



Ohio Revised Code

Section 1721.211 Preneed cemetery merchandise and services contract.

Effective: October 29, 2018

Legislation: House Bill 168 - 132nd General Assembly

(A) As used in this section, "preneed cemetery merchandise and services contract" means a written agreement, contract, or series of contracts to sell or otherwise provide an outer burial container, monument, marker, urn, other type of merchandise customarily sold by cemeteries, or opening and closing services to be used or provided in connection with the final disposition of a dead human body, where payment for the container, monument, marker, urn, other type of merchandise customarily sold by cemeteries, or opening and closing services is made either outright or on an installment basis, prior to the death of the person so purchasing or for whom so purchased. "Preneed cemetery merchandise and services contract" does not include any preneed funeral contract or any agreement, contract, or series of contracts pertaining to the sale of any burial lot, burial or interment right, entombment right, or columbarium right with respect to which an endowment care trust is established or is exempt from establishment pursuant to section 1721.21 of the Revised Code.

(B) Subject to the limitations and restrictions contained in Chapters 1101. to 1127. of the Revised Code, a trust company licensed under Chapter 1111. of the Revised Code or a national bank or federal savings association that pledges securities in accordance with section 1111.04 of the Revised Code or the individuals described in division (C)(2) of this section have the power as trustee to receive moneys under a preneed cemetery merchandise and services contract and to hold and invest such moneys in accordance with sections 2109.37 and 2109.371 of the Revised Code or, if provided for in the instrument creating the trust, in accordance with the Ohio Uniform Prudent Investor Act.

(C)(1) The greater of one hundred ten per cent of the seller's actual cost or thirty per cent of the seller's retail price of the merchandise and seventy per cent of the seller's retail price of the services to be provided under a preneed cemetery merchandise and services contract shall remain intact as a fund and held in a preneed cemetery merchandise and services trust until the death of the person for whose benefit the contract is made or the merchandise is delivered as set forth in division (K) of this section. However, any moneys held pursuant to this section shall be released upon demand of the person for whose benefit the contract was made or upon the demand of the seller for its share of the moneys held and earned interest if the contract has been canceled as set forth in division (G) of this



section.

(2) The trustee of the preneed cemetery merchandise and services trust shall be a trust company licensed under Chapter 1111. of the Revised Code or a national bank or federal savings association that pledges securities in accordance with section 1111.04 of the Revised Code or at least three individuals who have been residents of the county in which the seller is located for at least one year, each of whom shall be bonded by a fidelity bond, or insured under an insurance policy less any deductible, in an amount that is at least equal to the amount deposited in the trust of which those persons serve as trustee. Amounts in the trust shall be held and invested in the manner in which trust funds are permitted to be held and invested pursuant to sections 2109.37 and 2109.371 of the Revised Code or, if provided for in the instrument creating the trust, in accordance with the Ohio Uniform Prudent Investor Act.

(3) Every preneed cemetery and merchandise contract entered into on or after October 12, 2006, shall include a provision in substantially the following form:

NOTICE: Under Ohio law, the person holding the right of disposition of the remains of the beneficiary of this contract pursuant to section 2108.70 or 2108.81 of the Revised Code will have the right to purchase cemetery merchandise and services inconsistent with the merchandise and services set forth in this contract. However, the beneficiary is encouraged to state his or her preferences as to the manner of final disposition in a declaration of the right of disposition pursuant to section 2108.72 of the Revised Code, including that the arrangements set forth in this contract shall be followed.

(D) Within thirty days after the last business day of the month in which the seller of cemetery merchandise or services receives final contractual payment under a preneed cemetery merchandise and services contract, the seller shall deliver the greater of one hundred ten per cent of the seller's actual cost or thirty per cent of the seller's retail price of the merchandise and seventy per cent of the seller's current retail price of the services as of the date of the contract to a trustee or to trustees as described in division (C)(2) of this section, and the moneys and accruals or income on the moneys shall be held in a fund in a preneed cemetery merchandise and services trust and designated for the person for whose benefit the fund was established as a preneed cemetery merchandise and services contract fund.



(E) The moneys received from more than one preneed cemetery merchandise and services contract may, at the option of the persons for whose benefit the contracts are made, be placed in a common or pooled trust fund in this state under a single trust instrument. If three individuals are designated as the trustees as provided in division (C)(2) of this section, they shall be bonded by a fidelity bond, or insured under an insurance policy less any deductible, in an aggregate amount of not less than one hundred per cent of the funds held by them as trustees. The trustees or their agent shall, on a continuous basis, keep exact records as to the amount of funds under a single trust instrument being held for the individual beneficiaries showing the amount paid, the amount deposited and invested, and accruals and income.

(F)(1) The seller of merchandise or services under a preneed cemetery merchandise and services contract shall ensure each of the following:

(a) That, within the time specified in division (D) of this section, the amounts required by that division were deposited in an appropriate fund in a preneed cemetery merchandise and services trust;

(b) That the preneed cemetery merchandise and services trust has not been used to collateralize or guarantee loans and has not otherwise been subjected to any consensual lien;

(c) That the preneed cemetery merchandise and services trust is invested in compliance with the investing standards set forth in sections 2109.37 and 2109.371 of the Revised Code or, if provided for in the instrument creating the trust, in accordance with the Ohio Uniform Prudent Investor Act;

(d) That no moneys have been removed from the preneed cemetery merchandise and services trust, except as provided for in this section.

(2) Except as provided in division (F)(3) of this section, the seller of merchandise or services under a preneed cemetery merchandise and services contract shall annually submit to the division of real estate of the department of commerce an affidavit in a form prescribed by the division, certifying under oath the seller satisfied division (F)(1) of this section.

(3) A licensed funeral director who sells preneed funeral contracts and who also sells merchandise or



services under a preneed cemetery merchandise and services contract shall be deemed to have met the requirement in division (F) (2) of this section by submitting the annual preneed cemetery merchandise and services contract affidavit to the board of embalmers and funeral directors along with or as part of the annual preneed funeral contract report required under divisions (I) and (J) of section 4717.31 of the Revised Code.

(G) This division is subject to division (I) of this section.

Any person upon initially entering into a preneed cemetery merchandise and services contract may, within seven days, cancel the contract and request and receive from the seller one hundred per cent of all payments made under the contract. After the expiration of the above period, any person who has entered into a preneed cemetery merchandise and services contract may, on not less than fifteen days' notice, cancel the contract and request and receive from the seller sixty per cent of the payments made under the contract which have been paid up to the time of cancellation; except that, if a preneed cemetery merchandise and services contract stipulates a firm or fixed or guaranteed price for the merchandise or services for future use at a time determined by the death of the person on behalf of whom payments are made, the person who has entered into the contract may, if the merchandise has not been delivered or the services have not been performed as set forth in division (K) or (L) of this section, on not less than fifteen days' notice, cancel the contract and receive from the seller sixty per cent of the principal paid pursuant to the contract and not less than eighty per cent of any interest paid, up to the time of cancellation, and not less than eighty per cent of any accrual or income earned while the moneys have been held pursuant to divisions (C) and (D) of this section, up to the time of cancellation. Upon cancellation, after the moneys have been distributed to the beneficiary pursuant to this division, all remaining moneys being held pursuant to divisions (C) and (D) of this section shall be paid to the seller. If more than one person enters into the contract, all of those persons must request cancellation for it to be effective under this division. In such a case, the seller shall refund to each person only those moneys that each person has paid under the contract.

(H) Upon receipt of a certified copy of the certificate of death or evidence of delivery of the merchandise or performance of the services pursuant to division (K) or (L) of this section, the trustee described in division (C)(2) of this section or its agent, shall forthwith pay the fund and accumulated interest, if any, to the person entitled to them under the preneed cemetery merchandise and services contract. The payment of the fund and accumulated interest pursuant to this section, either to a seller



or person making the payments, shall relieve the trustee of any further liability on the fund or accumulated interest.

(I) Notwithstanding any other provision of this section, any preneed cemetery merchandise and services contract may specify that it is irrevocable. All irrevocable preneed cemetery merchandise and services contracts shall include a clear and conspicuous disclosure of irrevocability in the contract and any person entering into an irrevocable preneed cemetery merchandise and services contract shall sign a separate acknowledgment of the person's waiver of the right to revoke. If a contract satisfies the requirements of this division, division (G) of this section does not apply to that contract.

(J) Any preneed cemetery merchandise and services contract that involves the payment of money shall be in writing and in compliance with the laws and rules of this state.

(K) For purposes of this section, the seller is considered to have delivered merchandise pursuant to a preneed cemetery merchandise and services contract when either of the following occur:

(1) The seller makes actual delivery of the merchandise to the beneficiary, or the seller pays for the merchandise and identifies it as being stored for the benefit of the beneficiary at a manufacturer's warehouse.

(2) The seller receives delivery of the merchandise on behalf of the beneficiary, and all of the following occur:

(a) The merchandise is permanently affixed to or stored upon the real property of a cemetery located in this state.

(b) The seller notifies the beneficiary of receipt of the merchandise and identifies the specific location of the merchandise.

(c) The seller at the time of the beneficiary's final payment provides the beneficiary with evidence of ownership in the beneficiary's name showing the merchandise to be free and clear of any liens or other encumbrances.



(L) For purposes of this section, a seller is considered to have performed services pursuant to a preneed cemetery merchandise and services contract when the beneficiary's next of kin signs a written statement that the services have been performed or, if no next of kin of the beneficiary can be located through reasonable diligence, when the owner or other person responsible for the operation of the cemetery signs a statement of that nature.

(M) Notwithstanding any other provision of this chapter, any trust may be charged a trustee's fee, which is to be deducted from the earned income or accruals on that trust. The fee shall not exceed the amount that is regularly or usually charged for similar services rendered by the trustee described in division (C)(2) of this section when serving as a trustee.

(N) The general assembly intends that this section be construed as a limitation upon the manner in which a person is permitted to accept moneys in prepayment for merchandise and services to be delivered or provided in the future, or merchandise and services to be used or provided in connection with the final disposition of human remains, to the end that at all times members of the public may have an opportunity to arrange and pay for merchandise and services for themselves and their families in advance of need while at the same time providing all possible safeguards whereunder the prepaid moneys cannot be dissipated, whether intentionally or not, so as to be available for the payment for merchandise and services and the providing of merchandise and services used or provided in connection with the final disposition of dead human bodies.

(O) This section does not apply to the seller or provider of merchandise or services under a preneed cemetery merchandise and services contract if the contract pertains to a cemetery that is owned and operated entirely and exclusively by an established and legally cognizable church or denomination that is exempt from federal income taxation under section 501(c)(3) of the "Internal Revenue Code of 1954," 26 U.S.C.A. 501, an established fraternal organization, or a municipal corporation or other political subdivision of the state, to a cemetery that is a national cemetery, or to a cemetery that is a family cemetery as defined in section 4767.02 of the Revised Code; provided that, on a voluntary basis, rules and other measures are adopted to safeguard and secure all moneys received under a preneed cemetery merchandise and services contract.

(P) This section does not prohibit persons other than cemetery corporations or associations from



selling outer burial containers, monuments, markers, urns, or other types of merchandise customarily sold by cemeteries pursuant to a preneed cemetery merchandise and services contract; however all sellers of merchandise pursuant to a preneed cemetery merchandise and services contract shall comply with this section unless the seller is specifically exempt from this section.

(Q) Any contract for preneed services or merchandise entered into with a cemetery not registered under section 4767.03 of the Revised Code is voidable.