WEST VIRGINIA CODE: §47-14-11

§47-14-11. Disciplinary proceedings; revocation of license or certificate; liquidation upon violation.

(a) No person shall:

(1) Violate any provisions of this article;

(2) Attempt to procure or procure a certificate of authority or license under this article by bribery or fraudulent misrepresentation;

(3) Have had any certificate of authority or license to sell preneed funeral contracts revoked, suspended or otherwise acted against, including denial of licensure, by a licensing authority of another jurisdiction;

(4) Have been convicted or found guilty of a crime in any jurisdiction which directly relates to the sale of preneed funeral contracts;

(5) Make or file a report required by this article which the certificate holder knows to be false or knowingly fail to make or file a report required by this article;

(6) Advertise goods or services in a manner which is fraudulent, false, deceptive or misleading in form or content;

(7) Engage in fraud, deceit or misrepresentation in the conduct of business governed by the provisions of this article;

(8) Fail to comply with a lawful order of the division;

(9) Knowingly make any false or misleading statement, oral or written, directly or indirectly, regarding the sale of services or merchandise in connection with the conduct of the certificate holder's business;

(10) Fail to maintain the funds received under the contracts as required by this article;

(11) Fail to cancel a preneed funeral contract upon proper request and refund that portion of the amount paid on such a contract as required by this article;

(12) Fail to renew or qualify for renewal of its certificate of authority or license;

(13) Fail to produce records in connection with the certificate holder's business or otherwise fail to comply with the provisions of this article or any rule promulgated by the division pursuant to this article; or

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(14) Solicit by the certificate holder, its agents, employees or representatives through the use of fraud, undue influence, misrepresentation or overreaching or other forms of vexatious conduct as defined by law, this article or the legislative rules promulgated by the division.

(b) Upon the violation of any of the provisions of this article, determined in an administrative hearing after notice and an opportunity to be heard, the division may institute revocation proceedings regarding a license to operate a funeral establishment or a certificate of authority or license to sell preneed funeral contracts, or both the license and the certificate of authority or license, or file a complaint in a court of competent jurisdiction setting forth the relevant facts and praying for the issuance of an order to show cause why the license to operate a funeral home or the certificate of authority or license to sell preneed funeral contracts, or both the license and the certificate should not be revoked or the person should not be enjoined from engaging in business governed by the provisions of this article.

(1) Upon application for such rule to show cause, the court may, in its discretion, issue an injunction restraining the defendant from transacting further business until further order of the court.

(2) Upon return of such order to show cause, the court shall hear and try the issue forthwith. If the court determines that the person so charged as defendant in such proceeding has not been guilty of the omission, failure or violation alleged in the complaint by the division, the court shall dismiss such complaint. If the court finds that the charges of the division are supported by the evidence, it may enter an order directing the revocation of a license to operate a funeral home or of a certificate of authority or license to sell preneed funeral contracts, or the revocation of both the license and the certificate of authority or license, or permanently enjoining the person from engaging in business governed by the provisions of this article until its requirements are met. The court shall have the authority to order the liquidation of the business upon a finding that the person engaged therein is in violation of any provision of this article.

(3) In any such order of liquidation or in any order or orders thereafter entered, the court shall provide a notice to creditors for the filing of claims and otherwise direct all other matters necessary and essential to govern an estate in receivership.

(c) When the division finds that any person has violated the provisions of subsection (a) of this section after an administrative hearing or finds that any funeral services or funeral or burial goods are offered for sale when the offer is not a bona fide offer to sell such services or goods, it may enter an order imposing one or more of the following penalties:

(1) Denial of an application for a certificate of authority or license, including a renewal;

(2) Revocation or suspension of a certificate of authority or license;

(3) Imposition of an administrative fine not to exceed $1,000 for each county where there are separate violations;

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(4) Issuance of a reprimand; or

(5) Placement of the licensee or certificate holder on probation for a period of time and subject to such conditions as the division may specify.

(d) All preneed funeral contract buyers have a priority in claims against the provider, to the extent that their interest is set forth in this article. Such priority constitutes a statutory lien at the time the contract was executed to the extent payments on the contract were made and interest has accrued.

(e) For purposes of this section, the acts or omissions of any person employed by or under contract to or on behalf of the certificate holder shall be treated as acts or omissions of the certificate holder.

(f) Subject to the provisions of subsection (b), section seven of this article, all prices or quotations of prices contained in any preneed funeral contract shall be fully and clearly stated.

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