

HEALTH AND SAFETY CODE

TITLE 8. DEATH AND DISPOSITION OF THE BODY

SUBTITLE C. CEMETERIES AND CREMATORIES

CHAPTER 712. PERPETUAL CARE CEMETERIES

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 712.001. DEFINITIONS. (a) The definitions provided by Section 711.001 apply to this chapter.

(b) In this chapter:

(1) "Banking department" or "department" means the Banking Department of Texas.

(2) "Commissioner" means the Banking Commissioner of Texas.

(3) "Corporation" means a corporation that is organized under this chapter, or any corresponding statute in effect before September 1, 1993, to operate one or more perpetual care cemeteries in this state.

(4) "Fund" means a perpetual care trust fund established by one or more corporations under this chapter or any corresponding statute in effect before September 1, 1993.

(4-a) "Preconstruction trust" means a trust established by a corporation under this chapter for the purpose of administering proceeds from sales of undeveloped mausoleum spaces.

(4-b) "Preconstruction trustee" means the trustee of a preconstruction trust.

(5) "Trustee" means the trustee of a cemetery perpetual care trust fund.

(6) "Undeveloped mausoleum space" means a crypt or niche in a mausoleum or mausoleum section that is designed to contain at least 10 crypt or niche interments and that is not ready for the interment of human remains or cremated remains on the date an interment right pertaining to the mausoleum space is sold. The term does not include a private mausoleum or mausoleum section in which all mausoleum spaces are intended to be sold under a single contract.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended

by Acts 1993, 73rd Leg., ch. 634, Sec. 24, eff. Sept. 1, 1993.

Amended by:

Acts 2005, 79th Leg., Ch. 345, Sec. 1, eff. September 1, 2005.

Acts 2005, 79th Leg., Ch. 1290, Sec. 1, eff. September 1, 2005.

Sec. 712.002. EXEMPTIONS FROM CHAPTER. This chapter does not apply to:

(1) a family, fraternal, or community cemetery that is not larger than 10 acres;

(2) an unincorporated association of plot owners not operated for profit;

(3) a church, a religious society or denomination, or an entity solely administering the temporalities of a church or religious society or denomination; or

(4) a public cemetery owned by this state, a county, or a municipality.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1993, 73rd Leg., ch. 634, Sec. 25, eff. Sept. 1, 1993; Acts 2003, 78th Leg., ch. 562, Sec. 36, eff. Sept. 1, 2003.

Sec. 712.003. INCORPORATION REQUIRED; MINIMUM CAPITAL.

(a) A perpetual care cemetery may not be operated in this state unless articles of incorporation are filed with the secretary of state showing:

(1) subscriptions and payments in cash for the corporation's full capital stock;

(2) the location of its perpetual care cemetery; and

(3) a certificate showing the deposit in its fund of the minimum amount required under Section 712.004.

(b) A corporation chartered on or after September 5, 1955, and before September 1, 1993, must have a minimum capital of:

(1) \$15,000, if the cemetery serves a municipality with a population of less than 15,000;

(2) \$30,000, if the cemetery serves a municipality with a population of 15,000 to 25,000; or

(3) \$50,000, if the cemetery serves a municipality

with a population of at least 25,000.

(c) A corporation chartered on or after September 1, 1993, must have a minimum capital of \$75,000.

(d) A nonprofit association or corporation operated solely for the benefit of plot owners seeking to convert a cemetery to a perpetual care cemetery under this chapter is not required to meet the requirements prescribed by this section and Section 712.004 if the cemetery has existed for at least 75 years and the association or corporation has operated the cemetery for the preceding 10 years.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1991, 72nd Leg., ch. 14, Sec. 218, eff. Sept. 1, 1991; Acts 1993, 73rd Leg., ch. 634, Sec. 26, eff. Sept. 1, 1993.

Sec. 712.0031. NOTICES TO BANKING DEPARTMENT. (a) Not later than the 30th day after the date a corporation files its articles of incorporation with the secretary of state, the corporation shall notify the banking department in writing of its intent to operate a perpetual care cemetery in this state. The notice shall be accompanied by a filing fee of \$500, shall be sworn to and verified under oath by all persons subscribing to the capital stock of the corporation, and shall contain:

(1) the information required to be provided to the secretary of state under Section 712.003;

(2) the names and addresses of any other persons or entities who are or will be beneficial owners of the capital stock of the corporation or otherwise share an interest in the ownership of the corporation's capital stock, or who have paid or will pay any portion of the consideration therefor;

(3) the name and address of any person or entity to whom the capital stock or assets of the corporation are or will be pledged as security for any loan; and

(4) the name and address of the person who will actively manage the cemetery operations of the corporation along with a brief statement of that person's working experience in the cemetery industry.

(b) A cemetery operations manager must have at least two

years of experience in cemetery management.

(c) If the corporation fails to provide to the banking department the information prescribed by Subsection (a), the commissioner may instruct the secretary of state to cancel the corporation's charter and serve notice of the cancellation on the corporation by registered or certified letter, addressed to the corporation's address.

(d) A corporation shall notify the commissioner in writing of any change in the controlling ownership interest of the capital stock of the corporation not later than the 30th day following the change of controlling ownership interest.

Added by Acts 1993, 73rd Leg., ch. 634, Sec. 27, eff. Sept. 1, 1993.

Sec. 712.004. PERPETUAL CARE TRUST FUND REQUIRED.

(a) Before obtaining a corporate charter, the incorporators of a corporation chartered on or after September 3, 1945, and before September 1, 1993, must establish a fund by permanently depositing in cash with the trustee of the fund:

(1) \$15,000, if the corporation has capital stock of \$15,000;

(2) \$30,000, if the corporation has capital stock of \$30,000; or

(3) \$50,000, if the corporation has capital stock of \$50,000 or more.

(b) Before obtaining a corporate charter, the incorporators of a corporation chartered on or after September 1, 1993, must establish a fund by permanently depositing in cash with the trustee of the fund an amount of not less than \$50,000 for each perpetual care cemetery operated in this state.

(c) The fund shall be permanently set aside and deposited in trust with the trustee in accordance with Subchapter B.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1993, 73rd Leg., ch. 634, Sec. 28, eff. Sept. 1, 1993.

Sec. 712.005. CANCELLATION OF CHARTER FOR FAILURE TO BEGIN OPERATION OF PERPETUAL CARE CEMETERY. (a) If a corporation chartered under Section 712.003 does not begin actual operation of

its perpetual care cemetery for six months after the charter is granted and delivered, the commissioner may instruct the secretary of state to cancel the charter and serve notice of the cancellation on the corporation by registered or certified letter, addressed to the corporation's address.

(b) The commissioner may rescind the order of cancellation on:

(1) the application of the directors;

(2) the payment to the commissioner of a penalty set by the commissioner in an amount not to exceed \$500;

(3) the execution and delivery to the commissioner of an agreement to begin actual operation of the perpetual care cemetery not later than one month after the date of the agreement; and

(4) a proper showing by the trustee that the fund is on deposit.

(c) If the corporation does not begin actual operation as agreed, the commissioner by order may set aside the order of rescission and the cancellation is final. The commissioner shall make a full report of the cancellation to the attorney general for liquidation of the corporation, if liquidation is necessary.

(d) If no sale of the dedicated cemetery property of the corporation is made, a certified copy of the order of cancellation authorizes the trustee to refund the fund to the incorporators who signed the corporation's articles of incorporation.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1993, 73rd Leg., ch. 634, Sec. 29, eff. Sept. 1, 1993.

Sec. 712.007. NOTICE OF PERPETUAL CARE REQUIRED. (a) A corporation shall post a sign at or near a cemetery entrance or administration building and readily accessible to the public.

(b) The sign must contain the following:

(1) "Perpetual Care Cemetery," or "Endowment Care Cemetery";

(2) the names and telephone numbers of two of the corporation's officers or directors; and

(3) the name of each bank or trust company entrusted

with the fund.

(c) A corporation must include the following statement in each sales contract, certificate of ownership, or other instrument of conveyance of the exclusive right of sepulture:

"This cemetery is operated as a perpetual care cemetery, which means that a perpetual care fund for its maintenance has been established in conformity with the laws of the State of Texas. Perpetual care means to maintain, repair, and care for the cemetery."

(d) The term "endowment care" may be substituted for the term "perpetual care" in the statement required by Subsection (c). Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1993, 73rd Leg., ch. 634, Sec. 30, eff. March 1, 1994.

Sec. 712.008. RULES. (a) The Finance Commission of Texas may adopt rules to enforce and administer this chapter, including rules establishing fees to defray the costs of enforcing and administering this chapter.

(b) The Finance Commission of Texas shall adopt rules establishing reasonable standards for:

(1) timely placement of burial markers or monuments in a perpetual care cemetery; and

(2) timely response to consumer complaints made to a corporation that operates a perpetual care cemetery.

Added by Acts 2001, 77th Leg., ch. 699, Sec. 13, eff. Sept. 1, 2001. Amended by Acts 2003, 78th Leg., ch. 562, Sec. 37, eff. Sept. 1, 2003.

Sec. 712.009. LIMITATIONS ON BURIALS; DAMAGES. (a) The Finance Commission of Texas shall adopt rules to administer and enforce this section.

(b) An individual, corporation, partnership, firm, trust, or association that operates or owns a perpetual care cemetery may not inter the remains of an individual who may have caused the death of another person if:

(1) the victim is interred in that cemetery; and

(2) the person having the right to control the

disposition of the victim's remains under Section 711.002(a) gives written notice to the cemetery requesting that the individual not be interred in that cemetery if:

(A) the individual was convicted under Section 19.02, 19.03, 19.05, or 49.08, Penal Code, for causing the death of the victim, or convicted under a similar statute of another state; or

(B) the individual was identified as causing the death of the victim, in violation of a provision described by Paragraph (A), by the medical examiner or law enforcement agency having jurisdiction over the offense, and the individual dies before being convicted of the offense.

(c) An individual, corporation, partnership, firm, trust, or association that violates Subsection (b) is liable to the person having the right to control the disposition of the victim's remains under Section 711.002(a) for:

- (1) any actual damages incurred;
- (2) punitive damages not to exceed \$10,000; and
- (3) reasonable attorney's fees and court costs incurred in an effort to enforce compliance with Subsection (b).

(d) Damages under Subsection (c) may not be assessed if the individual, corporation, partnership, firm, trust, or association that operates the cemetery proves by a preponderance of the evidence that:

(1) the cemetery is the only cemetery serving the municipality or county in which the victim and individual causing the victim's death lived; and

(2) the bodies of the victim and individual causing the victim's death were placed as far apart as possible in, or in different parts of, the cemetery.

(e) An individual, corporation, partnership, firm, trust, or association operating or owning a perpetual care cemetery and barred from interring remains of an individual under this section may not be held liable for damages by a person having the right to control the disposition of the individual's remains under Section 711.002(a), including damages for failure to provide for interment under a contract executed before the delivery of the written notice

under Subsection (b)(2).

(f) A notice under Subsection (b)(2) expires seven years after the date the notice is delivered. A new notice may be delivered on the expiration of each previous notice.

Added by Acts 2001, 77th Leg., ch. 699, Sec. 14, eff. Sept. 1, 2001.

#### SUBCHAPTER B. PERPETUAL CARE TRUST FUND

Sec. 712.021. ESTABLISHMENT AND PURPOSES OF FUND. (a) A corporation that operates a perpetual care cemetery in this state shall have a fund established with a trust company or a bank with trust powers that is located in this state. The trust company or bank may not have more than one director who is also a director of the corporation.

(b) The principal of the fund may not be reduced voluntarily, and it must remain inviolable. The trustee shall maintain the principal of the fund separate from all operating funds of the corporation.

(c) In establishing a fund, the corporation may adopt plans for the general care, maintenance, and embellishment of its perpetual care cemetery.

(d) The fund and the trustee are governed by the Texas Trust Code (Section 111.001 et seq., Property Code).

(e) A corporation that establishes a fund may receive and hold for the fund and as a part of the fund or as an incident to the fund any property contributed to the fund.

(f) The fund and contributions to the fund are for charitable purposes. The perpetual care financed by the fund is:

(1) the discharge of a duty due from the corporation to persons interred and to be interred in its perpetual care cemetery; and

(2) for the benefit and protection of the public by preserving and keeping the perpetual care cemetery from becoming a place of disorder, reproach, and desolation in the community in which the perpetual care cemetery is located.

(g) The trustors of two or more perpetual care trust funds may establish a common trust fund in which deposits required by this chapter are made, provided that separate records of principal and



income are maintained for each perpetual care cemetery for the benefit of which the common trust fund is established, and further provided that the income attributable to each perpetual care cemetery is used only for the perpetual care of that cemetery.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1993, 73rd Leg., ch. 634, Sec. 31, eff. Sept. 1, 1993.

Sec. 712.022. OPERATION OF PERPETUAL CARE CEMETERY. A corporation authorized by law to operate a perpetual care cemetery but not doing so may do so if the corporation:

(1) notifies the commissioner; and

(2) establishes a fund as provided by Section 712.021 in an amount equal to the larger of:

(A) the amount that would have been paid into the fund if the cemetery operated as a perpetual care cemetery from the date of the cemetery's first sale of plots; or

(B) the minimum amount provided by Section 712.004.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1993, 73rd Leg., ch. 634, Sec. 32, eff. Sept. 1, 1993.

Sec. 712.023. VALIDITY OF CONTRIBUTIONS. A contribution to a fund for perpetual care is not invalid because of:

(1) indefiniteness or uncertainty of the person designated as beneficiary in the instrument establishing the fund; or

(2) a violation of the law against perpetuities or the law against the suspension of the power of alienation of title to or use of property.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1993, 73rd Leg., ch. 634, Sec. 33, eff. Sept. 1, 1993.

Sec. 712.024. AMENDMENT OF TRUST INSTRUMENT. A corporation and the trustee of a fund may, by agreement, amend the instrument that established the fund to include any provision that is consistent with this chapter.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended

by Acts 1993, 73rd Leg., ch. 634, Sec. 34, eff. Sept. 1, 1993.

Sec. 712.025. USE OF FUND INCOME. Fund income may be used only to provide the perpetual care described by the instrument that established the fund, including the general care and maintenance of the property entitled to perpetual care in the perpetual care cemetery.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1993, 73rd Leg., ch. 634, Sec. 35, eff. Sept. 1, 1993; Acts 2003, 78th Leg., ch. 562, Sec. 38, eff. Sept. 1, 2003.

Sec. 712.026. SUIT BY PLOT OWNERS TO MAINTAIN PERPETUAL CARE. (a) If the directors of a corporation do not generally care for and maintain the corporation's perpetual care cemetery, the district court of the county in which the perpetual care cemetery is located may:

(1) by injunction compel the directors to expend the net income of the corporation's fund as required by this chapter; or

(2) appoint a receiver to take charge of the fund and expend the net income of the fund as required by this chapter.

(b) The suit for relief under this section must be brought by at least five owners of plots located in the perpetual care cemetery.

(c) In a suit for relief under this section, court costs and attorney's fees shall be awarded:

(1) to the directors of the corporation, if it is found that the directors are substantially expending the available net income of the fund as required by this subchapter; or

(2) to the plot owners initiating the suit, if it is found that the directors are not substantially expending the available net income of the fund as required by this subchapter.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1993, 73rd Leg., ch. 634, Sec. 36, eff. Sept. 1, 1993; Acts 2001, 77th Leg., ch. 106, Sec. 1, eff. Sept. 1, 2001.

Sec. 712.027. INVESTMENT OF FUND. (a) A trustee shall

invest and manage the investment of the principal of a fund in accordance with the Texas Trust Code (Section 111.001 et seq., Property Code).

(b) An investment must be made at not more than the prevailing market value of the securities at the time of acquisition.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1993, 73rd Leg., ch. 634, Sec. 37, eff. Sept. 1, 1993.

Sec. 712.028. AMOUNT OF FUND DEPOSITS FROM SALES. (a) A corporation shall deposit in its fund an amount that is at least:

(1) the greater of:

(A) \$1.75 a square foot of ground area conveyed as perpetual care property; or

(B) 15 percent of the total purchase price of that ground area;

(2) the greater of:

(A) \$105 for each crypt interment right for mausoleum interment or lawn crypt interment conveyed as perpetual care property, or \$60 for each crypt interment right if that crypt is accessible only through another crypt; or

(B) seven percent of the total purchase price of that crypt interment right; and

(3) the greater of:

(A) \$35 for each niche interment right for columbarium interment conveyed; or

(B) 15 percent of the total purchase price of that niche interment right.

(b) Subsection (a) does not apply to deposits from sales required to be made by a corporation in its fund before September 1, 1993, under a corresponding statute in effect before that date.

(c) If a plot owner exchanges a plot for another plot in a corporation's perpetual care cemetery, the amount to be deposited in the corporation's fund in respect of the plot received by the plot owner in the exchange may be reduced by the amount deposited in the fund in respect of the plot contributed by the plot owner in the exchange. The amount required to be deposited with respect to an

exchanged plot is the amount required at the time the plot owner originally contracted to purchase the plot.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1991, 72nd Leg., ch. 14, Sec. 219, eff. Sept. 1, 1991; Acts 1993, 73rd Leg., ch. 634, Sec. 38, eff. Sept. 1, 1993; Acts 2003, 78th Leg., ch. 562, Sec. 39, eff. Sept. 1, 2003.

Sec. 712.029. ACCOUNTING FOR AND DEPOSITING AMOUNTS.

(a) The part of the purchase price of a plot in a perpetual care cemetery that is to be deposited in a fund must be shown separately on the original purchase agreement from the total purchase price. A copy of the agreement shall be delivered to the purchaser of the plot.

(b) On the sale of a plot, a commission may not be paid to a broker or salesman on the amount to be deposited in the fund.

(c) A corporation shall deposit in its fund the amount required under Section 712.028 not later than the 20th day after the end of the month in which the original purchase agreement has been paid in full. A corporation may prepay funds into its fund at any time and, if a surplus exists in the fund from the prepayments, may credit against the surplus the amounts otherwise required to be deposited in the fund under Section 712.028 until the surplus has been depleted. In determining whether a surplus exists from prepayments, no part of the fund resulting from gifts to the fund under Section 712.030 may be considered.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1991, 72nd Leg., ch. 14, Sec. 220, eff. Sept. 1, 1991; Acts 1993, 73rd Leg., ch. 634, Sec. 39, eff. Sept. 1, 1993.

Sec. 712.030. USE OF GIFT FOR SPECIAL CARE OF PLOT IN PERPETUAL CARE CEMETERY. A trustee may take and hold property transferred to the trustee in trust in order to apply the principal, proceeds, or income of the property for any purpose consistent with the purpose of a corporation's perpetual care cemetery, including:

(1) the improvement or embellishment of any part of the perpetual care cemetery;

(2) the erection, renewal, repair, or preservation of

a monument, fence, building, or other structure in the perpetual care cemetery;

(3) planting or cultivating plants in or around the perpetual care cemetery; or

(4) taking special care of or embellishing a plot, section, or building in the perpetual care cemetery.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1993, 73rd Leg., ch. 634, Sec. 40, eff. Sept. 1, 1993.

#### SUBCHAPTER C. REGULATION AND ENFORCEMENT

Sec. 712.041. ANNUAL STATEMENT OF FUNDS. (a) A corporation shall file in its office and with the commissioner a statement for each perpetual care cemetery operated in this state in duplicate that shows:

(1) the principal amount of its fund;

(2) the amount of the fund invested in bonds and other securities;

(3) the amount of cash on hand in the fund;

(4) any other item that shows the financial condition of the fund;

(5) the number of crypts, niches, and square feet of ground area conveyed under perpetual care before and after March 15, 1934, listed separately; and

(6) the number of crypts, niches, and square feet of ground area conveyed under perpetual care after March 15, 1934, for which the minimum deposits required for perpetual care have not been paid to the fund.

(b) The corporation's president and secretary, or two principal officers, shall verify the information on the statement.

(c) The corporation shall revise and post and file the statement on or before March 1 of each year.

(d) A copy of the statement shall be available to the public upon request.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1993, 73rd Leg., ch. 634, Sec. 41, eff. Sept. 1, 1993.

Sec. 712.042. FEES. On filing a statement of funds under

Section 712.041, a corporation shall pay the commissioner a reasonable and necessary fee set by rule adopted by the Finance Commission of Texas under Section 712.008 to defray the cost of administering this chapter.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1991, 72nd Leg., ch. 14, Sec. 221, eff. Sept. 1, 1991; Acts 1993, 73rd Leg., ch. 634, Sec. 42, eff. Sept. 1, 1993; Acts 1995, 74th Leg., ch. 914, Sec. 6, eff. Sept. 1, 1995; Acts 1999, 76th Leg., ch. 62, Sec. 7.65, eff. Sept. 1, 1999; Acts 2001, 77th Leg., ch. 699, Sec. 15, eff. Sept. 1, 2001.

Sec. 712.043. ADDITIONAL FUND REPORT. The commissioner may require, as often as the commissioner determines necessary, the trustee of a corporation's fund to make under oath a detailed report of the condition of the fund. The report must include:

- (1) a detailed description of the assets of the fund;
- (2) a description of securities held by the fund;
- (3) if a security held by the fund is a lien, a description of the property against which the lien is taken;
- (4) each security's acquisition cost;
- (5) each security's market value at the time of acquisition;
- (6) each security's current market value;
- (7) each security's status with reference to default;
- (8) a statement that a security is not encumbered by debt; and
- (9) any other information the commissioner determines is pertinent.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1993, 73rd Leg., ch. 634, Sec. 43, eff. Sept. 1, 1993.

Sec. 712.044. EXAMINATION OF RECORDS; EXAMINATION FEES AND EXPENSES. (a) The commissioner may examine, annually or more often as the commissioner reasonably considers necessary or appropriate to protect the interest of plot owners and efficiently administer and enforce this chapter:

- (1) the books and records of a corporation relating to

its fund, including deposits to or withdrawals from the fund, income of the fund, and uses and expenditures of that income;

(2) the books and records of a corporation relating to sales of undeveloped mausoleum spaces and any preconstruction trust established by the corporation as provided by Section 712.063, including deposits to or withdrawals from the preconstruction trust, income of the preconstruction trust, and uses and expenditures of principal and income of the preconstruction trust; and

(3) the consumer complaint files of a corporation relating to the fund, sales of undeveloped mausoleum spaces, a preconstruction trust, or to discharge of the corporation's perpetual care responsibilities, minutes of the corporation's board of directors, cemetery dedication statements and plat maps, and mausoleum and lawn crypt construction contracts and specifications.

(b) A corporation that is examined under this section shall make the specified books and records available for examination by the banking department upon reasonable notice to the corporation and shall pay to the commissioner for the examination a reasonable and necessary fee set by rules adopted by the Finance Commission of Texas under Section 712.008 to defray:

(1) the cost of examination;

(2) the equitable or proportionate cost of maintenance and operation of the department; and

(3) the cost of administering and enforcing this chapter.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1993, 73rd Leg., ch. 634, Sec. 44, eff. Sept. 1, 1993; Acts 2001, 77th Leg., ch. 699, Sec. 16, eff. Sept. 1, 2001.

Amended by:

Acts 2005, 79th Leg., Ch. 345, Sec. 2, eff. September 1, 2005.

Acts 2005, 79th Leg., Ch. 1290, Sec. 2, eff. September 1, 2005.

Sec. 712.0441. ENFORCEMENT. (a) After notice and opportunity for hearing, the commissioner may impose an

administrative penalty on a person who:

(1) violates this chapter or a final order of the commissioner or rule of the Finance Commission of Texas and does not correct the violation before the 31st day after the date the person receives written notice of the violation from the banking department; or

(2) engages in a pattern of violations, as determined by the commissioner.

(b) The amount of the penalty for each violation may not exceed \$1,000 for each day the violation occurs.

(c) In determining the amount of the penalty, the commissioner shall consider the seriousness of the violation, the person's history of violations, and the person's good faith in attempting to comply with this chapter. The imposition of a penalty under this section is subject to judicial review as a contested case under Chapter 2001, Government Code. The commissioner may collect the penalty in the same manner that a money judgment is enforced in district court.

(d) In addition to any penalty that may be imposed under Subsection (a), the commissioner may bring a civil action against a corporation to enjoin a violation described in Subsection (a) that has not been corrected within 30 days after the receipt by the corporation of written notice from the commissioner of the violation. Any such civil action may be brought in the district court of the county in which the corporation's perpetual care cemetery is operated.

(e) The commissioner may issue an order to cease and desist if a violation described in Subsection (a) has not been corrected within 30 days after the receipt by the corporation of written notice from the commissioner of the violation. Any order proposed under this subsection shall be served upon the corporation, shall state the grounds for the proposed order with reasonable certainty, and shall state the proposed effective date, which shall not be less than 15 days after receipt by the corporation. Unless the corporation shall request a hearing within 15 days after such receipt, the order shall become effective as proposed. If the corporation requests a hearing, it shall be conducted in accordance



with the procedures for a contested case hearing under the Administrative Procedure and Texas Register Act.

(f) The commissioner may issue an order requiring restitution by a corporation to its fund or to a preconstruction trust if, after notice and opportunity for hearing held in accordance with the procedures for a contested case hearing under the Administrative Procedure and Texas Register Act, the commissioner finds that the corporation has not made a deposit in the fund as required by Section 712.028 or in the preconstruction trust as required by Section 712.063.

(g) If a violation described in Subsection (a) has not been corrected within 90 days after the receipt of written notice by the corporation from the commissioner of the violation, the commissioner may report the violation to the attorney general, who shall bring suit or quo warranto proceedings for the forfeiture of the corporation's charter and dissolution of the corporation in the district court of any county in which its perpetual care cemetery is operated.

(h) If a fund is misappropriated by its trustee or is not otherwise handled as required by this chapter, the commissioner may take action against the trustee as provided in Chapter 185, Finance Code.

Added by Acts 1993, 73rd Leg., ch. 634, Sec. 45, eff. Sept. 1, 1993.

Amended by Acts 1997, 75th Leg., ch. 769, Sec. 3, eff. Sept. 1,

1997; Acts 1999, 76th Leg., ch. 62, Sec. 7.66, eff. Sept. 1, 1999;

Acts 2001, 77th Leg., ch. 699, Sec. 17, eff. Sept. 1, 2001.

Amended by:

Acts 2005, 79th Leg., Ch. 345, Sec. 3, eff. September 1, 2005.

Acts 2005, 79th Leg., Ch. 1290, Sec. 3, eff. September 1, 2005.

Sec. 712.0442. PATTERN OF WILFUL DISREGARD. (a) If, after a hearing conducted as provided by Chapter 2001, Government Code, the trier of fact finds that a violation of this chapter or a rule of the Finance Commission of Texas establishes a pattern of wilful disregard for the requirements of this chapter or rules of the finance commission, the trier of fact shall recommend to the

commissioner that the maximum administrative penalty permitted under Section 712.0441 be imposed on the person committing the violation or that the commissioner cancel or not renew the person's permit under Chapter 154, Finance Code, if the person holds such a permit.

(b) For the purposes of this section, violations corrected as provided by Section 712.0441 may be included in determining whether a pattern of wilful disregard for the requirements of this chapter or rules of the finance commission exists.

Added by Acts 2001, 77th Leg., ch. 699, Sec. 18, eff. Sept. 1, 2001.

Sec. 712.048. CRIMINAL PENALTIES. (a) A person who is an individual, firm, association, corporation, or municipality, or an officer, agent, or employee of an individual, firm, association, corporation, or municipality, commits an offense if the person sells, offers to sell, or advertises for sale an interment right in a plot and, before a fund is established for the cemetery in which the plot is located as provided by this chapter, represents that the plot is under perpetual care. An offense under this subsection is a Class A misdemeanor. This subsection does not prevent an aggrieved party or the attorney general from maintaining a civil action for the recovery of damages caused by an injury resulting from an offense under this subsection.

(b) A person who is an individual, firm, association, corporation, or municipality, or an officer, agent, or employee of an individual, firm, association, corporation, or municipality, commits an offense if the person knowingly defalcates or misappropriates assets of a fund. An offense under this subsection is punishable as if it were an offense under Section 32.45, Penal Code.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1993, 73rd Leg., ch. 634, Sec. 46, eff. Sept. 1, 1993.

#### SUBCHAPTER D. SALE OF UNDEVELOPED MAUSOLEUM SPACE

Sec. 712.061. OFFER AND SALE OF UNDEVELOPED MAUSOLEUM SPACE. (a) A corporation may not directly or indirectly sell or offer for sale an undeveloped mausoleum space unless before the

sale or offer the corporation:

(1) establishes a preconstruction trust as provided by Section 712.063 or executes and submits a performance bond payable to the commissioner as provided by Section 712.067; and

(2) submits a written notice to the commissioner as required by Subsection (b).

(b) The written notice to the commissioner must set forth:

(1) the date the corporation anticipates that sales of undeveloped mausoleum spaces will begin;

(2) a copy of the sales contract proposed for use that complies with Section 712.066;

(3) if the corporation establishes a preconstruction trust as provided by Section 712.063, a copy of the executed preconstruction trust agreement that complies with this subchapter and identifies the preconstruction trustee;

(4) if the corporation submits a performance bond payable to the commissioner as provided by Section 712.067, the executed, original performance bond in the amount required by Section 712.067 and documentation supporting the corporation's computation of that amount; and

(5) other information the commissioner reasonably requires to properly administer and enforce this subchapter.

(c) At any time before beginning construction of the mausoleum or mausoleum section in which undeveloped mausoleum spaces are being sold, a corporation that has established a preconstruction trust may substitute a performance bond that meets the requirements of Section 712.067. On acceptance of the performance bond by the commissioner, the corporation may terminate and withdraw all proceeds deposited in the preconstruction trust.

Added by Acts 2005, 79th Leg., Ch. 345, Sec. 4, eff. September 1, 2005.

Added by Acts 2005, 79th Leg., Ch. 1290, Sec. 4, eff. September 1, 2005.

Sec. 712.062. DEPOSITS TO FUND. This subchapter does not affect the corporation's obligation to make deposits to its fund as provided in Subchapter B.

Added by Acts 2005, 79th Leg., Ch. 345, Sec. 4, eff. September 1, 2005.

Added by Acts 2005, 79th Leg., Ch. 1290, Sec. 4, eff. September 1, 2005.

Sec. 712.063. PRECONSTRUCTION TRUST. (a) Except as provided by Section 712.067, a corporation that intends to directly or indirectly sell or offer for sale undeveloped mausoleum spaces shall establish a preconstruction trust by written declaration and agreement appointing as preconstruction trustee a financial institution with trust powers that is located in this state.

(b) The corporation shall deposit in the preconstruction trust an amount equal to at least 40 percent of all proceeds received directly or indirectly from the sale of undeveloped mausoleum spaces, not including interest, finance charges, sales taxes, credit life insurance premiums, or deposits to the corporation's fund required by Section 712.029(c).

(c) On application, the commissioner may authorize a corporation to deposit less than the amount required by Subsection (b) if the corporation demonstrates to the reasonable satisfaction of the commissioner that:

(1) the sales projections of the corporation are prudent and based on reasonable assumptions;

(2) the projected cost of construction is objectively determined based on documentation similar to that required by Section 712.067(b); and

(3) the amount of money projected to be deposited in the preconstruction trust under the proposed lesser amount will equal or exceed 120 percent of the cost of constructing the mausoleum or mausoleum section.

(d) The corporation shall deposit the required amount into the preconstruction trust on or before the 30th day after the end of the month in which payment is received. At the time of making a deposit, the corporation shall furnish to the preconstruction trustee the name of each payor and the amount of payment on each account for which the deposit is being made. A contract between the corporation and an agent or third party developer may not

restrict or waive the corporation's primary liability for making the deposits required by this section.

(e) The preconstruction trustee may commingle deposits received if the accounting records accurately establish a separate account for each contract and reflect the amounts deposited and the income and loss allocable to each contract.

(f) Money in a preconstruction trust may be invested only in:

(1) demand deposits, savings accounts, certificates of deposit, or other accounts in financial institutions if the amounts deposited in those accounts are fully covered by federal deposit insurance or otherwise fully secured by a separate fund of securities in the manner provided by Section 184.301, Finance Code;

(2) marketable notes, bonds, evidences of indebtedness, or obligations with a term to maturity of five years or less and:

(A) issued by the United States or an instrumentality of the United States; or

(B) the principal and interest of which are guaranteed by the full faith and credit of the United States; and

(3) a mutual fund the portfolio of which consists wholly of investments permitted by Subdivisions (1) and (2).

(g) The preconstruction trustee may withdraw money from earnings on a preconstruction trust for the purpose of paying reasonable and necessary costs of operation of the preconstruction trust, including trustee or depository fees and expenses, and any special examination fees due to the department related to an examination of the preconstruction trust that is not incidental to examination of the corporation's fund. With the department's prior approval, the corporation may withdraw money from earnings on a preconstruction trust to pay any tax incurred because of the existence of the preconstruction trust.

(h) The preconstruction trust and the preconstruction trustee are governed by Subtitle B, Title 9, Property Code.

Added by Acts 2005, 79th Leg., Ch. 345, Sec. 4, eff. September 1, 2005.

Added by Acts 2005, 79th Leg., Ch. 1290, Sec. 4, eff. September 1,

2005.

Sec. 712.064. CONSTRUCTION; DEFAULT. (a) The corporation shall start construction of the mausoleum or mausoleum section in which sales or reservations for sale of undeveloped mausoleum spaces are being made on or before a date that is 48 months after the date of the first of those sales or reservations and shall complete construction on or before a date that is 60 months after the date of the first of those sales or reservations. The commissioner may grant extensions for good cause shown.

(b) If construction of a mausoleum or mausoleum section related to an undeveloped mausoleum space has not begun or been completely constructed by the applicable time specified by Subsection (a), on the written request of the buyer, the corporation and the preconstruction trustee shall, on or before the 30th day after the date of the buyer's request, refund the entire amount paid for the undeveloped mausoleum space plus, if the corporation established a preconstruction trust, net income earned on that portion of the money deposited in the preconstruction trust. The corporation is liable to a buyer for any portion of the purchase price paid for undeveloped mausoleum spaces that was not deposited in the preconstruction trust.

Added by Acts 2005, 79th Leg., Ch. 345, Sec. 4, eff. September 1, 2005.

Added by Acts 2005, 79th Leg., Ch. 1290, Sec. 4, eff. September 1, 2005.

Sec. 712.065. RELEASE OF TRUST FUNDS TO CORPORATION.

(a) On completion of construction of a mausoleum or mausoleum section subject to this subchapter, the corporation may withdraw all money deposited in the preconstruction trust and the net income earned on the money after submitting to the preconstruction trustee a sworn affidavit of completion executed by an officer or agent of the corporation on a form prescribed by the department.

(b) During construction of the mausoleum or mausoleum section containing the undeveloped mausoleum spaces, the corporation may periodically withdraw from the preconstruction

trust an amount equal to the previously unreimbursed cost of performed labor or delivered materials after submitting to the preconstruction trustee a sworn affidavit of expenditures for construction cost executed by an officer or agent of the corporation on a form prescribed by the department.

(c) If the corporation delivers a completed mausoleum space acceptable to the buyer in lieu of the undeveloped mausoleum space purchased, the corporation may withdraw all money deposited to the preconstruction trust for that buyer and related income earned on the money after submitting to the preconstruction trustee a sworn affidavit of performance executed by an officer or agent of the corporation on a form prescribed by the department.

(d) The corporation shall maintain copies of the affidavits required by this section for examination by the department.

Added by Acts 2005, 79th Leg., Ch. 345, Sec. 4, eff. September 1, 2005.

Added by Acts 2005, 79th Leg., Ch. 1290, Sec. 4, eff. September 1, 2005.

Sec. 712.066. CONTRACT DISCLOSURES. (a) A sales contract for an undeveloped mausoleum space, whether in English or Spanish, must inform the buyer:

(1) that the buyer by written notice may cancel the contract for the failure of the corporation or its agent or contractor to construct the mausoleum or mausoleum section containing the undeveloped mausoleum space within the time limits specified by Section 712.064(a) and receive a refund of the entire amount paid under the contract for the undeveloped mausoleum space plus, if the corporation established a preconstruction trust, net income earned on that portion of the money deposited in the preconstruction trust, as provided by Section 712.064(b);

(2) of the options available under a fully paid contract in the event that the person to be interred in the undeveloped mausoleum space dies before completion of the related mausoleum or mausoleum section, which may include an option to:

(A) select a replacement mausoleum space or other interment that is acceptable to the buyer or buyer's

representative; or

(B) elect temporary interment of the human remains or cremated remains in an existing mausoleum space until the undeveloped mausoleum space is completed, at which time the corporation shall disinter and reinter the human remains or cremated remains at no additional charge; and

(3) if the corporation does not offer a temporary interment option and the buyer does not accept a replacement mausoleum space or other interment, that the buyer or the buyer's representative by written notice may cancel the contract and receive a refund of the entire amount paid under the contract for the undeveloped mausoleum space plus, if the corporation established a preconstruction trust, net income earned on that portion of the money deposited in the preconstruction trust, as provided by Section 712.064(b).

(b) A corporation's sales contract for undeveloped mausoleum space must comply with applicable regulations of the Federal Trade Commission, including 16 C.F.R. Section 433.2, with respect to a contract payable in installments.

(c) Required notices to buyers must be written in plain language designed to be easily understood by the average consumer and be printed in an easily readable font and type size.

Added by Acts 2005, 79th Leg., Ch. 345, Sec. 4, eff. September 1, 2005.

Added by Acts 2005, 79th Leg., Ch. 1290, Sec. 4, eff. September 1, 2005.

Sec. 712.067. BOND IN LIEU OF PRECONSTRUCTION TRUST.

(a) In lieu of establishing the preconstruction trust required by Section 712.063, a corporation may execute and submit a bond issued by a surety company authorized to do business in this state and reasonably acceptable to the commissioner. The bond must be payable to the commissioner and conditioned on the faithful performance of the contracts for sale of undeveloped mausoleum spaces.

(b) The amount of the bond must equal or exceed 120 percent of the cost of construction of the related mausoleum or mausoleum



section. The cost of construction of the mausoleum or mausoleum section must be based on:

(1) estimates of the design architect and two or more bids for the construction from qualified contractors authorized to do business in this state;

(2) the actual cost of construction set forth in an executed contract with a qualified contractor authorized to do business in this state; or

(3) if the corporation intends to construct the mausoleum or mausoleum section itself, an amount equal to 120 percent of the estimated cost of construction, including direct and allocated labor and material costs.

(c) At any time before beginning construction of the mausoleum or mausoleum section in which undeveloped mausoleum spaces are being sold, a corporation that has submitted a performance bond may establish a preconstruction trust that meets the requirements of Section 712.063. On acceptance of the substituted preconstruction trust by the commissioner, the corporation may terminate and withdraw the previously submitted performance bond.

Added by Acts 2005, 79th Leg., Ch. 345, Sec. 4, eff. September 1, 2005.

Added by Acts 2005, 79th Leg., Ch. 1290, Sec. 4, eff. September 1, 2005.

Sec. 712.068. REPORTS. On or before the date the corporation's annual statement of funds is due as required by Section 712.041, the corporation shall cause the preconstruction trustee to file with the department, in the form prescribed by the department, a full and true statement regarding the activities of any preconstruction trust that was subject to this subchapter at any time during the preceding calendar year.

Added by Acts 2005, 79th Leg., Ch. 345, Sec. 4, eff. September 1, 2005.

Added by Acts 2005, 79th Leg., Ch. 1290, Sec. 4, eff. September 1, 2005.