WEST VIRGINIA CODE: §47-14-3

§47-14-3. Certificate of authority required; fees to go to division; special account established; duties of certificate holder.

(a) No person may receive, hold, control or manage any funds or other thing of value tendered as payment on any preneed funeral contract unless such person has obtained a certificate of authority or renewal thereof from the division: Provided, That no bank, trust company, savings and loan association or other financial institution regulated by this state or insured by an agency of the United States federal government or life insurance companies licensed pursuant to the provisions of chapter thirty-three of this code is required to obtain a certificate of authority.

(b) No person may sell, make available or be a provider of a preneed funeral contract unless such person has obtained a certificate of authority or renewal thereof from the division.

(c) Any person desiring to obtain a certificate of authority shall file with the division, upon forms provided by the division, a completed application, together with a $200 application fee for the original certificate of authority. The fee shall be payable to a special revenue account to be known as the "Preneed Burial Contract Regulation Fund" to be used for the purpose of administering the provisions of this article. The original application or a renewal application shall contain at least the following information:

(1) The name and address of each person owning ten percent or more interest in the applicant;

(2) The experience of the applicant;

(3) Such other information as the division may require to determine to its satisfaction that the applicant possesses the ability, experience, financial stability and integrity to negotiate preneed funeral contracts and, in the case of a funeral service provider, to provide the funeral services, funeral goods or burial goods as specified therein; and

(4) The types of preneed funeral contracts proposed to be written or otherwise used and copies of any writings used pursuant thereto; and if a person is a party to or bound by any such contract, an itemization of all outstanding preneed funeral contracts, the dates upon which such contracts were entered into, the names of all parties involved in such contracts or having any right thereunder, the amount paid toward each contract and, if payments are not completed, the amounts owing on each contract and the present depository or holder of all such funds.

(d) Each certificate of authority holder shall renew its certificate of authority according to the schedule established by this article. The fee for renewal shall be $200 per each entity, payable to the "Preneed Burial Contract Regulation Fund" established by this section.

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(e) Each certificate of authority holder shall file with the division a biennial report which shall contain the following:

(1) An identification of all outstanding preneed funeral contracts, the dates upon which the contracts were entered into by the parties, the names of all parties involved in such contracts or having any right thereunder, including, but not limited to, the contract beneficiary, the amount paid and interest earned on each contract and, if payments are not completed, the amounts owing and the present balance of funds applicable to each such contract.

(2) The date on which any insurance policy or annuity was purchased to fund a preneed funeral contract, the amount paid for each such insurance policy or annuity and the present value of each such insurance policy or annuity.

(3) The name of the contract seller and the name of the provider of the services and goods and a statement that the provider has sufficient funds available to perform all of its obligations under its contracts.

(4) A statement that the contract seller and the person receiving funds paid thereunder have complied with the trust requirements of this article, and the name and address of the present depository or holder of such funds and a statement of all the amounts thereof itemized as to each such contract.

(5) Any changes or amendments in any contracts or obligations of the seller and provider which have occurred since the date of the last report.

(6) Such other information as may be considered necessary by the division in order to meet its responsibilities under this article.

Any person who sells, provides or makes preneed funeral contracts available or receives moneys or other consideration therefor from the public or who otherwise holds or performs such contracts with or without a certificate of authority is required to file a biennial report with the division as prescribed in this subsection. Beginning with the year one thousand nine hundred ninety-five, the reporting period for which a biennial report is to be made pursuant to this section shall be a calendar year ending on December 31, every other year. All such reports shall be filed with the division no later than the thirty-first day of March of the year following the reporting period.

(f) Beginning with the calendar year one thousand nine hundred ninety-five, the certificate of authority shall expire on June 30 following its issuance: Provided, That a temporary certificate of authority may be issued by the division for a period not to exceed six months for purposes of implementing the change in the certificate of authority reporting period for the year one thousand nine hundred ninety-five. The fee for such temporary certificate shall be $100.

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(g) Every application, request for renewal and statement filed with the division shall be sworn to by the applicant or certificate holder. If the certificate holder is a partnership, it shall be sworn to by each member thereof. If the certificate holder is a corporation, it shall be sworn to by the president and secretary thereof.

(h) Upon the satisfaction of the division, based upon the application statements and any other information that the applicant meets the requirements of this article and of the rules promulgated by the division and, if upon investigation by the division of the principals, including directors, officers, stockholders, employees and agents of such person, nothing is found to warrant denial of the certificate, the division shall issue the certificate of authority or renewal thereof.

(i) (1) The certificate holder shall keep accurate accounts, books and records in this state of all transactions, copies of all contracts, dates and amounts of payments made and accepted thereon, the name and address of each contract buyer, the name of the contract beneficiary of each contract, the name of the trustee holding trust funds received under each contract and such other records as the division may require to determine whether such certificate holder is complying with the provisions of this article. Such records must be kept for twelve months after the date of termination of the applicable preneed contract.

(2) The certificate holder shall make all books and records pertaining to preneed funeral contracts available to the division for examination. The division may not more frequently than once in any calendar year, unless pursuant to an order of court for good cause shown, during ordinary business hours, cause to be examined the books, records and accounts of the certificate holder with respect to funds received by said certificate holder and for that purpose may require the attendance of and examine, under oath, all persons whose testimony the division may require.

(3) The certificate holder shall pay for the cost of any examination which is not the first one in that calendar year, including the salary and traveling expenses paid to the person making the examination during the time spent in making the examination and in traveling to and returning from the point where the records are kept and all other expenses necessarily incurred in the examination. The division shall assess and collect a fee for each such examination, based on the certificate holder's total outstanding preneed funeral service contracts and the cost of such examination, but the cost to the person being audited shall not be more than a total cost of $500 for each such examination. This fee shall be payable to the "Preneed Burial Contract Regulation Fund" established in this section.

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