

## SUBCHAPTER 23. CEMETERY MERCHANDISE TRUSTS

### **365:25-23-1. Purpose**

The purpose of this subchapter is to set forth rules and procedural requirements which the Commissioner deems necessary to carry out the provisions of the Cemetery Merchandise Trust Act. The information called for by the regulations of this subchapter is hereby declared to be necessary and appropriate in the public interest.

[Source: Added at 28 Ok Reg 214 (emergency), eff 10-19-10; Added at 28 Ok Reg 1964, eff 7-14-11]

### **365:25-23-2. Permit required**

Pursuant to the Cemetery Merchandise Trust Act, any organization which shall accept money or anything of value for prepaid cemetery merchandise pursuant to a prepaid cemetery merchandise contract shall obtain a permit from the Oklahoma Insurance Department authorizing the transaction of this type of business prior to the commencement of this type of business. The Commissioner may deny the issuance of a permit if the organization or any of its owners or officers:

- (1) Makes a material misstatement or misrepresentation in an application or permit;
- (2) Has been sentenced, convicted, pled guilty or nolo contendere to a crime involving fraud, dishonesty or moral turpitude; or
- (3) Fraudulently or deceptively obtains or attempts to obtain a permit for another.

[Source: Added at 28 Ok Reg 214 (emergency), eff 10-19-10; Added at 28 Ok Reg 1964, eff 7-14-11]

### **365:25-23-3. Contract approval**

No organization shall use in any way any sales contract without having received prior written approval from the Insurance Commissioner to do so. The original and two (2) copies of any such contract, including any amendments thereto, shall be submitted to the Insurance Commissioner for approval.

[Source: Added at 28 Ok Reg 214 (emergency), eff 10-19-10; Added at 28 Ok Reg 1964, eff 7-14-11]

### **365:25-23-4. Forms**

(a) **Application for Cemetery Merchandise Permit.** An application for Cemetery Merchandise Permit shall be made by filing an Application for Cemetery Merchandise Permit Original Application on a form approved by the Commissioner. The application shall be filed with and approved by the Insurance Commissioner before any contracts covered by this act may be marketed.

(b) **Surety bond.** Organizations purchasing a surety bond shall use the Surety Bond Form as approved by the Commissioner. Any variation from this form must have the prior written approval of the Insurance Commissioner.

(c) **Renewal of Cemetery Merchandise Permit.** A renewal of a Cemetery Merchandise Permit shall be made by filing the Renewal of Cemetery Merchandise Permit form as approved by the Commissioner no later than March 15 of each year. Renewals made after March 15 of the year following the year the permit is first issued shall be made by filing the Application for Cemetery Merchandise Permit and paying any fines that may have been imposed with respect to an expired permit in addition to double the renewal fee.

(d) **Cemetery Merchandise Annual Report.** Every holder of a Cemetery Merchandise Permit shall file a Cemetery Merchandise Annual Report on a form approved by the Commissioner on or before March 15 of each year.

(e) **Oklahoma Quarterly Report of Cemetery Merchandise.** Every holder of a Cemetery Merchandise Permit that maintains a surety bond shall submit an Oklahoma Quarterly Report of Cemetery Merchandise on a form approved by the Commissioner.

(f) **Notice of Sale.** Prior to the sale of a cemetery with a cemetery merchandise permit, a permit holder shall first file a Notice of Sale on a form approved by the Commissioner.

[Source: Added at 28 Ok Reg 214 (emergency), eff 10-19-10; Added at 28 Ok Reg 1964, eff 7-14-11]

#### **365:25-23-5. Trust fund and trustee**

A holder of a Cemetery Merchandise Permit with funds in trust shall keep the Insurance Department informed of the identity of the trustee at all times and at all times shall comply with the provisions of 36 O.S. § 7126. Prior to changing the trustee or trust location, a permit holder shall notify the Commissioner at least thirty (30) days prior to any transfer or change stating the reason for the proposed change.

[Source: Added at 28 Ok Reg 214 (emergency), eff 10-19-10; Added at 28 Ok Reg 1964, eff 7-14-11]

#### **365:25-23-6. Surety bond**

A permit holder posting a surety bond in lieu of making remittances to a trust fund, shall file a quarterly report no later than the thirtieth day after the close of each quarter. The bond shall be in an amount not less than the minimum funding requirement for cemetery merchandise trusts pursuant to the provisions of 36 O.S. § 7126. If at any time the Quarterly Report shows that the bond posted does not meet the minimum funding requirements, the permit holder shall be notified by the Insurance Department and shall post an additional or amended bond within ten (10) days following notification. The additional or amended bond shall be sufficient in size to satisfy the provisions of 36 O.S. §§ 7126 and 7127.

[Source: Added at 28 Ok Reg 214 (emergency), eff 10-19-10; Added at 28 Ok Reg 1964, eff 7-14-11]

#### **365:25-23-7. Reports to trustee**

The Cemetery Merchandise Trust Act provides that each permit holder provide either a copy of each contract to its trustee or may, in lieu thereof, submit a summary of the relevant information from the contracts. If a permit holder chooses to provide a summary, the information shall be submitted on a monthly basis to the trustee on a form provided by the Oklahoma Insurance Department. The report shall contain the following information:

- (1) Name of the cemetery;
- (2) Town where the cemetery is located;
- (3) Period of time covered by the report;
- (4) Account numbers assigned to each contract;
- (5) Name of the contract beneficiary;
- (6) Description of the merchandise purchased;
- (7) Cost breakdown on each piece of merchandise sold which is covered by the Cemetery Merchandise Trust Act;
- (8) Amount of deposit made on each account;
- (9) Beginning and ending balances; and
- (10) A current original manufacturer's price list from any and all cemetery merchandise suppliers used by the permit holder.

[Source: Added at 28 Ok Reg 214 (emergency), eff 10-19-10; Added at 28 Ok Reg 1964, eff 7-14-11]

#### **365:25-23-8. Annual report**

On or before March 15 of each year, each permit holder shall file an Annual Report with the Oklahoma Insurance Department which shall include the following information:

- (1) Name of the cemetery;
- (2) Town where the cemetery is located;
- (3) Name and address of person to contact with questions about the report;
- (4) Period of time covered by the report;
- (5) Trust account numbers;
- (6) Merchandise covered by each account;
- (7) Amount deposited on each account to the trust fund;
- (8) Beginning and ending balance;
- (9) Method of determination of wholesale cost;
- (10) A current original manufacturer's price list from any and all cemetery merchandise suppliers used by the permit holder; and
- (11) Name of the vault company with whom the permit holder deals.

[Source: Added at 28 Ok Reg 214 (emergency), eff 10-19-10; Added at 28 Ok Reg 1964, eff 7-14-11]

#### **365:25-23-9. Notice of sale**

The seller of a cemetery with a cemetery merchandise trust permit, shall make application forty-five (45) days prior to the transfer of ownership using a form approved by the Commissioner. A transfer may only be made to a permit holder in good standing

with the Department. In addition to the notice, the seller shall also submit a copy of the proposed Seller's Agreement and a listing of all undelivered prepaid cemetery merchandise contracts. The listing shall provide the contract holder's name; the beneficiary's name or names, contract number, contract value, and the trust value at the time of notice. No transfer may be made without the Commissioner's prior written approval.

[**Source:** Added at 28 Ok Reg 214 (emergency), eff 10-19-10; Added at 28 Ok Reg 1964, eff 7-14-11]

