



TEXAS FUNERAL SERVICE COMMISSION

3RD QUARTER NEWSLETTER

March 2017 – May 2017

March 2, 2017

Happy Texas Independence Day!

The 85th Legislative Session started in January. Representative Richard Raymond and Senator Craig Estes have filed legislation streamlining the agency's enabling statute. HB 1292 has been referred to the House Public Health Committee. SB 983 has not been referred to committee yet.

The agency will continue to monitor the session for legislation that could impact the industry and/or the internal workings of the agency.

In February, the agency hosted a stakeholders' meeting to discuss amendments to agency's rules related to display of license, consumer brochure and continuing education. Drafts of those changes can be found on the agency's website. I would encourage everyone to review the rules and let me know thoughts or concerns prior to the March 21, 2017 Commission meeting.

The agency is in the process of creating an email system to notify licensees and other stakeholders of important and time-sensitive information. Every email address maintained by the agency will be automatically uploaded to the new system. While, each licensee will have the option to opt-out of these emails, I would encourage you to receive the emails.

Yours truly,

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

Janice S. McCoy
Executive Director

Changes at the Commission

The agency is losing two of its long-term employees. Martha Gussoni (Executive Assistant and Administrator of Licensing) and Bill Vanneste (Inspector) are both retiring. Bill's last day with the agency was February 28, 2017. Martha will be leaving the agency on March 31, 2017. These two employees have 30+ years of combined service and their institutional knowledge will be missed.

With the hiring freeze directive by the Governor, the agency is unable to say when these two employees will be replaced. Please be patient with the remaining 10 staff members as we work to cover the duties left unmanned by these retirements.

Upcoming Commission Meetings

The upcoming TFSC meeting will occur on **Tuesday, March 21, 2017** 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:

- 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.

Continuing Education

All active license holders must complete 16 hours of continuing education every two years. The Commission is considering a rule to require that 4 of the mandatory 16 hours of continuing education must be taken in-person and not online. A copy of the draft rule can be found on the Commission's website on the News and Things to Know page.

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.

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.

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.

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 Commission is considering a change to its rules to allow a funeral establishment to provide the brochure in a digital format. A copy of the draft rule can be found on the Commission's website on the News and Things to Know page.

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.

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.

A Message from Legal

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. 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

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.

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

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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** as of March 2, 2017*