

3400 Preneed Funeral Contracts

3401 Operating Regulation

5 **Del.C.** §§3404 and 3409

Effective Date: August 11, 2014

1.0 Expiration and Renewal

All licenses under 5 **Del.C.** Ch. 34 shall expire on December 31 of each year. A renewal application must be submitted to the Commissioner before that date for a license to remain in effect.

18 DE Reg. 159 (08/01/14)

2.0 Compliance with Applicable Laws

- 2.1 All licensees shall comply with 5 **Del.C.** Ch. 34, all regulations issued thereunder, and all other applicable State and federal statutes and regulations relating to preneed funeral contracts.
- 2.2 The manager and appropriate staff of each licensee shall familiarize themselves with all such statutes and regulations.
- 2.3 Each licensee shall maintain, either by paper copy or through electronic access, 5 **Del.C.** Ch. 34 and the following regulations:
 - 2.3.1 Regulation 101, Retention of Financial Institution Records;
 - 2.3.2 Regulation 3401, Operating Regulation; and
 - 2.3.3 Regulation 3402, Surety Bond or Irrevocable Letter of Credit.

18 DE Reg. 159 (08/01/14)

3.0 Minimum Required Records

- 3.1 Each licensee shall maintain any records necessary to verify the licensee's compliance with 5 **Del.C.** Ch. 34, all regulations issued thereunder, and all other applicable State and federal statutes and regulations relating to preneed funeral contracts.
- 3.2 All such records shall be made available to the Commissioner's staff when requested.
- 3.3 Records may be maintained at any suitable location, but must be available within a reasonable period of time upon request.
- 3.4 All such records may be maintained by paper copy or in an electronic format.
- 3.5 All records shall be maintained in accordance with the time periods specified in Regulation 101, Retention of Financial Institution Records.
- 3.6 The Commissioner may grant written approval for variations from this section to accommodate specific record keeping systems. Requests for such approvals must be in writing and provide sufficient information concerning the system to ensure that the requirements of this section are satisfied and that the records will be readily available when requested.

18 DE Reg. 159 (08/01/14)

4.0 Display of License

Each licensee shall prominently display its license issued under 5 **Del.C.** Ch. 34 in clear view of all customers.

18 DE Reg. 159 (08/01/14)

5.0 Annual Statement to Preneed Contract Beneficiaries

- 5.1 At least once, annually, each licensee shall deliver, to each beneficiary of its preneed funeral contracts, or an appropriate representative of the beneficiary, a statement containing the following information:

TITLE 5 BANKING
DELAWARE ADMINISTRATIVE CODE

- 5.1.1 the name and address of the financial institution where the trust account for the contract is held;
- 5.1.2 the total amount held in that trust account at the beginning of the statement period;
- 5.1.3 the number and amounts of payments received during the statement period;
- 5.1.4 the amount of interest accrued during the statement period; and
- 5.1.5 the total amount held in the trust account at the end of the statement period.

18 DE Reg. 159 (08/01/14)

6.0 Annual Statement to the Commissioner

- 6.1 Each licensee shall submit to the Commissioner on July 31st of each year a statement containing the following information for each of its preneed funeral contracts:
 - 6.1.1 the name and address of the contract beneficiary and any appropriate representative of the beneficiary;
 - 6.1.2 the name and address of the financial institution where the trust account for the contract is held;
 - 6.1.3 the name and address of the trustee for the trust account;
 - 6.1.4 the total amount held in the trust account as of June 30th; and
 - 6.1.5 a certification from the financial institution that the information contained in the statement is true and accurate.

18 DE Reg. 159 (08/01/14)

7.0 Disclosure Requirements for Irrevocable Trust Documents

- 7.1 The trust document establishing an irrevocable trust permitted by Section 3404 of Title 5 of the **Delaware Code** shall contain:
 - 7.1.1 A provision expressly stating that the trust is irrevocable;
 - 7.1.2 A provision that upon the discontinuation of business or the inability to provide the contracted goods or services by the original trustee, the funds held in the trust shall be transferred to either a specified successor trustee or a successor trustee selected by either the contract beneficiary, or an appropriate representative of the beneficiary;
 - 7.1.3 A provision that if funds held by the trust are inadequate, at the death of the contract beneficiary, to cover the beneficiary's funeral expenses, the trustee shall contribute all trust funds toward payment of those expenses;
 - 7.1.4 A provision that if the funds held by the trust exceed the beneficiary's funeral expenses, the excess funds shall be paid to the beneficiary's estate;
 - 7.1.5 A provision that the trustee may, from time to time, accept monetary contributions to the trust; and
 - 7.1.6 A provision stating "In no event shall the principal amount of the trust exceed \$15,000, excluding accrued interest."

2 DE Reg. 295 (8/1/98)

3 DE Reg. 653 (11/1/99)

18 DE Reg. 159 (08/01/14)

8.0 Examination Fees and Supervisory Assessments

- 8.1 The Commissioner may examine licensees pursuant to Section 122 of Title 5 of the **Delaware Code**. The costs of such examination are assessed in accordance with Section 127(a) of Title 5. A licensee shall remit payment not later than 30 days after the date of the examination invoice.
- 8.2 The Commissioner shall assess each licensee a supervisory assessment, which is due and payable on August 1 each year, in accordance with Section 127(b) of Title 5 of the **Delaware Code**.

- 8.3 Failure to remit timely payment of any examination fee or supervisory assessment will result in a penalty of 0.05 percent of the amount unpaid for each day that such fee or assessment remains unpaid after the due date, in accordance with Sections 127(a) and 127(b) of Title 5 of the **Delaware Code**.

18 DE Reg. 159 (08/01/14)

9.0 Examination Responses

A licensee shall send the Commissioner a written response to every violation specified in a report of examination no later than 30 days after the date of the report.

18 DE Reg. 159 (08/01/14)