

# WEST VIRGINIA CODE: §35-5B-1

## §35-5B-1. Definitions.

The following words and phrases as used in this article, unless a different meaning is clearly indicated by the context, have the following meanings:

(1) "Burial vault" means a protective container for a casket which is used to prevent a grave from sinking.

(2) "Cemetery" means and includes all land and appurtenances including roadways, office buildings, outbuildings and other structures used or intended to be used for or in connection with the interment of human remains. The sprinkling of ashes or their burial in a biodegradable container on church grounds or their placement in a columbarium on church property does not constitute the creation of a cemetery.

(3) "Cemetery company" or "seller" means any person, partnership, firm or corporation engaged in the business of operating a cemetery or selling property, goods or services used in connection with interring or disposing of the remains or commemorating the memory of a deceased human being, where delivery of the property or goods or performance of the service may be delayed later than one hundred twenty days after receipt of the initial payment on account of such sale. Such property, goods or services include, but are not limited to, burial vaults, mausoleum crypts, lawn crypts, memorials, marker bases and opening and closing and/or interment services, but do not include graves or incidental additions such as dates, scrolls or other supplementary matter representing not more than ten percent of the total contract price.

(4) "Commissioner" or "Tax Commissioner" means the secretary of the West Virginia Department of Tax and Revenue.

(5) "Compliance agent" means a natural person who owns or is employed by a cemetery company to assure the compliance of the cemetery company with the provisions of this article.

(6) "Cost requirement" means the total cost to the seller of the property, goods or services subject to the deposit requirements of section four of this article required by that seller's total contracts.

(7) "Delivery" means that the seller has transferred physical possession of the identified goods, has attached or installed such goods at the designated interment space or has actually furnished preneed cemetery company contract services. In the case of preneed goods which are identified with the name of the buyer or other contract beneficiary, "delivery" may also occur when: (A) The seller pays for and stores the goods at the cemetery where they are intended to be used; or (B) the seller has paid the supplier of such goods and

the supplier has caused such merchandise to be manufactured and stored, has caused title to such merchandise to be transferred to the buyer or other contract beneficiary and has agreed to ship such merchandise upon his or her request.

(8) "Grave" means a below-ground right of interment.

(9) "Interment" means the disposition of human remains by earth burial, entombment or inurnment.

(10) "Lawn crypt" means a burial receptacle, usually constructed of reinforced concrete, installed underground in quantity on gravel or tile underlay. Each crypt becomes an integral part of the given garden area and is considered real property.

(11) "Marker base" means the visible part of the base or foundation upon which the memorial, marker or monument rests and is considered personal property.

(12) "Mausoleum crypt" means a burial receptacle usually constructed of reinforced concrete and usually constructed or assembled above the ground and is considered real property.

(13) "Memorials, markers or monuments" means the object used to identify the deceased including the base and is considered personal property.

(14) "Opening and closing or interment service" means any service associated with the excavation and filling in of a grave in a manner which will not disturb or invade adjacent grave sites.

(15) "Preneed" means at any time other than either at the time of death or while death is imminent.

(16) "Preneed cemetery company contract" means a contract for the sale of real and personal property, goods or services used in connection with interring or disposing of the remains or commemorating the memory of a deceased human being, where delivery of the property or performance of the service may be delayed for more than one hundred twenty days after the receipt of initial payment on account of such sale. Such property, goods or services include, but are not limited to, burial vaults, mausoleum crypts, lawn crypts, memorials, marker bases and opening and closing and/or interment services, but do not include graves or incidental additions such as dates, scrolls or other supplementary matter representing not more than ten percent of the total contract price.

(17) "Seller's trust account" means the total specific funds deposited from all of a specific seller's contracts, plus income on such funds allotted to that seller.

(18) "Specific trust funds" means funds identified with a certain preneed cemetery company contract for personal property, goods or services.

(19) "Trustee" means any natural person, partnership or corporation, including any bank, trust company, broker-dealer, foreign state charter trust, savings and loan association or credit union which receives money in trust pursuant to any agreement or contract made pursuant to the provisions of this article.

WV Legislature