

**CHANGES TO TEXAS ADMINISTRATIVE CODE
CHAPTER 26 – PERPETUAL CARE CEMETERIES
§26.2 and §26.4
(Amendments effective January 1, 2015)**

RULE §26.2 What Records am I Required to Maintain?

(a) What unique defined terms are used in this section?

- (1) "You" or "I" means the owner or operator of a perpetual care cemetery.
- (2) "Perpetual care property" or "property" means all niches, crypts, and ground space sold in connection with perpetual care.
- (3) "Consumer complaint" means a written complaint you receive, either at your corporate office or your cemetery location, from a consumer regarding the manner in which you operate your perpetual care cemetery or perform your obligations under a perpetual care cemetery contract or Health and Safety Code, Chapter 711 or Chapter 712. The term includes a written complaint you receive either directly from the consumer or through the department. The term does not include an oral complaint.
- (4) "Maintain" means to store and retain records either in hard copy form or on microfiche or in an electronic database from which the record can be retrieved and printed in hard copy in a manner that does not impede the efficient completion of the examination.

(b) What records must I maintain?

- (1) You must maintain the following records in a general file that is readily accessible to the department:
 - (A) your most current financial statement or tax return, either of which must:
 - (i) substantiate your use or expenditure of fund income; and
 - (ii) include a balance sheet and income statement dated not later than the last day of your preceding fiscal year;
 - (B) a sample form of each purchase agreement you currently use;
 - (C) a sample form of each document of conveyance of interment rights you currently use;
 - (D) the current trust agreement governing the fund, and any amendments if amended since the last examination;
 - (E) if the certificate holder received a uniform risk rating of 3, 4, or 5 at the last examination or if the last examination was a limited scope examination, the examination report acknowledgments, signed by the certificate holder's board of directors, for the last examination report (See Texas Department of Banking Supervisory

Memorandum 1014 (2011) ~~(2006)~~ for an explanation of the perpetual care cemetery rating system);

(F) all trustee/depository statements covering the perpetual care fund, provided at least quarterly, and all written correspondence from the trustee that you received since the last examination;

(G) minutes of each meeting of the cemetery corporation's board of directors held since the last banking department examination or, if the cemetery corporation is a wholly-owned subsidiary and does not hold board meetings, minutes of each meeting of the parent corporation's board of directors held since the last examination;

(H) all recordkeeping exceptions and other department or commissioner approvals or directions upon which the certificate holder relies in connection with its current operations;

(I) all maps, plats, and property dedications, and a list of these that reflects the dates of filing in the county records under Health and Safety Code, §711.034;

(J) your current sales maps showing the sold and unsold spaces in all gardens, mausoleums, crematories, and columbaria in the cemetery;

(K) records and photographs relating to lawn crypt construction and completion, to demonstrate you complied with Health and Safety Code, §§711.061, 711.063 and 711.064;

(L) each cemetery price list that you used at any time since the last examination; and

(M) your quarterly reconciliation of capital gains and losses in the fund since the last examination, if your trust agreement includes capital gains and losses in the definition of trust income;

(N) all documents relating to the offer and sale of undeveloped mausoleum spaces as required under Health and Safety Code, Chapter 712, §712.044 (a)(2)-(3) and Subchapter D; and

(O) all records relating to regulatory action or litigation to which the certificate holder is subject.

(2) You must maintain the following records in a segregated consumer complaint file:

(A) each written complaint that you received from a consumer regarding the manner in which you operate the perpetual care cemetery or perform your contractual obligations to a consumer; and

(B) all written correspondence and other records relating to a consumer complaint, including records showing how you resolved or otherwise disposed of the complaint.

(3) You must maintain either:

(A) separate files for each property purchaser, filed alphabetically or numerically, that contains all executed property purchase agreements, conveyance documents, and all related information; or

(B) files referenced by property location if:

(i) the cemetery maintains an alphabetical index on which the names of the property owners or purchasers can be cross-referenced to their property location; and

(ii) the files contain all executed property purchase agreements, conveyance documents, and all related information.

(4) You must maintain, and update at least monthly, a historical register of all interment rights sold, showing:

(A) the purchaser's name;

(B) the date of purchase;

(C) the purchase agreement number;

(D) a specific description of the property you sold; and

(E) how and when you disposed of the purchase agreement, including whether the agreement was conveyed, canceled, or voided.

(5) You must maintain a monthly recapitulation of all conveyance of interment rights issued since the date of your last examination that includes, for each paid-in-full property sale:

(A) the date the purchase agreement was executed;

(B) the property purchaser's name;

(C) the purchase agreement number;

(D) the date that the purchase agreement was paid-in-full;

(E) the conveyance document number;

(F) the amount of ground area, number of crypts, or number of niches conveyed under the purchase agreement, and the corresponding sales price of each;

(G) the deposits to the fund from sales, as required by Health and Safety Code, §712.028;

(H) any additional deposits to the fund:

(i) that are required by contract in an amount in excess of the deposits required by Health and Safety Code, §712.028;

(ii) that result from exchanged or traded-in property;

(iii) that result from the sale of additional or subsequent rights of interment; or

(iv) that are voluntarily made in excess of the amount of deposits required by Health and Safety Code, §712.028;

(I) total deposits for each conveyance, which is the sum of subparagraphs (G) and (H) of this paragraph for each conveyance; and

(J) cumulative monthly totals of the amounts listed in subparagraphs (F), (G), and (H) of this paragraph.

(c) Where do I need to keep the records required under this section?

(1) You must keep all required records at the perpetual care cemetery's physical location, corporate office located in this state, or another location approved in writing by the commissioner.

(2) If the physical location of the records is not conducive to examination by banking department personnel, the banking department may request that you provide your records at a mutually agreeable location in your area that is more suitable for conducting an examination. In this situation, if you refuse to agree, the commissioner may consider your inaction to constitute refusal to submit to an examination and initiate an appropriate enforcement action against you under Health and Safety Code, §§712.0441 - 712.0444.

(d) With respect to purchase agreements executed prior to the effective date of this section, a perpetual care cemetery will not violate this section if it cannot produce records required under this section that were not previously required by statute or rule.

RULE §26.4 When Must I Order and Set a Burial Marker or Monument in my Perpetual Care Cemetery?

(a) Definitions.

(1) "Department" means the Texas Department of Banking.

(2) "Purchaser" means the person who signs the contract to buy a burial marker or monument from you, and includes a person authorized under the terms of the contract to act for such person in connection with the contract. If such person is deceased and is the person for whom the marker or monument has been purchased, the term also includes any person listed in Health and Safety Code, §711.002, as you deem appropriate under the circumstances.

(3) "Set" means install or place.

(4) "You" or "I" means a cemetery corporation that owns or operates a perpetual care cemetery. For purposes of subsection (b)(1) of this section the term also includes a representative or agent that receives payment for the marker or monument on your behalf, whether or not the agent or representative signs the purchase order.

(b) When must I order the purchaser's burial marker or monument? You must order the marker or monument and pay the amount, if any, required by the vendor or manufacturer to initiate the order on or before the 21st day after the date as of which both of the following events have occurred:

(1) the purchaser pays you:

(A) the amount you require to order the marker or monument; and

(B) all amounts due under the perpetual care cemetery agreement, including charges for interment rights, the plot or plots on which the marker or monument is to be set, and fees for perpetual or endowment care; and

(2) the purchaser approves the design and lettering for the marker or monument and signs the necessary documentation directing or authorizing you to order the marker or monument.

(c) When must I set the burial marker, once it has been delivered to my cemetery location? You must set the marker on or before the earlier of a date stipulated by the certificate holder in writing or the 15th day after the date as of which all of the following events have occurred:

(1) the purchaser inspects and accepts the marker if you require inspection and approval;

(2) the purchaser pays you:

(A) all amounts due under the contract for the marker, including the amount due for the base if your cemetery requires that a base be used with the marker; and

(B) any remaining amounts due under the perpetual care cemetery agreement, including charges for interment rights, the plot or plots on which the marker or monument is to be set, and fees for perpetual or endowment care; and

(3) if the purchaser has stipulated in writing that the marker be set later than required under this subsection, the purchaser asks you to set the marker.

(d) When must I set the burial monument, once it has been delivered to my cemetery location? You must set the monument on or before the earlier of a date stipulated by the certificate holder in writing or the 25th day after the date as of which all of the following events have occurred:

(1) the purchaser inspects and accepts the monument if you require inspection and approval;

(2) the purchaser pays you:

(A) all amounts due under the contract for the monument, including the amount due for the foundation if your cemetery requires that a foundation be used with the monument; and

(B) any remaining amounts due under the perpetual care cemetery agreement, including charges for interment rights, the plot or plots on which the marker or monument is to be set, and fees for perpetual or endowment care; and

(3) if the purchaser has stipulated in writing that the monument be set later than required under this subsection, the purchaser asks you to set the monument.

(e) What if I cannot set the burial marker or monument within the time period required by subsection (c) or (d) of this section because of inclement weather or other special circumstances? If you cannot set the marker or monument within the required time period, you must notify the purchaser in writing no

later than the 5th day after the date by which the marker or monument must be set under subsection (c) or (d) of this section. Your written notice must:

- (1) if possible, state the date you expect to set the marker or monument; and
- (2) provide an explanation of the delay.

(f) What marker list must I maintain? Must I keep a written log related to the burial marker or monument purchase and installation process to prove that I have complied with this section? ~~No.~~ However, You must keep a list of all ~~each~~ marker transactions ~~purchased~~ since the last examination, and the purchaser's marker or monument contract file must include all documentation necessary to verify and substantiate the dates specified in subsections (b), (c), (d), and (e) of this section, as applicable, and your compliance with this section.

(g) Must I inform the purchaser of the date requirements established by this section? Yes. You must provide written notice to the purchaser of all of the date requirements in one of the following:

- (1) purchase agreement;
- (2) marker/monument order form;
- (3) cemetery rules and regulations; or
- (4) cemetery price list.

(h) Does subsection (b) of this section apply to burial markers or monuments the purchaser buys from someone other than my cemetery or an affiliate of my cemetery? No. Subsection (b) applies to only those markers and monuments purchased from you or from an affiliate of your cemetery. For purposes of this subsection, an affiliate means a company that directly or indirectly controls, is controlled by, or is under common control with you.

(i) If a purchaser buys a burial marker or monument from a vendor other than my cemetery and has it delivered to my cemetery, must I install the marker or monument within the time period provided for in subsection (c) or (d) of this section? Yes, provided:

- (1) the purchaser has paid you all amounts due for the space or spaces in your cemetery on which the marker or monument will be set;
- (2) the purchaser or vendor has paid all setting fees;
- (3) the marker or monument meets your cemetery's standards requirements; and
- (4) if applicable, the vendor has met all requirements relating to the setting and placement of the marker or monument under your cemetery's rules and regulations.