



TEXAS FUNERAL SERVICE COMMISSION

3RD QUARTER NEWSLETTER

March 2016 – May 2016

February 29, 2016

Happy Leap Year! We get an extra day this year. How are you going to spend it?

Do you know why we have a leap year? It takes the Earth approximately 365, 5 hours, 48 minutes, and 45 seconds to circle once around the sun. Since our calendar only has 365 days, if we don't add a leap day every four years, we would lose six hours off our calendar every year. I don't know about you, but with two kids and a full time job, I can't afford to lose six hours!

Our Mortuary Law Exam went online in January. We are still working on a few bugs on the technical side, but so far it looks like it is a success.

Today is the last day to fill out a customer satisfaction survey. We'll tabulate the results and post them on the website soon. Hopefully, we can address any concerns raised.

Finally, I would welcome comments on how you think the new rules are working. We've come across a few rules that may need to be clarified in an upcoming meeting. If there is something that doesn't make sense to you, please let me know.

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

Changes at the Commission

The Commission hired Robert Puig as a Licensing Technician in January. Robert was born in Eagle Pass, TX, raised in Laredo, TX, and has lived in the Austin area since 1984. He considers himself an Austinite since he has lived here longer than any other place. His work background is in computers (manufacturing, testing, and tech support) but after 25 years in the computer industry he decided to try something different. When he is not working he practices\teaches Wing Chun Kung Fu, listens to all kinds of music, attends concerts, reads, and does fun outdoor nature activities and Hill Country day trips with his wife.

Robert is now the agency's first point of contact on our phone system, so please give him a warm welcome if you call. And, with Robert's arrival, Maria Haynes will now handle all Provisional Licensing. Maria has been with the agency since December 2013.

Upcoming Commission Meetings

The next TFSC meeting will be held **Tuesday, June 21st**, beginning at 9:00 am in Room 2-225 of the William P. Hobby Building in Austin, Texas. Licensed Texas funeral directors and embalmers can receive up to four hours of continuing education credit for attending a Commission meeting.

The Commission has tentatively scheduled the following dates for future meetings:

September 13, 2016

December 13, 2016

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.

Renewals

The online renewal system is administered by the Health Professions Council (an umbrella agency for health-related agencies including the Commission). The HPC runs the help-desk and is responsible for questions about renewing online - including resetting forgotten passwords. The HPC help-desk states it can take multiple days to respond to a help ticket, especially near the end of the month. The help-desk only responds to emailed help requests.

Mortuary Law Exam

The Mortuary Law Exam is now offered online only. Test takers are strongly encouraged to use Google Chrome or Mozilla Firefox (version 16.0 or higher) to complete the examination. Additionally, if taking the exam at work, check with the IT department to ensure the security settings (firewalls) do not block the online exam. Refunds will not be given due to browser or firewall issues.

All applicants must take and pass the Mortuary Law Exam prior to being issued a provisional license.

Change of Address

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

Provisional Program Update

A person who is not and has never been enrolled in an accredited school or college of mortuary science may receive a provisional license for a period of 12 months. It is important to note the license will not be renewed until the licensee shows he/she has enrolled in an accredited school or college of mortuary science.

A licensee who does not complete the provisional program during the prescribed time may reapply for a provisional license. The applicant will have to retake and pass the mortuary law exam and may have to pay undergo a new background check. A person may only reapply one time, but there is no waiting period between licenses.

Continuing Education

All active license holders must complete 16 hours of continuing education every two years. Licensees who are on retired, active status or disabled, active status are required to obtain 10 hours of continuing education. Inactive licensees are not required to take continuing education.

The Commission performs 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.

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.

The fee for a duplicate license is \$5.00 per license ordered.

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 must have a designated embalmer in charge (EIC) at all times. Funeral establishments that perform embalming services should only designate a FDIC, not both.

Any time a FDIC/EIC changes establishments he/she must notify the Commission by submitting the prescribed forms within 15 days. All forms - FDIC Appointment/Removal and EIC Appointment/Removal - can be found on the TFSC website by following the "TFSC Establishment Licensing & Regulations" link.

Public Licensing Information

A person can verify an individual/establishment is licensed with the Commission by accessing the TFSC website and following the "License Search & Verification" link.

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 Texas Funeral Service Commission Law Book (Effective Sept. 2015) can be purchased for \$15.00. The law book includes the Commission's governing statute, the Commission's rules and other laws relevant to the death care industry.

Publication order forms can be found on the TFSC website by following the "TFSC Forms" link. 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.

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.

Complaints

Written complaints must be filed within two years of the event giving rise to the complaint. However, the Executive Director may waive this requirement if the complainant shows good cause for the late filing.

Embalming

Tex. Occ. Code §651.457 states "A person violates this chapter if the person embalms a body without receiving the *express* written or oral permission of a person authorized to make funeral arrangements for the deceased" (emphasis added).

There has been an increase in complaints related to the use of the term "prepare the body" by a funeral director. To the licensed funeral director "prepare a body" may mean to embalm the deceased. However, a family member may understand "prepare a body" to mean something else to include removal, bathing, or dressing the body.

Using the industry lingo "prepare the body" instead of expressly asking for permission to embalm may lead to embalming being performed without express permission being granted. While it may seem to be semantics, by making sure the family member knows he/she is being asked for permission to embalm, the funeral director could avoid possible administrative penalties and/or sanctions.

The Administrator of Compliance encourages all funeral directors to stop using the term "prepare" in lieu of the term "embalm."

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. 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.

A Message from Legal

The laws governing the death care industry are found in Texas Occupations Code Chapter 651, Texas Health and Safety Code Chapter 716, and 22 Texas Administrative Code, Chapters 201-209. All the laws and rules can be found on the TFSC website by following the "TFSC Governing Laws" link.

Informal/Formal Hearings for Violations

For complaints that result in a finding of violation, a licensee may opt to negotiate the violation and penalty with the agency's Staff Attorney instead of participating in an Informal Conference panel. If no resolution is reached, the case will be automatically set for a hearing at the State Office of Administrative Hearings (SOAH). After SOAH's Administrative Law Judge has issued a Proposal for Decision the case will be taken to Commissioners for a final determination.

Deadlines to Respond

Under the rules, a licensee has a specified time to respond to the Commission. Failure to respond can result in additional violations and/or automatic license sanctions.

22 TAC §203.41 – Licensee has 15 days to respond to notice of complaint

22 TAC §203.42(b) – Licensee has 30 days to respond to initial finding of violation

Tex. Occ. Code §651.555 – Licensee has 30 days to pay penalty after final Commission action

Criminal Convictions

22 TAC §203.15 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 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 investigations is exempt from disclosure by law.

For Your Information

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.

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.

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, regulates perpetual care cemeteries.

Just for Fun



Agency Contact Information

Mailing Address

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 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

Agency Directory

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