

#### **40 KAR 2:155. Cemetery and preneed forms.**

RELATES TO: KRS 367.937(2), 367.940(1), (3), (4), 367.946(1), (4), 367.954(8), 367.958(1), (13)

STATUTORY AUTHORITY: KRS 15.180, 367.150(4), 367.972(2)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 367.972(2) authorizes the Attorney General to promulgate administrative regulations to implement KRS 367.932 to 367.974 and 367.991. This administrative regulation establishes the requirements for a cemetery company and preneed cemetery merchandise seller annual report form, identified in KRS 367.946(4), a preneed burial contract license annual report form identified in KRS 367.940(4), a cemetery preconstruction project application form identified in KRS 367.958(1), a cemetery registration application form identified in KRS 367.946(1), a cemetery company and sellers of cemetery merchandise monthly report form identified in KRS 367.954(8) and 367.958(13), a preneed merchandise sellers application form as identified in KRS 367.940(1), a preneed burial contract sellers monthly report form as identified in KRS 367.940(3), and an irrevocable funeral trust agreement form as identified in KRS 367.937(2).

##### **Section 1. Definitions.**

- (1) "Bank of underground crypts" is defined by KRS 367.932(15).
- (2) "Columbarium" is defined by KRS 367.932(10).
- (3) "Last twelve (12) months" means January 1 through December 31 of the preceding calendar year.
- (4) "Mausoleum" is defined by KRS 367.932(9).
- (5) "Principal stockholder" means one (1) who owns ten (10) percent or more of the corporate stock in the applicant corporation.
- (6) "Underground crypt" is defined by KRS 367.932(14).

Section 2. Cemetery Company and Cemetery Merchandise Sellers Annual Report Form. The "Cemetery Company and Cemetery Merchandise Sellers Annual Report" Form CPN-1, required by KRS 367.946(4), shall contain the following information:

- (1) The phrase "last twelve (12) months" means January 1 through December 31 of the preceding calendar year;
- (2) The last day covered by this report;
- (3) The cemetery name and registration number;
- (4) The nature of cemetery ownership, selecting from one (1) of the following:
  - (a) Corporation;
  - (b) Proprietorship;
  - (c) Partnership;
  - (d) Nonprofit; or
  - (e) Municipal;
- (5) The cemetery location and mailing address, including city, state and zip code;
- (6) The cemetery phone number;
- (7) The name and address, including city, state and zip code, of all trust companies holding perpetual care and maintenance trust funds;
- (8) The account number of all perpetual care and maintenance trust accounts;
- (9) A copy of the annual perpetual care and maintenance trust report from the financial institution listing all transactions that have occurred during the preceding year;
- (10) The beginning balance of all perpetual care and maintenance trust accounts;
- (11) Perpetual care and maintenance trust fund account deposit information, including:
  - (a) The unpaid balance from the prior year;
  - (b) The number of graves sold during the year, the amount collected on the grave sales, and the amount deposited into the perpetual care and maintenance trust account from

- grave sales;
- (c) The number of lawn or mausoleum crypts sold, the amount collected on the lawn or mausoleum crypt sales, and the amount deposited into the perpetual care and maintenance trust account from lawn or mausoleum crypt sales;
  - (d) The number of niches sold, the amount collected on the sale of niches, and the amount deposited into perpetual care and maintenance trust account from niche sales;
  - (e) The amount of unpaid trust deposits from the current year. This shall include last quarter's deposits if not made before the filing deadline; and
  - (f) The total perpetual care and maintenance account deposits made during the last twelve (12) months;
- (12) Additional gifts to perpetual care, including funds not required by KRS 367.952(2);
- (13) Perpetual Care and Maintenance Trust Fund Account earnings information, including:
- (a) All interest and dividends earned during the current fiscal year;
  - (b) All capital gains and losses;
  - (c) All interest used during the current fiscal year;
  - (d) All taxes and fees; and
  - (e) Total earnings reinvested into the trust balance;
- (14) The ending balance of the perpetual care and maintenance trust fund account;
- (15) For registrants complying with KRS 367.954 by trusting forty (40) percent of all payments made for cemetery merchandise, the following information shall be required:
- (a) The name and address, including city, state and zip code, of all trust companies holding cemetery merchandise trust funds;
  - (b) The account number of all cemetery merchandise trust accounts;
  - (c) A copy of the cemetery merchandise annual trust report from the financial institution summarizing all transactions that have occurred on the cemetery merchandise trust fund for the last twelve (12) months. This shall include a ledger sheet listing all persons who have purchased preneed cemetery merchandise within the last twelve (12) months;
  - (d) The beginning balance in the cemetery merchandise trust fund;
  - (e) All additions to the cemetery merchandise trust fund, including:
    - 1. The amount deposited for sales from the last twelve (12) months;
    - 2. The amount deposited for prior year sales;
    - 3. The total interest earned;
    - 4. All capital gains and losses; and
    - 5. The total additions to the cemetery merchandise trust fund;
  - (f) The amount withdrawn during the last twelve (12) months for:
    - 1. Merchandise provided;
    - 2. Monies refunded; and
    - 3. Total withdrawals; and
  - (g) The ending balance of the cemetery merchandise trust fund;
- (16) For registrants complying with KRS 367.954 by placing preneed cemetery merchandise in storage, the following information shall be required:
- (a) The name and address, including city, state and zip code, of all companies holding cemetery merchandise in storage;
  - (b) The total dollar amount of cemetery merchandise held in storage;
  - (c) The name and address, including city, state and zip code, of the company issuing the surety bond covering the cemetery merchandise held in storage; and
  - (d) The amount of the bond covering the cemetery merchandise held in storage;
- (17) For registrants complying with KRS 367.954 by posting a good and sufficient bond with the Attorney General's Office, the following information shall be required:

- (a) The name and address, including city, state and zip code, of the bond company issuing the bond;
- (b) The amount of the bond; and
- (c) The total dollar amount of preneed cemetery merchandise sold in the last twelve (12) months;
- (18) The preneed burial license number;
- (19) A ledger sheet which requires the following information:
  - (a) All preneed burial contracts sold by the firm for which services have not yet been performed or monies have not yet been refunded during the last twelve (12) months (that is, contracts that are still in existence on December 31); and
  - (b) All preneed burial contracts for which services were performed or monies were refunded during the last twelve (12) months (that is, accounts that had a positive balance on January 1 but show a zero balance as of December 31);
- (20) A reconciliation section containing information on the following:
  - (a) The beginning balance of the trust;
  - (b) All deposits placed in the trust, including:
    - 1. The additions to existing contracts;
    - 2. The new contract deposits; and
    - 3. The earnings on all contracts;
  - (c) The total deposits in the trust;
  - (d) All withdrawals from the trust, including:
    - 1. The total refunds and conversions in the trust; and
    - 2. The total number of trusts serviced;
  - (e) The total withdrawals from the trust;
  - (f) Any unrealized gains or losses from market changes; and
  - (g) The ending balance in the trust;
- (21) A copy of the annual preneed burial trust report statements from the financial institution summarizing all transactions that have occurred on this fund for the last twelve (12) months;
- (22) List all preconstruction sales project numbers;
- (23) A status report of sales projects, containing the following information for each preconstruction sales project:
  - (a) The date the preconstruction sales project was registered with this office;
  - (b) The date the sales began;
  - (c) The date construction began; and
  - (d) The number of sales during the current year, including:
    - 1. The number of mausoleum crypts sold;
    - 2. The number of underground crypts sold; and
    - 3. The number of niches sold;
- (24) A ledger sheet listing all persons who have purchased preconstruction crypts or niches within the past twelve (12) months;
- (25) The amount received for preconstruction sales during the last twelve (12) months, including:
  - (a) The amount received for mausoleum crypt sales and the amount deposited into trust;
  - (b) The amount received for underground crypt sales and the amount deposited into trust;
  - (c) The amount received for niche sales and the amount deposited into trust; and
  - (d) The total amount deposited into trust;
- (26) The name and address, including city, state and zip code, of the trustee holding the preconstruction sales trust;
- (27) The account number of the preconstruction sales trust;

- (28) Preconstruction sales trust information including the following:
  - (a) Trust beginning balance;
  - (b) Trust deposits from sales for last twelve (12) months;
  - (c) Trust deposits from prior year sales;
  - (d) Trust earnings derived from:
    - 1. Interest; and
    - 2. Unrealized capital gains or losses;
  - (e) Trust withdrawals from:
    - 1. Merchandise provided; and
    - 2. Monies refunded; and
  - (f) Trust balance on December 31;
- (29) A copy of the preconstruction sales annual trust report from the financial institution summarizing all transactions for the preceding year;
- (30) A brief explanation of the stage of construction each project is in at the last day of the year;
- (31) A certification that this is a true and correct report of activity for the last twelve (12) months and that the person completing the report is authorized to sign the report;
- (32) A dated and notarized signature of the individual duly authorized to sign the form, including the signatory's printed name and title. If the cemetery is incorporated, the president or authorized individual shall sign;
- (33) If the person signing did not prepare the report, the printed name, signature, and title of the person who prepared the report is required;
- (34) A ledger sheet for preneed cemetery merchandise sales containing the following information:
  - (a) The cemetery name;
  - (b) The name of the financial institution in which the trust is located;
  - (c) The consumer's name in which the trust was created;
  - (d) The original contract date on which the contract was entered;
  - (e) The retail selling price of the cemetery merchandise;
  - (f) The amount deposited into the trust account;
  - (g) Any earnings which accrued during the last twelve (12) months;
  - (h) The amount of any trust that was refunded during the last twelve (12) months;
  - (i) Any merchandise that was provided during the last twelve (12) months; and
  - (j) The trust balance as of December 31; and
- (35) A ledger sheet for preneed burial contracts containing the following information:
  - (a) The firm name;
  - (b) The signature of the preparer;
  - (c) The name of the financial institution in which the trust is located;
  - (d) The account number of the trust within the financial institution;
  - (e) The consumer's name in which the trust was created;
  - (f) The original contract date on which the contract was entered;
  - (g) Whether the contract is irrevocable;
  - (h) The trust balance as of January 1;
  - (i) The amount of any additions which occurred during the last twelve (12) months;
  - (j) Any earnings which accrued during the last twelve (12) months;
  - (k) Any withdrawals from the trust, including trusts that were refunded, serviced, or converted; and
  - (l) The trust balance as of December 31.

Section 3. By midnight of March 31 following the end of the last twelve (12) months, the "Cemetery Company and Cemetery Merchandise Sellers Annual Report", CPN-1, shall be

filed with the Attorney General. A report postmarked by that time shall be considered timely filed.

Section 4. Preneed Burial Contract Annual Report. The "Preneed Burial Contract Annual Report", Form CPN-2, as required by KRS 367.940(4) shall contain the following information:

- (1) The licensee's name, preneed burial license number, location, and mailing address including city, state, and zip code;
- (2) A statement certifying that this is a true and correct report of activity for the preceding year;
- (3) A reconciliation of the preneed burial contract trust account containing information on the following:
  - (a) The beginning balance of the trust;
  - (b) All deposits placed in the trust, including:
    1. All additions to existing contracts;
    2. All new contract deposits; and
    3. Earnings on all contracts;
  - (c) The total deposits in the trust;
  - (d) All withdrawals from the trust, including:
    1. Total refunds and conversions in the trust; and
    2. Total number of contracts serviced;
  - (e) The total withdrawals from the trust;
  - (f) Any unrealized gains or losses from market changes; and
  - (g) The ending balance in the trust;
- (4) A dated and notarized signature of the individual completing the form, acknowledging that the information is an accurate accounting to the best of the signatory's knowledge, and that the signatory is authorized to complete the report; and
- (5) A ledger containing the following information on all contracts entered into between a consumer and the preneed burial licensee which, as of December 31, have not been serviced or, during the last twelve (12) months, were serviced, refunded, or converted:
  - (a) The name of the firm placing the funds in trust;
  - (b) The signature of the individual preparing the ledger;
  - (c) The year for which the ledger is being completed;
  - (d) The name of the financial institution in which the trust is located;
  - (e) The account number of the trust within the financial institution;
  - (f) The consumer's name in which the trust was created;
  - (g) The original contract date on which the contract was entered;
  - (h) Whether the contract is irrevocable;
  - (i) The trust balance as of January 1;
  - (j) Any additions which occurred during the last twelve (12) months;
  - (k) Any earnings which accrued during the last twelve (12) months;
  - (l) Any withdrawals from the trust, including trusts that were refunded, serviced or converted; and
  - (m) The trust balance as of December 31.

Section 5.

- (1) By midnight of March 31 following the preceding twelve (12) months, the Preneed Burial Contract Annual Report, CPN-2, shall be filed with the Attorney General. A report postmarked by that time shall be considered timely filed; and
- (2) If a licensee filed an annual report that included a portion of the calendar year preceding the effective date of this administrative regulation, the licensee shall file a new annual report for that portion of the year that was not previously reported.

Section 6. Cemetery Presale and Preconstruction Project Application. The "Cemetery Presale/Preconstruction Project Application", Form CPN-3, shall contain the following information:

- (1) The parent company name;
- (2) The cemetery name;
- (3) The project name and any internal project identification number which shall be used on all sales contracts;
- (4) The cemetery telephone number;
- (5) The cemetery location and address, including street address, post office box, city, county, state, and zip code;
- (6) The cemetery mailing address, including city, state, and zip code, if different from location;
- (7) The date sales began or will begin on the project for which the application is being submitted;
- (8) The name and address, including street address, city, state, and zip code, of the financial institution where the preconstruction trust fund will be held and account numbers for those trusts;
- (9) If no preconstruction trust fund is being used, applicant is required to attach a bond issued by a surety company licensed to do business in Kentucky in an amount sufficient to cover all payments made by or on account of purchasers who have not received the purchased property and services and the bond numbers of the attached bond;
- (10) An identification of the type of construction project for which the application is submitted, selecting from the following types:
  - (a) Mausoleum;
  - (b) Columbarium;
  - (c) Underground crypt; or
  - (d) Bank of underground crypts;
- (11) The number and type of units to be sold;
- (12) The gross selling price of the units;
- (13) The date construction is scheduled to begin;
- (14) The name of the contractor;
- (15) A project cost estimate sheet and one (1) of the following:
  - (a) For mausoleum projects, a site plan showing exact dimensions of the construction site with scaled drawings of existing buildings or landmarks;
  - (b) For lawn crypt projects, a sales chart map which identifies each lot by number;
- (16) The location of the project in the cemetery;
- (17) The locations where temporary entombment or inurnment will be offered;
- (18) Whether the applicant has any other preconstruction sales projects at the location and, if yes, the preconstruction sales project numbers and project names for each;
- (19) If the applicant is eligible for self-construction pursuant to KRS 367.958(4), the following information:
  - (a) A certified statement regarding the projects the applicant has constructed in the past using primarily equipment owned by the entity and the applicant's own personnel with a minimum of subcontracting;
  - (b) The name of the construction company;
  - (c) The parts to be subcontracted;
  - (d) The cost of the subcontracted parts; and
  - (e) The name and address, including city, state and zip code, of subcontractors;
- (20) A statement of compliance where the applicant signs and agrees to the following:
  - (a) To trust payments of money in compliance with Kentucky's cemetery and preneed funeral laws, KRS 367.932-367.974;

- (b) That, under penalty of law, the information provided in the Cemetery Presale/Preconstruction Project Application, CPN-3, is true and accurate to the best of the applicant's knowledge;
- (c) That the applicant will notify the Attorney General immediately of any change in the information provided in the Cemetery Presale/Preconstruction Project Application, CPN-3;
- (d) That the applicant is not insolvent and has not conducted business in a fraudulent manner;
- (e) That the applicant is duly authorized to do business in this state;
- (f) That the registration, if granted, may be revoked in accordance with KRS Chapter 13B if the applicant violates any laws of Kentucky pertaining to trust funds or contracts or violates any administrative regulations of the Attorney General affecting those funds or contracts; and
- (g) That the applicant is authorized to complete the Cemetery Presale/Preconstruction Project Application, CPN-3, on behalf of the cemetery company; and
- (21) A dated and notarized signature of the applicant including the title or position held by the applicant.

Section 7. Cemetery Registration Application. The "Cemetery Registration Application", Form CPN-4, shall contain the following information:

- (1) The name of the cemetery;
- (2) The mailing address of the cemetery, including the city, state, and zip code;
- (3) The location of the cemetery, including the city, state, and zip code;
- (4) The on-site telephone number of the cemetery;
- (5) The total acreage that is developed;
- (6) The total acreage that is undeveloped;
- (7) The total acreage sold to date;
- (8) An identification of any amenities used by the cemetery, including:
  - (a) Mausoleums;
  - (b) Crematory;
  - (c) Lawn crypts;
  - (d) Columbariums; and
  - (e) Scattering gardens;
- (9) Whether any of the following additional services are offered:
  - (a) At-need;
  - (b) Preneed burial/funeral;
  - (c) Preneed cemetery merchandise; and
  - (d) Preconstruction;
- (10) Information on all financial institutions holding the business bank accounts, including:
  - (a) The name and address, including city, state, and zip code; and
  - (b) The account numbers of the business bank accounts;
- (11) Information on all financial institutions holding perpetual care and maintenance trust fund monies, including:
  - (a) The name and address, including city, state and zip code;
  - (b) The account number;
  - (c) The principal balance;
  - (d) The interest balance; and
  - (e) The total balance;
- (12) Information on all financial institutions holding cemetery merchandise trust fund monies, including:
  - (a) The name and address, including city, state and zip code;

- (b) The account number;
  - (c) The principal balance;
  - (d) The interest balance; and
  - (e) The total balance;
- (13) Information on all financial institutions holding preneed burial contract trust fund monies, including:
- (a) The name and address, including city, state and zip code;
  - (b) The account number; and
  - (c) The preneed burial license number;
- (14) Information regarding mausoleum building on the cemetery premises, including:
- (a) The number of crypts or niches;
  - (b) Whether all mausoleum crypts or niches sold have been constructed;
  - (c) If all mausoleum crypts and niches sold have not been constructed, the first date of the sale of the crypts and niches;
  - (d) If all mausoleum crypts and niches sold have not been constructed, the date construction began;
  - (e) If all mausoleum crypts and niches sold have not been constructed, the preconstruction sales permit number; and
  - (f) If all mausoleum crypts and niches sold have not been constructed, the number of crypts or niches remaining to be constructed;
- (15) Information regarding underground or lawn crypts, including:
- (a) Whether all underground or lawn crypts sold have been constructed;
  - (b) If all underground or lawn crypts sold have not been constructed, the number of crypts remaining to be constructed;
  - (c) If all underground or lawn crypts sold have not been constructed, the first date of the sale of crypts;
  - (d) If all underground or lawn crypts sold have not been constructed, the date construction began; and
  - (e) If all underground or lawn crypts sold have not been constructed, the preconstruction sales permit number;
- (16) Whether the owning entity previously or currently operates one (1) or more cemeteries in any state other than Kentucky;
- (17) If the owning entity has previously or currently operates one (1) or more cemeteries in any state other than Kentucky, the following information:
- (a) The name of the cemetery;
  - (b) The address of the cemetery, including city, state and zip code; and
  - (c) The dates on which the cemetery was operated;
- (18) If the applicant is an existing corporation, partnership, or sole proprietorship, the applicant shall attach a complete and detailed financial statement for the last three (3) years showing assets, liabilities, and reserves;
- (19) If the applicant is a new corporation, partnership, or sole proprietorship, the applicant shall attach a complete and detailed financial statement including estimated receipts from all sources and estimated expenditures for the next two (2) years;
- (20) If this is a stock sale, a Certificate of Good Standing from the Secretary of State shall be required;
- (21) If the applicant is a corporation, the following information:
- (a) The name of the parent corporation;
  - (b) The state of incorporation;
  - (c) The corporate headquarters mailing address, including city, state and zip code;
  - (d) The Kentucky business address, including city, state and zip code, if different than the cemetery address;
  - (e) The Kentucky business telephone number;



- (f) The date of incorporation;
- (g) The name of the resident process agent;
- (h) The address of the resident process agent, including the city, state and zip code;
- (i) The tax identification number; and
- (j) The following information on each incorporator, principal stockholder owning ten percent or more, director, officer and general manager:
  - 1. Name;
  - 2. Title or position;
  - 3. Resident address, including city, state and zip code; and
  - 4. Social Security number;
- (22) If the applicant is a partnership, the following information:
  - (a) The name of each partner;
  - (b) The resident address, including city, state and zip code of each partner;
  - (c) The position held by each partner; and
  - (d) The Social Security number of each partner;
- (23) If the applicant is a sole proprietorship, the following information:
  - (a) The name of the sole proprietor;
  - (b) The resident address, including city, state and zip code of the sole proprietor; and
  - (c) The Social Security number of the sole proprietor;
- (24) If the applicant is a municipality, the following information:
  - (a) The name of the municipality;
  - (b) The address where the records are held, including city, state and zip code;
  - (c) The telephone number of the location where records are held;
  - (d) The name of the custodian of records; and
  - (e) The title of the custodian of records;
- (25) A statement, signed by the applicant or applicants, which includes the following:
  - (a) The applicant agrees to deposit funds in compliance with Kentucky's cemetery and preneed laws, KRS 367.932-367.974;
  - (b) The applicant states, under penalty of law, that the information provided on the application is true to the best of the applicant's knowledge and that the applicant shall notify the Attorney General within sixty (60) days of any material change in the information provided on the application;
  - (c) The applicant is not insolvent, has not conducted business in a fraudulent manner, and that the applicant is duly authorized to do business in the Commonwealth of Kentucky;
  - (d) The applicant agrees that the registration, if granted, may be revoked in accordance with KRS Chapter 13B if the applicant violates any laws of Kentucky pertaining to trust funds or contracts or violate any administrative regulations of the Attorney General affecting those funds or contracts; and
  - (e) The signatory is authorized to complete this form on behalf of the applicant;
- (26) The date on which the applicant completed the application;
- (27) The signature of the applicant and the title or position held by the applicant; and
- (28) For applicants applying for exemption consideration, the following information:
  - (a) The tax-exempt number;
  - (b) Whether the cemetery is owned by a religious group, private family burial ground, nonprofit organization, or sole proprietorship;
  - (c) The name of the cemetery;
  - (d) The location of the cemetery, including city, state and zip code;
  - (e) The total number of acres;
  - (f) The total number of acres plotted;
  - (g) The total number of graves;
  - (h) The total number of graves available;

- (i) The total number of graves used;
- (j) Whether spaces are provided to the general public;
- (k) The current charge for one (1) grave space;
- (l) The current charge for opening or closing the grave;
- (m) An attached copy of any arrangements that have been made for perpetual care and maintenance expenses, including any bylaws or trust agreements;
- (n) A list of the names and addresses of those individuals who are responsible for the day-to-day operation of the cemetery, including those who make maintenance decisions, accept payments, plot spaces and keep records;
- (o) Attach any articles of organization, bylaws, or other information concerning the responsibilities of these individuals, how they are elected or appointed, the terms that they serve, and the method of reporting the operation of the cemetery to the lot owners;
- (p) An affidavit of exemption where the applicant certifies that the cemetery for which the application is made meets the qualifications for exemption provided in KRS 367.932(12), including:
  - 1. The cemetery operates nonprofit;
  - 2. The cemetery has no salaried employees, directors, officers, or managers other than maintenance caretakers;
  - 3. The cemetery is owned and controlled by lot-owners; and
  - 4. The cemetery does not sell any preneed merchandise or services;
- (q) A statement that the applicant is authorized to sign the affidavit on behalf of the named cemetery and that if any of the statements should change, the applicant shall notify the Office of the Attorney General within thirty (30) days;
- (r) The printed name of the applicant;
- (s) The street address, city, state and zip code of the applicant; and
- (t) A notarized signature of the applicant.

Section 8. The following documents shall accompany each cemetery registration application:

- (1) A certified copy of the Articles of Incorporation, Articles of Partnership, or the partnership agreement;
- (2) A copy of the bylaws;
- (3) If a new cemetery, a certificate from the agency having jurisdiction over zoning matters stating that the property on which the cemetery is located is properly zoned for that purpose and the applicant has complied with all applicable zoning ordinances;
- (4) A statement of the applicant's proposed plan of operation;
- (5) If a foreign corporation, evidence of qualification to do business in Kentucky;
- (6) A certified copy of the perpetual care trust agreement, cemetery merchandise trust agreement, preneed burial trust agreement, and preconstruction trust agreement; and
- (7) If a new cemetery, proof of deposit of initial contribution to the perpetual care trust fund as required by KRS 367.952.

Section 9. Cemetery Company and Cemetery Merchandise Sellers Monthly Report. The "Cemetery Company and Sellers of Cemetery Merchandise Monthly Report", Form CPN-5, shall contain the following information:

- (1) The name of the cemetery company or cemetery merchandise seller and the city in which it is located;
- (2) The telephone number of the cemetery company or cemetery merchandise seller;
- (3) The name of the financial institution holding the cemetery company or cemetery merchandise seller's funds;
- (4) The registration number of the cemetery company or cemetery merchandise seller's account held by the financial institution;
- (5) The preneed burial license number;

- (6) The month for which the report is submitted;
- (7) The signature of the individual completing the report; and
- (8) The following information for all contracts entered between a consumer and the cemetery company or cemetery merchandise seller for the month for which the report is submitted:

- (a) The date on which a contract was entered;
- (b) The amount received on the contract;
- (c) The consumer's name and address, including address, city, state and zip code;
- (d) The number of items sold over and under \$500 per consumer and in total for the month;
- (e) The number of preneed funeral items sold per consumer and in total for the month;
- (f) The number of preconstruction items sold per consumer and in total for the month;
- (g) The number of preneed cemetery merchandise items sold per consumer and in total for the month;
- (h) The administrative fees due per person per contract and in total for the month;
- (i) The consumer security fees due per consumer and in total for the month; and
- (j) The total fees submitted per consumer for the month and in total for the month.

Section 10. Preneed Merchandise Sellers Application. The "Preneed Merchandise Sellers Application", Form CPN-6, shall contain the following information:

- (1) The applicant's name, including the funeral home, cemetery or business name;
- (2) The following corporate information:
  - (a) The date of application;
  - (b) The state of incorporation;
  - (c) The corporate headquarters mailing address, including city, state and zip code;
  - (d) The Kentucky business address, including city, state and zip code;
  - (e) The Kentucky business telephone number;
  - (f) The date of incorporation;
  - (g) The name of the resident process agent;
  - (h) The address of the resident process agent, including city, state and zip code; and
  - (i) The applicant's tax identification number;
- (3) For each of the applicant's incorporators, principal stockholders (one who owns a ten (10) percent or greater interest), directors, officers, and general managers, the following information shall be provided:
  - (a) Name;
  - (b) Title or position;
  - (c) Resident address, including city, state and zip code; and
  - (d) Social Security number;
- (4) For applicants organized as a partnership, the following information shall be provided:
  - (a) The name of each partner;
  - (b) The position held by each partner; and
  - (c) The Social Security number of each partner;
- (5) For applicants organized as a sole proprietorship, the following information shall be provided:
  - (a) The name of the sole proprietor; and
  - (b) The Social Security number of the sole proprietor;
- (6) If this is a stock sale, a Certificate of Good Standing from the Secretary of State shall be attached to the Preneed Sellers Application;
- (7) Applicants which are an existing corporation, partnership, or sole proprietorship shall include a complete and detailed financial statement for the past three (3) years showing assets, liabilities, and reserves;

(8) For an applicant that is a new corporation, the following information shall be provided:

- (a) The amount of stock subscribed;
- (b) The consideration for all stock issued;
- (c) The amount of promotional stock involved; and
- (d) To whom the promotional stock is issued;

(9) Applicants which are a new corporation, partnership or sole proprietorship shall include a complete and detailed financial statement including estimated receipts from all sources (including capitalization, sales, and loans) and estimated expenditures for the next two (2) years;

(10) For applicants or owning entities that sell preneed burial contracts at any other location or business in Kentucky, the following information shall be provided:

- (a) The name of the business;
- (b) The address of the business, including city, state and zip code; and
- (c) The dates of business operation;

(11) For applicants or owning entities selling preneed burial contracts in other states within the United States, the following information shall be provided:

- (a) The name of the business;
- (b) The address of the business, including city, state and zip code; and
- (c) The dates of business operation;

(12) The name of the funeral home, cemetery, or business selling preneed burial contracts;

(13) The mailing address, including city, state and zip code, of the funeral home, cemetery, or business selling preneed burial contracts;

(14) The location of the funeral home, cemetery or business selling preneed burial contracts;

(15) A letter attached to the Preneed Merchandise Sellers Application, Form CPN-6, from a financial institution that has agreed to hold the trust fund accounts for the applicant;

(16) The name, address (including city, state, and zip code) and account number of the financial institution holding the business bank account;

(17) Whether the applicant is going to solicit the sale of preneed burial contracts by a home solicitation program;

(18) Whether the applicant is familiar with Kentucky's Home Solicitation Sales Law, KRS 367.410-367.460;

(19) A statement, dated and signed by the applicant, where the applicant agrees to the following:

- (a) Applicant shall deposit payments of money in compliance with Kentucky's cemetery and preneed funeral laws, KRS 367.932-367.974;
- (b) Applicant states under penalty of law that all information given on the Preneed Merchandise Sellers Application is true and accurate to the best of the applicant's knowledge;
- (c) Applicant shall notify the Attorney General immediately if any information given in the Preneed Merchandise Sellers Application changes;
- (d) Applicant is not insolvent and has not conducted business in a fraudulent manner and is duly authorized to do business in this state;
- (e) Applicant agrees that the preneed sales license, if granted, may be denied, suspended, or revoked in accordance with KRS 367.973;
- (f) Applicant is authorized to complete the Preneed Merchandise Sellers Application, CPN-6, on behalf of the business; and

(20) The signature of all applicants, incorporators, principal stockholders owning ten (10) percent of total shares, directors, officers, and general managers associated with the

corporation named herein or, if a sole proprietorship or partnership, by all owners or general partners, and the title of position held.

Section 11. The following documents must accompany each cemetery registration application:

- (1) A certified copy of the Articles of Incorporation, Articles of Partnership, or the partnership agreement;
- (2) A copy of the bylaws;
- (3) A statement of the applicant's proposed plan of operation;
- (4) If a foreign corporation, evidence of qualification to do business in Kentucky; and
- (5) A letter from the financial institution which has agreed to hold the trust fund account.

Section 12. Preneed Sellers Monthly Report. The "Preneed Burial Sellers Monthly Report", Form CPN-7, shall contain the following information:

- (1) The name of the preneed burial seller and city in which it is located;
- (2) The month for which the report is submitted; and
- (3) The following information for all contracts entered between a consumer and the preneed burial contract seller for the month for which the report is submitted:
  - (a) The date on which the contract was entered into between a consumer and the preneed burial contract seller;
  - (b) The name of the financial institution holding the consumer's funds;
  - (c) The address of the financial institution hold the consumer's funds, including city, state, and zip code;
  - (d) The amount received on the contract;
  - (e) The consumer's name and address;
  - (f) Whether the contract was irrevocable;
  - (g) The fee that was assessed for the individual contract; and
  - (h) The total fees collected for the month.

Section 13. Irrevocable Funeral Trust Agreement. The "Irrevocable Funeral Trust Agreement", Form CPN-8, shall contain the following information:

- (1) The name and Social Security number of the beneficiary that has received, applied for, or intends to apply to be an aged, blind, or disabled recipient of benefits pursuant to the Federal Supplementary Security Income Program under Title XVI of the Social Security Act or other federal or state entitlement programs;
- (2) An acknowledgement by the beneficiary that the money paid to the specified funeral home, intended to pay for funeral arrangements of the beneficiary pursuant to a prearranged funeral agreement, contract or plan and deposited by the funeral home, as agent, in a Kentucky bank, savings and loan, or credit union, as trustee, constitutes an irrevocable trust fund during the lifetime of the beneficiary and forms a part of the prearranged funeral agreement;
- (3) An acknowledgement by the beneficiary or grantor that if, for any reason, the beneficiary or grantor fails to apply for entitlement benefits within thirty (30) days from this signing of this irrevocable funeral trust agreement, fails to receive, or otherwise becomes ineligible for entitlement benefits, the irrevocable funeral trust agreement shall become a revocable funeral trust agreement;
- (4) An acknowledgement by the beneficiary or grantor that the irrevocable funeral trust agreement shall not affect the selection of funeral goods or services or the selection of the funeral home and that, at any time, the beneficiary or grantor of the irrevocable trust may, by written request to the funeral home (as agent) and bank (as trustee), change the agent, trustee, or both;
- (5) The beneficiary or grantor acknowledges that by signing the irrevocable funeral trust agreement, the beneficiary or grantor gives authorization to the funeral home and the

Attorney General, Commonwealth of Kentucky, to access the appropriate records to ensure compliance with KRS Chapter 367;

- (6) The signature of the beneficiary or grantor;
- (7) The name and address of the funeral home, including the city, state and zip code;
- (8) The signature of an authorized representative of the funeral home; and
- (9) The date on which the irrevocable funeral trust agreement is signed.

Section 14. Incorporation by Reference.

- (1) The following material is incorporated by reference:
    - (a) "Sellers of Cemetery Merchandise and Cemetery Companies Annual Report", Form CPN-1, 11-02;
    - (b) "Preneed Burial Contract Annual Report", Form CPN-2, 11-02;
    - (c) "Cemetery Presale and Preconstruction Project Application", Form CPN-3, 11-02;
    - (d) "Cemetery Registration Application", Form CPN-4, 11-02;
    - (e) "Cemetery Company and Sellers of Cemetery Merchandise Monthly Report", Form CPN-5, 11-02;
    - (f) "Preneed Merchandise Sellers Application", CPN-6, 11-02;
    - (g) "Preneed Sellers Monthly Report", Form CPN-7, 11-02; and
    - (h) "Irrevocable Funeral Trust Agreement", Form CPN-8, 11-02.
  - (2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Office of the Attorney General, 1024 Capital Center Drive, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.
- (23 Ky.R. 4018; Am. 24 Ky.R. 328; eff. 7-11-1997; 29 Ky.R. 995; 1832; 2079; eff. 2-16-2003; Recodified from 40 KAR 2:250, eff. 6-30-2016; Crt eff. 2-21-2020.)