, service, or product in the same cemetery.

Gross Sales Price Received—the price of a cemetery space, a right of interment, merchandise, service, or product before the application of any discount, rebate, or promotional offer.

Interment Space—cemetery space as that term is defined in R.S. 8:1.

Located in Louisiana—registered with the Louisiana secretary of state to do business in Louisiana.

Non-willful Violation—an unintentional or negligent error resulting in a violation of title 8 or the rules of the board. A *non-willful violation* is one that represents a failure to exercise the degree of care that someone of ordinary prudence would have exercised in the same circumstances.

Other Property Used or Intended to be Used for the Interment of Human Remains—shall include, but not be limited to:

- a. cremation benches;
- b. cremation boulders;
- c. memorial niches;
- d. copings; or
- e. other property that encloses or contains human remains.

Presiding Officer—the chair of the Louisiana Cemetery Board or a member of the Louisiana Cemetery Board appointed to preside over a proceeding to be conducted by the board.

Title 8 or Louisiana Cemetery Act—the Louisiana Revised Statutes, title 8, less and except the Louisiana Unmarked Human Burial Sites Preservation Act, as that law may from time-to-time be amended.

Trust Account—for purposes of R.S. 8:412(B)(1) only and for no other purpose, an escrow account, established by an abandoned cemetery sales and management licensee. The funds contained therein, shall not be the property of the abandoned cemetery sales and management licensee and must be used solely in accordance with R.S. 8:412(B)(1) and for no other purposes.

Wholesale Cost—the price, exclusive of any discounts or rebates, paid to a supplier, vendor, or manufacturer for merchandise or personal property.

Willful Violation—a knowing, voluntary, or intentional violation of title 8 or the rules of the board.

AUTHORITY NOTE: Promulgated in accordance with R.S. 8:67.

HISTORICAL NOTE: Promulgated by the Department of Commerce, Cemetery Board, LR 1:519 (December 1975), amended by the Office of the Governor, Cemetery Board, LR 39:2739 (October 2013), LR 43:2149 (November 2017).

Chapter 3. Organization

§301. Officers of Board

A. The officers of the board shall be a chair, a vice-chair, and a secretary-treasurer. The board may designate and elect such other officers as it shall determine. All officers shall be elected from among the members of the board, and shall perform such duties as shall be prescribed by the board.

B. Officers shall be elected to serve for a period of one year or until their successors are elected. Their term of office shall begin at the close of the meeting at which they are elected.

C. No member shall hold more than one office at a time, except that one member may serve as secretary-treasurer. An officer may serve consecutive terms.

AUTHORITY NOTE: Promulgated in accordance with R.S. 8:64 and R.S. 8:67.

HISTORICAL NOTE: Promulgated by the Department of Commerce, Cemetery Board, LR 1:519 (December 1975), amended by the Office of the Governor, Cemetery Board, LR 39:2739 (October 2013).

§303. Meetings; Quorum

A. Regular meetings of the board shall be held at least twice a year, at such times and places as shall be determined by the board. Special meetings may be called by the chair or the board's designee and shall be called upon the written request of any three members of the board.

B. Written notice of all meetings shall be sent by the secretary or the board's designee to each member of the board.

C. Four members of the board shall constitute a quorum.

AUTHORITY NOTE: Promulgated in accordance with R.S. 8:65 and R.S. 8:67.

HISTORICAL NOTE: Promulgated by the Department of Commerce, Cemetery Board, LR 1:520 (December 1975), amended by the Office of the Governor, Cemetery Board, LR 39:2739 (October 2013).

§305. Committees

A. The executive committee shall consist of the officers of the board.

B. There shall be the following standing committees:

1. examination and inspection committee;
2. rules committee;
3. consumer complaints committee.

C. Such other committees, standing or special, shall be appointed by the board or by the chair of the board, as the board or the chair shall from time to time deem necessary to carry on the work of the board. All appointments to committees, standing or special, other than the executive committee, shall be made by the chair. The chair shall be an ex officio member of all committees, and as such, he shall have the same rights as the other committee members,

including the right to vote, but he shall not be counted in determining whether a quorum is present.

AUTHORITY NOTE: Promulgated in accordance with R.S. 8:67.

HISTORICAL NOTE: Promulgated by the Department of Commerce, Cemetery Board, LR 1:520 (December 1975), amended by the Office of the Governor, Cemetery Board, LR 39:2740 (October 2013).

§307. Parliamentary Authority; Order of Business

A. The rules contained in the current edition of *Roberts Rules of Order* shall govern the conduct of the board meetings and proceedings. The board may vary, modify, or deviate from such rules of order whenever it shall deem it necessary or advisable to do so.

AUTHORITY NOTE: Promulgated in accordance with R.S. 8:67.

HISTORICAL NOTE: Promulgated by the Department of Commerce, Cemetery Board, LR 1:520 (December 1975), amended by the Office of the Governor, Cemetery Board, LR 39:2740 (October 2013).

§309. Computation of Time

A. In computing a period of time allowed or prescribed by these rules, by law or by order of the board, the date of the act, event or default after which the period begins to run is not to be included. The last day of the period is to be included, unless it is a legal holiday or a day of the weekend, in which event the period runs until the end of the next day which is not a legal holiday or a day of the weekend.

B. A half-holiday is considered as a legal holiday. A legal holiday or day of the weekend is to be included in the computation of a period of time allowed or prescribed, except when:

1. it is expressly excluded;
2. it would otherwise be the last day of the period; or
3. the period is less than seven days.

AUTHORITY NOTE: Promulgated in accordance with R.S. 8:67.

HISTORICAL NOTE: Promulgated by the Department of Commerce, Cemetery Board, LR 1:520 (December 1975), amended by the Office of the Governor, Cemetery Board, LR 39:2740 (October 2013).

§311. Amendment of Rules

A. These rules may be amended, and any such amendments shall become effective, in accordance with and as provided by the Administrative Procedure Act.

AUTHORITY NOTE: Promulgated in accordance with R.S. 8:67.

HISTORICAL NOTE: Promulgated by the Department of Commerce, Cemetery Board, LR 1:520 (December 1975), amended by the Office of the Governor, Cemetery Board, LR 39:2740 (October 2013).

Chapter 5. Rulemaking Procedure

§501. Proceedings by the Board

A. The board may initiate proceedings for the promulgation, amendment, or repeal of any rule. Such proceedings shall be conducted in accordance with the Administrative Procedure Act.

B. The board will maintain a list of persons who have made timely requests for advance notice of its rulemaking proceedings, and will give notice to such persons by certified mail pursuant to the Administrative Procedure Act.

AUTHORITY NOTE: Promulgated in accordance with R.S. 8:67.

HISTORICAL NOTE: Promulgated by the Department of Commerce, Louisiana Cemetery Board, LR 1:521 (December 1975), amended by the Office of the Governor, Cemetery Board, LR 39:2740 (October 2013).

§503. Initiation of Proceedings by Interested Persons

A. Any interested person may petition the board requesting the adoption, promulgation, amendment, or repeal of a rule. The petition shall be filed by mailing same to the board at its administrative office in the parish of Jefferson.

B. A petition filed in accordance with this Section shall contain the following:

1. the names and addresses of the petitioners;
2. the names and addresses of the attorneys, if any, of petitioners;
3. all pertinent allegations of fact, views, arguments and reasons supporting the action sought by the petition;
4. a statement or prayer expressing the action sought by the petition.

C. After submission of a petition under this Chapter 5, the board shall either deny the petition in writing, stating the reasons for the denial, or shall initiate rulemaking proceedings, in accordance with the Administrative Procedure Act.

AUTHORITY NOTE: Promulgated in accordance with R.S. 8:67.

HISTORICAL NOTE: Promulgated by the Department of Commerce, Cemetery Board, LR 1:521 (December 1975), amended by the Office of the Governor, Cemetery Board, LR 39:2740 (October 2013).

Chapter 7. Certificate or License

§701. Applications

A. All applications for any certificate of authority or license shall be submitted to and filed with the board at its administrative office in the parish of Jefferson, and must be accompanied by the charge, fee, or other sum provided for in the Louisiana Cemetery Act. Payment of such charge, fee, or other sum shall be by check or money order made payable to the Louisiana Cemetery Board.

B. If the applicant fails to submit the necessary documentation needed to complete an application, or the

application remains incomplete and pending for a period in excess of 180 days without the applicant applying for and being granted an extension for good cause shown, the application shall be considered void, and any application fees paid in conjunction therewith shall be forfeited by the applicant and shall not be refunded; thereafter a new application for license must be submitted by the applicant, together with the payment of the applicable application fee without credit for any fees previously paid.

C. An application may be approved and certificate issued if the director or the director's designee determines that the applicant, its owners or managerial personnel meet the qualifications for license, has no unresolved or outstanding violations of title 8 or these rules, and are not subject to any investigation for violations of title 8 or these rules.

D. If the director or director's designee determines that further investigation is warranted, the director or director's designee may seek additional information from the applicant, from third parties, and may refer all matters to the assistant attorney general for further investigation and inquiry as warranted.

AUTHORITY NOTE: Promulgated in accordance with R.S. 8:67.

HISTORICAL NOTE: Promulgated by the Department of Commerce, Cemetery Board, LR 1:521 (December 1975), amended by the Office of the Governor, Cemetery Board, LR 39:2741 (October 2013), LR 43:2150 (November 2017).

§703. Application for Exempt Status

A. Each cemetery authority or person seeking an exemption under R.S. 8:78 shall make an application in the manner prescribed by the board. Such application shall include a complete explanation justifying the exemption.

B. Upon the board's determination that a cemetery authority or person meets the qualifications for an exemption, the board may issue an exempt certificate of authority to said cemetery upon completion of an application and the submission of required documentation, as required by the board.

C. Every cemetery authority and every person who has been determined by the board to be exempt shall immediately notify the board of any change of fact, circumstance, condition, status, or mode of operation which might affect the board's determination. The board may, from time to time, require submission of such information as it may deem necessary to determine if a cemetery authority or person continues to meet the qualifications for an exemption. If the board determines that a previously-exempt cemetery authority or person no longer meets the qualifications for such an exemption, such cemetery authority or person shall immediately begin the process of applying for a certificate of authority.

D. If a cemetery authority or person is determined to be exempt, the cemetery authority or person must, nonetheless, comply with all applicable provisions of title 8.

AUTHORITY NOTE: Promulgated in accordance with R.S. 8:67.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Cemetery Board, LR 39:2741 (October 2013).

§705. Forms and Instructions
[Formerly §703]

A. The applicant shall prepare and file all applications on the forms prescribed by the board and in accordance with the instructions issued by the board.

B. The forms and instructions shall be prescribed by the board and shall contain such instructions and require such information as the board may find useful.

AUTHORITY NOTE: Promulgated in accordance with R.S. 8:67.

HISTORICAL NOTE: Promulgated by the Department of Commerce, Cemetery Board, LR 1:521 (December 1975), amended by the Office of the Governor, Cemetery Board, LR 39:2741 (October 2013).

§707. Other Provisions Concerning Certificate or License
[Formerly §705]

A. A certificate of authority or license shall be valid for the period of time stated thereon unless it shall have been sooner suspended or revoked. Each certificate of authority for the operation of a cemetery must be displayed on the premises of the cemetery authority, and each license for the conduct of other businesses shall be exhibited on reasonable request.

B. A certificate of authority or license provided for by the Louisiana Cemetery Act shall be nontransferable.

C. When an application for certificate of authority has been filed, but has not been acted upon by the board, for a change in the ownership or control of an already-licensed cemetery or cemetery authority and the existing certificate of authority expires, the annual regulatory charge due as provided for by the Louisiana Cemetery Act shall nonetheless be paid.

1. Upon payment of the annual regulatory charge, the board or its designee may issue a temporary certificate of authority, not to exceed 180 days without the applicant seeking and being granted an extension by the board or its designee for good cause shown, whose application for the change in the ownership or control of the cemetery or cemetery authority is pending. A temporary certificate of authority issued pursuant to this Subsection may be revoked by the board or its designee with or without cause.

D. If an applicant fails to submit the necessary documentation needed to complete an application for certificate of authority or license and the application remains pending for a period in excess of 180 days, without the applicant seeking and being granted an extension by the board or its designee for good cause shown, the application will be considered stale dated and the applicant must reapply including the resubmission of all time-sensitive information, documentation, and repayment of the prescribed application fees as provided for by the Louisiana Cemetery Act. Nothing contained herein to the contrary shall prohibit the board from

pursuing regulatory action for an applicant's failure to comply with title 8 or these rules.

E. Prior to the issuance of a certificate of authority to a newly established cemetery, the board may require the submission of minimum development plans, including, but not limited to, maps and plats and a development schedule for any roads and non-interment structures.

AUTHORITY NOTE: Promulgated in accordance with R.S. 8:67.

HISTORICAL NOTE: Promulgated by the Department of Commerce, Cemetery Board, LR 1:522 (December 1975), amended by the Office of the Governor, Cemetery Board, LR 39:2741 (October 2013), LR 43:2150 (November 2017).

§709. Refusal to Grant or Renew Certificate of Authority or License
[Formerly §707]

A. If the director or director's designee refuses to grant or renew any certificate of authority to engage in the business of a cemetery, or the applicant has unresolved or outstanding violations of title 8 or these rules and/or is subject to a pending investigation for violation of title 8 or these rules, the director or director's designee shall give the applicant written notice of the decision and all of his or her reasons therefor. The applicant shall have 30 days after receipt of notice of the decision in which to initiate an adjudication proceeding before the board in accordance with §1101 et seq. If no such proceeding is initiated, the action shall be deemed a final decision of the board.

B. If the director or director's designee refuses to grant or renew any license to engage in the business of a cemetery sales organization or a cemetery management organization, or the applicant has unresolved or outstanding violations of title 8 or these rules and/or is subject to a pending investigation for violation of title 8 or these rules, the director or director's designee shall give the applicant written notice of the decision and all of his or her reasons therefor. The applicant shall have 30 days after receipt of notice of the decision in which to initiate an adjudication proceeding before the board in accordance with §1101 et seq. If no such proceeding is initiated, the action shall be deemed a final decision of the board.

C. The board may require the applicant to pay the costs of the adjudication proceeding.

AUTHORITY NOTE: Promulgated in accordance with R.S. 8:67.

HISTORICAL NOTE: Promulgated by the Department of Commerce, Cemetery Board, LR 1:522 (December 1975), amended by the Office of the Governor, Cemetery Board, LR 39:2741 (October 2013), LR 43:2150 (November 2017).

§711. Revocation or Suspension of Certificate of Authority
[Formerly §709]

A. Upon receipt of information that may constitute grounds for revocation, suspension, annulment, or withdrawal of a certificate of authority, the board shall comply with the provisions of title 8, Administrative Procedure Act, and these rules regarding the revocation,

suspension, annulment, or withdrawal of any certificate of authority, and particularly but without limitation, R.S. 49:961.

B. A holder of a certificate of authority shall have 30 days from receipt of the notice required by R.S. 49:961(C) in which to show compliance with all lawful requirements for the certificate of authority.

AUTHORITY NOTE: Promulgated in accordance with R.S. 8:67.

HISTORICAL NOTE: Promulgated by the Department of Commerce, Cemetery Board, LR 1:522 (December 1975), amended by the Office of the Governor, Cemetery Board, LR 39:2742 (October 2013).

Chapter 9. Cemetery Records and Documents

§901. Records Required to be Maintained

A. Every cemetery or cemetery authority, whether holding a certificate of authority or not, shall maintain accurate, complete, and legible records of any books, contracts, records, or documents pertaining to, prepared in, or generated by, the cemetery including, but not limited to:

1. forms, including, but not limited to:
 - a. contracts and deeds;
 - b. titles; and
 - c. certificates of interment rights;
 2. reports;
 3. accounting records;
 4. ledgers;
 5. electronic records;
 6. cemetery space ownership records;
 7. interment records;
 8. maps and plats;
 9. current and historic price lists;
 10. current and historic rules of the cemetery, if any;
- and
11. trust records.

B. The records referenced in this Section shall be known as “records pertaining to the operation and business of a cemetery.”

AUTHORITY NOTE: Promulgated in accordance with R.S. 8:67.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Cemetery Board, LR 39:2742 (October 2013).

§903. Records to be Transferred

A. Upon the change of ownership or control of a cemetery or cemetery authority, the records referenced in Section 901 shall be provided to the transferee.

AUTHORITY NOTE: Promulgated in accordance with R.S. 8:67.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Cemetery Board, LR 39:2742 (October 2013).

§905. Access to Records

A. All records pertaining to the operation and business of a cemetery shall be available for inspection by the board at any time during regular business hours. The records shall be available for inspection at the cemetery or at a location designated by the board.

AUTHORITY NOTE: Promulgated in accordance with R.S. 8:67.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Cemetery Board, LR 39:2742 (October 2013).

§907. Permanency of Records

A. All records pertaining to the operation and business of a cemetery shall be preserved until the obligation pursuant thereto is fulfilled. Following the fulfillment of any obligation, these records shall be subject to the retention schedule set forth in Subsections B and C of this Section.

B. The following records pertaining to the operation and business of a cemetery shall be permanently preserved:

1. contracts and deeds, titles, and certificates of interment rights;
2. cemetery space ownership records;
3. interment records;
4. maps and plats; and
5. current and past rules and regulations of the cemetery, if any.

C. The following records pertaining to the operation and business of a cemetery shall be preserved for a minimum of seven years, unless otherwise directed by the board:

1. reports;
2. accounting records;
3. trust records;
4. ledgers;
5. electronic records; and
6. current and past price lists.

D. The records required by this Chapter shall be either:

1. in the form of the original record; or
2. electronically, subject to the following requirements:

a. any and all electronic records must be able to be easily reproduced in a legible format; and

b. any and all electronic records must be accessible for the purposes of examination by the board pursuant to title 8 and the rules of the board;

c. at the request of the board, cemeteries or cemetery authorities maintaining electronic records shall

provide, at their expense, hard copies of any records for the board's examination.

E. All records, including electronic records, pertaining to ownership, interments, maps, and plats shall be adequately protected from destruction by fire in one or more of the following manners:

1. by duplicate records stored at a separate location; or
2. by storing the originals in a fireproof container.

AUTHORITY NOTE: Promulgated in accordance with R.S. 8:67.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Cemetery Board, LR 39:2742 (October 2013).

§909. Written Contracts Required

A. All contracts for cemetery spaces, interment rights, or cemetery related merchandise and services shall be in writing and written in clear and understandable language. All such contracts shall be sequentially numbered and entered into a sales journal numerically.

B. All contracts under Subsection 909.A shall include the following mandatory information:

1. date of the contract;
2. name of the seller and purchaser;
3. statement that the cemetery is perpetual care, if applicable;
4. the location of the interment space;
5. an itemization of the prices charged, including any applied discounts, for each item provided as part of the contract;
6. the terms under which each contract is to be paid; and
7. the clear terms for cancellation of the agreement and the damages for cancellation, if any.

C. All contracts for cemetery spaces or interment rights shall also include:

1. the cost of the cemetery space or interment right(s);
2. the type of interment to be provided and the number of interments allowed. Nothing in this Section shall be interpreted to limit the ability of a cemetery authority to sell or allow multiple interments, as permitted by the cemetery authority's rules;
3. the amount or percentage to be placed in the cemetery's perpetual or endowed care trust; and
4. a statement regarding whether the payment for the cemetery space(s) or interment right(s) includes or does not include the cost of opening and closing of the cemetery space.

D. All contracts for cemetery related merchandise and services shall also include:

1. the price of each item of merchandise or service contracted for;

2. if the merchandise will not be delivered or stored pursuant to R.S. 8:502.1, then the agreement shall state the amount or percentage to be placed in the cemetery's merchandise trust fund;

3. a description of each item of merchandise or service with sufficient information to describe the merchandise or service, including the size, design, and materials used in construction or manufacture.

AUTHORITY NOTE: Promulgated in accordance with R.S. 8:67 and R.S. 8:206.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Cemetery Board, LR 39:2742 (October 2013).

Chapter 11. Proceedings other than Rulemaking; General Procedural Rules

§1101. Proceedings by the Board [Formerly §901]

A. Proceedings initiated by the board, except for the promulgation, amendment or repeal of a rule, shall be commenced by the issuance of an order to show cause directed to the respondent. Such order shall state the acts, conduct, or the failure or omission to act alleged to be contrary to or in violation of any provision of law or of any of the lawful rules, regulations, orders, decisions or opinions issued, rendered and/or promulgated by the board.

AUTHORITY NOTE: Promulgated in accordance with R.S. 8:66 and R.S. 8:67.

HISTORICAL NOTE: Promulgated by the Department of Commerce, Cemetery Board, LR 1:522 (December 1975), amended by the Office of the Governor, Cemetery Board, LR 39:2743 (October 2013).

§1103. Proceedings by Persons other than the Board [Formerly §903]

A. Any person desiring to initiate adjudication proceedings, except for the promulgation, amendment or repeal of a rule, and who is entitled or required by law to do so shall prepare and file with the board a petition in the form and content as set forth in Subsection 503.B of these rules and including, whenever applicable and possible, particular reference to the statute, rule, regulation, order, decision or opinion involved.

B. Any person desiring to initiate adjudication proceedings, except for the promulgation, amendment or repeal of a rule, but who is not entitled or required by law to do so shall prepare and file with the board a petition which shall meet the requirements of Subsection 1103.A. If the board shall determine that the petition is filed in good faith, that the petitioner would be entitled to relief if the allegations of his petition are established and that such allegations otherwise justify the initiation of adjudication proceedings, the board shall initiate adjudication proceedings in accordance with these rules.

AUTHORITY NOTE: Promulgated in accordance with R.S. 8:67.

HISTORICAL NOTE: Promulgated by the Department of Commerce, Cemetery Board, LR 1:522 (December 1975), amended by the Office of the Governor, Cemetery Board, LR 39:2743 (October 2013).

§1105. Notice
[Formerly §905]

A. Upon the issuance of an order to show cause by the board, or upon the initiation of adjudication proceedings pursuant to a petition filed by any person in accordance with these rules, the board shall issue a notice in conformity with the provisions of R.S. 49:955.

B. The hearing set by such notice shall be fixed not less than 20 days from the date of such notice.

AUTHORITY NOTE: Promulgated in accordance with R.S. 8:67 and R.S. 8:68.

HISTORICAL NOTE: Promulgated by the Department of Commerce, Cemetery Board, LR 1:523 (December 1975), amended by the Office of the Governor, Cemetery Board, LR 39:2744 (October 2013).

§1107. Service of Notice; Pleadings, and other Documents
[Formerly §907]

A. Service of such notice, and of all pleadings, decisions, orders, and other papers and documents shall be made, and shall be deemed valid if made, by delivering one copy to each party or his attorney of record in person or depositing it in the United States mail, first class, postage prepaid, certified or registered mail, return receipt requested, directed to the party or his attorney of record at his post office address. Service by mail shall be deemed complete at the date of mailing. Notwithstanding the foregoing, the parties may mutually agree to another method of service acceptable under the Louisiana *Code of Civil Procedure*.

B. Unless otherwise provided, when any party has appeared through an attorney, service upon such attorney shall be deemed valid service upon the party until written notice of dismissal of such attorney is received by the board and served on all parties of record to the proceeding.

AUTHORITY NOTE: Promulgated in accordance with R.S. 8:67.

HISTORICAL NOTE: Promulgated by the Department of Commerce, Cemetery Board, LR 1:523 (December 1975), amended by the Office of the Governor, Cemetery Board, LR 39:2744 (October 2013).

§1109. Answer or Appearance
[Formerly §909]

A. A respondent may file his answer or other appearance personally or through an attorney not later than five days before the date fixed for the hearing.

B. The filing of an answer or other appearance by an attorney constitutes an appearance by the party for whom the pleading is filed, and also constitutes an appearance of the attorney on behalf of such party. An attorney who has appeared on behalf of a party may withdraw from any proceeding upon good cause shown to the board and upon written notice to the board.

AUTHORITY NOTE: Promulgated in accordance with R.S. 8:67.

HISTORICAL NOTE: Promulgated by the Department of Commerce, Cemetery Board, LR 1:523 (December 1975), amended by the Office of the Governor, Cemetery Board, LR 39:2744 (October 2013).

§1111. Appearances
[Formerly §313]

A. No person, except an individual appearing on his own behalf or as a representative or witness on behalf of a party, shall be permitted to participate in any proceeding before the board unless such person is represented by an attorney of this state in good standing.

B. Any attorney or counselor from any other jurisdiction, of good standing there, may, at the discretion of the board be admitted, pro hac vice, to associate with an attorney of this state in a proceeding and to participate therein in the same manner as an attorney of this state, provided, however, that all pleadings, briefs, and other papers filed with the board in such matters shall be signed by an attorney authorized to practice in this state who shall be held responsible for them and who shall be present at all times during the proceeding unless excused by the presiding officer.

C. Any person appearing before or transacting business with the board in a representative capacity may be required by the board or the presiding officer to file evidence of his authority to act in such capacity.

AUTHORITY NOTE: Promulgated in accordance with R.S. 8:67.

HISTORICAL NOTE: Promulgated by the Department of Commerce, Cemetery Board, LR 1:520 (December 1975), amended by the Office of the Governor, Cemetery Board, LR 39:2744 (October 2013).

§1113. Formal Requirements for Pleadings
[Formerly §315]

A. All pleadings shall be printed or typewritten and shall be prepared on either letter size or legal size paper.

B. All pleadings must be signed in ink by the party or attorneys of record, if any.

C. All pleadings initiating a proceeding or otherwise seeking affirmative relief and all petitions of intervention shall be verified, except for those matters initiated or petitions or orders to show cause brought by the board or upon the motion of the attorney general of the state of Louisiana.

AUTHORITY NOTE: Promulgated in accordance with R.S. 8:67.

HISTORICAL NOTE: Promulgated by the Department of Commerce, Cemetery Board, LR 1:521 (December 1975), amended by the Office of the Governor, Cemetery Board, LR 39:2744 (October 2013).

§1115. Statutory References in Pleadings
[Formerly §317]

A. All pleadings shall cite, by appropriate reference, the statutory provision or other authority under which the board's action is sought, and shall refer to any statutes, rules,

regulations, decisions, orders, and/or opinions, germane to the particular matter or proceeding involved.

AUTHORITY NOTE: Promulgated in accordance with R.S. 8:67.

HISTORICAL NOTE: Promulgated by the Department of Commerce, Cemetery Board, LR 1:521 (December 1975), amended by the Office of the Governor, Cemetery Board, LR 39:2745 (October 2013).

**§1117. Ex Parte or Emergency Relief
[Formerly §319]**

A. If a petition or other pleading filed by a person other than the board seeks ex parte action or the granting of emergency relief pending full hearing, it shall set forth the necessity or emergency for such requested action and must be supported by affidavits to make a prima facie case.

B. The chair may take any such emergency action as they deem appropriate in their sole discretion.

AUTHORITY NOTE: Promulgated in accordance with R.S. 8:67.

HISTORICAL NOTE: Promulgated by the Department of Commerce, Cemetery Board, LR 1:521 (December 1975), amended by the Office of the Governor, Cemetery Board, LR 39:2745 (October 2013).

**§1119. Contents of Answer
[Formerly §911]**

A. The answer shall:

1. conform to the requirements for answers under the Louisiana *Code of Civil Procedure*;

2. contain a specific detailed statement of any affirmative defense or matter in extenuation or mitigation;

3. contain a clear and concise statement of the facts and matters of law relied upon constituting the grounds of the defense or the basis for extenuation or mitigation.

AUTHORITY NOTE: Promulgated in accordance with R.S. 8:67.

HISTORICAL NOTE: Promulgated by the Department of Commerce, Cemetery Board, LR 1:523 (December 1975), amended by the Office of the Governor, Cemetery Board, LR 39:2745 (October 2013).

**§1121. Default in Answering or Appearing
[Formerly §913]**

A. In the event of the failure of a respondent to answer or otherwise appear within the time allowed, and provided that these rules relative to service and notice have been complied with, such respondent failing to answer or otherwise appear shall be deemed to be in default. At the time fixed for the hearing, the party initiating the proceeding shall present its evidence and in due course, and after due consideration of all of the pleadings, evidence and the entire record, the board shall render its decision or issue its order or ruling, as appropriate.

AUTHORITY NOTE: Promulgated in accordance with R.S. 8:67.

HISTORICAL NOTE: Promulgated by the Department of Commerce, Cemetery Board, LR 1:523 (December 1975), amended

by the Office of the Governor, Cemetery Board, LR 39:2745 (October 2013).

**§1123. Leave to Intervene Necessary
[Formerly §915]**

A. Persons, other than the original parties to any proceeding, whose interests are to be directly and immediately affected by the proceeding, shall secure an order granting leave to intervene before being allowed to participate, provided that the granting of leave to intervene in any proceeding shall not be construed to be a finding or determination by the board for purposes of judicial review or appeal.

B. A petition for leave to intervene must clearly identify the proceedings in which the intervention is sought, must set forth the name and address of the petitioner for intervention, and must contain a clear and concise statement of the direct and immediate interest of the petitioner in such proceeding, stating the manner in which such petitioner will be affected by such proceeding, outlining the matters and things relied upon by such petitioner as a basis for his request to intervene, and if affirmative relief is sought, the petition must contain a clear and concise statement of the relief sought and the basis thereof.

C. A petition to intervene and adequate proof of service of a copy thereof on all parties of record to the proceeding shall be filed not less than 10 days prior to the commencement of the hearing. For good cause shown, the board shall allow a petition of intervention to be filed not later than the time of the hearing.

1. If such petition to intervene is not filed in accordance with these rules, such petition will not be considered.

2. If a petition to intervene shows direct and immediate interest in the subject matter of the proceeding or any part thereof, and does not unduly broaden the issues, the board may grant leave to intervene or otherwise appear in the proceeding with respect to the matters set out in the intervening petition, subject to such reasonable conditions as may be prescribed.

3. If it appears during the course of a proceeding that an intervenor has no direct or immediate interest in the proceeding, and that the public interest does not require participation by such intervenor therein, the board may dismiss such intervenor from the proceeding.

AUTHORITY NOTE: Promulgated in accordance with R.S. 8:67.

HISTORICAL NOTE: Promulgated by the Department of Commerce, Cemetery Board, LR 1:524 (December 1975), amended by the Office of the Governor, Cemetery Board, LR 39:2745 (October 2013).

**§1125. Prehearing Conference
[Formerly §917]**

A. The chair or the chair's appointee may, of their own volition, or upon the motion of any party of record, hold a prehearing conference for the purpose of formulating or simplifying the issues, obtaining admissions of fact and of

documents which will avoid unnecessary proof, arranging for the exchange of proposed exhibits or prepared expert testimony, limiting the number of witnesses, and considering such other matters as may expedite the orderly conduct and disposition of the proceeding, or the settlement thereof.

B. The action taken at such prehearing conference, including without limitation, all the agreements, admissions, and/or stipulations made by the parties concerned, shall be made a part of the record. Such action shall control the subsequent course of the proceeding, unless otherwise stipulated by all parties of record with the consent of the chair or the chair's appointee.

C. In any proceeding, the chair or the chair's appointee may, in its discretion, call all parties together for a conference prior to the taking of testimony, or may recess a hearing, after it has commenced, for the purpose of holding a conference.

AUTHORITY NOTE: Promulgated in accordance with R.S. 8:67.

HISTORICAL NOTE: Promulgated by the Department of Commerce, Cemetery Board, LR 1:524 (December 1975), amended by the Office of the Governor, Cemetery Board, LR 39:2746 (October 2013).

§1127. Hearing **[Formerly §919]**

A. At the date, time and place fixed for the hearing, the board shall hear all matters presented in connection with the proceeding pending before it. The hearing shall be conducted by the chair or the chair's appointee. The board and all other parties may be represented by counsel.

B. Opportunity shall be afforded all interested persons to respond and present evidence on all issues of fact involved and arguments on all issues of law and policy involved and to conduct such cross-examination as may be required for a full and true disclosure of the facts.

C. The chair or the chair's appointee conducting any proceeding subject to these rules shall have the power to direct, control and regulate the order, procedure and course of the hearing, including, but not limited to, opening statements, the order and method of presentation of testimony and evidence by all parties, and closing statements. The chair or the chair's appointee shall have the further power to set the time and place for continued or recessed hearings, fix the time for filing of memoranda and other documents, and generally to do all things necessary and proper for the conduct of a full and fair hearing.

AUTHORITY NOTE: Promulgated in accordance with R.S. 8:67.

HISTORICAL NOTE: Promulgated by the Department of Commerce, Cemetery Board, LR 1:524 (December 1975), amended by the Office of the Governor, Cemetery Board, LR 39:2746 (October 2013).

§1129. Adjudication Procedure **[Formerly §921]**

In the conduct of adjudication the board shall conform to and comply with, and shall conduct such adjudication in

accordance with, the applicable provisions of the Administrative Procedure Act.

AUTHORITY NOTE: Promulgated in accordance with R.S. 8:67.

HISTORICAL NOTE: Promulgated by the Department of Commerce, Cemetery Board, LR 1:525 (December 1975), amended by the Office of the Governor, Cemetery Board, LR 39:2746 (October 2013).

§1131. Judicial Review of Adjudication **[Formerly §923]**

A. Judicial review of a final decision or order in adjudication proceedings shall be in accordance with, and is governed by, the Administrative Procedure Act.

B. The party seeking such judicial review shall cause to be prepared, and shall transmit to the reviewing court, the original or a certified copy of the entire record of the proceeding under review. All costs of preparing and transmitting the record for review shall be borne by the party prosecuting such appeal.

AUTHORITY NOTE: Promulgated in accordance with R.S. 8:67.

HISTORICAL NOTE: Promulgated by the Department of Commerce, Cemetery Board, LR 1:525 (December 1975), amended by the Office of the Governor, Cemetery Board, LR 39:2746 (October 2013).

§1133. Informal Proceedings Authorized **[Formerly §925]**

A. Nothing in these rules shall be construed as prohibiting the board from holding informal proceedings, hearings, or conferences for the purpose of aiding the board in ascertaining and determining facts necessary for the performance of its duties. Any person who is aggrieved by any action or determination of the board following such an informal proceeding, hearing, or conference, and who is otherwise entitled thereto, may file a petition requesting the promulgation, amendment, or repeal of a rule, or may file a petition to initiate an adjudication proceeding, under applicable provisions of these rules. Such petitions for exercise of the rulemaking process or for adjudication shall be handled by the board de novo.

AUTHORITY NOTE: Promulgated in accordance with R.S. 8:67.

HISTORICAL NOTE: Promulgated by the Department of Commerce, Cemetery Board, LR 1:525 (December 1975), amended by the Office of the Governor, Cemetery Board, LR 39:2746 (October 2013).

§1135. Fine Schedules for Willful and Nonwillful Violations of the Louisiana Cemetery Act

A. The board, at its discretion, after notice and hearing as required by the Administrative Procedure Act, and in lieu of a complete suspension or complete revocation of a certificate of authority or a license, may impose fines for violations of title 8 and the rules of the board according to the following fine schedule.

B. By agreement of the board and a party alleged to have violated the Louisiana Cemetery Act, a hearing pursuant to

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title 8 and the Administrative Procedure Act may be waived and the parties may enter into a consent agreement, stipulating to the facts and law applicable to the alleged violation. In the event that such an agreement is reached, the following fine schedule may apply to each of the enumerated violations.

C. Each willful or nonwillful act shall constitute a separate violation for the purposes of imposing the fines set forth in the following schedule.

D. The schedule of fines shall in no event be less than as follows.

1. For each willful violation:

Violation	Minimum Fine	Maximum Fine
Failure to maintain records pertaining to the operation and business of a cemetery	\$500 per violation	\$10,000 per violation
Operating without a valid, subsisting, and unsuspended certificate of authority	\$500 per violation (each interment is a violation)	\$10,000 per violation
Failure to timely make required deposits to perpetual care or merchandise trust funds	\$500 per violation	\$10,000 per violation
Failure to timely deliver merchandise or services	\$500 per violation	\$10,000 per violation
Failure to maintain or provide proof of adequate insurance on stored merchandise	\$250 per violation (per day)	\$10,000 per violation
Failure to timely file annual perpetual care or merchandise trust fund reports	\$50 (per day, per report)	\$10,000 per violation
Failure to timely file application for predevelopment sales projects	\$50 (per day from the date of the first sale within the predevelopment project)	\$10,000 per violation
Failure to timely issue titles or certificates of interment rights	\$25 (per day, per title)	\$10,000 per violation
Failure to timely respond to consumer complaints	\$25 (per day, per complaint)	\$10,000 per violation
Failure to timely respond to violations noted in an examination by the board	\$25 (per day, per examination)	\$10,000 per violation
Any violations not specifically listed in this schedule	Not applicable	\$10,000 per violation

2. For each nonwillful violation:

Violation	Minimum Fine	Maximum Fine
Failure to maintain records pertaining to the operation and business of a cemetery	\$250 per violation	\$1,000 per violation
Operating without a valid, subsisting, and unsuspended certificate of authority	\$250 per violation (each interment is a violation)	\$1,000 per violation
Failure to timely make required deposits to perpetual care or merchandise trust funds	\$250 per violation	\$1,000 per violation
Failure to timely deliver merchandise or services	\$250 per violation	\$1,000 per violation
Failure to maintain or provide proof of adequate insurance on stored merchandise	\$125 per violation (per day)	\$1,000 per violation
Failure to timely file annual perpetual care or merchandise trust fund reports	\$25 (per day, per report)	\$1,000 per violation

Violation	Minimum Fine	Maximum Fine
Failure to timely file application for predevelopment sales projects	\$25 (per day from the date of the first sale within the predevelopment project)	\$1,000 per violation
Failure to timely issue titles or certificates of interment rights	\$15 (per day, per title)	\$1,000 per violation
Failure to timely respond to consumer complaints	\$15 (per day, per complaint)	\$1,000 per violation
Failure to timely respond to violations noted in an examination by the board	\$15 (per day, per examination)	\$1,000 per violation
Any violations not specifically listed in this schedule	Not applicable	\$1,000 per violation

E. Nothing in this section shall limit the authority of the board or the attorney general to bring any civil or administrative action for alleged violations not covered by any agreement entered into under this section or for breach of any agreement entered into under this Section.

AUTHORITY NOTE: Promulgated in accordance with R.S. 8:66 and R.S. 8:67.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Cemetery Board, LR 39:2746 (October 2013).

Chapter 13. Declaratory Orders and Rulings

§1301. Right to Seek Order or Ruling; Procedure [Formerly §1101]

A. A request for a declaratory order or ruling on the applicability of any statutory provision or of any rule or order of the board, shall be by petition filed with the board at its administrative office. Such petition shall set forth in clear and concise language all facts, circumstances and relevant information as to the necessity for such declaratory order or ruling, and shall make specific reference to the statutory provision, rule, or order of the board about which the declaratory order or ruling is requested. The petition shall be considered by the board at its next regularly-scheduled meeting, provided that the petition has been filed at least 30 days prior to that meeting.

B. Pending the issuance of the decision by the board, an order may be issued that other proceedings and actions connected with the matter submitted to the board shall be held in abeyance or stayed.

C. The costs incurred by the board in connection with any such request for a declaratory order or ruling are to be solely borne by the petitioner.

AUTHORITY NOTE: Promulgated in accordance with R.S. 8:67.

HISTORICAL NOTE: Promulgated by the Department of Commerce, Cemetery Board, LR 1:525 (December 1975), amended by the Office of the Governor, Cemetery Board, LR 39:2747 (October 2013).

§1303. Declaratory Judgment for Determining Validity or Applicability of a Rule
[Formerly §1103]

A. The validity or applicability of a rule may be determined in an action for declaratory judgment in the Twenty-Fourth Judicial District Court for the Parish of Jefferson as provided for in the applicable provisions of the Administrative Procedure Act.

AUTHORITY NOTE: Promulgated in accordance with R.S. 8:67.

HISTORICAL NOTE: Promulgated by the Department of Commerce, Cemetery Board, LR 1:525 (December 1975), amended by the Office of the Governor, Cemetery Board, LR 39:2747 (October 2013).

§1305. Informal Opinions
[Formerly §1105]

A. Nothing in these rules shall be construed as prohibiting the board from rendering an informal or advisory opinion to any person on any matter arising out of the administration or enforcement of the Louisiana Cemetery Act.

AUTHORITY NOTE: Promulgated in accordance with R.S. 8:67.

HISTORICAL NOTE: Promulgated by the Department of Commerce, Cemetery Board, LR 1:525 (December 1975), amended by the Office of the Governor, Cemetery Board, LR 39:2747 (October 2013).

Chapter 15. Cemetery Care Fund

§1501. Payments to Perpetual Care Trust Fund
[Formerly §1301]

A. After establishment of the perpetual or endowed care trust fund when and as required by title 8, the amount to be deposited in the trust fund shall be a minimum of 10 percent of the gross sales price received, less sales tax and interest or finance charges, if any, for the sale, transfer, or conveyance of any interment space or interment right.

B. In no event shall the deposit be less than 10 percent of the fair market value of each interment space or right conveyed. Such fair market value shall be the undiscounted price of a comparable right of interment or interment space in the same cemetery, unless otherwise provided in this Rule.

C. In addition to the minimum deposits required, a cemetery may require, within the cemetery's rules, additional deposits to the perpetual or endowed care trust fund. Such additional deposits shall not be withdrawn from the trust fund once deposited.

D. All perpetual or endowed care deposits shall be delivered to the trustee not later than the thirtieth day after the close of the month of the sale or transfer of the interment space or interment right by the cemetery authority or cemetery sales/management organization. However, if the sale or transfer is financed by the seller and payments are pursuant to an installment contract, then the deposits to the trust fund must be made either:

1. not later than the thirtieth day of the close of the month in which the contract is made; or

2. proportionally over the term of the contract, provided that the seller maintains adequate accounting records of the installment payments and the proportionate amounts due the trust fund.

E. If an installment 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 deposits shall be delivered to the trustee not later than the thirtieth day after the end of the calendar month in which the cemetery authority receives the funds.

F. In the event of a documented deposit overfunding error or when a contract for a cemetery space or interment right is cancelled, terminated, upgraded, or traded, the cemetery authority shall be entitled to a credit for the amount deposited and attributable to such space, provided that the cemetery authority can provide sufficient documentation, acceptable to the board, of the credit due.

G. No deposit to the perpetual or endowed care trust fund shall be required in those instances in which a cemetery authority uses or conveys an interment space for an indigent interment, provided the space so used or conveyed is contained within a special area or section of the cemetery set aside and used solely for indigent interments.

H. No deposit to the perpetual or endowed care trust fund shall be required on the discounts given on predevelopment or preconstruction interment spaces or rights of interment in a mausoleum, if the cemetery has filed with the board the required application and supporting documentation.

AUTHORITY NOTE: Promulgated in accordance with R.S. 8:67.

HISTORICAL NOTE: Promulgated by the Department of Commerce, Cemetery Board, LR 8:467 (September 1982), amended by the Office of the Governor, Cemetery Board, LR 39:2748 (October 2013), LR 43:2150 (November 2017).

§1503. Remittance by the Trustee to the Cemetery Authority
[Formerly §1303]

A. The principal of the trust fund shall remain permanently intact and only the income shall be expended.

B. The net income, after the deduction of costs associated with the operation of the trust, may be remitted to the cemetery for care and maintenance of the cemetery as provided for by title 8. A cemetery or cemetery authority may not charge the trust for administrative costs for the operation of the cemetery or trust funds.

C. All income received by the trustees of cemetery care funds, which is not remitted to the cemetery authority within 120 days after the end of the latest tax reporting year of the cemetery authority, owning or operating a cemetery for which the trust fund is maintained, shall become, for all purposes, part of and added to the corpus or principal of the trust, and may not be withdrawn or distributed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 8:67.

HISTORICAL NOTE: Promulgated by the Department of Commerce, Cemetery Board, LR 8:467 (September 1982), amended by the Office of the Governor, Cemetery Board, LR 39:2748 (October 2013).

§1505. Annual Reports Required

A. All perpetual or endowed care cemeteries shall submit a report to the board, on the forms prescribed by the board, within six months after the close of the cemetery authority’s tax reporting year.

B. All trustees of perpetual or endowed care trust funds shall submit a report to the board, on the forms prescribed by the board, within 5 months after the close of the cemetery authority’s tax reporting year, or within 60 days from resignation as trustee. The assets of the trust shall be reported on a cost basis.

1. All trustees of perpetual or endowed care trust funds shall amortize bond premiums and discounts and adjust the cost value accordingly over the life of the bond to ensure the cost of the bond will be equivalent to the value of the bond at acquisition.

C. If the trustee is unable to obtain the requisite signatures of the cemetery authority on the annual report as required by law, the trustee shall, nonetheless, submit the annual report to the board within the timeframe provided by law. Once the requisite signatures have been obtained, the trustee shall resubmit the completed report to the board and shall file the report with the clerk of court as required by the Louisiana Cemetery Act.

AUTHORITY NOTE: Promulgated in accordance with R.S. 8:67.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Cemetery Board, LR 39:2748 (October 2013), amended LR 43:2151 (November 2017).

§1507. Administration and Investment of Perpetual Care Trust Funds

A. The trustee of a perpetual care trust fund shall administer the trust assets in a prudent manner that takes into consideration of the long-term safety, stability and growth of the trust. Engaging in speculative investments for any reason, including for the purpose of generating distributable income, is strictly prohibited. It shall be unlawful for a trustee or an investment advisor acting on behalf of a trustee of a perpetual care trust fund to:

1. engage in derivative and hedge transactions or investments including, but not limited to, the buying and selling of options (calls and puts) with trust assets;
2. place a margin loan, pledge or other lien against any of the securities or assets held in a trust;
3. churn or excessively trade trust assets for the purpose of generating commissions or fees for the trustee and/or investment advisor. A series of transactions, even if suitable when viewed in isolation, may be considered excessive and unsuitable for the trust when taken together in

consideration of the long-term safety, stability and growth of the trust.

B. Mutual funds which are listed on a national exchange are permissible investments under the Louisiana Cemetery Act or these rules.

1. If a mutual fund is not listed on a national exchange but all of its underlying assets are listed on a national exchange and otherwise comply with the Louisiana Cemetery Act or these rules, the mutual fund may be considered compliant.

AUTHORITY NOTE: Promulgated in accordance with R.S. 8:67.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Cemetery Board, LR 43:2151 (November 2017).

§1509. Investment Advisors

A. Nothing in these rules shall be construed as prohibiting the trustee or cemetery authority from utilizing the services of an investment advisor. However, the use of an investment advisor does not relieve the trustee of its obligations and fiduciary responsibilities to administer the trust under the provisions of the Louisiana Cemetery Act or these rules including, but not limited to, directing and oversight of all trust assets. At all times the assets of the trust must be held by the trustee.

AUTHORITY NOTE: Promulgated in accordance with R.S. 8:67.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Cemetery Board, LR 43:2151 (November 2017).

Chapter 17. Merchandise Trust Funds

§1701. Payments to the Merchandise Trust Fund

A. All contracts for the sale of cemetery related merchandise or personal property that are not delivered within 120 days after entering into such contract, shall, after establishment of the merchandise trust fund when and as required by title 8, deposit into the trust fund a minimum of 70 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 or 125 percent of the wholesale cost, whichever is greater.

1. For deposits made at 125 percent of the wholesale cost, documentation to support wholesale cost must be maintained by the cemetery or other entity in the contract file of the customer and must be reviewable and verifiable by the board.

B. All contracts for the sale of cemetery related services that are not delivered within 120 days after entering into such contract, shall, after establishment of the merchandise trust fund when and as required by title 8, deposit into the trust fund a minimum of 70 percent of the price charged for such service.

1. For each service contracted for at a discount or contracted for without charge, the deposit shall in no event be less than 70 percent of the highest price charged for such service during the preceding 12 months. Any and all

documentation to support 70 percent of the highest price charged for such services during the preceding 12 months must be maintained by the cemetery or other entity in the contract file of the customer and must be reviewable and verifiable by the board.

C. All deposits due on merchandise and services shall be delivered to the trustee not later than the twentieth day after the close of the month in which the contract is made. However, if the contract is financed by the seller and payments are made pursuant to an installment contract and the delivery of the merchandise and services is not to be made until the contract is paid in full or more than 120 days after entering into such contract, then payments to the trust fund must be deposited either:

1. not later than the twentieth day of the close of the month in which the contract is made; or

2. proportionally over the term of the contract, provided that the seller maintains adequate accounting records of the installment payments and the proportionate amounts due the trust fund.

AUTHORITY NOTE: Promulgated in accordance with R.S. 8:67.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Cemetery Board, LR 39:2748 (October 2013).

§1703. Delinquent Payments to Merchandise Trust Fund

A. If a deposit is not timely made, the board may require, in its sole discretion, that the deposit be 70 percent of the highest price charged in the 12 months preceding the deposit or 125 percent of the wholesale cost at the time the deposit is made, whichever is greater.

B. In the event that a cemetery or other entity converts previously stored merchandise to trusting, the board may require, in its sole discretion, that the deposit be 70 percent of the highest price charged in the 12 months preceding the conversion or 125 percent of the wholesale cost at the time of conversion, whichever is greater.

AUTHORITY NOTE: Promulgated in accordance with R.S. 8:67.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Cemetery Board, LR 39:2749 (October 2013).

§1705. Withdrawals from Merchandise Trust Fund

A. The merchandise trust 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. A cemetery, cemetery authority, or other entity required to establish and maintain a merchandise trust fund may not charge the income of the trust for its administrative costs for the operation of the cemetery, cemetery authority, other entity, or trust funds. Within a merchandise trust fund, realized capital gains and losses shall be allocated in the same manner as income.

B. At the time of withdrawal, if a cemetery or other entity has not allocated the income earned to each separate account, as required by the Louisiana Cemetery Act, only the funds on deposit for such account shall be withdrawn. Upon satisfactory proof to the board that such income has been allocated to a particular account, the board may, in its discretion, authorize the withdrawal of such funds.

C. Prior to a withdrawal, if the cemetery or other entity is delinquent in its deposits to the merchandise trust fund, the board may require verification that all deposits on the pending withdrawals are current before such withdrawals can be made.

D. Upon satisfactory proof to the board that there has been an error or overfunding of the trust the board may, in its sole discretion, authorize the withdrawal or credit of such funds from the trust.

E. In the event that a cemetery or other entity converts accounts previously trusted to storage and presents satisfactory proof to the board that the merchandise to be stored is the same product selected by the customer and satisfactory proof of compliance with all storage requirements, the board may, at its discretion, authorize the withdrawal consistent with the requirements contained in the Louisiana Cemetery Act and the rules of the board. If the cemetery or other entity intends to substitute the product previously selected by the customer, a certification of acceptance of the substituted product must be obtained from the customer and retained by the cemetery or other entity in the contract file of the customer prior to the approval of the withdrawal by the board.

F. For the purposes of withdrawal, certification of delivery shall include:

1. for services:

- a. a copy of the death certificate; or
- b. a copy of the burial transit permit; or
- c. a copy of the published obituary;

2. for merchandise:

a. if the merchandise is delivered prior to the death of the contract beneficiary, such certification shall include:

- i. a written statement certifying delivery of the merchandise or personal property and signed by an authorized representative of the cemetery or other entity; or
- ii. a photograph of the merchandise or personal property as installed on the cemetery space; or
- iii. a copy of the paid-in-full invoice;

b. if the merchandise is delivered after the death of the contract beneficiary, such certification shall include:

- i. at least one of the items listed in Paragraph 1, above; and
- ii. at least one of the items listed in Subparagraph 2.a, above;

3. all certification documents to support such withdrawals must be maintained by the cemetery or other entity in the contract file of the customer and must be reviewable and verifiable by the board.

AUTHORITY NOTE: Promulgated in accordance with R.S. 8:67.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Cemetery Board, LR 39:2749 (October 2013).

§1707. Annual Reports Required

A. All cemeteries and other entities shall submit a report and the report filing fee to the board, on the forms prescribed by the board, within six months after the close of the cemetery's or other entity's tax reporting year.

B. All trustees of merchandise trust funds shall submit a report to the board, on the forms prescribed by the board, within 90 days after the close of the cemetery's or other entity's tax reporting year, or within 60 days from resignation as trustee. The assets of the trust shall be reported on a cost basis.

1. All trustees of merchandise trust funds shall amortize bond premiums and discounts and adjust the cost value accordingly over the life of the bond to ensure the cost of the bond will be equivalent to the value of the bond at acquisition.

AUTHORITY NOTE: Promulgated in accordance with R.S. 8:67.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Cemetery Board, LR 39:2750 (October 2013), amended LR 43:2151 (November 2017).

§1709. Trust Reconciliation

A. In the event of a change of ownership or control of a cemetery, cemetery authority, or other entity, documentation that demonstrates that the existing merchandise trust fund complies with title 8 and these rules shall be submitted to the board.

AUTHORITY NOTE: Promulgated in accordance with R.S. 8:67.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Cemetery Board, LR 39:2750 (October 2013).

§1711. General Storage Requirements

A. Stored merchandise must be comprised of materials that are designed to withstand prolonged storage without adversely affecting the structural integrity or aesthetic characteristics of such merchandise.

1. Personal property delivery pursuant to R.S. 8:502.1(2) and (3) shall not apply to merchandise comprised of materials subject to deterioration including, but not limited to caskets and urns, which is not delivered within 120 days after entering into such contract, and shall not be stored by the cemetery.

B. All storage of merchandise pursuant to title 8 shall be stored in accordance with the following requirements:

1. merchandise shall be stored in an organized and accessible manner in order to allow for expedient verification of compliance with title 8 and these rules; and

2. merchandise shall be stored in an environment so as to ensure the preservation of the merchandise.

C. If any merchandise is determined to be damaged and unusable, the cemetery or other entity shall replace the merchandise with an item of like kind and quality. Any cemetery or other entity with such damaged or unusable merchandise shall not be in compliance with title 8 or these rules until such time as the damaged or unusable items are replaced.

AUTHORITY NOTE: Promulgated in accordance with R.S. 8:67.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Cemetery Board, LR 39:2750 (October 2013), amended LR 43:2151 (November 2017).

§1713. Administration and Investment of Merchandise Trust Funds

A. As provided for by R.S. 8:509, merchandise trust funds shall be administered and invested in conformity with the perpetual care provisions of the Louisiana Cemetery Act and these rules.

AUTHORITY NOTE: Promulgated in accordance with R.S. 8:67.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Cemetery Board, LR 43:2151 (November 2017).

Chapter 19. On-Site Inspections and Examinations

§1901. On-Site Inspections and Examinations Generally

A. The board shall have the right to make on-site inspections and examinations of cemetery authorities or other entities to verify compliance with the requirements of title 8 and these rules at any time during normal working hours and by any employee of the board or other person designated by the board to do so.

AUTHORITY NOTE: Promulgated in accordance with R.S. 8:66 and R.S. 8:67.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Cemetery Board, LR 39:2750 (October 2013).

§1903. On-Site Inspections and Examinations of Trust Funds [Formerly §1305]

A. The board shall have the right to make on-site inspections and examinations of the perpetual or endowed care trust funds or the merchandise trust funds of a cemetery authority or other entity and its books and records pertaining thereto at any time during normal working hours and by any employee of the board or other person designated by the board to do so.

AUTHORITY NOTE: Promulgated in accordance with R.S. 8:67.

HISTORICAL NOTE: Promulgated by the Department of Commerce, Cemetery Board, LR 8:467 (September 1982), amended by the Office of the Governor, Cemetery Board, LR 39:2750 (October 2013).

§1905. Records

A. At a minimum, the following records shall be made available to the board for the purposes of the on-site examinations or inspections:

1. financial, accounting, ledgers, and trust records.
 - a. for the sale, transfer, or conveyance of any interment space or interment right, and the sale of any cemetery related merchandise or services, the accounting records must delineate all payments made under a purchase agreement or contract, less sales tax and interest or finance charges, if any, and the portion of the payment upon which deposits are required to the perpetual or endowed care trust fund or the merchandise trust fund;
2. contracts, invoices, purchase agreements, interment rights, and deeds related to the sale, transfer, or conveyance of any interment space, interment right, or the sale of any cemetery related merchandise and services;
3. by-laws and rules of the cemetery;
4. ownership records of interment spaces and interment rights;
5. detailed maps and/or plats of the cemetery;
6. interment records; and
7. additional documentation and information the board or its representative may deem necessary to verify compliance with the provisions of title 8 and the rules of the board.

AUTHORITY NOTE: Promulgated in accordance with R.S. 8:67.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Cemetery Board, LR 39:2750 (October 2013).

**§1907. Verification of Compliance
[Formerly §1305]**

A. During any such on-site examination the representative of the board shall, including, without limitation:

1. ascertain whether all deposits required to be made to the trust funds have been timely made by the cemetery or other entity;
2. ascertain whether trust funds are being administered pursuant to title 8 and the rules of the board;
3. ascertain whether books and records of the cemetery or other entity are being maintained pursuant to title 8 and the rules of the board;
4. inspect the grounds and other facilities of the cemetery to determine if perpetual care maintenance is, in fact, being reasonably performed; and
5. ascertain whether cemetery related merchandise and services have been delivered or stored in compliance with title 8 and the rules of the board.

AUTHORITY NOTE: Promulgated in accordance with R.S. 8:67.

HISTORICAL NOTE: Promulgated by the Department of Commerce, Cemetery Board, LR 8:467 (September 1982), amended by the Office of the Governor, Cemetery Board, LR 39:2750 (October 2013).

§1909. Examination Fees

A. The board shall assess the cemetery or other entity the costs associated with the expenses of the examination for each trust fund according to the following schedule:

1. if the examination takes two hours or less, there will be no fee charged;
2. if the examination takes more than two hours, but less than three hours, the fee will be \$125 per cemetery, per examiner;
3. if the examination takes three hours or more, the fee will be \$250 per cemetery, per examiner, per day, up to two days; and
4. if the examination takes more than two days, the cost shall be paid by the cemetery authority in an amount not to exceed a total of \$500, unless irregularities are found, in which case, the cemetery authority shall pay the full cost of the examination.

AUTHORITY NOTE: Promulgated in accordance with R.S. 8:67.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Cemetery Board, LR 39:2751 (October 2013), amended LR 43:2152 (November 2017).

§1911. Report of Examination

A. The board shall furnish a copy of the on-site examination report to the cemetery, within a reasonable period of time, specifying any violations or exceptions noted during the examination. The cemetery shall have 30 days, after receipt of the report, in which to provide the board with a response to any violations or exceptions so noted.

AUTHORITY NOTE: Promulgated in accordance with R.S. 8:67.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Cemetery Board, LR 39:2751 (October 2013).

Chapter 21. Qualifications of Applicants for Certificates of Authority or a License

**§2101. Qualifications
[Formerly §1501]**

A. The Louisiana Cemetery Act requires the board to determine generally whether applicants and their officers, directors, owners, and managerial personnel have the ability, experience, financial stability and responsibility, integrity, trustworthiness, and have good personal and business reputations, in order to ensure that the applicant's operation of a cemetery, cemetery sales organization, or cemetery management organization will be of permanent benefit to the community in which it is located.

B. While no rigid specifications, particularly as to character, can be fashioned, some objective evidence of a

lack of such qualifications should exist before an application is denied. Unless the applicant produces evidence, acceptable to the board, indicating complete rehabilitation, the application should be denied if the applicant is an individual who has, or is a firm, association, corporation or limited liability company any of whose officers, owners, directors, limited liability company managers or managerial personnel has or have:

1. been convicted of a felony;
2. employed misrepresentation or deception in obtaining, renewing, or reinstating a license or privilege from a public entity, or in seeking a certificate of authority or license from this board; or
3. used false or misleading advertising or solicitation in any business venture.

AUTHORITY NOTE: Promulgated in accordance with R.S. 8:67.

HISTORICAL NOTE: Promulgated by the Department of Commerce, Cemetery Board, LR 8:468 (September 1982), amended by the Office of the Governor, Cemetery Board, LR 39:2751 (October 2013).

Chapter 23. Miscellaneous

§2301. Consumer Complaints

A. Upon receipt of a written consumer complaint on a form prescribed by the board, the board on its own or in conjunction with the attorney general may initiate any such investigation or inquiry to verify compliance with the Louisiana Cemetery Act and the rules of the board.

B. The board may require the cemetery that is the subject of the complaint to respond to any allegations contained in a properly submitted complaint, in writing, within 30 days of the cemetery's receipt of the complaint.

C. Nothing herein shall prohibit the cemetery authority, whether notified of a complaint by the board or not, from contacting the consumer and attempting to resolve the matter amicably without the assistance or intervention of the board.

D. Any inquiry or investigation undertaken pursuant to such consumer complaints are considered to be investigations by the board for the purposes of R.S. 8:66.1 and 44:4(44).

AUTHORITY NOTE: Promulgated in accordance with R.S. 8:66 and R.S. 8:67.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Cemetery Board, LR 39:2751 (October 2013).

§2303. Issuance of Documents Reflecting Title and Rights in Cemetery Spaces

A. The cemetery shall issue a title or certificate of interment right to the purchaser or transferee within 30 days of payment in full of the contract or transfer, if made without charge.

AUTHORITY NOTE: Promulgated in accordance with R.S. 8:67.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Cemetery Board, LR 39:2751 (October 2013).

§2305. Standards for Graves and Required Maps and Plats

A. A standard adult grave shall measure at least 42 inches in width and 96 inches in length, except for preinstalled vaults in designated areas and grave spaces for cremated remains.

B. Prior to the first sale of cemetery spaces or interment rights, the cemetery shall prepare a map documenting the establishment of recoverable internal survey reference markers installed no more than 50 feet apart.

C. All maps or plats shall include, without limitation:

1. the number of cemetery spaces available for sale;
2. the location of each cemetery space;
3. the number designation assigned to each cemetery space;
4. the dimensions of a standard adult grave space;
5. information sufficient to locate the map within the land survey submitted to the board.

D. In the event that the board finds, after a hearing, that a cemetery cannot specifically identify the location of interments, the board may, at its discretion, and for the protection of the health, safety, and welfare of the public, prohibit further sales or burials in the cemetery or particular sections of the cemetery until the cemetery is in compliance with title 8 and these rules.

E. The location of monuments and other memorials that contain cremated remains must be shown on the cemetery's maps or plats.

AUTHORITY NOTE: Promulgated in accordance with R.S. 8:67.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Cemetery Board, LR 39:2751 (October 2013).

§2307. Preconstruction Projects

A. Prior to the first sale of a cemetery space or the right of use or interment in any cemetery space in a structure that has not yet been constructed or developed, the cemetery authority shall submit to the board, on a form prescribed by the board, the following:

1. a copy of the preliminary plans;
2. a map or plat delineating the sections, blocks, plots, avenues, walks, halls, rooms, corridors, elevations, or other subdivisions, with descriptive names or numbers;
3. a copy of all sales and promotional material;
4. a copy of the preconstruction/development sales contract; and
5. any such additional information and documentation that the board may deem necessary.

B. Prior to the commencement of construction, the cemetery shall notify the board, in writing, and request approval of any significant modifications to the preliminary plans previously submitted to the board. Significant

modifications include, but are not limited to, cancellation of a project, downsizing of a project, substitution of construction materials, and changes in or elimination of a feature of the project.

C. If the cemetery anticipates that it will not meet the commencement and/or completion deadlines set forth in title 8, the cemetery shall request an extension from the board, in writing, setting forth the reasons for the delays. The board shall consider the extension request at its next regularly scheduled meeting following receipt of the request.

D. Within 30 days of completion of a preconstruction or predevelopment project, the cemetery shall provide the board with a completion notification on a form prescribed by the board, along with any additional information and documentation that the board may deem necessary.

AUTHORITY NOTE: Promulgated in accordance with R.S. 8:66 and R.S. 8:67.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Cemetery Board, LR 39:2752 (October 2013).

Chapter 25. Construction; Divisibility

§2501. Construction; Divisibility [Formerly §1701]

A. If any provision of these rules or the application thereof is held invalid, the remainder of these rules or other applications of such provisions shall not be affected.

AUTHORITY NOTE: Promulgated in accordance with R.S. 8:67.

HISTORICAL NOTE: Promulgated by the Department of Commerce, Cemetery Board, LR 1:525 (December 1975), amended LR 8:467 (September 1982), amended by the Office of the Governor, Cemetery Board, LR 39:2752 (October 2013).