

Rulemaking Hearing Rules  
of  
the Department of Commerce and Insurance  
Division of Regulatory Boards

Chapter 0780-05-09  
Cemeteries

Amendments

Chapter 0780-05-09 Cemeteries is amended by deleting the chapter in its entirety, and substituting instead the following so that, as amended, Chapter 0780-05-09 shall read:

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0780-05-09-.01 Applicability. All duties incurred by a cemetery owner under this Chapter apply with regard to each and every cemetery possessed by such owner in the State of Tennessee.

Authority: T.C.A. §§ 46-1-101(a) and 46-1-301(b).

0780-05-09-.02 Definitions. All definitions contained in T.C.A. 46-1-102 apply equally to the rules of this chapter, with the following additions and exceptions:

- (1) “Cemetery owner” means any individual, association, partnership, corporation, limited liability company or other legally cognizable entity that owns or controls cemetery lands or property and conducts the business of a cemetery.

- (2) "Commissioner" means the Commissioner of the Tennessee Department of Commerce and Insurance or the Commissioner's designee.
- (3) "Master Map" means a cemetery map showing each site for disposition of human remains, including sites for interment, inurnment and entombment.
- (4) "Person" means, according to the context, any individual, association, partnership, corporation, or any other legally cognizable organization or entity.

Authority: T.C.A. §§ 46-1-102 and 46-1-301(b).

0780-05-09-.03 Bureau of Labor Statistics CPI-U Annual Averages.

- (1) The Bureau of Labor Statistics CPI-U annual averages can be accessed at the web site <http://stats.bls.gov/cpi>. The following tables contain the annual averages and percentage changes in annual averages for computation of consumer price index adjustments to the installation and memorial care fees:

Base Period 1967 = 100

Year	Annual Average	Percentage Change in Annual Average
1980	246.8	
1981	272.4	10.4%
1982	289.1	6.1%
1983	298.4	3.2%
1984	311.1	4.3%
1985	322.2	3.6%
1986	328.4	1.9%
1987	340.4	3.7%

Base Period 1982-84 = 100

1987	113.6	
1988	118.3	4.1%
1989	124.0	4.8%
1990	130.7	5.4%
1991	136.2	4.2%
1992	140.3	3.0%
1993	144.5	3.0%
1994	148.2	2.6%
1995	152.4	2.8%
1996	156.9	3.0%
1997	160.5	2.3%
1998	163.0	1.6%
1999	166.6	2.2%
2000	172.2	3.4%
2001	177.1	2.8%
2002	179.9	1.6%
2003	184.0	2.3%
2004	188.9	2.7%
2005	195.3	3.4%
2006	201.6	3.2%

- (2) The following rules apply when a cemetery owner calculates either a commodity installation fee in accordance with T.C.A. § 46-2-101(b) or a fee for memorial care. Calculations shall be rounded to the nearest cent.
  - (a) If the commodity is an erect or flat marker and requires the use of a base, the calculation shall be based upon the ground covered by the base only.
  - (b) Beginning with the December 31, 1981 calculation, the annual calculations shall use the CPI-U table contained in this rule, with the base period of 1967=100. The initial fee of \$0.10 shall be multiplied by the percentage change from the 1980 annual average to the 1981 annual average. That product shall be added to the initial fee of ten cents (\$0.10) to obtain the fee for 1982. Each subsequent year's calculation shall employ the same method, regardless of the base period of the table then in use.
  - (c) Beginning with the December 31, 1988 calculation, the annual calculations shall use the CPI-U table contained in this rule, with the base period of 1982-84=100. The values for both the 1988 annual average and the 1987 average shall come from this table.
- (3) The methods of adjustment listed in subparagraphs (2)(b) and (c) above shall also be used by the Commissioner in adjusting procurement costs pursuant to T.C.A. § 46-1-207(e)(1). These calculations shall be rounded to the nearest dollar.

Authority: T.C.A. §§ 46-1-204(c), 46-1-206, 46-1-207(e)(1), 46-1-301(b) and 46-2-101(b)(2).

0780-05-09-.04 Registration, Renewal and Reinstatement.

- (1) Every cemetery owner shall apply for a certificate of registration for each cemetery that an owner possesses or controls. Upon approval of the application and receipt of the appropriate nonrefundable filing fee, the Commissioner shall issue a certificate of registration to the applicant.
- (2) Renewal of a certificate of registration may be effected at any time during the two (2) months preceding the date of expiration, upon submission of an application to the Commissioner on the prescribed form, accompanied by the appropriate renewal fee.
- (3) An application for renewal shall be accompanied by a form, prescribed by the Commissioner, stating the number of preneed sales made during the preceding renewal period together with the appropriate consumer protection fee as set forth in T.C.A. § 46-1-105.
- (4) A certificate of registration becomes invalid if not renewed by the expiration date. After a certificate of registration has expired and has become invalid, a cemetery shall only be permitted to fulfill its preneed obligations for burials, to perform at need burials, and to perform basic maintenance of the cemetery property until the late renewal or reinstatement of the certificate of registration is effected.
- (5) An application for renewal received after the expiration date shall be accompanied by an additional fee for each month or fraction thereof that the application is late. Applications received later than nine (9) months after expiration shall not be renewed under this paragraph.

- (6) After the expiration of the nine (9) month period in paragraph (5) of this rule, a certificate of registration may, upon proper application to the Commissioner, and upon payment of a reinstatement fee, be reinstated.

Authority: T.C.A. §§ 46-1-103, 46-1-104, 46-1-105, and 46-1-301(b).

0780-05-09-.05 Fees. The following fees are hereby established by the Commissioner:

New registration .....	\$1,000.00
Renewal of registration	
Cemeteries with improvement care trust fund(s) less than \$200,000.00 .....	\$500.00
Cemeteries with improvement care trust fund(s) of \$200,000.00 or greater .....	\$1,000.00
Additional fee for each month (or fraction thereof) after expiration .....	\$250.00
Reinstatement .....	\$3,500.00
Change of ownership .....	\$1,000.00
Database update .....	\$60.00
Duplicate registration certificate.....	\$60.00
LexisNexis© Tennessee Funeral Laws .....	\$20.00
Merchandise and services report late fee (for each month or fraction thereof that the repo is late).....	\$100.00
Improvement care report late fee (for each month or fraction thereof that the report is late).....	\$100.00

Authority: T.C.A. §§ 10-7-506, 46-1-103(c)(1), 46-1-104(b), (c), and (d), 46-1-214(c), 46-1-215(c), and 46-1-301(b).

0780-05-09-.06 Reports Lacking Required Information.

- (1) A report required to be filed with the Commissioner by T.C.A. §§46-1-214 or 46-1-215 that fails to contain any required information shall not be accepted by the Commissioner for filing and shall not toll the deadline for filing.
- (2) A report that is not accepted for filing shall be promptly returned to the person submitting such report, along with an indication of the required information that is lacking.

Authority: T.C.A. §§ 46-1-214(e) and 46-1-301(b).

0780-05-09-.07 Change of Ownership. No later than thirty (30) days before the scheduled closing date of any proposed sale of a cemetery, the buyer shall submit to the Commissioner an application for registration accompanied by the appropriate nonrefundable filing fee.

Authority: T.C.A. §§ 46-1-103(c)(1), 46-1-107(a) and 46-1-301(b).

0780-05-09-.08 Memorial Care Required. A cemetery owner is required to provide memorial care whether or not the cemetery owner charges a memorial care fee. Memorial care is to be considered improvement care within the meaning of T.C.A. § 46-1-102(12), and improvement care is an obligation of the cemetery owner to be paid from the earnings of the improvement care trust fund.

Authority: T.C.A. §§ 46-1-102(12) and (18) and 46-1-301(b).

0780-05-09-.09 Explanation for Commodity Not Installed Within 30 Days. The cemetery company shall provide a written explanation to the lot owner, or the lot owner's representative, agent, or heirs or assigns and the seller of the commodity if the commodity is not installed within thirty (30) days from the date on which the commodity is delivered to the cemetery.

Authority: T.C.A. §§ 46-1-301(b) and 46-2-101(b)(2).

0780-05-09-.10 Sign Required at Cemetery. Each cemetery owner shall conspicuously post a sign within one hundred (100) feet of each public entrance to the cemetery grounds. The lettering shall not be less than two (2) inches in height. All signs shall contain the words:

This cemetery is registered by the Tennessee Department of Commerce and Insurance.

Authority: T.C.A. § 46-1-301(b).

0780-05-09-.11 Master Map.

- (1) The master map shall be filed in the cemetery office and available for public inspection.
- (2) The master map shall be updated no later than ten (10) days after the sale of an interment site, inurnment space or entombment space.

Authority: T.C.A. §§ 46-1-103(b)(4), 46-1-111(d) and 46-1-301(b).

0780-05-09-.12 Failure to Maintain Cemetery Grounds.

- (1) Any of the following conditions constitutes failure to maintain cemetery grounds:
  - (a) an accumulation of weeds, trash, junk, or filth;
  - (b) any unsafe or unsanitary condition(s);
  - (c) failure to perform any other maintenance obligation created by contract.
- (2) In determining the amount of any civil penalty, the Commissioner, in addition to those factors in 0780-05-09-.24(3), may consider the following:

- (a) the reason for the cemetery owner's failure to maintain cemetery grounds;
- (b) prior instances of the cemetery owner's failure to maintain cemetery grounds;
- (c) the degree of any condition listed in paragraph (1).

Authority: T.C.A. §§ 46-1-301(b), 46-1-304(a) and 46-1-306(f).

0780-05-09-.13 Notification of Cemetery Rule Change.

- (1) The cemetery company shall conspicuously post notification in the cemetery office of a rule or regulation change no less than thirty (30) days prior to the rule or regulation taking effect, and the notification shall clearly state the effective date of the new rule or regulation.
- (2) The cemetery company shall retain the rules and regulations for at least one (1) year from the date that it last posted or distributed them to customers.
- (3) The rules shall conspicuously state the effective date.
- (4) Rules and regulations shall not be contrary to Chapter 0780-05-09 or T.C.A. Title 46.

Authority: T.C.A. §§ 46-1-301 and 46-2-101(a) and (b).

0780-05-09-.14 Community Cemeteries – Request for Exemption. The person in responsible charge of the cemetery shall submit a written request for exemption in typewritten form on 8 ½" x 11" paper which shall contain the following information:

- (1) the name and address of the cemetery, or the description of its location if it has no street address;
- (2) the name, address, and telephone number of the person in responsible charge of the cemetery who is submitting the application on behalf of the cemetery;
- (3) a statement as to whether a cemetery association has been formed and incorporated or is to be incorporated, and, if so, a copy of the charter and by-laws of the association and the names, addresses, and telephone numbers of the officers and directors of the association, and whether the cemetery association has been granted tax exempt status, and, if so, documentation of such status;
- (4) a statement as to whether a trust fund or a not-for-profit general welfare trust corporation pursuant to T.C.A. Title 46, Chapter 7, has been, or is to be, created for the maintenance and upkeep of the cemetery, and, if so, the name, address, and telephone number of the trustee appointed or to be appointed and a copy of the trust agreement or a copy of the charter and by-laws of the trust corporation with the names, addresses, and telephone numbers of the officers and directors of the corporation;
- (5) identification of the source of funds (i.e. lot sales, donations, bequests, or other contributions) used for the maintenance and upkeep of the cemetery, the method used to account for such funds, and the frequency of audits and/or examinations

of financial records of the cemetery and trustee, and by whom such audits and/or examinations are performed;

- (a) for funds derived from lot sales, identification of the percentage of the lot sale price which is deposited into the trust fund;
- (b) for funds derived from donations, bequests, and other contributions, identification of the percentage which is deposited into the trust fund;
- (6) the age of the cemetery;
- (7) a description of the historic nature of the cemetery and/or its environs, if applicable;
- (8) the area remaining for future use and (if different) the area remaining for future sales;
- (9) the sale of lots, by number of lots sold per year, over the preceding ten (10) years and the price or prices at which the lots sold; and
- (10) the population of the community normally served by the cemetery.

Authority: T.C.A. §§ 46-1-106(b) and 46-1-301(b).

0780-05-09-.15 Community Cemeteries – Granting of Exemption. The Commissioner has the discretion to grant an exemption from the registration requirements of this chapter to a community cemetery after taking into consideration the intent of T.C.A. Title 46, Chapter 1 and factors including, but not limited to, the following:

- (1) the age of the cemetery
- (2) the remaining area for future use;
- (3) the sale of lots over the preceding ten (10) years and the price at which sold;
- (4) the population of the community normally served by the cemetery;
- (5) whether a community cemetery association has been formed and such association has been incorporated or has been granted tax exempt status;
- (6) the historic nature of the cemetery and/or its environs;
- (7) whether a trust fund has been established for the maintenance and upkeep of the cemetery; and
- (8) the source or sources of funds used for the maintenance and upkeep of the cemetery.

Authority: T.C.A. §§ 46-1-106(b) and 46-1-301(b).

0780-05-09-.16 Community Cemeteries – Notice of Changes.

- (1) With respect to an exempt community cemetery and/or its trust corporation, if applicable, the Commissioner shall be notified in writing within ten (10) days of the effective date of any change in:

- (a) the corporate charter;
  - (b) the corporate by-laws;
  - (c) the officers and/or directors of the corporation;
  - (d) the tax exempt status;
  - (e) the corporate registration status with the Tennessee Secretary of State;
  - (f) the terms of the trust agreement; or
  - (g) the amount of land dedicated to cemetery purposes.
- (2) Such notice of change shall be submitted in writing to the Burial Services Section of the Tennessee Department of Commerce and Insurance and shall include copies of all documents affected by such change.

Authority: T.C.A. §§ 46-1-106(b) and 46-1-301(b).

0780-05-09-.17 Community Cemeteries – Improvement Care Trust Fund.

- (1) As a condition precedent to the granting of an exemption as a community cemetery, the cemetery applying for such status shall deposit all funds allotted for the maintenance and upkeep of the cemetery into an improvement care trust fund. The trust fund shall be overseen by an independent third party trustee or a not-for-profit general welfare trust corporation created pursuant to T.C.A. Title 46, Chapter 7.
- (2) Only the interest and earnings shall be withdrawn from the trust fund for the maintenance and upkeep of the cemetery. Withdrawals from the trust fund shall be made for no purpose other than reasonable compensation to the trustee, which shall in no event exceed the amount of interest earned.
- (3) The trust agreement shall state the percentage of a lot sale price which shall be deposited into the trust fund. In no event shall the percentage be less than twenty percent (20%).
- (4) Donations, bequests, and other contributions shall be deposited into the trust fund in the amount or percentage designated by the donor, or, in the event that no amount or percentage is specified, then one hundred percent (100%) of the donation, bequest, or other contribution shall be deposited into the trust fund.

Authority: T.C.A. §§ 46-1-106(b) and 46-1-301(b).

0780-05-09-.18 Community Cemeteries – Access to Books, Records, and Papers. The granting of an exemption notwithstanding, the Commissioner shall be allowed, upon demand, full and immediate access to the books, records, and papers of the cemetery and/or its trustee which pertain to the financial affairs of the cemetery.

Authority: T.C.A. §§ 46-1-106(b) and 46-1-301(b).

0780-05-09-.19 Community Cemeteries – Revocation of Exemption. Pursuant to T.C.A. § 46-1-106(c), the Commissioner may at any time revoke any exemption granted to a community cemetery.



Authority: T.C.A. §§ 46-1-106(c) and 46-1-301(b).

0780-05-09-.20 Examinations and Audits.

- (1) The necessary expense of any examination or audit made pursuant to T.C.A. Title 46, Chapter 1, Parts 2 and 3 shall be paid by the cemetery owner at the rate of five hundred dollars (\$500.00) per examiner/auditor, per day. The cemetery owner shall be billed in increments of not less than one-half day for each half-day or any portion thereof.
- (2) The cemetery owner shall remit payment not later than fifteen (15) days after the invoice date.

Authority: T.C.A. §§ 46-1-214(e) and (g), 46-1-301(b) and 46-1-303(b).

0780-05-09-.21 Requirements for Exemption from Fidelity Bond Coverage. The cemetery company shall, in order to establish that each account or trust fund requires authorization from at least two individuals for withdrawal, submit satisfactory documentation which includes at least the following:

- (1) For each cemetery account, a current voided blank check(s) that clearly establishes that dual signatures are required for execution;
- (2) A copy of a certification letter from the trustee of the preneed merchandise and services trust fund that provides proof that dual signatures are required to request funds from the trust fund;
- (3) At a minimum, a compilation report including a balance sheet prepared by an independent certified public accountant in accordance with Generally Accepted Accounting Principles (G.A.A.P.).

Authority: T.C.A. §§ 46-1-301 and 46-1-202(c).

0780-05-09-.22 Criteria for Independent Audit.

- (1) The Commissioner may require audited financial statements or other financial reports performed by an independent certified public accountant, approved by the Commissioner, licensed in the State of Tennessee of any cemetery company or its trust funds when there are:
  - (a) deficiencies in any of the trust funds; or
  - (b) any violations of T.C.A. Title 46 or the Rules of the Departments of Commerce and Insurance, Division of Regulatory Boards, Burial Services Section, Chapter 0780-05-09 if such violation of statute or rule relates to trust funds; or
  - (c) any other reasonable cause to believe that the trust funds are in danger of being lost or dissipated.
- (2) The cost of the audit shall be paid by the cemetery company. The trust fund principal and the income earned from the trust funds shall not be used to pay for audit expenses.

Authority: T.C.A. §§ 46-1-215(d), 46-1-301 and 46-1-306(d)(2).

0780-05-09-.23 Trustee Violations. The Commissioner may assess civil penalties against a trustee for violations including but not limited to:

- (1) Improper distributions from the improvement care trust fund or the preneed merchandise and services trust fund;
- (2) Late filing of trustee reports;
- (3) Filing inaccurate or incomplete trustee reports;
- (4) Investing trust funds directly or indirectly:
  - (a) with any officer, director or employee of the cemetery company or anyone related by blood, adoption, or marriage to any individuals included in the above;
  - (b) with the cemetery company itself;
  - (c) in any business entity of which a controlling interest is held directly or indirectly by any of the foregoing persons or legal entities;
  - (d) with any other cemetery company or funeral establishment;
  - (e) in assets, ventures, funds or investments that are high risk or highly speculative.

Authority: T.C.A. §§ 46-1-301 and 46-1-306(c).

0780-05-09-.24 Trustee Civil Penalties.

- (1) With respect to any trustee required to comply with the provisions of T.C.A. Title 46, or rules promulgated thereunder, the Commissioner may, in addition to or in lieu of any other lawful disciplinary action, assess civil penalties against such trustee for each separate violation of a statute, rule or order pertaining to such provisions in accordance with the following schedule:

Violation	Penalty
T.C.A. § 46-1-204(e)(4)(C)	Not more than \$10,000.00 nor less than \$1000.00
T.C.A. § 46-1-207(d)	Not more than \$10,000.00 nor less than \$1,000.00
T.C.A. § 46-1-208	Not more than \$10,000.00 nor less than \$1000.00
T.C.A. § 46-1-214(b)	Not more than \$10,000.00 nor less than \$1,000.00
T.C.A. § 46-1-215(b)	Not more than \$10,000.00 nor less than \$1,000.00

T.C.A. § 46-1-302(a)	Not more than \$10,000.00 nor less than \$1,000.00
T.C.A. § 46-1-306(a)(10)	Not more than \$10,000.00 nor less than \$1,000.00
T.C.A. § 46-1-306(c)	Not more than \$10,000.00 nor less than \$1,000.00
T.C.A. § 46-1-306(e)	Not more than \$10,000.00 nor less than \$1,000.00

- (2) Each day of continued violation shall constitute a separate violation.
- (3) In determining the amount of any civil penalty to be assessed pursuant to this rule, the Commissioner may consider such factors as the following:
- (a) whether the amount imposed will be a substantial economic deterrent to the violator;
  - (b) the circumstances leading to the violation;
  - (c) the severity of the violation and the risk of harm to the public;
  - (d) the economic benefits gained by the violator as a result of noncompliance; and
  - (e) the interest of the public.

Authority: T.C.A. §§ 46-1-301 and 46-1-306(c).

0780-05-09-.25 Civil Penalties.

- (1) With respect to any person required to comply with the provisions of T.C.A. Title 46, or rules promulgated thereunder, or granted an exemption under T.C.A. § 46-1-106(b), the Commissioner may, in addition to or in lieu of any other lawful disciplinary action, assess civil penalties against such person for each separate violation of a statute, rule or order pertaining to such provisions in accordance with the following schedule:

Violation	Penalty
T.C.A. § 46-1-103(a)	Not more than \$1,000.00 nor less than \$500.00
T.C.A. § 46-1-107(a)	Not more than \$1,000.00 nor less than \$500.00
T.C.A. § 46-1-108(b)	Not more than \$1,000.00 nor less than \$500.00
T.C.A. § 46-1-108(c)	Not more than \$1,000.00 nor less than \$500.00

T.C.A. § 46-1-109(b)	Not more than \$1,000.00 nor less than \$500.00
T.C.A. § 46-1-110	Not more than \$1,000.00 nor less than \$500.00
T.C.A. § 46-1-111	Not more than \$1,000.00 nor less than \$500.00
T.C.A. § 46-1-202	Not more than \$1,000.00 nor less than \$500.00
T.C.A. § 46-1-203	Not more than \$1,000.00 nor less than \$500.00
T.C.A. § 46-1-204	Not more than \$1,000.00 nor less than \$500.00
T.C.A. § 46-1-205	Not more than \$1,000.00 nor less than \$500.00
T.C.A. § 46-1-206	Not more than \$1,000.00 nor less than \$500.00
T.C.A. § 46-1-207	Not more than \$1,000.00 nor less than \$500.00
T.C.A. § 46-1-208	Not more than \$1,000.00 nor less than \$500.00
T.C.A. § 46-1-209(a)	Not more than \$1,000.00 nor less than \$500.00
T.C.A. § 46-1-209(c)	Not more than \$1,000.00 nor less than \$500.00
T.C.A. § 46-1-212	Not more than \$1,000.00 nor less than \$500.00
T.C.A. § 46-1-213	Not more than \$1,000.00 nor less than \$500.00
T.C.A. § 46-1-214(a)	Not more than \$1,000.00 nor less than \$500.00
T.C.A. § 46-1-214(f)	Not more than \$1,000.00 nor less than \$500.00
T.C.A. § 46-1-215(a)	Not more than \$1,000.00 nor less than \$500.00
T.C.A. § 46-1-216	Not more than \$1,000.00 nor less than \$500.00

T.C.A. § 46-1-302(a)	Not more than \$1,000.00 nor less than \$500.00
T.C.A. § 46-1-303(b)	Not more than \$1,000.00 nor less than \$500.00
T.C.A. § 46-1-304(a)	Not more than \$1,000.00 nor less than \$500.00
T.C.A. § 46-1-306(a)	Not more than \$1,000.00 nor less than \$500.00
T.C.A. § 46-1-307(a)	Not more than \$1,000.00 nor less than \$500.00
T.C.A. § 46-2-101(a)(3)	Not more than \$1,000.00 nor less than \$500.00
T.C.A. § 46-2-101(b)(2)	Not more than \$1,000.00 nor less than \$500.00
T.C.A. § 46-2-101(b)(3)	Not more than \$1,000.00 nor less than \$500.00
T.C.A. § 46-2-101(b)(4)	Not more than \$1,000.00 nor less than \$500.00
T.C.A. § 46-2-106(a)	Not more than \$1,000.00 nor less than \$500.00

- (2) Each day of continued violation shall constitute a separate violation.
- (3) In determining the amount of any civil penalty to be assessed pursuant to this rule, the Commissioner may consider such factors as the following:
- (a) whether the amount imposed will be a substantial economic deterrent to the violator;
  - (b) the circumstances leading to the violation;
  - (c) the severity of the violation and the risk of harm to the public;
  - (d) the economic benefits gained by the violator as a result of noncompliance;  
and
  - (e) the interest of the public.

Authority: T.C.A. §§ 46-1-301(b), 46-1-306(b) and 56-1-308.

The rulemaking hearing rules set out herein were properly filed in the Department of State on the 2nd day of November, 2007 and will become effective on the 16th day of January, 2008. (FS 11-02-07; DBID 2744)