

# *Missouri Revised Statutes*

## **Chapter 214 Cemeteries Section 214.387**

August 28, 2010

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### **Burial merchandise or services, deferral of delivery, when--escrow arrangement--distribution of moneys--cancellation.**

214.387. 1. With the exception of sales made pursuant to section 214.385, all sales of prearranged burial merchandise and services shall be made pursuant to this section.

2. Upon written instructions from the purchaser of burial merchandise or burial services set forth in a cemetery prearranged contract, a cemetery may defer delivery of such burial merchandise or a warehouse receipt for the same under section 214.385, or performance of services, to a date designated by the purchaser, provided the cemetery operator, after deducting sales and administrative costs associated with the sale, not to exceed twenty percent of the purchase price, deposits the remaining portion of the purchase price into an escrow or trust account as herein provided, within sixty days following receipt of payment from the purchaser. Funds so deposited pursuant to this section shall be maintained in such account until delivery of the property or the performance of services is made or the contract for the purchase of such property or services is cancelled, and fees and costs associated with the maintenance of the trust or escrow arrangement shall be charged to these funds. The account is subject to inspection, examination or audit by the division. No withdrawals may be made from the escrow or trust account established pursuant to this section except as herein provided.

3. Each escrow arrangement must comply with the following:

(1) The escrow agent shall be located in Missouri, authorized to exercise escrow powers, and shall maintain the escrow records so that they may be accessed and produced for inspection within five business days of the agent's receipt of a written request made by the office or its duly authorized representative. A cemetery operator shall not serve as an escrow agent for the cemetery operator's account nor shall the escrow agent be employed by or under common ownership with the cemetery operator. The cemetery operator shall maintain a current name and address for the escrow agent with the office, and shall obtain written approval from the office before making any change in the name or address of the escrow agent. Notwithstanding any other provision of law, information regarding the escrow agent shall be deemed an open record;

(2) The escrow account funds shall be maintained in depository accounts at a Missouri financial institution that provides Federal Deposit Insurance Corporation or comparable deposit insurance;

(3) The escrow arrangement shall be administered by the escrow agent pursuant to an agreement approved by the office under the same filing and approval procedure as that set forth for endowed care trust fund agreements in section 214.330;

(4) The operator shall establish a separate depository account for each cemetery prearranged contract administered pursuant to this subsection;

(5) The division may promulgate by rule a form escrow agreement to be used by a cemetery operator operating pursuant to this section.

4. Each trust must comply with the following:

- (1) The trustee shall be a state or federally chartered financial institution authorized to exercise trust powers in Missouri, provided that a foreign financial institution must be approved by the office;
  - (2) The trust fund records, including all trust fund accounting records, shall either be maintained in the state of Missouri or shall be electronically stored so that the records may be made available within fifteen business days of the trustee's receipt of a written request made by the office or its duly authorized representative. The cemetery operator shall maintain a current name and address of the trustee and the records custodian and shall supply such information to the office or its representative upon request;
  - (3) The principal of such funds shall be appropriately invested pursuant to the prudent investor rule under chapter 469, provided that no trust funds shall be invested in any term insurance product;
  - (4) Payments regarding two or more cemetery prearranged contracts may be deposited into and commingled in the same trust, so long as adequate records are made available to the trustee to account for cemetery prearranged contracts on an individual basis with regard to deposits, earnings, distributions, and any taxes;
  - (5) Trust instruments shall be subject to the same filing and approval procedure as that set forth for endowed care trust fund agreements under section 214.330;
  - (6) A trustee may commingle the funds from trusts of unrelated cemetery operators for investment purposes if the trustee has adequate accounting for the allocations, disbursements, payments, and income among the participating trusts.
5. The income from escrow accounts, after payment of expenses associated with the arrangement, shall be distributed to the cemetery operator. All other distributions from trusts and escrow accounts shall be made pursuant to forms approved by the office. For performance of a cemetery prearranged contract, a certificate of performance form signed by the cemetery operator shall be required for distribution. For cancellation of a cemetery prearranged contract, a certificate of cancellation form signed by the cemetery operator and the purchaser shall be required for distribution.
6. A cemetery prearranged contract is subject to cancellation as follows:
- (1) At any time before the final disposition of the deceased, or before the services or merchandise described in this section are provided, the purchaser may cancel the contract without cause by delivering written notice thereof to the operator. Within fifteen days after its receipt of such notice, the cemetery operator shall pay to the purchaser a net amount equal to eighty percent of all payments made under the contract. The cemetery operator shall be entitled to keep one-half of the interest earned on trust funds. Upon delivery of the purchaser's receipt for such payment to the escrow agent or trustee, the escrow agent or trustee shall distribute to the cemetery operator from the escrow account or trust an amount equal to all deposits made into the escrow account or trust for the contract;
  - (2) Notwithstanding the provisions of subdivision (1) of this subsection, if a purchaser is eligible, becomes eligible, or desires to become eligible, to receive public assistance under chapter 208 or any other applicable state or federal law, the purchaser may irrevocably waive and renounce his right to cancel the contract pursuant to the provisions of subdivision (1) of this section, which waiver and renunciation shall be made in writing and delivered to the cemetery operator;
  - (3) Notwithstanding the provisions of subdivision (1) of this subsection, any purchaser, within thirty days of receipt of the executed contract, may cancel the contract without cause by delivering written notice thereof to the cemetery operator, and receive a full refund of all payments made on the contract;
  - (4) Notwithstanding the provisions of subdivision (1) of this subsection, once any purchase order is entered for the production or manufacture of burial merchandise, per the purchaser's written request, the purchaser's obligation to pay for said burial merchandise shall be noncancellable;

(5) No funds subject to a purchaser's right of cancellation hereunder shall be subject to the claims of the cemetery operator's creditors.

7. Burial merchandise sold through a contract with a cemetery or cemetery operator which is entered into after the death of the individual for whom the burial merchandise is intended shall not be subject to any trusting or escrow requirement of this section.

8. This section shall apply to all agreements entered into after August 28, 2010.

(L. 1994 S.B. 496 § 214.385 subsec. 2 subdivs. (b), (c), (d) merged with S.B. 701, A.L. 2002 S.B. 892, A.L. 2009 S.B. 296, A.L. 2010 H.B. 1692, et al. merged with H.B. 2226, et al. merged with S.B. 754)

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