



# TEXAS FUNERAL SERVICE COMMISSION

## 3RD QUARTER NEWSLETTER

### March 2015-May 2015

March 2, 2015

Howdy! Today is Texas Independence Day! As a native Texan, I think we live in the greatest state in our nation. What a vast and diverse state. If you aren't originally from here, that's okay, we're glad you're here now.

Check out the Texas State Libraries and Archives Commission page on the history of the Texas Declaration of Independence: <https://www.tsl.texas.gov/exhibits/texas175/declaration.html>

The 2015 Texas Legislative Session started in January. There are several bills that would impact the funeral service industry in particular. I encourage each of you to get involved and let your elected representatives know how you feel about the laws they are considering.

You can find your elected representative here: <http://www.fyi.legis.state.tx.us/Home.aspx>

The Commission will be updating its Mortuary Law Exam this summer. If you are interested in helping to develop questions, please let me know. As we transition to an online exam later this year, having new and more questions will ensure our licensees know relevant mortuary laws and rules.

As always, please feel free to share your thoughts and concerns with me.

Yours truly,

A handwritten signature in cursive script that reads "Janice".

Janice S. McCoy  
Executive Director

## **Upcoming Commission Meetings**

The next TFSC meeting will be held next **Tuesday, March 10**, beginning at 9:00 am in Room 2-225 of the William P. Hobby Building in Austin, Texas. The June meeting is currently scheduled for **Tuesday, June 9, 2015**, at the same time and location. Licensed Texas funeral directors and embalmers can receive up to four hours of continuing education credit for attending a Commission meeting.

## **A Message from Legal**

The laws governing the death care industry are found in Texas Occupations Code (Tex. Occ. Code) Chapter 651, Texas Health and Safety Code Chapter 716, and Texas Administrative Code (TAC) Title 22, Part 10. All the laws and rules can be found on the TFSC website by following the "Governing Laws" link.

These governing provisions are both statute and rules. Statute is created and amended by the Texas Legislature during a regular legislative session. Rules are enacted by the Commission through a series of open meetings and publication in the Texas Register. The Rules of the Commission clarify the laws found in statute.

### **Administrative Penalty Matrix**

The Commission is proposing to adopt a penalty matrix in order to clarify and equalize the penalty for all licensees. This matrix will classify each violation as Class A, B, C or D and would lay out the penalty that would be incurred for the violation.

An initial stakeholders' meeting was held in January to determine the classifications of violations and proposed penalties. Please contact either Janice McCoy or Kyle Smith if you have comments or concerns regarding the proposed penalty matrix.

### **Criminal Convictions**

TAC §203.33(j) requires a current licensee to disclose in writing any conviction at the time of renewal or no later than 30 days after judgment in the trial court, whichever date is earlier. It also requires an applicant to disclose in writing any conviction against him/her at the time of application. Licensees and applicants with a criminal conviction must fill out a questionnaire which can be found on the TFSC website.

The Commission may suspend or revoke a license or refuse to issue a license on the grounds that the licensee or applicant has been convicted of a felony or misdemeanor that directly relates to the duties and responsibilities of the occupation of funeral director or embalmer.

### **Public Information**

The Public Information Act gives a person the right to access government records without disclosing why the records are being requested. While all government information is presumed to be available to the public, certain exceptions may apply to the disclosure of the information. In the case of the TFSC, information concerning open complaints and investigations is exempt from disclosure.

## **A Message from Licensing**

The Licensing Division fulfills the TFSC's mission to protect the public from deceptive practices by performing licensing, registration, examination and continuing education functions.

The current licensing work processes include (1) processing all initial provisional license applications, reciprocal applications and reinstatement applications for funeral directors/embalmers to include DPS/FBI fingerprint background checks; (2) administering examinations for all individual licensees; (3) renewing individual licenses; (4) ensuring licensees are current with their continuing education requirements and (5) processing all initial/renewal establishment applications to include funeral homes, commercial embalming facilities, crematories and certain cemeteries.

### **Change of Address**

Licensees must notify the Commission in writing if they have a change of address. This notification helps ensure that mail and communications to the licensees is not delayed.

### **Continuing Education**

All active license holders must complete 16 hours of continuing education prior to a license being renewed. Licensees who are on retired, active status are required to obtain 10 hours of continuing education. Inactive retired licensees are not required to take any continuing education.

Starting in September 2014, the Commission began a random audit of continuing education credits. Each month, 10 percent of individual licensees will receive a letter with the renewal notice stating that he/she will have to submit his/her certificates to the Commission prior to renewal.

Failure to complete required continuing education will delay renewal of the license and may cause additional fees and penalties to be imposed. It is the sole responsibility of the licensee to submit continuing education certificates to the Commission, even if the licensee renewed online.

### **FDIC/EIC**

At all times a licensed funeral establishment must have a designated funeral director in charge (FDIC). The FDIC is ultimately responsible for compliance with all mortuary, health and vital statistics laws in the funeral establishment. Commercial Embalming Establishments also must at all times have a designated embalmer in charge (EIC). Funeral establishments that perform embalming services should only designate a FDIC.

The FDIC/EIC must be designated at the time an establishment is initially licensed. Any time a FDIC/EIC changes the establishment must notify the Commission by submitting the prescribed forms within 15 days. All forms - Appointment of FDIC/EIC and Removal of FDIC/EIC - can be found on the TFSC website by following the "Licensing" link.

If a provisional licensee leaves the employment of a FDIC/EIC for whatever reason, the FDIC/EIC must file an affidavit that shows the length of time the provisional license holder was employed and the number of cases handled within 15 days of employment termination.

### **Duplicate License**

A licensee shall conspicuously display his/her license in each place of business at which the licensee practices. All licenses displayed must be the original embossed license issued by the Commission and may not be a copy of the original license.

In June, the Commissioners voted to change the fee for a duplicate license to \$5.00 per license if it is ordered at renewal. Licensees who renew online cannot order or pay for the duplicates using the online system. Contact the Commission office within five days of online renewal for instructions on ordering a duplicate license(s). Licensees who renew using a paper application should note how many duplicate licenses are being requested and include \$5.00 per additional license requested.

Outside the renewal period, the duplicate license fee is \$25.00 for the first license and \$5.00 for any subsequent licenses. For example, if a licensee wants three duplicates, the total fee would be \$35.00.

### **Renewals**

Funeral Directors and Embalmers can renew a license online. To renew online, go to [www.hpc.state.tx.us/message.php](http://www.hpc.state.tx.us/message.php) or follow the links from the TFSC website. The website details what information is required for license issuance.

Licensees who renew online and do not receive a license in the mail should contact the Commission. Be prepared to provide the transaction receipt received upon completion of renewal online. Without a receipt, the Commission cannot trace the renewal.

### **Publications**

All licensed funeral homes are required to provide the TFSC promulgated *Facts about Funerals* brochure to customers when funeral services are discussed. Funeral homes must order the brochure from the Commission.

The State of Texas Funeral Services Law Book (Effective Sept. 2013) can be purchased for \$15.00. The law book includes the Commission's governing statute but does not include the Rules of the Commission. Rules of the Commission can be accessed through the TFSC website.

Publication order forms can be found on the TFSC website by following the "Agency News and Information" link to the Publication Order Form. Please use this order form to avoid delays in shipment of orders. All orders must include a physical shipping address or the orders will not be processed.

### **Public Licensing Information**

A person can verify that an individual/establishment is licensed with the Commission by accessing the TFSC website and following the "Public Licensee Search" link.

## **A Message from Compliance**

The Compliance Division fulfills the TFSC's mission to protect the public from deceptive practices by inspecting establishments and investigating complaints. The compliance work processes include (1) ensuring each licensee is in compliance with the rules and regulations that govern the death care industry in the state of Texas through investigation of consumer complaints and (2) inspections of all establishments licensed by the TFSC.

Statutorily mandated risk based inspections of all licensed establishments are conducted at least once every two years. The inspection process includes a survey of the physical plant, a check of a sample of case files and a comprehensive review of all required documents.

Any person can file a complaint against an individual or establishment licensed by the TFSC. The TFSC complaint process can be found on the website by following the "Complaint Procedures" link.

After the Commission receives a complaint against a licensee or an establishment, the licensee is sent notice of the complaint and given 15 days to supply certain requested documentation in response. Failure of the licensee to provide that information could result in administrative action, including fines, against the license(s) involved for non-compliance.

### **Disposition of a Body**

One of the most common questions received by the Compliance Division relates to who has the right to control the disposition of a decedent's body. This information is found in the Texas Health and Safety Code §711.002. Additionally, Subsection (k) outlines the appropriate measures to be taken if there is a dispute among the people who may have the right to control the disposition of a decedent's body.

## **For Your Information**

### **Military Funeral Honors**

Anyone providing Military Funeral Honors for an eligible veteran should visit the Department of Defense Military Funeral Honors website at [www.dmdc.osd.mil](http://www.dmdc.osd.mil) for information. The website serves as a resource tool for funeral directors as they assist veterans' families by arranging Military Funeral Honors. The core elements of the Funeral Honors ceremony, which will be conducted on request, include: Flag Folding, Flag Presentation and the Playing of Taps.

If the family of an eligible veteran requests Funeral Honors through their funeral director, the funeral director should contact the appropriate Military Service to arrange for the Funeral Honors detail. The Department of Defense has established a toll free line (1-877-MIL-HONR) for use only by Funeral Directors to request honors. The Services request at least 48-hours in order to organize the Funeral Honors detail.

### **Texas State Veterans Cemetery**

Veterans are eligible to be buried in a Texas State Veterans Cemetery. Funeral homes should work with the families who choose to have their loved ones buried in a Texas State Veterans Cemetery to determine the type of interment the family wishes. Options to be considered are a full-casketed burial, in-ground burial of cremated remains, a columbarium niche for cremated remains, or the scattering of ashes in the memorial garden.

The funeral home should ask the family to provide a copy of the military discharge form (DD Form 214) or other military service documents to ensure eligibility. If the funeral is for the spouse of a veteran, the funeral home should request a copy of the marriage certificate. The funeral home should contact the family's Veterans cemetery of choice and make all of the arrangements for the burial service.

Although viewing facilities are not available at the cemetery, and funeral services cannot be held at Texas State Veterans Cemeteries, a family may request that a final committal service be performed. Military Honors are performed during these committal services. Committal services are held in committal shelters, followed by burial at the grave site. Floral arrangements will accompany the casket or urn from the committal shelter to the grave site.

Some families may have retained cremated remains and wish to place them at a Texas State Veterans cemetery. If this is the case, the family may contact the cemetery directly, without going through a funeral home.

Please contact the Veterans Land Board toll free at 1-800-252-VETS (8387) for questions.

### **Cemetery Ingress/Egress**

Health & Safety Code §711.041 provides that any person who wishes to visit a cemetery or private burial grounds for which there is no public access shall have the right to reasonable ingress and egress for the purpose of visiting the cemetery or private burial grounds. The owner of the property may determine reasonable hours of visitation and routes needed to access the cemetery.

### **Perpetual Care Cemetery**

A cemetery operated as a perpetual care cemetery means that a perpetual care fund for its maintenance has been established in conformity with state law. Perpetual care means the maintenance, repair and care of the cemetery. The Texas Department of Banking (DOB), not the Commission, licenses perpetual care cemeteries.

Beginning in January 2014, the DOB instituted a system for registering cemetery brokers after legislation was enacted during the 2013 Legislative Session. A cemetery broker is defined as a person who sells the exclusive burial right in a cemetery for another person, essentially an unaffiliated third party. The new law further clarifies the procedures a cemetery broker must take in documenting the sale of a plot with a cemetery organization. According to DOB, by the end of November 2014, only four people have registered as cemetery brokers in Texas.

### Preneed Funeral Contracts

The Texas Department of Banking (DOB) regulates prepaid funeral merchandise or services. Prepaid funeral merchandise and services are defined as goods and services sold on a prepaid basis directly to the public for use in connection with future funeral services. Along with the normal funeral service items, prepaid funeral merchandise and services also include opening and closing of the grave and outer-burial containers. The term does not include a grave, marker, monument, tombstone, crypt, niche, plot, or lawn crypt unless it is sold in contemplation of trade for a funeral service or funeral merchandise.

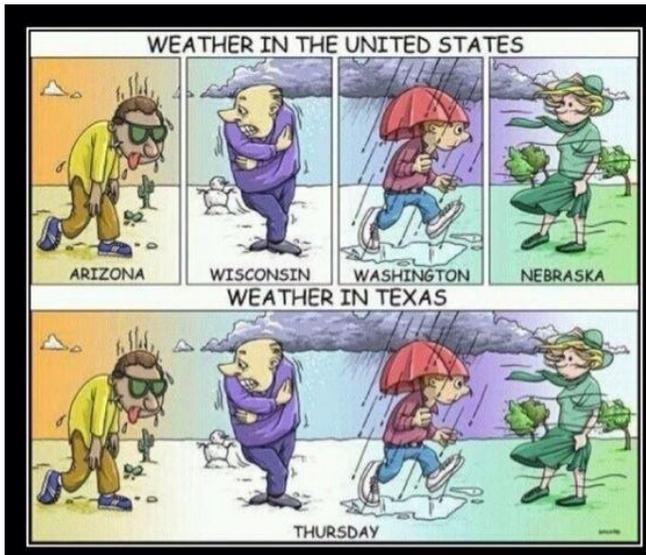
Any funeral home or cemetery that sells prepaid funeral merchandise or services in Texas must have: (1) a trust-funded permit issued by the DOB or (2) sell through an insurance-funded permit holder.

Further information can be accessed at the DOB's website at [www.dob.texas.gov](http://www.dob.texas.gov).

### Remembering Our Fallen Exhibit

TFDA Services, Inc. is sponsoring the "Remembering Our Fallen" from Texas exhibit. This is a traveling exhibit that will move between the TFDA Regions beginning November 2014 through November 2015.

### Just for Fun



## Agency Contact Information

### **Mailing Address**

Texas Funeral Service Commission  
 PO Box 12217, Capitol Station  
 Austin, TX 78711

### **Physical Address**

Texas Funeral Service Commission  
 333 Guadalupe Street, Ste. 2-110  
 Austin, TX 78701

### **Web Address**

[www.tfsc.texas.gov](http://www.tfsc.texas.gov)

### **Agency Directory**

Executive Director	Janice McCoy	(512) 936-2474
Staff Attorney	Kyle Smith	(512) 936-2480
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Administrator of Compliance	Rodney van Oudekerke	(512) 936-2470
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Chief Financial Officer	Jennifer Noack	(512) 936-2474
Establishment & Crematory Licensing Technician	Nikki Smith	(512) 936-2479
Provisional Licensing Technician	Sarah Reyes	(512) 936-6552
Administrative Assistant/Brochures	Maria Haynes	(512) 936-2421
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Investigator / Cemetery Technician	Sandy Gonzalez	(512) 936-2484
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