

## **ADMINISTRATIVE NOTICE 97-19**

**SUBJECT: Preneed Cemetery Companies - A preneed cemetery company must be registered with the Office of the Attorney General, Preneed Funeral Services Division in order to sell preneed funeral services, funeral goods and burial goods.**

It was brought to the attention of the State Tax Division that some preneed cemetery companies are selling preneed funeral services as well as caskets. Please be advised that a preneed cemetery company when registered only as a preneed cemetery company may not sell preneed funeral services, funeral goods or burial goods. In order to provide those services and goods, the preneed cemetery company must be registered with the Preneed Funeral Services Division of the Office of the West Virginia Attorney General.

Preneed funeral services are regulated under Article 14, Chapter 47 of the West Virginia Code. West Virginia Code § 47-14-2 provides the following definitions:

"Funeral goods" means those items of merchandise sold or offered for sale directly to the public by any person which will be used in connection with a funeral or alternative for final disposition of human remains, but does not include those services actually performed by a cemetery acting only as such, or the sale by a cemetery of cemetery lots, land or interest therein, services incidental thereto, or the sale by any person of markers, memorials, monuments, equipment, crypts, urns, burial vaults or vaults constructed or to be constructed in a mausoleum or columbarium.

"Funeral services" means those services usually performed by a licensed funeral establishment or director including, but not limited to, care and preparation of human remains and coordinating rites and ceremonies in connection with the disposition of human remains carried out at the request of any individual responsible for funeral and disposition arrangements.

The definition of "burial goods" is similar to "funeral goods." Article 5B, Chapter 35 of the West Virginia Code provides the following definition in Section 1(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.

The distinction between that which is sold as preneed funeral services, funeral goods or burial goods and that which is sold under preneed cemetery company contracts is reasonably clear and unambiguous; that which is sold under a preneed cemetery company contract does not include preneed funeral services, funeral goods or burial goods. This determination is supported by West Virginia Code § 35-5B-3(1) which states that "[t]he provisions of this article [Article 5B, Chapter 35] do not apply to: (1) Sales of property, goods and services subject to the provisions of article fourteen, chapter forty-seven of this code; ..."

In conclusion, a preneed cemetery company when registered only as a preneed cemetery company may not sell preneed funeral services, funeral goods or burial goods because those activities are regulated under Article 14, Chapter 47 of the West Virginia Code. In order to engage in those transactions, a preneed cemetery company must also be registered with the Preneed Funeral Services Division of the Office of the West Virginia Attorney General (telephone no. (304) 558-8986 or 1-800-368-8808). See, W. Va. Code § 47-14-1 et seq.

ISSUED: June 19, 1997

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State Tax Commissioner