

Oregon Mortuary and Cemetery Board
State Office Building, Mail Box # 19
800 NE Oregon Street, Suite 430
Portland, OR 97232-2195
www.oregon.gov/MortCem
(503) 731-4040
(503) 31-4494 fax

New Funeral Establishment Licensing Overview & Guideline

This overview is intended to be a guideline to assist persons applying for a funeral establishment license. There may be exceptions to the general process.

Requesting and purchasing a funeral establishment application for licensure.

All forms and applications are available upon request from the Board office, or on the Board website: www.oregon.gov/MortCem

Submit the completed application for a funeral establishment license to the Board office along with the \$150.00 facility license fee, and an additional \$50 for each principal. Please call Ginger Simmons, Board Licensing Specialist, (503) 731-4040 ext. 26, if you have questions about the number of principals associated with your proposed facility.

Principals

OAR 830-011-0000 Definitions

(32) "Principal". Principal means those persons who have controlling authority over the licensed facility, including but not limited to:

- (a) Managers or other persons who have decision making authority and whose primary duties include control over the operation of the licensed facility;
- (b) Officers or directors who have some degree of responsibility for the operation of the licensed facility;
- (c) Stock holders or corporations who own or control ten percent or more of the licensed facility by owning or controlling ten percent or more of the voting stock; and
- (d) Partners.

830-040-0000 (3) When a person, firm, partnership or corporation applies to the Board for a funeral establishment license, immediate disposition company license, or certificate of authority to operate a cemetery or crematorium, the name shall contain the identification of the activity, business or profession of funeral, immediate disposition, cemetery or crematory service as set forth in ORS Chapter 692 and the rules adopted thereto. This identified name shall be the

registered name with the Board and shall also be utilized as the advertised name of the funeral, immediate disposition company, cemetery or crematory establishment.

(4) Applications for all licensed facilities shall specify the names of all principals. If the principal is a corporation, the application shall include the names of all principals of that corporation.

Business Name

Please provide a copy of your registration with the corporation division; and/or your assumed business name.

Each licensed facility shall be registered with the State Mortuary and Cemetery Board by its true corporate, firm or individual name. In addition, one assumed business name, as registered with the Corporation Commission, may be used by such licensed facility, and shall be promptly reported to the Board. OAR 830-040-0030.

No licensed facility shall be advertised or operated without the appropriate license or certification or be held out under any name which could be termed misleading. When a person, firm, partnership or corporation applies to the Board for a funeral establishment license, the name shall contain the identification of the activity, business or profession of funeral service as set forth in ORS Chapter 692 and the rules adopted thereto. This identified name shall be the registered name with the Board and shall also be utilized as the advertised name of the funeral establishment. OAR 830-040-0000 (2) & (3).

In a change of ownership where an assumed business name or names held by the former owner are going to be maintained by the new owner, please notify the Board when the former owner has surrendered the rights to the associated name or names and provide a copy of the registration to the Board office.

Manager of Facility: Funeral home manager must be a licensed FSP.

A funeral establishment must be licensed by the State Mortuary and Cemetery Board under ORS 692.146 and must be operated by a licensed funeral service practitioner. ORS 692.025(3) (a) and (b).

It shall be the responsibility of the funeral establishment licensee to assign a manager for each funeral establishment. In the case of funeral establishments, the manager shall be an Oregon licensed funeral service practitioner. All licensed funeral establishments shall be operated / managed by an Oregon Licensee. OAR 830-030-0000(8).

OAR 830-030-0000(9) provides that the Board may authorize a funeral service practitioner to manage more than one funeral establishment or immediate disposition company when the Board, in its sole discretion, determines that the management of more than one funeral establishment or immediate disposition company by a single funeral service practitioner is in the public interest. A request by a funeral service practitioner to manage more than one funeral establishment or immediate disposition company shall be in writing and shall describe the basis for the request.

Board approval shall be in writing and shall identify each funeral establishment or immediate disposition company the funeral service practitioner is authorized to manage.

Facility Preneed Sales Registration Requirements

Department of Consumer & Business Services (DCBS): (503) 947-7499 – Salem

Once a funeral establishment is licensed by the Board, if it intends to sell preneed goods and services which are not delivered at the time of purchase, [thus requiring the money to be trusted in a financial institution], the facility must register as a certified provider with the Department of Consumer and Business Services as required by ORS 97.933 and comply with the reporting requirements outlined in ORS 97.933(3) (a).

ORS 97.933 provides that a provider, as defined in ORS 97.933, may not engage in prearrangement sales or preconstruction sales unless the provider is certified by the Director of the Department of Consumer and Business Services.

Clarification of Preneed Trust Sales:

Whether made before death or not, the sale of existing graves, crypts or niches does not constitute preneed sales and you need not be certified by the Department of Consumer and Business Services (DCBS) to make such sales. Preneed sales involves goods that are not delivered or kept and marked in storage, whereby the money should be placed in trust, and includes such items as opening / closing and undelivered vaults, liners and markers.

If you sell any goods or services that are not considered “delivered” to the purchaser at the time of sale, you must be registered with DCBS as a certified provider. If you have questions as to whether or not you must be registered as a preneed salesperson, please contact the Board's office.

Sales funded by an insurance policy or an annuity contract are also excluded from the definition of preneed sales.

Board Registration Is Required For Individuals Conducting Preneed Sales

All persons who sell preneed goods and services which involve money being trusted in financial institutions must apply for a preneed sales certificate of registration from the Board. To apply, a person first submits a completed Preneed Salesperson Registration application with the \$150 fee. A background investigation is performed on all Applicants. Board staff attempts to issue preneed sales certificates of registration as expeditiously as possible. If a person does not have criminal conviction history which creates a risk for licensure, generally the preneed sales certificate of registration is issued within a couple of days to a week.

ORS 97.931 provides that a salesperson may not engage in prearrangement sales unless the salesperson is registered with the State Mortuary and Cemetery Board or holds a current funeral service practitioner license, embalmer license, funeral service practitioner apprentice registration or embalmer apprentice registration.

OAR 830-011-0070(1) provides that an individual may not engage in prearrangement or preconstruction preneed sales under ORS 97.923 to 97.949 unless the individual is registered as a "preneed salesperson" with the State Mortuary and Cemetery Board. Individuals who are currently licensed as a funeral service practitioner or embalmer or certificated as an apprentice funeral service practitioner or apprentice embalmer need not register separately to sell preneed.

OAR 830-011-0070(4) provides that an applicant may not make preneed sales or engage in preneed sales activity, including but not limited to marketing and participating in sales presentations, until a certificate of registration has been issued to the applicant by the Board.

Preneed Contracts & Preneed Sales Programs:

Preneed contracts must contain the following information:

OAR 830-040-0005 requires the following contract language: This Facility is Licensed by the Oregon Mortuary and Cemetery Board

OAR 830-030-0100(18) provides that "Licensees shall, in their preneed sales programs, include a reasonable period of not less than five days during which purchasers are extended the privilege of canceling their purchase contracts."

During its regular meeting on July 27, 2004, the Board formally interpreted OAR 830-030-0100(18) to mean that licensees are required to provide written disclosure of the 5-day cancellation privilege. The Board recommends printing the written disclosure on the preneed sales contract. However, the Board concluded that providing written disclosure on the General Price List or on a separate piece of paper would also suffice. Although the rule is silent on the matter, the Board took the position that written disclosure of the 5-day cancellation privilege is not required on irrevocable contracts.

The Board did not decide upon the specific language to be included in the required written disclosure. For the convenience of licensees, staff recommends the following language:

The purchaser may cancel this prearrangement sales contract within five (5) days and receive a full money-back refund.

Licensees may use other language so long as the true intent of the 5-day cancellation privilege is conveyed to the purchaser in writing.

NOTE: OAR 830-030-0100(18) does not conflict with the 100 per cent refund provisions in ORS 97.943(8). Under ORS 97.943(8), the purchaser may cancel a prearrangement contract at any time prior to the death of the beneficiary, but the certified provider is entitled to retain any amount paid for merchandise already delivered. The intent of OAR 830-030-0100(18) is to establish a cooling off period. Under OAR 830-030-0100(18), for a brief 5-day period, the consumer is entitled to cancel for a full, money-back refund.

Please provide a copy of the Order of Certification for preneed sales from the Department of Consumer & Business Services or notify the Board office if you intend to register.

If this is a change of ownership where outstanding preneed contracts have been funded through trusts, ORS 97.941(10) (a) provides that if the original trustee is licensed under ORS chapter 692 and voluntarily surrenders the license to the Board, the original provider shall transfer responsibility as provider to a successor provider who holds a certificate of registration or is registered under ORS 97.933.

Other Legal Authorities Pertaining To Money Trusted For Sales Of Preneed Goods And Services:

The laws pertaining to preneed goods and services trusting requirements were formerly located and outlined in ORS 128.400 - 128.440. The statutes specifically regulating deposits of preneed trust money from endowment care cemeteries were formerly outlined in ORS 128.415.

During the 2001 session, the legislature passed major reforms to Oregon's preneed trust laws. The 2001 edition of ORS 97.923 - 97.949 now contains the laws formerly in ORS Chapter 128.

Completed Funeral Establishment Application

Once a funeral establishment application is received in the Board office, it is reviewed for completion by licensing and compliance staff. Additional information may be requested for incomplete applications and background questionnaires.

Background Investigation

Background investigations are conducted on all principals. ORS 692.025(7) & OAR 830-01-0050. This could take up to six weeks depending on whether additional information is requested.

Paperwork to be submitted for review for compliance prior to the facility inspection:

Paperwork can be submitted by mail or fax (503) 731-4494 to Lynne Nelson, Acting Compliance Manager. An investigator / inspector will be assigned to conduct the review of paperwork. If you have questions, please call (503) 731-4040 ext. 24.

Required documents and paperwork for review:

- a. Provide a copy of the at need general price lists and any other funeral goods and service price lists used, such as a separate preneed price list.
- b. Provide a copy of any additional price lists to be used, such as casket price lists, outer burial container price lists, urn price lists.
- c. Provide a copy of the Statement of Goods and Services Selected to be used for at need and preneed arrangements.

- d. Provide a copy of the preneed contract to be used.
- e. Provide a copy of the cremation authorization to be used.
- f. Provide a copy of the receipt for cremains to be used.
- g. Provide a copy of the embalming authorization form.
- h. Provide a copy of initial advertising.

830-040-0050 (1) Each licensed facility advertising through any media (including but not limited to telephone books, newspapers, direct mail, bill boards, etc.) shall include either the licensed facility's registered name, or its assumed business name and physical address as it appears on the Board's records. All printed materials and letterhead shall include the physical location of the facility.

(2) No person, firm or corporation shall advertise, promote, or market at need or preneed funeral arrangements without first having received a license from the Board.

(3) No cemetery or cremation facility, or person, firm or corporation shall advertise, promote, or market at need or preneed cemetery or cremation plans without first having received either a certificate of authority to operate that cemetery or crematorium.

(4) No person, firm or corporation shall advertise, promote, or market at need or preneed immediate disposition arrangements without having first registered with the Board.

(5) Any advertisement which intentionally conceals or misstates a material fact shall be considered misrepresentation.

Mortuary Inspection Checklist

The mortuary inspection checklist provides a guideline for records, the preparation room or a holding room, plus a typical checklist for a basic review of what the Board reviews during a funeral establishment compliance inspection. It is used by the investigator / inspector throughout the inspection process associated with licensing. This useful tool is available upon request.

Final Inspection

Once the application is processed, background investigations have been completed, paperwork has been reviewed and corrected if necessary and any other issues resolved, a final inspection will be scheduled with an investigator / inspector.

The facility inspection scheduling is based on the availability of an investigator / inspector and will generally be initiated through the compliance manager. New facilities and change of ownerships do get Board staff priority, but due to time constraints, coordination of scheduling may take up to four weeks. It is helpful to inform the compliance manager or the assigned

investigator / inspector at the onset of the initial application process or by the time the paperwork review process is underway, of the targeted goal date for opening a new facility or the anticipated date of closing for a change of ownership. This way, a tentative date for an inspection can be planned in advance. Maintaining strong communication with the investigator / inspector or the compliance manager, during the entire process is beneficial to all parties.

Licensing

By the time of the final inspection, a facility is generally ready for licensing even if there are minor corrections necessary for compliance noted during the inspection, if the applicant is a good risk for licensure. A yellow inspection receipt will be issued at the conclusion of the inspection outlining any compliance issues that must be corrected, with a date negotiated for completion and written confirmation that compliance has been achieved.

Unless there are extenuating circumstances or the licensing matter must be reviewed and considered by the Board prior to staff giving temporary authorization to begin business (for example, the Board needs to consider whether the Applicant is a good risk for licensure), the yellow inspection receipt will serve as the temporary license until the new license is issued and received. The Board will ratify the licensure at its next regularly scheduled bi-monthly meeting. The date the Board ratified the licensure will be recorded as the effective date of licensure on the new license.

If this licensing procedure is a change of ownership without extenuating circumstances or requiring review by the Board to determine whether the Applicant is a good risk for licensure, an inspection receipt will be issued at the time of the inspection authorizing the change of ownership pending ratification by the Board at its next regularly scheduled bi-monthly meeting. The former license(s) must be surrendered since licenses are not transferable pursuant to OAR 830-040-0040(3). The licenses may be surrendered at the time of the inspection if through the application, background investigation and inspection process, it has been determined that there will not be any problems with the prospective new owners ability to obtain Board licensure. Licenses may also be mailed to the Board office. Once written confirmation of closing has been received in the Board office (fax is acceptable) and the old licenses surrendered, the new licenses(s) will be issued with the closing date recorded as the effective date of licensure on the license(s).

Establishment licenses shall be posted in a conspicuous location for public viewing pursuant to OAR 830-040-0000(12).

In cases where the Board must review the licensing matter to assess whether an Applicant is a good risk for licensure, the Board may disapprove a new facility application or proposed change of ownership for any of the grounds upon which a license may be denied. Board approval may also be denied when conditions exist in relation to any principal which constitute grounds for refusing to issue or renew a license or certificate or for suspension of a license OAR 830-011-0050(2).

It is the responsibility of staff to provide the Board with sufficient information to allow them to make an informed judgement as to whether or not an applicant is a good risk for licensure. The Board and / or Board staff may require an Applicant to furnish any information and documents necessary to conduct a thorough background investigation.

Board staff is in a completely neutral position when requesting additional information from an Applicant, as well as when requests are made for corrections to paperwork and facilities pertaining to compliance. Expedient cooperation by an Applicant is appreciated in responding to requests for additional information and meeting requested deadlines.

Applicants should be aware that OAR 830-050-0050(1) provides that failure to comply with a Board request may be considered grounds for refusal to approve an application; and OAR 830-030-0090(2)(d)(A) and (B) provides that failing to supply the Board with requested documents within the Board's jurisdiction and failing to answer truthfully and completely matters within the Board's jurisdiction is grounds for Board action, which may include denial of applications for licensure.

Contact Information

If you have compliance, licensing or other questions and / or also need additional information, please contact the Board office:

LICENSING:

Ginger Simmons: Licensing Specialist (503) 731-4040 ext. 26
ginger.simmons@state.or.us

Carla Knapp: Office Manager (503) 731-4040 ext. 21
carla.knapp@state.or.us

COMPLIANCE:

Lynne Nelson: Acting Compliance Manager (503) 731-4040 ext. 24
lynne.nelson@state.or.us

Lynne Nelson: Investigator (503) 731-4040 ext. 23
lynne.nelson@state.or.us

Bill Bennington: Investigator (503) 731-4040 ext. 30
bill.bennington@state.or.us

EXECUTIVE DIRECTOR OF THE BOARD:

David Koach: Executive Director (503) 731-4040 ext. 22
david.koach@state.or.us