

Select Year: 2017

The 2017 Florida Statutes

Title XXXIII

REGULATION OF TRADE, COMMERCE, INVESTMENTS, AND SOLICITATIONS

Chapter 497

FUNERAL, CEMETERY, AND CONSUMER SERVICES

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497.263 Cemetery companies; license required; licensure requirements and procedures.—

(1) **LICENSE REQUIRED.**—No person may operate a cemetery without first obtaining a license under this section, unless specifically exempted from this chapter.

(2) **APPLICATION PROCEDURES.**—

(a) A person seeking a cemetery license under this section shall apply for such licensure using forms and procedures prescribed by rule.

(b) The applicant shall be a corporation, a partnership, or a limited liability company.

(c) The application shall require the name, principal place of business, date of formation, and federal tax identification number, of the applicant.

(d) The application shall require such historical sketches and audited or unaudited financial statements concerning the applicant and each principal of the applicant, as the licensing authority may require by rule.

(e) The application shall state any and all names under which the cemetery may do business if licensed, if different from the applicant's name.

(f) The application shall state the exact location of the proposed cemetery.

(g) The proposed cemetery must contain at least 30 contiguous acres. The application shall state the exact number of acres in the proposed cemetery.

(h) The applicant must have a net worth of \$50,000, as attested to by a sworn statement signed by all officers of the applicant. Such net worth must be continually maintained as a condition of licensure.

(i) The application shall be accompanied by such description of the proposed financial structure of the cemetery as the licensing authority may require by rule.

(j) The application shall be accompanied by a legal description of the cemetery.

(k) The application shall be accompanied by such maps or surveys of the proposed cemetery, and maps showing the location of the proposed cemetery in the local area, as the licensing authority may require by rule, and the licensing authority may by rule require such maps or surveys of the cemetery to be prepared by a licensed Florida professional surveyor.

(l) The application shall include such description of the development plans for the proposed cemetery as the licensing authority may require by rule.

(m) The applicant shall be required to make disclosure of the applicant's criminal records, if any, as required by s. 497.142.

(n) The application shall require the applicant to disclose whether the applicant or any principal of the applicant has ever had a license or the authority to practice a profession or occupation refused, suspended, fined, denied, or otherwise acted against or disciplined by the licensing authority of any jurisdiction. The licensing authority may require by rule additional information to be provided

concerning any affirmative answers. A licensing authority's acceptance of a relinquishment of licensure, stipulation, consent order, or other settlement, offered in response to or in anticipation of the filing of charges against the license, shall be construed as action against the license. The licensing authority may require by rule additional information to be provided concerning any affirmative answers.

(o) The applicant shall submit fingerprints in accordance with s. 497.142.

(p) The applicant shall demonstrate by clear and convincing evidence that the applicant has the ability, experience, financial stability, and integrity to operate a cemetery, and that its principals are of good character.

(q) The application shall be signed in accordance with s. 497.141(12).

(r) The application shall be accompanied by a nonrefundable application fee of \$5,000.

(s) The licensing authority may establish by rule requirements for the appearance before the licensing authority of the applicant and the applicant's principals, to stand for oral interview by the licensing authority at a public licensing authority meeting, before the application shall be deemed complete.

(3) ACTION CONCERNING APPLICATIONS.—If the licensing authority finds that the applicant meets the criteria established in subsection (2), the applicant shall be notified that a license will be issued when all of the following conditions are satisfied:

(a) The establishment of a care and maintenance trust fund containing not less than \$50,000 has been certified by a trust company operating pursuant to chapter 660, a state or national bank holding trust powers, or a savings and loan association holding trust powers as provided in s. 497.458, pursuant to a trust agreement approved by the licensing authority. The \$50,000 required for the care and maintenance trust fund shall be over and above the \$50,000 net worth required by subsection (2).

(b) The applicant files with the licensing authority an opinion or certification from a Florida attorney in good standing, or a Florida title company, in a form acceptable to the licensing authority, that the applicant holds unencumbered fee simple title to all land identified in the application.

(c) The applicant obtains approval of the local zoning authorities regarding the cemetery, and files with the licensing authority evidence satisfactory to the licensing authority of such approval, or if no approval by local zoning authorities is required, such approval of residents adjacent to the proposed cemetery as the licensing authority may require by rule.

(d) The licensing authority determines that the applicant has designated as general manager of the cemetery a person of integrity, who has 3 years of cemetery management experience as defined by rule of the licensing authority, and who has the ability to operate a cemetery.

(e) Evidence satisfactory to the licensing authority that the applicant has fully developed not less than 2 acres for use as burial space, such development to include a paved road from a public roadway to the developed section.

(f) Regarding the cemetery land identified in the application, the applicant has recorded, and provides the licensing authority with a written attestation of such recording signed by a licensed Florida attorney, in the public records of real estate in the county in which the cemetery land is located, a notice which contains the following language:

NOTICE

The property described herein shall not be sold, conveyed, leased, mortgaged, or encumbered without the prior written approval of the Department of Financial Services, as provided in Chapter 497, Florida Statutes.

Such notice shall be clearly printed in boldfaced type of not less than 10 points and may be included on the face of the deed of conveyance to the licensee or may be contained in a separate recorded instrument which contains a description of the property.

(4) **ISSUANCE OF LICENSE.**—There shall be issued a license to operate a cemetery company to any applicant who, within 12 months after notice that a license may be issued, meets the criteria of subsection (3). The licensing authority may, for good cause shown, grant up to two extensions of the 12-month period within which the applicant must meet the criteria of subsection (3).

History.—s. 4, ch. 59-363; s. 1, ch. 63-324; s. 2, ch. 65-288; ss. 12, 35, ch. 69-106; s. 3, ch. 72-78; s. 141, ch. 73-333; s. 3, ch. 76-168; s. 3, ch. 76-251; s. 1, ch. 77-457; s. 7, ch. 78-95; s. 1, ch. 78-369; s. 1, ch. 78-407; ss. 5, 39, 40, ch. 80-238; ss. 2, 3, ch. 81-318; s. 3, ch. 85-202; ss. 1, 4, ch. 87-39; s. 1, ch. 89-8; ss. 59, 122, ch. 93-399; s. 3, ch. 2001-120; s. 558, ch. 2003-261; s. 45, ch. 2004-301; s. 23, ch. 2005-155.

Note.—Former s. 559.33; s. 497.006; s. 497.201.

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497.285 Inactive cemeteries.—

(1) A licensee shall be considered inactive upon the acceptance of the surrender of its license by the department or upon the nonreceipt by the department of the license renewal fees required by s.

497.265.

(2) A cemetery licensee licensed to engage in preneed sales shall cease all preneed sales to the public upon becoming inactive in regard to its cemetery license. At-need sales to the public shall cease within 30 days after becoming inactive.

(3) Any licensee desiring to surrender its license to the department shall first:

(a) File notice with the department.

(b) Submit copies of its existing trust agreements.

(c) Resolve to the department's satisfaction all findings and violations resulting from the last examination conducted.

(d) Pay all outstanding fines and invoices due the department.

(e) Submit its current license.

(4) Upon receipt of the notice, the department shall review the licensee's:

(a) Trust funds.

(b) Trust agreements.

(c) Care and maintenance of the cemetery grounds.

(5) After a review to the department's satisfaction, the department shall terminate the license.

(6)(a) The care and maintenance trust fund of a licensee shall be held intact and in trust after the licensee has become inactive, and funds in that trust fund shall be disbursed to the cemetery on a regular basis for the upkeep of the grounds.

(b) The merchandise trust fund of a licensee shall be held intact and in trust after the licensee has become inactive, and the funds in that trust fund shall be disbursed in accordance with the requirements of the written contracts until the fund has been exhausted.

History.—s. 85, ch. 93-399; s. 66, ch. 2004-301.

Note.—Former s. 497.349.