



TEXAS FUNERAL SERVICE COMMISSION

2ND QUARTER NEWSLETTER

December 2016 - February 2017

December 5, 2016

Happy Holidays! I hope everyone had a Happy Thanksgiving and got to spend some time with family and friends. I'm really looking forward spending the holiday season with my family this year. My 7 ½ year old kids really get me in the spirit. Although remembering to move that Elf around every night is hard on this mom!

We are still working to prepare for the upcoming legislative session. The bill streamlining the agency's enabling statute will be filed shortly. And, we're still working with the budget writers on our appropriation requests.

Please note our office will be short-staffed during the last two weeks of December. My 11 staff members have asked to spend time with their families during the holiday season. Please be patient and know we will get back to you as soon as possible. And, for those of you whose license expires on December 31, 2016, I would encourage you to renew early.

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 has been approached by various stakeholders to revise several different rules found in 22 TAC, Chapter 203, including continuing education requirements and display of license. If you are interested in participating in meetings to discuss revisions, please email the Executive Director.

Upcoming Commission Meetings

The upcoming TFSC meeting will occur on **Tuesday, December 13, 2016** at 9:00 a.m. 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:

- March 21, 2017
- June 20, 2017
- September 12, 2017
- December 12, 2017

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.

Mortuary Law Exam

Each individual who takes the online Mortuary Law Exam must accept the Legal Attestation under penalties of law and Commission action. Commission action could include the loss of a license or the refusal to issue a license. A copy of the attestation can be found on the TFSC website.

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. 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.

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 licensees is not delayed.

Online 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. TFSC licensing staff is able to help with resetting passwords or emails for the online renewal system. Contact Nikki Smith at nikki@tfsc.texas.gov for assistance.

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. Retired, Inactive and Disabled, 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.

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 (Revised Oct. 2016) 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 Legal

Out-of-State Providers

The Commission's Staff has received questions about whether licensed Texas Funeral Directors, Embalmers, and Establishments can be held liable for acts done by third party contractors that the licensee has contracted with to supply goods or services to a consumer.

The answer to that question is yes. This is true even if the contractor used is an out-of-state person or business.

As an example of the Statute's recognition of third party liability, note the language in Tex. Occ. Code Chapter 651.408, which states, "The fact that a funeral director contracts for cemetery or crematory services... does not limit the director's liability to the consumer for those services."

If a TFSC licensee contracts with an out-of-state business, whether licensed in another jurisdiction or unlicensed, the Texas licensee can be held liable for errors, negligent or intentional acts, and unprofessional or unlawful conduct, engaged in by the out-of-state business or individual.

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 or opt to participate in an Informal Conference panel. In either instance, 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.

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.

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.

For Your Information

Pre-need Funeral Contracts

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 Texas Department of Banking (DOB) or (2) sell through an insurance-funded permit holder.

The Texas Department of Banking (DOB) regulates trust-funded prepaid funeral merchandise or services. Further information can be accessed at the DOB's website at www.dob.texas.gov.

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, regulates perpetual care cemeteries.

Just for Fun



Agency Contact Information

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 Austin, TX 78711

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