



TEXAS FUNERAL SERVICE COMMISSION

4TH QUARTER NEWSLETTER

June 2017 - August 2017

June 22, 2017

Well, it is definitely summer in Texas. Hot sunny days ahead!

The 85th Legislative Session ended in May and the Governor just completed signing or vetoing over 1,200 pieces of legislation. Unfortunately, the rewrite of the agency's enabling statute did not pass this session. However, there were bills passed that did directly or indirectly impact the agency and the industry. A list of the bills can be found on the agency's website.

The agency recently underwent a state audit of its enforcement activities including both its investigation and inspection procedures. The agency agreed with the findings of the auditors and will be taking corrective steps to fix the minor issues raised by the auditors. The first corrective action took place at the June Commission meeting where Commissioners acted on a proposed amendment to the rules related to inspection of cemeteries.

The agency continues to develop 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

Jeff Morales, Commission Investigator, has taken on the additional role of Inspector. Jeff will be splitting his time between being out on the road and in the office. Be patient if he doesn't respond to email or phone messages immediately. Jeff has been with the Commission since April 2014.

Two of the agency's seven Commissioners terms expired in February 2017. However, the Governor did not issue appointments for those seats. Scott Smith and Joyce Odom will continue to serve in those roles until an appointment (or reappointment) is made by the Governor.

At the June Commission meeting, Commissioners adopted amendments to the rule relating to Display of License. The amendment will allow a copy of an original license - in lieu of the original license - to be maintained by a funeral establishment under specific circumstances. The amendments will ease the regulatory burden on licensees while maintaining protections for consumers to ensure they work only with licensed funeral directors and embalmers. The rule will take effect 20 days after it is filed with the Secretary of State.

Upcoming Commission Meetings

The upcoming TFSC meeting will occur on **Tuesday, September 12, 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:

- December 12, 2017
- March 20, 2018
- June 19, 2018
- September 11, 2018
- December 11, 2018

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.

Ownership for Establishment Renewals

Lately the agency has had to return many renewal applications (both online and on paper) due to incorrect ownership provided on the renewal application. The application will not be approved if the ownership does not match the ownership in the agency's database. Providing a wrong owner name on the application will delay the renewal and could result in a late penalty being assessed. The following is provided as guidance:

- For "Sole Owner" list the name of the individual as the owner
- For "Partnership" all the names of the partners
- For "Corporation" (includes LP, LTD, LLC, S-CORP, INC, etc...) list the name of the Corporation - - do NOT provide the names of the officers of the Corporation

If you are unsure of who the agency has listed as owner of your establishment, 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.

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.

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.

Filing a Death Certificate

Title 25, Tex. Admin. Code 181.2(a) states, "...the funeral director, or person acting as such, who assumes custody of a dead body or fetus shall obtain an electronically filed report of death through a Vital Statistics Unit system or complete a report of death...." Funeral directors utilize the Texas Electronic Registration system (TER) to begin the process of filing a death certificate.

Occasionally a family begins the arrangement process with one funeral establishment but then uses a second funeral establishment to finalize arrangements. Under these circumstances, the first funeral home will need to release the death certificate and inform the second funeral home of the Electronic Death Record number for the deceased. Failure to release the record in the TER delays the filing of the death certificate and could be considered unprofessional conduct.

According to the Department of State Health Service-Vital Statistics Unit, the second funeral home can still file the death certificate even if the first funeral home does not relinquish the record. The second funeral home should enter the decedent's information and a new Electronic Death Record number will be generated.

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

Heritage Crematory Services (Colorado based company)

Please be advised the Colorado Office of Funeral Home and Crematory Registration suspended the registration of Heritage Crematory Services on June 6, 2017, saying the company "is guilty of multiple deliberate and willful violations of the Mortuary Science Code . . ." In its order suspending Heritage's license, the state wrote "*Respondent advertises that its staff and owners are 'your friends and neighbor.' Respondents owners do not reside or work in the state of Colorado.*"

This company's Internet advertisements make it appear as if they have a physical location in Texas. They do not have any physical presence in Texas and are not licensed by the Commission.

Out-of-State Providers

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. This is true even if the contractor used is an out-of-state person or business.

The Statute's recognition of third party liability can be found 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 by 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.

If no resolution is reached, the case will be 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 a Commission meeting for a final determination by Commissioners.

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

Tex. Occ. Code §651.503 – Licensee must file Letter of Warning report in number of days specified by Agreed Order or pay administrative penalty

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.

Notice From Department of Banking for PCC Stakeholders

Senate Bill 1402 contains Department of Banking identified areas of Perpetual Care Cemetery (PCC) regulation that needed to be revised or clarified to provide for better and consistent regulation of the industry. SB 1402 becomes effective September 1, 2017.

Highlights of SB 1402 include:

Section 1 – amends the section authorizing administrative penalties. It currently provides that if a person is found to have demonstrated willful disregard of the law, the trier of fact must recommend the maximum penalty allowed under the statute. The amendment makes this recommendation discretionary instead of mandatory.

Section 2 – amends the qualifications for a certificate of authority. This change will bring the statute in line with the Department's long-held policy that an applicant corporation must wholly own all land it operates as a perpetual care cemetery.

Section 3 – provides a five year phase-in period for non-compliant certificate holders to meet the new land ownership requirement.

Section 4 – makes two changes that are intended to give relief to cemeteries related to their perpetual care trust funds. It (1) amends the statute that allows two or more perpetual care cemeteries to pool their trust funds. References to “common trust fund” are changed to “master trust account.” Common trust funds have cumbersome requirements and are infrequently utilized. Master trust accounts have fewer constraints and may be an option for cemeteries to combine their trust funds to decrease costs and increase income. And (2) provides a way for perpetual care cemeteries with small trust funds to temporarily place their funds in segregated interest bearing accounts. It is intended to give relief to cemeteries where the income from their trust funds is insufficient to pay their trustee fees.

You may direct questions about SB 1402 to Director of Special Audits Russell Reese at (512)-475-1324.

House Bill 1948 was signed by the Governor and will also become effective on September 1, 2017. This bill provides PCCs the option to use the “total return method” for determining permissible distributions. According to the bill, the “total return method” allows for annual distributions to be calculated based on a certain, preset percentage amount (typically 3-5 percent) of the total trust market value. The trustee must determine the total return percentage to be used and must annually determine the total market value. This accounting option is intended to allow PCCs the ability to extract enough income from their trust to provide for the ongoing care and maintenance of the cemetery while generating higher portfolio growth. To use this total return method, a PCC must, on the concurrence of its trustee, modify the terms of its trust agreement.

You may direct questions about HB 1948 to Texas Department of Banking Senior Counsel Everett Jobe at (512)-475-1321.

For any PCCs that are considering changes to the accounting of their perpetual care trust funds under the new options made available under SB 1402 or HB 1948, you should first talk with your trustee.

Just for Fun

I don't care what people
think of me....
at least mosquitoes find
me attractive



Agency Contact Information

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** as of April 1, 2017*