

DRAFT ONTARIO REGULATION
made under the
FUNERAL, BURIAL AND CREMATION SERVICES ACT, 2002
CONSUMER PROTECTION

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PART I
DISCLOSURE REQUIREMENTS

DEFINITIONS

Definitions

1. In this Part,

“consumer information guide” means the guide that the registrar is required to prepare and make available under section 2;

“transfer” means a gift, a bequest or any other transfer made without consideration.

INFORMATION FROM REGISTRAR

Consumer information guide

2. (1) The registrar shall prepare a consumer information guide that sets out information regarding the provisions of the Act and the regulations relating to the purchase of licensed supplies or services.

- (2) The registrar shall make copies of the guide available to operators.

- (3) Upon providing a copy of the consumer information guide to an operator, the registrar may charge the operator a fee to recuperate the cost of preparing and providing the guide.

- (4) Every operator shall provide the consumer information guide to prospective purchasers in accordance with section 3 and provide it or make it available to the public in accordance with section 9.

DISCLOSURE TO PROSPECTIVE PURCHASERS

Disclosure by operator before contract made

3. (1) Every operator shall ensure that, before a contract for the sale of licensed supplies or services is entered into, a prospective purchaser has received,

- (a) a copy of the consumer information guide;

- (b) an offer to provide a copy of the operator's price list, excluding the part of the price list containing the interment and scattering rights prices required by section 15 of Ontario Regulation (Price List, Pricing and Payments into a Care and Maintenance Account) made under the Act;
- (c) in addition to the description of cancellation rights contained in the contract, an explanation of the cancellation rights and refund entitlements under the Act; and
- (d) if the prospective purchaser so requests, an explanation of the funding, financing and payment options available to the purchaser, including,
 - (i) an explanation of any penalties or fees that apply in respect of a particular funding, financing or payment option,
 - (ii) information as to any consideration or benefit that would be due to the operator or to a person other than the operator if the purchaser chooses a particular funding, financing or payment option, and
 - (iii) an explanation of how the purchaser's choice of funding, financing or payment option may affect rights and refunds available upon cancellation.

(2) If an operator maintains or makes use of a website and enters into electronic contracts for the sale of licensed supplies and services through the website, the operator shall provide,

- (a) the information described in subsection (1), other than the consumer information guide, by posting the information on the website in a printable form; and
- (b) the consumer information guide by making the guide available online in accordance with subsection 9 (2).

(3) Subsections (1) and (2) do not apply to contracts which are exempt from subsections 40 (1) and (2) of the Act.

Additional disclosure by cemetery operator

4. (1) In addition to the information provided under section 3, the operator of a cemetery shall advise a prospective purchaser that, at the request of the prospective purchaser, the operator will have a written document containing the following information provided to the purchaser without charge before the purchaser enters into a contract for the sale of interment rights or scattering rights:

1. The name of the cemetery and its location.

2. The operator's name, address, telephone number and licence number.
3. The price for and a description of the interment rights or scattering rights that the prospective purchaser has indicated being interested in purchasing, including,
 - i. the location and dimension of each lot or scattering ground,
 - ii. the number and type of interments or scatterings permitted in each lot or scattering ground,
 - iii. in the case of interment rights relating to a private mausoleum or columbarium, the number of niches, crypts or compartments, and
 - iv. any limitations or restrictions on exercising the interment or scattering rights.
4. A statement that the cemetery is governed by by-laws and that a copy of the by-laws is available from the operator for review.
5. Information as to the resale or transfer of interment or scattering rights by a rights holder, including,
 - i. any restrictions on the resale or transfer of interment or scattering rights, including any prohibition under the cemetery by-laws and any applicable fee,
 - ii. obligations imposed under the Act or the cemetery by-laws on the parties to a resale or transfer of interment or scattering rights,
 - iii. if the resale of interment or scattering rights is prohibited under the cemetery by-laws, an explanation of a rights holder's cancellation rights and refund entitlement under section 47 of the Act.
6. Restrictions contained in the cemetery by-laws with respect to markers, lot decorations and private structures.
7. Any restrictions or requirements in the cemetery by-laws as to the purchase of supplies or services from the operator or a person specified by the operator.

(2) Upon request, the operator shall provide additional copies of the document described in subsection (1) to a prospective purchaser and, once the rights are sold or transferred, to any person with an interest in the rights or to the person's representative.

(3) The operator may charge a fee to recuperate the cost of providing additional copies under subsection (2).

(4) If specifications or a photograph, map or plan of a cemetery or part of a cemetery are provided or shown to a prospective purchaser of an interment right or scattering right for the purpose of promoting the sale of the rights, the operator of the cemetery shall ensure that the name and location of the cemetery are clearly indicated on the specifications, photograph, map or plan.

DISCLOSURE TO PURCHASERS

Disclosure if circumstances change

5. (1) If an operator has entered into a contract for the sale of licensed supplies and services, the operator shall notify the purchaser of any of the following changes in circumstances that occur before the contract is fully performed and that result in the operator not being able to provide the supplies and services specified in the contract at the location specified in the contract:

1. A sale of the assets of the operator's business.
2. The expiry, surrender, revocation or termination of the operator's licence.

(2) An operator shall give a purchaser written notice of a change mentioned in subsection (1) within 30 days of the change occurring.

(3) The notice shall refer the purchaser to the purchaser's cancellation rights under the Act.

DISCLOSURE ON RESALE OR TRANSFER OF INTERMENT OR SCATTERING RIGHTS

Disclosure on resale of rights

6. (1) For the purposes of clause 47 (2) (a) of the Act, an interment rights holder or scattering rights holder who sells the rights shall provide the following information to the third party purchaser upon selling the rights:

1. The interment or scattering rights certificate endorsed in accordance with subsection (2) by the rights holder selling the rights.
2. A copy of the cemetery by-laws.
3. In the case of the sale of interment rights, a written statement of the number of lots that have been used in the plot to which the rights relate and the number of lots that remain available.

4. In the case of the sale of scattering rights, a written statement of the number of scatterings that have occurred on the scattering grounds to which the rights relate and of the number of scatterings that remain available.
5. A copy of the document required under clause 17 (b).
6. Any other documentation in the rights holder's possession relating to the rights.

(2) The endorsement on the certificate provided to a third party purchaser under paragraph 1 of subsection (1) shall include,

- (a) a statement, signed by the rights holder selling the rights, acknowledging the sale to the third party purchaser;
- (b) the date on which the rights were sold;
- (c) the name and address of the third party purchaser; and
- (d) a statement of any money owing to the operator in respect of the rights.

(3) After an interment rights holder or scattering rights holder sells the rights to a third party purchaser but before the purchaser exercises those rights, the purchaser shall provide the cemetery operator with,

- (a) the endorsed certificate mentioned in subsection (1); and
- (b) all other information that the cemetery operator specifies and that is necessary in order to issue a new certificate in relation to the rights.

(4) Upon request, a cemetery operator shall provide additional copies of the cemetery by-laws and of the document mentioned in subsection 4 (1) to a third party purchaser, any other person who has an interest in the rights that were subject to the resale or a representative of such a person.

(5) A cemetery operator who provides copies of the by-laws or of a document under subsection (4) may charge the person who is provided with the copies a fee to recuperate the cost of providing the copies.

Disclosure on transfer of rights other than by resale

7. If a rights holder transfers interment rights or scattering rights to another person by any means other than by sale,

- (a) the rights holder who transfers the rights shall disclose to the person acquiring the rights the same information, with necessary modifications, as an interment rights holder or scattering rights holder is required to disclose under subsections 6 (1) and (2) upon selling the rights; and
- (b) the person who acquires the rights shall provide the cemetery operator with the same documentation and information as a third party purchaser is required to disclose upon a sale of the rights under subsection 6 (3).

GENERAL

Proof of licence

8. (1) Every operator shall display the operator's licence or a copy of the licence in a conspicuous place near the main entrance of any office, building or other dedicated space maintained by the operator in which the public may enter into a contract for the purchase of licensed supplies or services with the operator.

(2) If an operator maintains or makes use of a website and enters into contracts for the sale of licensed supplies or services through the website, the operator shall ensure that the operator's licence number and a description of the type of licence are available in a conspicuous place on the website.

(3) Individuals licensed under the Act shall carry their licence on their person whenever conducting business relating to the sale of licensed supplies or services and shall produce it upon request.

Consumer information guide

9. (1) Every operator who maintains premises at which the public may enter into a contract with the operator for the purchase of licensed supplies or services, shall ensure that copies of the consumer information guide are displayed and made available for the taking by any person, without charge, in the same place and manner as those in which the price list is required to be displayed and made available for the taking under section 16 of Ontario Regulation (Price List, Pricing and Payments into a Care and Maintenance Account) made under the Act.

(2) Every operator who maintains or makes use of a website and who enters into electronic contracts for the sale of licensed supplies or services through the website, shall provide on the website access to an electronic version of the consumer information guide in printable form or to a link to the website maintained by the registrar.

(3) If an operator does not maintain premises described in subsection (1) and subsection (2) does not apply to the operator, the operator shall ensure that a copy of the consumer information guide is provided to any person upon request without charge.

(4) If an operator receives a request from a person for a copy of the operator's price list, the operator shall provide a copy of the consumer information guide with the price list.

Disclosure of cemetery and crematorium by-laws

10. (1) Every operator of a cemetery or crematorium shall ensure that a copy of the cemetery by-laws or crematorium by-laws, as the case may be, is provided upon request to any prospective purchaser free of charge.

(2) If a prospective purchaser requests more than one copy of the cemetery by-laws or crematorium by-laws, the operator shall provide the additional copies, subject to a fee to recuperate the cost of providing the additional copies.

(3) The operator of a cemetery or crematorium shall make a copy of the by-laws and proposed by-law amendments available for the public to inspect during normal office hours free of charge.

Promotional material, etc.

11. (1) Every operator shall ensure that the following information appears in any sign or written advertisement, brochure, price list, contract, letterhead, pamphlet, circular, or other written material used by the operator to promote the sale of licensed supplies and services:

1. The operator's name.
2. The operator's business name, if different from the operator's name.
3. The name of any person who directly or indirectly controls the operator's business and who directly or indirectly controls another business that sells licensed supplies or services and that has a business premises within 100 kilometres of the operator's business location, except if the business is a cemetery owned by a municipality or a religious organization.

(2) Despite subsection (1), if more than one sign is posted at an operator's business premises, the information mentioned in that subsection need only appear on one of the signs so long as the sign in question is close to the main entrance of the operator's business premises and is, by its size and placement, the sign with the most prominence at the premises.

(3) The information included on a sign under subsection (1) shall be placed in a conspicuous place on the sign.

(4) Every operator shall ensure that the information mentioned in subsection (1) is included in any audio or video material that the operator uses to promote the sale of licensed supplies or services if the material is at least one minute in duration.

(5) An operator who maintains or makes use of a website to promote the sale of licensed supplies or services shall ensure that the information mentioned in subsection (1) is available in a conspicuous place on the website.

PART II CONTRACT REQUIREMENTS

GENERAL

Definition

12. In this Part,

“recipient” means a person who is designated in a contract for the provision of a licensed supply or service as the person for whom the service or supply is to be provided.

General requirements

13. (1) This section applies to every contract for the provision of licensed supplies or services.

(2) The contract shall be written in plain language and legibly printed in 10 point or larger type.

(3) The contract shall contain the following:

1. A unique identification number or code.
2. The date of the contract.
3. The name, address and telephone number of each party to the contract, the operator’s business name, if different, and the operator’s licence number.
4. The name and address of each recipient if different from the purchaser for whom licensed supplies or services are to be provided under the contract and the date of birth or age of each recipient, if known.
5. The name of the individual who negotiated the contract on behalf of the operator and, if the individual is licensed under the Act, his or her licence number.
6. A description of all supplies and services to be provided under the contract that is sufficiently detailed to permit identification of the supplies and services, including details of any customization, model and serial numbers and other identification that refer to any specific licensed supplies.

7. A description of when, under what circumstances and in what manner the supplies or services will be provided.
8. If applicable, the address or location of where the supplies or services are to be provided.
9. The total price payable under the contract, including all taxes and any payments to be made by the operator in connection with or under the contract for which the purchaser is required under the contract to reimburse the operator and less any discount allowed to the purchaser.
10. The amount, if any, paid on signing the contract and, if payments under the contract are to be made over time or in instalments, a payment schedule setting out when payments are due, the amount or method of calculating the amount of each payment and the amount or method of calculating the amount of any financing charges and discounts.
11. A statement of the rate of interest or method of calculating the rate of interest or other penalty charged by the operator on late or deficient payments under the contract and a description of the rights and duties of the purchaser and the operator relating to the cancellation of the contract for non-payment.
12. The terms of any warranties applicable to the supplies or services offered by the operator and information on whether the warranties survive completion of the contract.
13. The undertaking of the operator that if, after making reasonable efforts to obtain a licensed supply or service agreed to under the contract, the operator needs to substitute a different supply or service for the one agreed to in the contract, the operator,
 - i. shall inform the purchaser of the proposed substitution, and whether the substitution is of equal or greater value than the original supply or service,
 - ii shall inform the purchaser of the purchaser's cancellation rights and determine if the purchaser wishes to cancel the contract, and
 - iii. shall not increase the purchase price as a result of the substitution, if the purchaser does not cancel the contract.
14. Specific acknowledgement by the purchaser that the purchaser received a copy of the consumer information guide and the operator's price list before entering into the contract.

15. The name of any person other than the purchaser who may cancel the contract and the circumstances under which the person may do so.
16. The name of every person other than the purchaser who is entitled to receive a payment under the contract that would otherwise be payable to the purchaser and the circumstances under which the payment is to be made to that person.
17. The manner in which the amount of any refund or payment to the purchaser is to be determined and the reason for and amount of any deduction that may be made in calculating the amount of a refund.
18. All cancellation, refund and return policies of the operator that are in addition to the rights of purchasers under the Act.

(4) If the parties to a contract agree that certain supplies or services will be provided by another supplier, the contract between the parties shall contain,

- (a) a description of the supplies and services the operator will arrange to obtain from other suppliers;
- (b) the acknowledgement of the parties that the operator is acting on behalf of and only as agent for the purchaser in obtaining supplies or services from another supplier; and
- (c) if the parties agree that the purchaser is to pay the other supplier directly for the provision of supplies or services,
 - (i) the anticipated price for the supplies or services,
 - (ii) the purchaser's acknowledgement and agreement that the purchaser is liable to pay and will pay the supplier directly for the supplies or services at the price in effect at the time the supplies or services are provided, and
 - (iii) the undertaking of the purchaser to save the operator harmless from any claims by the other supplier for payment for the supplies or services.

(5) The contract shall disclose which licensed supplies and services, if any, the operator intends a subcontractor to provide and, if known, the names and addresses of subcontractors who are expected to provide the supplies or services.

(6) The contract shall disclose which, if any, licensed supply to be provided under the contract was previously used and its original price, if known.

(7) If the licensed supplies or services are to be provided under the contract as a package, the contract shall set out,

- (a) the package price;
- (b) the price at which each supply and service would be sold if it were sold separately and not as part of the package;
- (c) the total price that would have been payable under the contract using the prices mentioned in clause (b); and
- (d) the amount, if any, saved by the purchaser by purchasing the supplies and services as a package.

(8) If any licensed supplies to be provided under the contract are to be placed in storage so that the supply is being treated as delivered at the time of storage, the contract shall include,

- (a) the purchaser's agreement to the operator's storing or arranging the storage of the supply;
- (b) a description of the operator's obligations to store the supplies until they are needed, claimed or determined to be abandoned;
- (c) the name, address and telephone number of the storage facility;
- (d) the purchaser's agreement to treat the supply, for the purposes of section 44 of the Act and section 69 of Ontario Regulation (Operation of Businesses) made under the Act, as being provided at the time the supply is placed in storage;
- (e) the undertaking of the operator to give the purchaser a copy of the record mentioned in subsection 29 (8) within 10 days after the day the supply is placed in storage and within 10 days after the day the supply is moved to a different storage facility;
- (f) the name of any person, other than the purchaser who may request removal of the supply from storage; and
- (g) an explanation of how the operator determines that a supply is abandoned under section 30.

SPECIFIC CONTRACTS

Exemption

14. (1) For the purposes of subsection 40 (3) of the Act, a contract that meets the following requirements with respect to the supplies and services under the contract is exempt from subsections 40 (1) and (2) and sections 41, 42, 43 and 44 of the Act and sections 13, 15 and 21 of this Regulation:

1. A licence issued under the Act is not required in order to sell the supplies and services.
2. The supplies and services are purchased separately from licensed supplies or services.
3. The total purchase price does not exceed \$250.
4. The purchaser is taking immediate delivery of the supply or receiving the service immediately.
5. If the purchase is a supply, the supply will not be stored by the operator.

(2) No operator contracting for the provision of a supply or service shall enter into separate contracts, rather than a single contract, if the purpose of entering into separate contracts is to keep the value of any contract at less than \$250 so this section applies to the contract.

If payment precedes provision

15. (1) This section applies to every contract for the provision of licensed supplies or services if money is paid under the contract before the licensed supplies or services are provided and the money is required to be held in trust.

(2) The contract shall contain the following:

1. Details concerning the holding, investment and payment out of the money in accordance with the regulations, including the manner in which the funds will be held in trust and notification that the money shall not be moved without the purchaser's consent.
2. A written statement disclosing the fact of consideration or benefit and the name of every person, if any, from whom the operator or another person is entitled to receive any consideration or benefit, directly or indirectly, related to arrangements for holding money paid under the contract in trust as required under section 52 or 56 of the Act.
3. If the money is held in an individual trust account or pooled trust fund under the regulations,

- i. a description of the purchaser's right to request a statement once a year from the operator that sets out the current value of the individual trust account as of the end of the prior month, the types of investments held as of that day and the name of the eligible depository of any account in which trust money in the individual trust account is deposited, and
 - ii. a description of the purchaser's right to request a statement from the operator, once in a 12-month period, setting out the current value of the purchaser's money as of the end of the month before the request, and the name of the trustee.
4. Information concerning the manner in which the operator will determine the prices for the licensed supplies and services applicable at the time they are provided.
5. A description of the purchaser's right to receive on completion of the contract any amount held in trust in excess of all amounts paid or payable to the operator and any other suppliers and a description of the manner in which the operator will calculate the amount to be paid to the purchaser or other person entitled under the contract to receive the payment.

Contract for cremation or related services

16. (1) If a contract for the provision of licensed supplies or services provides for a cremation, the contract shall include,

- (a) a statement that dead human bodies cannot be cremated if there is a pacemaker or radioactive implant in the body or if the body is in a container made of or containing non-flammable or hazardous material or chlorinated or fibre-reinforced plastic; and
- (b) a statement that dead human bodies will not be cremated unless a coroner's certificate has been provided to the operator.

(2) If a contract for the provision of licensed supplies or services provides for a cremation or otherwise provides for the operator to come into possession of cremated human remains, the contract shall include,

- (a) the requirement that, if the operator so requests, the purchaser shall pay a refundable deposit that does not exceed,
 - (i) \$350 if the operator is not a cemetery operator, or

- (ii) the lesser of \$350 and the minimum amount charged by the operator for the interment of cremated remains in a common lot in the cemetery, if the operator is a cemetery operator;
- (b) a statement that if cremated remains are not claimed on or before the first anniversary of the cremation, the operator may inter the cremated remains in a common lot in a cemetery and is entitled to retain the amount of any deposit described in clause (a) that was paid; and
- (c) a statement that if the cremated remains are claimed before they are interred, the operator shall promptly return any deposit described in clause (a) that was paid.

Contract for interment or scattering rights

17. A contract for the provision of licensed supplies or services that includes the sale of interment or scattering rights shall include,

- (a) the name and address of the holder or intended holder of the rights;
- (b) the written document containing the information described in subsection 4 (1), as a schedule to the contract;
- (c) information relating to when and under what circumstances the rights certificate can be expected to be provided to the purchaser, if the certificate is not provided at the time the contract is made;
- (d) a requirement that payment under the contract shall be applied first to the purchase of the rights before being applied to the purchase of any other supplies or services under the contract; and
- (e) the amount of the care and maintenance contribution for the lot or scattering ground.

Contract for future interment or scattering rights

18. (1) If a contract for the provision of licensed supplies or services includes the sale of interment rights or scattering rights mentioned in section 56 of the Act that do not relate to a private structure or a private scattering ground, the contract shall include the following:

1. Details of the proposed construction or development schedule, the anticipated start date and the anticipated completion date.
2. The requirement that money payable under the contract that is required to be held in a future rights trust fund under the regulations shall be paid directly to the trustee of the operator's future rights trust fund.

3. The name, address and telephone number of the trustee of the future rights trust fund and the name of the contact person for the trustee.
4. Details concerning the holding, investment and payment out of the money to be held in a future rights trust fund.
5. The undertaking of the operator to notify the purchaser in writing of any change in the anticipated completion date within 30 days after the operator learns that the construction or development will be delayed.
6. The undertaking of the operator to notify the purchaser in writing,
 - i. in the case of interment rights mentioned in section 56 of the Act, when the part of the cemetery containing the lot, or the mausoleum, columbarium or other facility in the cemetery has been built, developed or otherwise made ready for interment purposes,
 - ii. in the case of scattering rights mentioned in section 56 of the Act, when land in the cemetery has been set aside as a scattering ground to be used for the scattering of cremated human remains.
7. Provisions describing the purchaser's right to inspect the cemetery or facility after completion and to cancel the contract within 30 days after receipt of the notice mentioned in paragraph 6.
8. A description of the process to be followed on cancellation of the contract.
9. A description of the process for the payout by the trustee of amounts in the future rights trust fund on cancellation of the contract.

(2) If a contract for the provision of licensed supplies or services includes the sale of interment rights or scattering rights mentioned in section 56 of the Act that relate to a private structure or a private scattering ground, the contract shall include the following:

1. Details of the proposed construction or development schedule, the anticipated start date and the anticipated completion date.
2. Details concerning the holding, investment and payment out of the money required to be held in an individual trust account under the regulations.
3. The undertaking of the operator to notify the purchaser in writing of any change in the anticipated completion date within a period of time specified in the contract.

4. The undertaking of the operator to notify the purchaser in writing when the private structure has been built, developed or otherwise made ready for interment purposes or land in the cemetery has been set aside as a private scattering ground to be used for the scattering of cremated human remains.
5. A description of the process for the payout of amounts in the individual trust account on cancellation of the contract.
6. If applicable, a statement that the consent of the registrar is required to the establishment of the cemetery.

Contract funded by insurance or annuity

19. (1) If the price payable under a contract for the provision of licensed supplies or services is to be funded in whole or in part out of the proceeds of an insurance policy or annuity contract, the contract for the licensed supplies or services shall contain,

- (a) the name, address and telephone number, if any, of the insurer or the issuer of the annuity contract and the number of the insurance policy or annuity contract if known;
- (b) a statement disclosing any formal or informal arrangements the operator or another person affiliated or associated with the operator has with any agent, insurer or issuer of annuity contracts relating to the recommendation of the agent, insurer or issuer to purchasers and potential purchasers of licensed supplies or services;
- (c) a statement of whether the operator or another person affiliated or associated with the operator is entitled to receive, directly or indirectly, any consideration or benefit from any person as a result of the purchaser applying for or purchasing insurance or an annuity in connection with the purchaser's contract with the operator;
- (d) the name of the beneficiary under the insurance policy or annuity contract and, if applicable, details of any assignment to the operator of the proceeds under the policy or contract;
- (e) a description of the licensed supplies and services to be paid for out of the proceeds if not all of the supplies and services under the contract are to be paid for out of the proceeds;
- (f) the acknowledgement by the operator and the purchaser that once the operator is named as a beneficiary or assigned the right to designate the beneficiary under the insurance policy or annuity contract or the beneficiary's rights to proceeds are assigned to the operator,

- (i) money is considered, for the purposes of section 38 of the Act, to be paid under the contract for the provision of the licensed supplies or services in an amount equal to the amount of the proceeds under the insurance policy or annuity contract that will be paid directly or indirectly to the operator, and
 - (ii) the operator shall not charge the purchaser any additional amount by reason of any future increase in a price listed in the operator's price list; and
- (g) a statement of what will occur if,
- (i) the insurance policy or annuity contract application is denied,
 - (ii) the insurance policy or annuity contract is not paid for in full at the time the contract for licensed supplies and services is to be fulfilled, and
 - (iii) the operator was to be the beneficiary or was to have been assigned the right to designate a beneficiary under the insurance policy or annuity contract and at the time the contract for licensed supplies and services is to be fulfilled, the beneficiary who was named or designated at the time the contract was made has changed.
- (2) The operator shall attach the following to the contract if available:
1. The insurance policy or annuity contract.
 2. The enrolment or other documents that confirm the purchase of the policy or contract.
 3. The document designating the operator as the beneficiary of the policy or contract or assigning the proceeds of the policy or contract to the operator.

Delivery of contract

20. (1) The operator under a contract for the provision of licensed supplies or services shall ensure that the purchaser receives a copy of the contract as signed by the purchaser at the time the purchaser signs it.

(2) For the purposes of clause 40 (1) (d) of the Act, the prescribed manner of delivering a copy of a contract for the provision of licensed supplies or services to a purchaser after it is signed by all parties is, as soon as possible,

- (a) to deliver it personally to the purchaser;
- (b) to send it to the purchaser by registered mail; or

- (c) to send it to the purchaser by another manner if the operator can prove receipt of it by the purchaser.

Additional requirements for enforceability of contracts

21. For the purposes of clause 40 (1) (h) of the Act, a contract for the provision of licensed supplies or services is not enforceable by an operator if any of the following requirements are not satisfied:

1. The contract was signed by the individual who negotiated the contract on behalf of the operator and, in the case of a contract for funeral supplies or services, is also signed by a funeral director on behalf of the operator.
2. If the operator entered into the contract with the purchaser over the internet, the contract was formed by text-based communications.
3. If the operator no longer provides a supply or service that the operator agreed to provide under the contract, the operator has made reasonable efforts to provide the supply or service and, if unable to do so, has arranged to provide an appropriate refund under the contract.
4. If the operator substitutes a different supply or service for the licensed supply or service agreed to under the contract, the operator,
 - i. has informed the purchaser, or the person entitled under the contract to cancel the contract, of the substitution and whether or not the substitution is of equal or greater value than the original supply,
 - ii. has provided or arranged for the provision of a substituted supply or service of comparable quality and value, and
 - iii. has not charged any increase in price as a result of the substitution.
5. If the contract is for the purchase from a cemetery operator of interment rights mentioned in section 56 of the Act, the cemetery operator notifies the purchaser in writing that the part of the cemetery containing the lot or the mausoleum, columbarium or other facility in the cemetery has been built, developed or otherwise made ready for interment purposes.
6. If the contract is for the purchase from a cemetery operator of scattering rights mentioned in section 56 of the Act, the cemetery operator notifies the purchaser in writing that land in the cemetery has been set aside as a scattering ground to be used for the scattering of cremated human remains.

PROHIBITED PRACTICES

On default

22. (1) No operator shall take any action to repossess a licensed supply or interment or scattering rights on a default in payment for the supply or rights if at least two-thirds of the purchase price for the supply or rights has been paid to the operator, unless a judge of the Superior Court of Justice grants leave to do so.

(2) Upon an application for leave under subsection (1), the court may, in its discretion, grant leave to the operator, refuse leave or grant leave upon the terms and conditions that the court considers advisable.

(3) Any provision in any future performance agreement or in any security agreement incidental to such an agreement under which the operator may acquire title to, possession of or any rights in any goods of the purchaser, other than the goods passing under the agreement, is not enforceable.

Content of contract

23. (1) No operator shall include in any contract for the provision of any licensed supply or service a provision that,

- (a) conflicts with the Act or the regulations;
- (b) entitles the operator to unilaterally amend the contract, except with respect to the provision of substituted supplies or services in accordance with paragraph 4 of section 21;
- (c) permits the contract to be amended in a manner other than by text-based communications; or
- (d) states that the placing of a supply in storage constitutes provision of the supply to the purchaser for the purposes of the Act, the regulations or the contract.

(2) Despite clause (1) (d), an operator may include a provision in a contract that states that the placing of a supply in storage constitutes provision of the supply if the storage is to be carried out under section 39 of the Act and section 29 of this Regulation.

Operator's policies

24. No operator shall have a cancellation, refund or return policy that would deprive a person of any of the person's rights under the Act or the regulations relating to the purchase of licensed supplies or services or that would effectively penalize the person for exercising any of those rights.

INSURANCE OR ANNUITY CONTRACTS RELATING TO THE
SALE OF LICENSED SUPPLIES OR SERVICES

Prohibited practices

25. (1) No licensee shall sell or lend an operator's business name, logo, letterhead or other identifier to a person who is soliciting the making of or negotiating the terms of an insurance policy or annuity contract with a vulnerable person mentioned in subsection 29 (2) of the Act.

(2) No licensee shall permit the use of an operator's business name, logo, letterhead or other identifier by a person who is soliciting the making of or negotiating the terms of an insurance policy or annuity contract with a vulnerable person mentioned in subsection 29 (2) of the Act.

(3) Section 29 of the Act applies with necessary modifications to a person in respect of the solicitation and negotiation of an agreement for the sale of an insurance policy or annuity contract if,

- (a) the proceeds of the policy or contract are intended to be used to fund, directly or indirectly, in whole or in part the purchase of licensed supplies or services; and
- (b) the policy or contract names an operator as beneficiary of the proceeds or assigns to an operator the right to designate the beneficiary of the proceeds.

(4) No licensee shall accept any payment for an insurance policy or annuity contract that is in cash or made payable to the licensee.

(5) Subsection (4) does not apply if the licensee receives the payment in the licensee's capacity as a licensed insurer or agent under the *Insurance Act*.

(6) No operator shall agree to be named as a beneficiary or to have the right to designate the beneficiary assigned under an insurance policy or annuity contract or to have the beneficiary's rights to proceeds under an insurance policy or annuity contract assigned to the operator if the proceeds are to be used to fund the purchase of licensed supplies or services, unless the operator and the person who names the operator as the beneficiary or assignee have entered into a contract for the provision of the supplies or services.

Excess insurance or annuity proceeds

26. An operator shall make a refund in accordance with the Act and the regulations if the operator receives insurance or annuity proceeds to fund the purchase of licensed supplies or services and,

- (a) the amount received exceeds the amount payable to the operator and any other suppliers for the provision of the supplies or services to be funded out of the proceeds;
- or

- (b) the operator provides no licensed supplies or services in consideration for the proceeds.

PART III MISCELLANEOUS CONSUMER PROTECTION MATTERS

Interpretation

27. (1) In this Part,

“customized supply” means a licensed supply that is customized to the purchaser’s specifications within the meaning of subsection (2);

“recipient” has the same meaning as in Part II.

(2) For the purposes of subsection 44 (6) of the Act and the definition of “customized supply” in subsection (1), a supply is customized to the purchaser’s specifications if,

- (a) the supply is produced on the basis of instructions or specifications provided by or on behalf of the purchaser;
- (b) the supply is personalized or has another unique characteristic, with the result that the operator is prevented from readily reselling or reusing it in the ordinary course of business; and
- (c) removing or undoing the personalization or unique characteristic would affect the structural integrity or aesthetic characteristics of the supply or would involve extraordinary expense.

Prohibitions against soliciting

28. A home, as defined in the *Homes for the Aged and Rest Homes Act*, is prescribed for the purposes of subsection 29 (2) of the Act.

Storage of supplies in advance of use

29. (1) For the purposes of section 39 of the Act, an operator who sells a licensed supply in advance of the use of the supply may agree to store the supply, or arrange for the supply to be stored by another person, if the supply is one that is listed in subsection (2) and all of the conditions set out in subsection (3) have been met.

(2) Subsection (1) applies to the following licensed supplies:

1. A casket.

2. An urn.
3. A marker.
4. An outer burial container.
5. A vault.
6. A grave liner.

(3) The following are the conditions mentioned in subsection (1):

1. The supply is in a substantially completed condition.
2. The purchaser has made full payment for the supply.
3. The operator knows or ought to know that the supply is made of materials designed to withstand prolonged storage without any adverse effect on the structural integrity or aesthetic characteristics of the supply.
4. The supply is to be stored in a way that does not give rise to a lien on the supply.
5. In the contract for the provision of the supply, the purchaser has agreed,
 - i. to the operator storing or arranging the storage of the supply, and
 - ii. to treat the supply, for the purposes of section 44 of the Act and section 69 of Ontario Regulation (Operation of Businesses) made under the Act, as being provided at the time the supply is placed in storage.

(4) An operator who, under section 39 of the Act, agrees to store a supply, or arrange for a supply to be stored by another person, shall not store the supply, or have it stored by another person, within the 30 days after the day the contract for the provision of the supply is made.

(5) An operator who, under section 39 of the Act, agrees to store a supply, or arrange for a supply to be stored by another person, shall ensure that,

- (a) the supply is and continues to be stored in a manner that will not adversely affect the structural integrity or aesthetic characteristics of the supply; and
- (b) adequate insurance is purchased and maintained against loss of or damage to the supply while in storage.

(6) An operator's duties under subsection (5) end at the earlier of,

- (a) the time the supply is removed from storage and provided pursuant to a request under the contract for provision of the supply; and
- (b) the time the stored supply is deemed to be abandoned under section 30.

(7) If an operator agrees to store a supply, or arrange for a supply to be stored by another person, the purchaser is not responsible for the costs relating to the storage or insuring of the supply, even if a contract provides otherwise.

(8) An operator who, under section 39 of the Act, agrees to store a supply, or arrange for a supply to be stored by another person, shall,

- (a) when the supply is placed in storage and each time the supply is moved to a different storage facility, ensure that a record is prepared setting out,
 - (i) the name of the person storing the supply,
 - (ii) the address of the storage facility,
 - (iii) the address of the person storing the supply, if it is different from the address of the storage facility,
 - (iv) the location of the supply within the storage facility,
 - (v) the name and telephone number of an individual at the storage facility who may be contacted for information about the stored supply,
 - (vi) the name and address of the purchaser of the supply,
 - (vii) the name, address and date of birth of the recipient, if any, of the supply, and
 - (viii) a description of the supply that is sufficiently detailed to permit identification of the supply, including details of customization, if any;
- (b) if the record was not prepared by the operator, ensure that the operator receives a copy of the record;
- (c) give the purchaser a copy of the record within 10 days after the day the supply is placed in storage and within 10 days after the day the supply is moved to a different storage facility; and

- (d) retain the record for at least 10 years after the later of,
 - (i) the day the supply is removed from storage pursuant to a request under the contract for provision of the supply, and
 - (ii) the day the stored supply is deemed to be abandoned under section 30.
- (9) An operator shall ensure that the registrar is given a current list setting out,
 - (a) the name of each person storing a supply under an arrangement with the operator, the address of the storage facility and, if it is different from the address of the storage facility, the address of the person storing the supply; and
 - (b) for each storage facility listed under clause (a), the name and telephone number of an individual at the storage facility who may be contacted for information about the stored supply.
- (10) An operator shall ensure that,
 - (a) copies of the records prepared under subsection (8) are made available during regular business hours for inspection by the registrar or a person designated in writing by the registrar; and
 - (b) the facilities at which supplies are stored under section 39 of the Act are made available during regular business hours for inspection by the registrar or a person designated in writing by the registrar.
- (11) An operator who, under section 39 of the Act, arranges for a supply to be stored by another person shall enter into a contract with the other person that requires the other person to,
 - (a) comply with an operator's duties under subsection (5); and
 - (b) make the facility at which the supply is stored available during regular business hours for inspection by the registrar or a person designated in writing by the registrar.
- (12) If a stored supply cannot be removed from storage within a reasonable time after a request for its provision is made under the contract, the operator shall, at the option of the person who made the request,
 - (a) provide to the person, at the operator's expense, a supply that is equivalent to or better than the stored supply; or

- (b) pay the person the market value of the stored supply on the day the request for provision of the stored supply is made.

Abandonment of stored supply

30. (1) An operator may seek directions from the registrar if a supply that is stored under section 39 of the Act is still in storage and the operator has reasonable grounds to believe that the recipient of the supply is or, if he or she were alive, would be at least 120 years old.

(2) If an operator seeks directions from the registrar under subsection (1) and the registrar directs the operator not to make any inquiries or give any notices, the supply is deemed to be abandoned for the purposes of this Regulation at the time the registrar gives the direction.

(3) If an operator seeks directions from the registrar under subsection (1) and the registrar directs the operator to make specified inquiries or give specified notices, and to wait for a specified period of time, after making the requisite inquiries and giving the requisite notices, to see if a claim for the supply is made,

- (a) the operator shall comply with the registrar's directions; and
- (b) if no claim for the supply is made before the expiry of the waiting period specified in the registrar's directions, the supply is deemed to be abandoned for the purposes of this Regulation upon the expiry of that period.

(4) An operator may dispose of a supply that is deemed to be abandoned under subsection (2) or (3).

(5) If, after the stored supply is deemed to be abandoned under subsection (2) or (3) but before the operator disposes of the supply under subsection (4), the operator receives a request under the contract for provision of the supply, the operator shall provide the supply to the person who made the request.

Cancellation of unenforceable contract, operator's obligations

31. (1) Within 30 days after the day an operator receives a notice of cancellation under subsection 41 (1) of the Act for a contract that is not enforceable by the operator under subsection 40 (1) of the Act, the operator shall, in addition to refunding to the purchaser all money received by the operator under the contract as required by subsection 41 (2) of the Act, pay to the purchaser the amounts required by subsections (2) to (5), as applicable.

(2) If, at the time the operator receives the notice of cancellation, any money paid by the purchaser under the contract had never been deposited into a holding account, an individual trust account, a pooled trust fund or a future rights trust fund, either in accordance with, or in contravention of, section 52 or 56 of the Act and Part V of Ontario Regulation (Operation of Businesses) made under the Act, the operator shall pay to the purchaser an amount equal to the

income that would have been earned on the money had the money been invested continuously in Canada Savings Bonds during the period,

- (a) beginning on the day the operator received the money under the contract; and
 - (b) ending immediately before the day the operator refunds the money to the purchaser.
- (3) Subsections (4) and (5) apply to any money that,
- (a) the operator received from the purchaser under the contract or from the trustee under a future rights trust fund; and
 - (b) under section 52 or 56 of the Act and Part V of Ontario Regulation (Operation of Businesses) made under the Act, the operator was required to deposit into a holding account, an individual trust account or a pooled trust fund.

(4) If the operator deposited the money mentioned in subsection (2) as required and, at the time the operator receives the notice of cancellation of the contract, the money is still in a holding account, an individual trust account or a pooled trust fund as required, the operator shall pay to the purchaser the income earned on the money up to the day the money is paid out of the account or fund following receipt of the notice of cancellation.

(5) If the operator deposited the money mentioned in subsection (2) as required and, at the time the operator receives the notice of cancellation of the contract, the money is no longer in a holding account, an individual trust account or a pooled trust fund, having been paid out in accordance with, or in contravention of, section 52 or 56 of the Act and Part V of Ontario Regulation (Operation of Businesses) made under the Act, the operator shall pay to the purchaser,

- (a) with respect to the income earned on the money up to the day it was no longer in a holding account, an individual trust account or a pooled trust fund, any part of that income that has not already been paid to the purchaser; and
- (b) an amount equal to the income that would have been earned on the sum of the money and the income mentioned in clause (a), had the money and the income been invested continuously in Canada Savings Bonds during the period,
 - (i) beginning on the day the money was no longer in a holding account, an individual trust account or a pooled trust fund, and
 - (ii) ending immediately before the day the operator refunds the money to the purchaser.

(6) An operator who has delivered or performed some or all of the licensed supplies and services provided for under a contract before the purchaser cancels the contract under subsection 41 (1) of the Act is exempt from subsections 41 (2) and (3) of the Act, read with subsections (1) to (5) of this section, in respect of the licensed supplies and services that have been delivered or performed, if,

- (a) the purchaser does not comply with subsections 41 (4) and (5) of the Act, read with section 32 of this Regulation;
- (b) the grounds on which the contract is not enforceable by the operator under subsection 40 (1) of the Act have not caused any disadvantage to the purchaser; or
- (c) it would otherwise be inequitable for the operator to be subject to subsections 41 (2) and (3) of the Act, read with subsections (1) to (5) of this section, in respect of the licensed supplies and services that have been delivered or performed.

(7) If an operator receives written notice of cancellation from a purchaser under subsection 41 (1) of the Act after having provided to the purchaser some or all of the licensed supplies under the contract, the operator shall give the purchaser forthwith a written notice setting out,

- (a) the purchaser's obligation under subsection 41 (5) of the Act and subsection 32 (3) of this Regulation to take reasonable care of the supplies; and
- (b) the effect, set out in subsection (6), that the purchaser's failure to comply with the obligation mentioned in clause (a) will have on the purchaser's right to a refund under subsection 41 (2) of the Act.

Cancellation of unenforceable contract, purchaser's obligations

32. (1) For the purposes of subsection 41 (4) of the Act, if a purchaser cancels a contract under subsection 41 (1) of the Act after licensed supplies have been delivered to the purchaser under the contract,

- (a) subject to clause (b), the purchaser shall permit the supplies to be repossessed by the operator or return the supplies to the operator, unless,
 - (i) the operator fails to pay the costs of the repossession or return,
 - (ii) the supplies contain human remains, whether interred or not, or
 - (iii) the supplies are perishable, consumable, have been distributed or cannot be reused;

- (b) if, under the contract, the purchaser took possession of the supplies from the operator instead of the operator sending the supplies to the purchaser, the purchaser shall return the supplies to the operator at the purchaser's expense and the operator shall not be required to repossess them.

(2) The purchaser shall perform the purchaser's obligations under subsection 41 (4) of the Act, read subject to subsection (1) of this section,

- (a) within 30 days after the day the purchaser gives the operator written notice of cancellation of the contract; and
- (b) during the operator's normal business hours.

(3) For the purposes of subsection 41 (5) of the Act, if a purchaser cancels a contract under subsection 41 (1) of the Act after licensed supplies have been delivered to the purchaser under the contract, the purchaser shall take reasonable care of the supplies, other than supplies mentioned in subclause (1) (a) (ii) or (iii), for the period that begins at the time the purchaser gives the operator written notice of cancellation of the contract and ends at the earlier of,

- (a) the time the supplies are returned to the operator; and
- (b) in the case of licensed supplies other than supplies mentioned in clause (1) (b),
 - (i) the time the supplies are repossessed by the operator, or
 - (ii) the end of the 30th day after the day the purchaser gives the operator written notice of cancellation of the contract, if the purchaser has provided the operator with a reasonable opportunity to repossess the supplies and the supplies have not been repossessed.

Consent to delivery within 30 days

33. (1) For the purposes of subsection 43 (1) of the Act, a purchaser under a contract for the provision of licensed supplies or services may consent to the operator providing, within 30 days after the day the contract is made, any of the supplies or services if,

- (a) they are required for the disposition of human remains within the 30-day period;
- (b) they are required for the co-ordination and provision of rites or ceremonies in relation to human remains within the 30-day period; or
- (c) the contract is a contract to which subsection 14 (1) applies.

(2) If, under section 42 of the Act, a purchaser cancels a contract for the provision of a customized supply before the provision of the supply but after consenting, for the purposes of subsection 43 (1) of the Act, to the operator providing the supply within 30 days after the day the contract is made, the activities of the operator in relation to the supply before the cancellation of the contract are deemed to be services that the operator has provided to the purchaser and the operator may deduct the expenses incurred for them from the refund to the purchaser paid under subsection 43 (4).

(3) When making the refund mentioned in subsection (2), the operator shall give the purchaser orally or, if requested, in writing, an itemized list of all expenses deducted under that subsection, including amounts deducted for work done by the operator and amounts deducted for payments made or debts incurred by the operator to third parties, and the list shall set out, for each expense, its purpose, and its amount.

(4) A purchaser may revoke a consent described in subsection (1) by giving the operator a written notice of the revocation that meets the following requirements:

1. It shall be signed and dated by the purchaser.
2. It shall set out,
 - i. the date of the contract,
 - ii. the unique identification number or code of the contract, and
 - iii. a description of the licensed supplies and services for which the purchaser is revoking consent, unless the purchaser is revoking consent for all of the licensed supplies and services for which the purchaser gave consent.

(5) An operator who is a party to a contract for the provision of interment rights or scattering rights is exempt from section 43 of the Act with respect to the provision of those rights.

Cancellation after cooling-off period

34. (1) If a purchaser cancels a contract under subsection 44 (1) of the Act, the amount that the operator is to pay to the purchaser under clause 44 (4) (a) of the Act, in addition to refunding all money received by the operator under the contract, is the total of the amounts required by subsections 31 (2) to (5), as applicable.

(2) If a purchaser cancels a contract under subsection 44 (1) of the Act, the amount that the operator may deduct under clause 44 (4) (a) of the Act, in calculating the refund to be made to the purchaser, is the lesser of,

- (a) 10 per cent of the sum of the money received by the operator under the contract and the additional amounts that the operator is required to pay to the purchaser as determined under subsection (1); and
- (b) \$350.

(3) If a purchaser cancels a contract under subsection 44 (1) of the Act for the provision of a customized supply, the amount of the refund to which the purchaser is entitled with respect to that supply under subsection 44 (6) of the Act is,

- (a) nil, if the customization of the supply has been completed at the time the contract is cancelled; or
- (b) if the customization of the supply has not been completed at the time the contract is cancelled, the amount of the refund as determined under subsection 44 (4) of the Act less the amount of the expenses incurred by the operator in relation to the supply before the cancellation of the contract.

(4) When making the refund mentioned in clause (3) (b), the operator shall give the purchaser orally or, if requested, in writing, an itemized list of all expenses deducted under that clause, including amounts deducted for work done by the operator and amounts deducted for payments made or debts incurred by the operator to third parties, and the list shall set out, for each expense, its purpose, and its amount.

Deemed cancellation under section 44 of the Act

35. (1) A purchaser under a contract for the provision of licensed supplies or services, other than interment rights or scattering rights, shall be deemed to have cancelled the contract under section 44 of the Act if,

- (a) the operator has reasonable grounds to believe that the recipient under the contract is or, if he or she were alive, would be at least 120 years old;
- (b) none, or only part, of the licensed supplies and services under the contract have been provided, and no request has been made to the operator to provide the licensed supplies or services that have not yet been provided; and
- (c) the operator is unable to locate the recipient or the purchaser after making reasonable efforts to do so.

(2) Subsection (1) does not apply in the circumstances in which section 30 applies.

Cancellation where cemetery prohibits resale

36. (1) If an interment rights holder or a scattering rights holder cancels a contract under subsection 47 (5) of the Act, the amount that the operator may deduct under subsection 47 (6) of the Act in calculating the payment to be made to the rights holder under that subsection is the amount of the operator's contribution to the cemetery's care and maintenance fund under section 77 of Ontario Regulation (Operation of Businesses) made under the Act in connection with the sale of such rights under the contract being cancelled.

(2) For the purposes of clause 47 (7) (b) of the Act, if the price for the interment rights or scattering rights is not set out on the operator's price list, their market value mentioned in paragraph 2 of subsection 47 (6) of the Act shall be deemed to be equal to the market value of interment rights or scattering rights, as the case may be, with respect to a lot that,

- (a) is equivalent to or better than the lot in respect of which the rights holder purchased the rights under the contract; and
- (b) is located in the cemetery to which the cancelled contract relates or, if there is no equivalent or better lot in the cemetery to which the cancelled contract relates, is located in another cemetery that,
 - (i) is in the same geographic location as the cemetery to which the cancelled contract relates, and
 - (ii) is similar to the cemetery to which the cancelled contract relates in terms of its size, its religious or ethnic affiliation and whether it is for profit or not for profit.

Reimbursement order after resale of abandoned rights

37. For the purposes of subclause 50 (2) (a) (iii) of the Act, the prescribed amount is the purchase price charged by the operator on the resale of the interment rights or scattering rights, less the amount of the operator's contribution to the cemetery's care and maintenance fund under section 77 of Ontario Regulation (Operation of Businesses) made under the Act in connection with the resale of the interment rights or scattering rights.

Transfer of rights to cancel and receive refund

38. (1) A purchaser under a contract for the provision of a licensed supply or service may, in the contract, transfer the purchaser's rights to cancel the contract and receive a refund under sections 41, 42, 43 and 44 of the Act to,

- (a) one person designated in the contract; or
- (b) more than one person designated in the contract, as long as not more than one person is designated for any set of circumstances or any point in time.

(2) The circumstances mentioned in subsection (1) may include the following:

1. While both the recipient and the purchaser are alive.
2. After both the recipient and the purchaser are deceased.
3. Before the death of the recipient but after the death of the purchaser.
4. Before the death of the purchaser but after the death of the recipient.

PART IV COMMENCEMENT

Commencement

39. This Regulation comes into force on the later of,

- (a) **the day that subsections 76 (2) to (24) of Schedule D to the *Ministry of Government Services Consumer Protection and Service Modernization Act, 2006* come into force; and**
- (b) **the day that this Regulation is filed.**