

DEPARTMENT OF LABOR & ECONOMIC GROWTH

DIRECTOR'S OFFICE

PREPAID FUNERAL & CEMETERY SALES

(By authority conferred on the director of the department of labor & economic growth by 2004 PA 21, MCL 328.227.)

PART 1. GENERAL PROVISIONS

R 339.11 Definitions.

Rule 11. (1) As used in these rules:

(a) "Act" means 1986 PA 255, MCL 328.211 et seq., as amended, and known as the prepaid funeral and cemetery sales act.

(b) "Change in ownership" means a change of owners, partners, officers, or directors.

(c) "Department" means the department of labor and economic growth.

(d) "Upgrade" as used in MCL 328.223(4) means the addition of services or increased quality of merchandise, but does not mean a change from cremation to burial or from burial to cremation.

(e) "Statement" as used in MCL 328.218(1) means a detailed listing of the components required in that section.

(f) "Business structure" means the organizational form in which a business is held including, but not limited to, a sole proprietorship, a partnership, a limited partnership, a corporation, or a limited liability company.

(2) The terms defined in sections 3, 4 and 5 of the act have the same meanings when used in these rules.

History: 2006 AACS.

PART 2. CONTRACTS

R 339.21 Physical Delivery and Retention.

Rule 21. (1) Physical delivery and retention is complete for a grave memorial or urn when it has been permanently inscribed with the name of the person being memorialized.

(2) Urns and grave memorials stored until time of need shall be insured against fire and theft in an amount equal to or greater than their total replacement cost.

(3) When physical delivery and retention are complete for an article of merchandise, that portion of the contract related to the merchandise shall cease to be a prepaid contract under the act. Upon receipt of proof of physical delivery and retention, funds held by the escrow agent shall be disbursed in accordance with MCL 328.222(11). The amount disbursed shall be the pro rata share for that item.

History: 2006 AACS.

R 339.22 Records.

Rule 22. (1) Copies of all prepaid contracts shall be maintained for 36 months after performance, cancellation, or revocation of the contract.

(2) Preprinted contracts shall be numbered in sequential order.

History: 2006 AACS.

R 339.23 Required language.

Rule 23. Executed contracts shall include a paragraph immediately following the paragraph required by MCL 328.225(4) that shall state, "After the death of the contract beneficiary, the contract buyer or the contract buyer's estate may cancel the prepaid contract only where there are no remains of the deceased; where the remains of the deceased cannot be recovered; or where a prepaid contract was not utilized due to lack of knowledge by the person or persons entitled to make funeral arrangements of the existence of the prepaid contract," and shall specify the refund provisions of MCL 328.223(1) or (2), as appropriate.

History: 2006 AACS.

R 339.24 Commissions.

Rule 24. (1) If a commission has not been taken by a contract seller or provider pursuant to section 12 of the act, and a request is made by a person other than the contract seller or provider to transfer a prepaid contract to another licensed provider, then a commission may be taken as if the contract had been cancelled in accordance with section 13 (1) of the act.

(2) A total commission of not more than 10% of the contract price may be taken, regardless of the number of times a prepaid contract is transferred.

History: 2006 AACS.

### PART 3. STANDARDS OF OPERATION

R 339.31 Escrow of funds for cemetery merchandise.

Rule 31. A cemetery electing to escrow funds as provided in MCL 328.222(2) for cemetery merchandise sold on or after January 1, 2005, under an installment contract, shall escrow cemetery merchandise funds received at the trusting level specified for the calendar year in which funds were received, regardless of the date of the contract.

History: 2006 AACS.

R 339.32 Annual reports requirements.

Rule 32 (1) Each registrant shall submit an annual report for the period of January 1 to December 31 of the previous calendar year to the department, on forms required by the department.

(2) Each report shall be submitted in sufficient time to ensure that the director receives the report by July 15 of the year following the report year.

History: 2006 AACS.

R 339.33 Extension requests.

Rule 33 A registrant shall submit a written request for extension of the due date for annual reports so the director receives it not later than July 1 of the year following the report year. One extension may be granted for not more than 90 days, upon approval by the department.

History: 2006 AACS.

R 339.34 Reporting Requirements.

Rule 34. A registrant shall report the following to the department:

(a) The sale of a prepaid funeral or cemetery sales business, a 10% or more change in ownership, or a change in business structure of a registrant.

- (b) The death of an owner within 30 days of the death. The department shall determine if a new prepaid funeral and cemetery sales registration is required.
- (c) A change of address to the department within 30 days of the change.

History: 2006 AACS.

R 339.35 Assignment of contracts upon discontinuance of business.

Rule 35. (1) A registrant who discontinues business or whose license is suspended indefinitely, lapsed, or revoked shall do both of the following:

- (a) Assign prepaid contracts to another registrant within 60 days of the event.
  - (b) Notify the department and the contract buyers of the assignment within 30 days of the assignment.
- (2) Contracts not assigned as required by (1)(a) and (b) above shall be cancelled and the buyer issued a refund of the contract.

History: 2006 AACS.

R 339.36 Deposit of funds for non-guaranteed or irrevocable contract.

Rule 36. A registrant receiving funds in connection with a non-guaranteed or irrevocable contract shall deposit those funds in a depository within 30 days of receipt.

History: 2006 AACS.

R 339.37 Investment of funds.

Rule 37. Investments by an escrow agent shall be in accordance with MCL 328.222(7). Investment reports to registrants and contract buyers shall include the fair market value of the investments. Disbursement of investment funds shall be based upon their fair market value. A registrant shall not deposit funds with an escrow agent that does not act in compliance with this rule.

History: 2006 AACS.

#### PART 4. RECORD KEEPING

R 339.41 Receipts journal.

Rule 41 A registrant shall maintain a chronological receipts journal that includes the following for funds received exclusively under the act:

- (a) The date the funds are received.
- (b) The amount of contract funds received.
- (c) The amount of commission funds received.
- (d) The date the contract funds are deposited.
- (e) The name of the buyer and beneficiary.
- (f) The contract number.

History: 2006 AACS.

R 339.42 Ledger.

Rule 42 (1) A registrant shall maintain a ledger for each prepaid contract sold that includes the following:

- (a) The name and address of the buyer.
- (b) The name and address of the beneficiaries.
- (c) The name and address of the escrow agent.

- (d) The date the funds are received from buyers and escrow agents/depositories.
  - (e) The amount of contract funds received from buyers and escrow agents/depositories.
  - (f) The amount of commission funds received.
  - (g) The date the contract funds are deposited.
  - (h) The contract number.
  - (i) The type of contract sold, guaranteed or non-guaranteed.
  - (j) The contract's total price exclusive of commission.
  - (k) The contract's total commission.
  - (l) The date the contract is performed, cancelled, or revoked.
  - (m) The amount of refund paid if the contract is cancelled or revoked, and the date of payment.
  - (n) The amount, date, purpose, payee, and check number of all disbursements made to buyers, beneficiaries, providers, registrants, and vendors.
- (2) Ledgers shall be maintained separately, in chronological order, or in sequential contract number order.

History: 2006 AACS.

R 339.43 Registrant responsibility to provide annual statement.

Rule 43. Unless waived by the contract buyer, the registrant shall provide the annual statement to the contract buyer, as provided in MCL328.222(14).

History: 2006 AACS.

R 339.45 Other requirements for registrant.

Rule 45. A registrant shall do the following:

- (a) Obtain documentation from an escrow agent with which it contracts showing when the contract funds were deposited, as well as, when and to whom they were disbursed.
- (b) Obtain copies of notices and statements sent to the contract buyers/beneficiaries from the escrow agent.
- (c) Ensure that such documentation as described in subdivisions (a) and (b) of this rule is produced and copies are retained.
- (d) Maintain copies of any other notices and statements sent to the buyers/beneficiaries in any capacity.
- (e) Maintain all records in compliance with MCL 328.218(1).

History: 2006 AACS.

R 339.47 Reporting period.

Rule 47. (1) The department may require a registrant to produce a list as described in MCL 328.218(1) for any period ending it considers necessary for examination, review, or audit.

(2) The registrant shall ensure that adequate provisions are included in any escrow agreement necessary to implement this rule.

History: 2006 AACS.