



*Funeral Board of Manitoba
Conseil des services funéraires
du Manitoba*

DRAFT

The Prearranged Funeral Services Act
Regulation

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DEFINITIONS

Definitions

1 The following definitions apply in this regulation.

"**Act**" means *The Prearranged Funeral Services Act*.

"**code of ethics**" means the code of ethics prepared and published by the board under section 10.3 of the Act.

"**general price list**" means the general price list as defined in the *Funeral Directors and Embalmers Regulation*, Manitoba Regulation 387/87 R.

"**inspector**" means an inspector appointed by the board under subsection 9.1(1) of the Act.

"**licence holder**" means a licensee and includes a salesperson or agent issued a licence under clause 2(3)(c) of the Act.

LICENCES

Application for licence by funeral director

2(1) A funeral director who wishes to apply for a licence under section 3 of the Act (providing funeral services under prearranged funeral plans or soliciting persons to enter into prearranged funeral plans) must meet the following requirements:

- (a) apply in a form approved by the board;
- (b) be in compliance with the Act and this regulation;
- (c) not have been convicted of an offence that is relevant to his or her suitability as a licensee;
- (d) provide a copy of the following:
 - (i) the form of prearranged funeral plan that the licensee proposes to use,
 - (ii) the general price list,
 - (iii) if there is an authorized trustee, the agreement with the authorized trustee respecting the payment, deposit, investment and management of money paid under prearranged funeral plans;
- (e) provide a completed licence application (in a form approved by the board) for each salesperson or agent employed by the licensee for the purpose of soliciting persons to enter into prearranged funeral plans with the licensee;

- (f) pay a fee of:
 - (i) \$500 where there is an authorized trustee, and
 - (ii) \$100, where all prearranged funeral plans sold by the licensee are funded by insurance policies.
- 2(2) The form of prearranged funeral plan referred to in subclause (1)(d)(i) must be acceptable to the board.
- 2(3) The agreement with an authorized trustee referred to in subclause (1)(d)(iii) must be acceptable to the board.
- 2(4) After a licence is issued, a licensee must not alter or change the form of a prearranged funeral plan, or alter or change the agreement with an authorized trustee, provided under subsection (1), unless the licensee has first obtained the board's written approval for the alteration or change.
- 2(5) A licence expires on March 31 of each year.

Licence renewal

- 3(1) The board may renew a licence of a person who
 - (a) applies on or before March 1 in a form approved by the board;
 - (b) has a current licence that has not been suspended;
 - (c) is in compliance with the Act and this regulation, including the reporting requirement under section 9;
 - (d) has not been convicted of an offence that is relevant to his or her suitability as a licensee;
 - (e) provides a copy of the documents referred to in clause 2(1)(d) or a declaration stating that they have not been changed without the board's written approval since the licence was last issued;
 - (f) provides a completed licence application for each of the salespersons and agents who act on behalf of the licensee; and
 - (g) pays the fee set out in subsection (2).
- 3(2) The annual fee to renew a licence is as follows: (a) where there is an authorized trustee, an annual fee-based on the number of active prearranged funeral plans for the previous

calendar year for which there is an authorized trustee, as set out in the report the licensee must submit under subsection 9(1), as follows:

- (a) for up to 100 plans..... \$100
- (b) for 101 to 250 plans \$175
- (c) for 251 to 500 plans \$300
- (d) for 501 to 1000 plans \$550
- (e) for 1001 to 2500 plans \$1,300
- (f) for more than 2500 plans \$2,050
- (g) where all prearranged funeral plans sold by the licensee are funded by insurance policies, an annual fee of \$100.

Information kept up to date

4 Within 15 days of any change in the salespersons or agents that a licensee employs, the licensee must

- (a) inform the board of the change in a form approved by the board; and
- (b) provide a completed licence application for each new salesperson or agent.

Licence for salesperson or agent

5(1) A licence for a salesperson or agent expires on March 31 of each year.

5(2) A licence for a salesperson or agent is not transferable.

REQUIREMENTS FOR PLANS

Requirements for plans

6(1) A prearranged funeral plan must include the following information:

- (a) the name, address and telephone number of the licensee;
- (b) the name, address and telephone number of the purchaser and, if it is the purchaser for whom the plan is purchased, his or her birth date;
- (c) the name, address and birth date of the person for whom the plan is purchased, if that person is not the purchaser;
- (d) an itemized list of the specific services and products that are included in the plan;
- (e) the name of the authorized trustee or, if the plan is funded by an insurance policy, the name of the insurer;

(f) the terms of payment which, in the case of a plan funded by an insurance policy, are the terms of payment specified in the insurance contract or plan;

(g) what happens to the interest on prepaid funds held by an authorized trustee, including what happens if the plan is cancelled;

(h) a statement that says the following:

The purchaser may cancel this plan at any time. There is no penalty or fee for cancellation within 10 days after the purchaser receives a copy of the plan.

6(2) If the funeral director has charged an administration fee, the statement referred to in clause (1)(h) must also state the following:

If the plan is cancelled after the 10-day period, the licensee may keep the administration fee, which is the lesser of

(a) \$250; or

(b) 10% of the value of this plan, excluding taxes, interest or other fees.

Records to be kept for each plan

7(1) Every licensee must keep complete and accurate records that enable the following to be determined and verified in respect of each prearranged funeral plan entered into by the licensee:

(a) the name of the purchaser and, unless the plan is purchased for someone else, the purchaser's birth date;

(b) the name and birth date of the person for whom the plan is purchased if that person is not the purchaser;

(c) the plan number;

(d) the amount of interest, if any, paid from a special fund and the date of the payment;

(e) if the person for whom the plan was purchased has died, the date of death, the specific products and services provided, and all disbursements and expenses relating to the provision of funeral services under the plan;

(f) the dates and amounts of any payments from the authorized trustee or insurer to the licensee on death.

7(2) The records referred to in subsection (1) must be kept for five years after funeral services are provided under a prearranged funeral plan.

Requirement to provide plan information

- 8 At the request of a purchaser of a prearranged funeral plan or a person for whom the plan was purchased, a licensee must provide a copy of the plan at no charge.

ANNUAL REPORT BY LICENSEE

Annual report by licensee

- 9(1) No later than March 1 each year, a licensee must provide a written report to the board, in relation to the preceding calendar year, that sets out the following information:

- (a) the name of each person who has purchased a prearranged funeral plan in that period;
- (b) the total cost to the purchaser of each prearranged funeral plan purchased in that period;
- (c) the method of payment of each prearranged funeral plan;
- (d) the portion of the total cost that was paid by each purchaser at the time of purchase;
- (e) the amount, date and payor of every payment made toward each prearranged funeral plan in that period;
- (f) the amount paid, and the payee of the amount paid in respect of, and the date of, each cancellation of a prearranged funeral plan in that period;
- (g) for each assignment of a prearranged funeral plan in that period, the name of the purchaser of the plan, the name of the assignee and the amount assigned;
- (h) in relation to plans for which there is an authorized trustee, a statement from the authorized trustee showing
 - (i) the amounts received by the authorized trustee in relation to each prearranged funeral plan purchased in that period, and
 - (ii) the amounts held by the trustee in respect of all prearranged funeral plans with the licensee that were paid out, transferred or assigned, the dates of each payout, transfer or assignment and the person to whom those payments were made or in favour of whom each transfer or assignment was made.

- 9(2) The board may also request a licensee to provide any other report or information at such time as the board may require, and the licensee must comply with the request.

AUTHORIZED TRUSTEES

Designation of authorized trustees

10 Each of the trust companies named in the Schedule is designated as an authorized trustee under the Act.

Annual statement by authorized trustee

11(1) The date as of which an authorized trustee must prepare the statement referred to in subsection 7(2) of the Act is December 31.

11(2) In addition to the items required by subsection 7(2) of the Act, the statement of the authorized trustee must show

(a) the interest accrued in respect of each plan during the preceding calendar year; and

(b) the date and amount of any payments and any service charges made in respect of each special fund during the preceding calendar year.

11(3) The date by which an authorized trustee must forward the statement under subsection 7(3) of the Act is January 31.

ADMINISTRATION FEE

Administration fee

12(1) For the purpose of subsection 3.5(4) and section 4 of the Act, the administration fee is the lesser of

(a) \$250; or

(b) 10% of the value of the prearranged funeral plan, excluding taxes, interest or other fees.

12(2) A licensee may charge a purchaser an administration fee only once in relation to each prearranged funeral plan, despite any addition, deletion or other change to the products and services to be included in the plan.

12(3) Despite subsections (1) and (2), when the purchaser of a prearranged funeral plan wishes to pay in installments, the administration fee in subsection (1) may include an additional amount for reasonable financing or service charges, which may be paid to the licensee in installments.

12(4) An administration fee, including any additional amount referred to in subsection (3), must be clearly identified in the general price list and in the prearranged funeral plan, using the following wording "Administration fee for preparing prearranged funeral plan".

12(5) Subject to section 13, a licensee must not require or collect any fee or charge other than an administration fee for the administration of a prearranged funeral plan.

WITHDRAWAL OF INTEREST

Withdrawal of interest from special fund

- 13** A licensee may withdraw and keep interest accrued in respect of payments deposited in a special fund only if the prearranged funeral plan specifically provides that the licensee may do so.

DISCIPLINARY PROVISIONS

Grounds for taking disciplinary action

- 14** For the purpose of subsection 3.1(1) of the Act, the board may suspend or cancel a licence on the following grounds:
- (a)** a breach by the licence holder of the *Criminal Code* (Canada) or of any other statute affecting the activities and business related to prearranged funeral plans;
 - (b)** fraudulent or unethical business practices by that person;
 - (c)** a breach of the code of ethics by that person.

Complaints and investigations

- 15(1)** Any person may make a written complaint to the chair of the board about the conduct of a licence holder.
- 15(2)** A complaint must be made within five years of the alleged wrongdoing.
- 15(3)** Subject to subsection (2), a complaint may be made about the conduct of a licence holder even if his or her licence has been suspended, cancelled or not renewed.
- 15(4)** Upon receiving a complaint or information relating to con-compliance with the Act or this regulation, the board may require an inspector to investigate the matter and the inspector may, as part of the investigation, take any action permitted under section 9.1 or 9.2 of the Act.
- 15(5)** In the course of an investigation, the inspector may investigate any other matter that arises and is related to the conduct of a licence holder regardless of whether it was included in the original complaint or other information received.
- 15(6)** The inspector must, on request, present evidence of his or her appointment and a photo identification card issued by the board.
- 15(7)** After completing an investigation, the inspector must prepare a written report of his or her findings and provide it to the chair of board.
- 15(8)** The inspector's report may include a recommendation that the complaint or matter be referred, in whole or in part, to a hearing under section 16 or that no further action be taken.

Hearing procedures

16(1) At the same time that the applicant or licence holder is given the notice required under subsection 3.1(4) of the Act, the chair of the board must also give the applicant or licence holder and any complainant,

(a) written notice of the date, time and place of the hearing; and

(b) a copy of the inspector's report under subsection 15(8).

The applicant or licence holder must also be given information identifying general details of the matter to be considered.

16(2) The applicant or licence holder may appear and be represented by counsel at the hearing, and the board may have counsel to assist it.

16(3) The inspector is a party to the hearing and has carriage of the matter.

16(4) If it has been proved that the applicant or licence holder has received notice of the hearing, the board may

(a) proceed with the hearing in the absence of the applicant or licence holder; and

(b) act or decide on the matter being heard in the same way as if the applicant or licence holder were in attendance.

16(5) The chair of the board may administer oaths for the purpose of a hearing.

16(6) The board may adjourn the hearing from time to time.

16(7) A hearing must be open to the public. However, a party to the hearing may request the board to make an order requiring

(a) that the hearing or any part of it be held in private; or

(b) that the applicant, licence holder or any witness be identified only by initials.

16(8) The board may make an order described in subsection (7), but only if it is satisfied that

(a) financial, personal or other matters may be disclosed that are of such a nature that the desirability of avoiding public disclosure of those matters outweighs the desirability of adhering to the principle that hearings be open to the public;

(b) a person involved in a civil or criminal proceeding may be prejudiced; or

(c) a person's safety may be jeopardized.

16(9) The board must ensure that an order made under subsection (7) and the reasons for it are either given orally at the hearing or made available to the public in writing.

16(10) The board is not bound by the rules of evidence that apply to judicial proceedings.

16(11) Evidence may be given at a hearing by oral testimony or affidavit or both, but a licence cannot be suspended or cancelled on affidavit evidence alone.

16(12) The oral evidence of a witness at a hearing must be recorded and taken on oath, and the parties have a right to cross-examine witnesses and call evidence in defence and reply.

16(13) The board may allow evidence to be introduced if, at least 14 days before the hearing, the party intending to introduce it gives the other party

(a) the name of any witness and an outline of his or her anticipated evidence; and

(b) the opportunity to inspect any documentary evidence.

16(14) Despite subsection (13), the board may allow evidence to be introduced if the board is satisfied that introduction of that evidence is necessary to ensure that the legitimate interests of a party to the hearing will not be unduly prejudiced. However, the board must

(a) declare its intent to do so; and

(b) give the applicant or licence holder a reasonable opportunity to prepare a response.

16(15) At the same time that the board provides a copy of the decision to the applicant or licence holder as required by subsection 3.1(6) of the Act, the board must also advise the applicant and the licence holder in writing of the right to appeal the decision under subsection 3.2(1) of the Act.

MISCELLANEOUS PROVISIONS

Transitional

17 Section 6 (requirements for plans) and section 13 (withdrawal of interest) apply only to prearranged funeral plans entered into after the day this regulation comes into force.

Repeal

18 The *Funeral Directors Regulation*, Manitoba Regulation 388/87 R, is repealed.

Coming into force

19 This regulation comes into force on the day that Part 3 of *The Grieving Families Protection Act (Various Acts Amended)*, S.M. 2011, c. 29, comes into force.

SCHEDULE

AUTHORIZED TRUSTEES

The Bank of Nova Scotia Trust Company

The Canada Trust Company

Canadian Western Trust Company

CIBC Trust Corporation

Concentra Trust

National Trust Company

The Royal Trust Company

Royal Trust Corporation of Canada

BMO Trust Company