

**The Nova Scotia Cemetery and Funeral Services Act and
Regulations**

Guidelines for Sellers
of
Pre-Arranged Funeral Plans and Pre-Need Cemetery Plans

Service Nova Scotia and Municipal Relations
October 2007

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Introduction

In October 2007, the Government of Nova Scotia revised the Regulations to the *Cemetery and Funeral Services Act* with respect to the sale and management of pre-arranged funeral and pre-need cemetery plans.

The material in this guide provides a reference point for licensed sellers of pre-arranged funeral and pre-need cemetery plans on their obligations under the *Cemetery and Funeral Services Act* and Regulations and highlights the 2007 amendments to the regulations. Revised requirements are in ***bold italic font***.

This guide is not intended to provide legal advice and is by no means an exhaustive review of all the provisions affecting funeral and cemetery services in Nova Scotia. It is recommended that anyone regulated under the *Cemetery and Funeral Services Act* and its Regulations obtain copies and review them in detail. Unofficial electronic versions are available online at:

Act: <http://www.gov.ns.ca/legislature/legc/>

Regulations: <http://www.gov.ns.ca/just/regulations/regs/cefregs.htm>

Official printed versions may be ordered from:

<u>For the <i>Cemetery and Funeral Services Act</i>:</u>	<u>For the regulations:</u>
Nova Scotia Government Publications P.O. Box 637 Halifax, Nova Scotia B3J 2T3 Tel: (902)-424-5200 or toll free 1-800-670-4357 Fax: (902)-424-0516 Website: http://www.gov.ns.ca/snsmr/publications/contact.asp	Registry of Regulations P.O. Box 7 Halifax, Nova Scotia B3J 2L6 Tel: (902) 424-6723 Fax: (902) 424-7120 E-mail: regofregs@gov.ns.ca Website: http://www.gov.ns.ca/just/regulations/order.htm

For more general information, please contact the office of the Registrar of Cemetery and Funeral Services at:

Business Licensing Office
Service Nova Scotia and Municipal Relations
P.O. Box 2723
Halifax, Nova Scotia B3J 3P7

Phone: 1-800-670-4357
Fax: 1-902-424-0702

General

Anyone wishing to sell pre-arranged funeral plans or pre-need cemetery plans must be licensed by the Registrar of Cemetery and Funeral Services. Both the business and the individual salespersons must obtain licences. Licences are renewable annually.

Each seller is required to post a bond with the office of the Registrar. When the number of prepaid plans outstanding changes enough to change the bond amount required, a seller is to contact its bonding company to obtain a bond endorsement reflecting the appropriate principal amount of the bond and notify the Registrar's office that this is being done. The seller must send the original bond endorsement to the Registrar's office as soon as it is completed.

Contract Requirements

A seller must provide the Registrar with a copy of the purchase agreement (cOntract) that will be used when a pre-arranged funeral plan or pre-need cemetery plan is sold. The purchase agreement is to contain:

- Licencee's name and contact information.
- A 10 day cancellation clause. The following language is to be inserted at the top of the first page of the purchase agreement in no less than 10 point font:

If this agreement is entered into a place other than a funeral home or a seller's business premises, you may, without penalty or obligation, cancel this transaction by notice in writing sent by registered mail to (name and address to be inserted here) or by delivering it there yourself within ten days after you have received the agreement.
- A list of the services and items included in the purchase agreement and their prices.
- The payment received and, if to be paid by installments, an indication of how and when any balance will be paid.
- A statement that purchases of some items on the plan are allowed prior to the death of the person(s) covered by the plan, if such a provision is to apply.
- A clause regarding the retention of up to 10% of administrative expenses, if it is the intent of the licensee to do so.
- ***A proof of purchase clause. Language to be included immediately above the signature lines in no less than 10 point font is:***

By law, the seller of pre-arranged funeral plans or pre-need cemetery plans must deposit all the money you pay them, less any administrative expenses agreed to in this purchase agreement, into a trust account at a financial institution. The seller must also give you written proof of the deposit no later than 21 days after they receive the money from you. If you are paying by installments, the seller must give you written proof of the deposit no later than 21 days after they receive the payment, and must give you semi annual statements confirming the deposit of your payments. If you do not receive such proof from the

seller within 21 days or if you do not receive your semi-annual statement of installment payments, please contact the office of the Registrar of Cemetery and Funeral Services at (insert current phone number of the Registrar); and

- Places for the signatures of both the purchaser and the salesperson and for the date the purchase agreement is entered into.

Any time the content or format of your standard purchase agreement is revised, it is to be submitted to the Registrar's Office for review prior to being put into use.

Obligation of the Seller to the Buyer at the Time of Sale

The seller is to provide the purchaser with a copy of the purchase agreement signed by both parties at the time of signing or within 10 days of the date of agreement. A signed and dated copy is to be kept on file.

The money received from the buyer, including HST, is to be deposited into the established trust account within one week of receipt of payment. The seller may retain up to 10% of the purchase price as an administration fee if the purchase agreement makes provision to do so. In the case of payment by installments, no more than 10% of any installment payment may be retained.

A seller must provide a buyer with proof that they have deposited the buyers payment into a trust account within 21 day of receiving the payment from the seller. In the case of the buyer paying by installments, the seller will provide proof the first installment was deposited into a trust account within 21 days of receiving it and provide the buyer with semi-annual statements showing that all subsequent payments were deposited into a trust account as well.

The proof of deposit that is to be provided to purchasers must be a record verified by the financial institution that states at a minimum all of the following: the name of the purchaser; the amount of the deposit; and the date of the deposit.

The semi-annual statement must also contain at a minimum: the name of the purchaser; the amounts of the deposits; and the dates of the deposits. Deposit slips or excerpts from the monthly statements of the trust account may be used for the semi-annual statement.

Fulfilling the Purchase Agreement

Payments are to remain in trust until the goods and services detailed in the plan are provided or the plan is cancelled and the funds are refunded. If a person dies before all payments are made, the personal representative of the deceased may pay the seller any unpaid balance.

A seller must keep copies of fulfilled purchase agreements, cancelled purchase agreements and death/burial certificates for five years after the fulfillment or cancellation of the purchase agreement.

Cancellation Rights Respecting the Purchase Agreement

A buyer has the right to cancel and receive a full refund within ten days of receiving their copy of the purchase agreement if the agreement was entered into in a place other than a funeral home or the seller's business premises. If the copy of the of the purchase agreement is mailed to the purchaser, receipt by the purchaser is deemed to be the third day after it was mailed. The seller must refund the entire purchase price within thirty days of receiving written notice of cancellation.

Any purchase agreement may be cancelled for a full refund if the seller did not provide to the purchaser a signed copy of the purchase agreement at the time of purchase or have one mailed to him or her within ten days of signing. In this circumstance, the purchaser may declare the purchase agreement void at any time. The seller must refund the entire purchase price within thirty days of receiving written notice of cancellation.

Cancellation of a Plan

Every pre-arranged funeral plan or pre-need cemetery plan must provide for cancellation of the plan (a) by the purchaser at anytime prior to the death of the purchaser or (b) after the death of the purchaser if it is not reasonably feasible to provide or use the goods, merchandise or services contracted for.

When a plan is cancelled the seller must refund the principal amount pertaining to the plan in the trust account less any amount spent under the plan. The purchaser is also entitled to receive any funeral merchandise, cemetery goods or other things purchased under the plan. The seller is to deliver the money and goods to the purchaser within thirty days of receiving written notice of cancellation. The seller is entitled to retain up to 10% of the purchase price as an administration fee, if the purchase agreement makes provision for doing so, and any interest earned on the principal.

Sellers are required to retain copies of cancellation and refund requests and cancelled cheques issued to purchasers for cancellations for five years.

Purchase of Merchandise prior to Need

A seller may purchase merchandise included in a pre-need cemetery plan or pre-arranged funeral plan prior to need, if there is a provision in the purchase agreement allowing purchase prior to need. Such purchases are to be tracked on an inventory of pre-purchased merchandise (see the Bookkeeping Requirements section).

A copy of the purchase invoice for each item placed in inventory and any request for release of funds from trust is to be retained in the purchase agreement file to which the merchandise

pertains.

Advertising and Solicitation

Advertising

If an advertisement for cemetery or funeral goods and services includes prices, a detailed description of the goods and services applicable for each listed price must be included in the ad.

The following are prohibited in advertising by sellers:

- Inaccurate or deceptive claims or statements, either directly or implied, with respect to price, worth, value or availability of funeral or cemetery goods and services;
- Any representation that appears to be a public service announcement;
- Any representation that would exploit human misery or play upon fears to encourage consumers to purchase funeral or cemetery goods and services; and
- Tasteless ads.

Solicitation

Sellers and their salespersons are not to solicit the purchase of pre-arranged funeral or pre-need cemetery plans by telephone or door to door.

Sellers and their salespersons are not to solicit the purchase of pre-arranged funeral or pre-need cemetery plans to anyone in a hospital, home for special care, nursing home or senior citizens home.

Sellers are not to attempt to sell to any individual more than once a year. Doing so is considered harassment.

In any solicitation, salespersons are to identify themselves by name, their licence number and the seller they represent.

Display of Merchandise

When a funeral home has a display of merchandise that it is offering for sale, it must include in the display its lowest priced merchandise of each type.

Bookkeeping Requirements

General

Purchase agreements for pre-arranged funeral or pre-need cemetery plan are to be numbered sequentially.

An account, separate and apart from the operating accounts of the business, must be set up and designated as a trust account for the seller's pre-arranged funeral plans and pre-need cemetery plans. Within the trust account, separate sub accounts must be created for each purchase agreement/plan. All interest and income earned on the funds in the trust account must be retained in the trust account and be credited to each plan's sub account.

Sellers are to retain duplicate deposit slips, cancelled cheques, bank statements or pass books, and copies of the proof of deposit to trust and semi-annual statements of deposits to trust provided to purchasers for their trust accounts.

Sellers must retain copies of fulfilled and cancelled purchase agreements for funeral and cemetery goods and services for a period of no less than 5 years after the date of fulfilment or cancellation.

Trust Ledger

A trust account ledger detailing trust account transaction activity each month must be maintained. If a seller has more than one trust account for pre-arranged funeral plans or pre-need cemetery plans, each trust account should have its own trust ledger.

The trust ledger is to include:

- Name of purchaser;
- ***Purchase agreement/plan number;***
- ***Number of beneficiaries covered by the plan;***
- Dates on which money was received or disbursed;
- Amounts of money received or disbursed;
- Names of the beneficiaries of the plans;
- To whom money was disbursed and for whom it was received;
- ***Whether a contract was fulfilled, partially fulfilled or cancelled; and***
- ***Opening and closing trust account balances for the month.***

Sellers must reconcile their trust ledger with their bank statements each month and retain a copy of the reconciliation.

Interest may be reported as a single lump sum each month in the trust ledger. There is no need to show the interest being credited to each sub account in the trust ledger as that is shown on the bank statement.

A sample trust ledger page for one month showing an acceptable format is attached as Appendix A:

Inventory of Merchandise Purchased prior to Need

If goods are purchased prior to need under a purchase agreement and the funds for the goods are withdrawn from trust, they are to be tracked on an inventory listing. Individual items are to be assigned to that particular purchase agreement. This requirement will impact the sellers of pre-need cemetery plans much more than the sellers of pre-arranged funeral services plans.

The inventory listing must include:

- ***The purchase agreement or plan number to which the item is assigned;***
- ***The date of purchase;***
- ***The names of all beneficiaries for whom the item is purchased;***
- ***A description of the item purchased sufficient to identify it (e.g. an inventory number);***
and
- ***The address of where the item is stored.***

A sample inventory listing is shown in Appendix B:

Public Accountant's Report

Each year each licensee is required to submit a report prepared by a public accountant within three months of the end of its fiscal year to the Registrar's office. This report is a requirement for licence renewal. The report must cover the following topics:

- (a) that all deposits of money received from the sale of pre-arranged funeral plans and pre-need cemetery plans have been made to the appropriate trust accounts no later than one week after the money was received;
- (b) ***that purchasers have been given proof of deposit to the trust account no later than 21 days after the seller received their money;***
- (c) ***that purchasers paying by installment payments have been given their semi-annual statements;***
- (d) that money received for pre-arranged funeral plans and pre-need cemetery plans has been disbursed only because goods and services have been provided or a plan has been cancelled;
- (e) that the seller has maintained the required monthly trust ledger;

- (f) that the seller has reconciled the trust ledger to the bank records on a monthly basis;
- (g) that the seller has maintained the duplicate deposit slips, cancelled cheques, bank statements, and *copies of proof of deposit and semi-annual statements provided to purchasers* associated with trust account transactions;
- (h) *that when the seller purchases merchandise, prior to need under a pre-arranged funeral plan or pre-need cemetery plan, the seller maintains the required inventory listing;*
- (i) the amount of money held in trust for each trust account;
- (j) that the seller has retained copies of:
 - (i) all active, fulfilled and cancelled purchase agreements for funeral and cemetery goods and services,
 - (ii) death certificates in the case of pre-arranged funeral plans and burial certificates in the case of pre-need cemetery plans,
 - (iii) cancellation and refund requests,
 - (iv) cancelled cheques issued to purchasers for cancellations/refunds;
- (k) that a cemetery that made deposits to its care fund and made withdrawals from the income of the care fund did so in accordance with Section 24 of the Act and Sections 28 to 33 of the regulations; and
- (k) any other information required by the Registrar about the sellers records and accounts.

The seller is responsible to provide information on the above topics to the public accountant who prepares the annual report.

Inspections

The Office of the Registrar has the authority to conduct inspections of sellers' activities. Full cooperation with the auditors and inspectors is expected. Sections 26 and 27 of the *Cemetery and Funeral Services Act* give the Registrar authority to inspect the premises of the licensee and the right of access to their records.

Appendix A: Sample trust ledger

Example									
Trust Ledger March 2006									
ABC Funeral Home									
Date	Purchase Agreement #	Name of Purchaser	# covered by the Plan	Money Received	Money Disbursed	Disbursed To Whom	For Whom (Beneficiaries)	Status of Plan	Balance
Mar 1, 2006								Opening Blance	\$ 132,000.00
Mar 1, 2006	101	John Smith	2	\$ 12,500.00			John Smith & Jane Smith	New	\$ 144,500.00
Mar 6, 2006	85	Jane Doe	1		\$ (4,500.00)	ABC Funeral Home	Jane Doe	Fullfilled	\$ 140,000.00
Mar 15, 2006	100	Bob Brown	2		\$ (4,500.00)	ABC Funeral Home	Jill Brown	Partially fullfilled	\$ 135,500.00
Mar 21, 2006	95	Jack Russel	2		\$ (11,000.00)	Jack Russel	Jack Russel & Jill Russel	Cancelled	\$ 124,500.00
Mar 21, 2006	95	interest	2		\$ (850.25)	ABC Funeral Home or Jack Russel*		Cancelled	\$ 123,649.75
Mar 21, 2006	102	James Jones	1	\$ 6,000.00			James Jones	New	\$ 129,649.75
Mar 22, 2006	101	John Smith	2		\$ (1,500.00)	XYZ Urn Company	Jane Smith	Partially fullfilled	\$ 128,149.75
Mar 23, 2006	103	Martha May	2	\$ 12,500.00			Fred Green & Mary Green	New	\$ 140,649.75
Mar 31, 2006		interest		\$ 341.25					\$ 140,991.00

* The seller has the discretion to disburse the interest accrued on a cancelled plan as they see fit.

Appendix B: Sample inventory listing

Example				
Inventory Listing				
ABC Funeral Home				
Date of	Purchase	Names of	Description	Location
Purchase	Agreement	Beneficiaries	of items	(Street Address)
	#		Purchased	
Mar 22, 2006	101	John Smith	Brass urn with doves and the letters JS engraved on it	123 Funeral Home Lane Dartmouth, Nova Scotia.