

**191—105.6 (523A) Grounds for discipline.** The commissioner may impose sanctions as set forth in Chapter 105 if the commissioner finds that a licensee or that an owner, partner, member, director, shareholder or manager of a licensed business entity has violated or failed to comply with Iowa Code chapter 523A, or any associated rules or implementing orders, including but not limited to the following acts or practices:

**105.6(1) *Fraudulent or deceptive applications.*** Engaging in fraudulent or deceptive acts in procuring a license, including but not limited to:

- a. False representations of a material fact, whether by conduct or by false or misleading statements;
- b. Concealing or omitting anything that should have been disclosed or included with the application;
- c. Filing a false identification;
- d. Filing an untrue certification or affidavit; or
- e. Falsifying documents.

**105.6(2) *Conviction of a criminal offense.*** Conviction of a criminal offense, in any jurisdiction, involving dishonesty or a false statement, including but not limited to fraud, theft, misappropriation of funds, falsification of documents, deceptive acts or practices, or other related offenses. “Conviction” shall include a plea of guilty or a finding of guilt, and shall include a deferred judgment.

**105.6(3) *Fraudulent or deceptive practices.*** Engaging in any act or practice that violates Iowa Code section 523A.701, 523A.702 or 523A.703, whether or not actual harm or injury occurs, including but not limited to:

- a. Making untrue or improbable statements in advertisements;
- b. Falsifying business records; or
- c. Misappropriating funds.

**105.6(4) *Insolvency or financial condition.*** Being or becoming insolvent or of unsound financial condition, the determination of which shall be based on but not limited to the following factors:

- a. The licensee’s or license applicant’s net worth;
- b. Whether a financial institution has closed or otherwise taken adverse action against an account held by or on behalf of the licensee or license applicant;
- c. The licensee or license applicant has exhibited a pattern of writing bad checks or otherwise overdrawing a business or trust account as a result of insufficient funds;
- d. Untimely payment by the licensee or license applicant of business obligations in a manner that threatens the operation of the business;
- e. Untimely placement by the licensee of consumer funds into trust;
- f. Failure of the licensee or license applicant to pay sales, unemployment or other tax owed in the course of business; or
- g. Any other act, practice or omission that provides a reasonable basis to question the ability of the licensee or license applicant to comply with the requirements of Iowa Code chapter 523A and related regulations.

**105.6(5) *Unethical, harmful or detrimental conduct.*** Engaging in any act or practice which may be harmful or detrimental to the public, whether or not actual harm or injury occurs, while engaged in activities regulated by Iowa Code chapter 523A, or materially related to such activity, including but not limited to:

- a. Encouraging cancellation of a purchase agreement if not in the best interests of the beneficiary;
- b. Failure to leave a residence when requested to do so;
- c. Intimidation or physical abuse, including improper sexual contact or conduct; or
- d. Any other act or practice that takes unfair or unreasonable advantage of the vulnerability of a client or prospective client based on age, poor health, infirmity, impaired understanding, restricted mobility, or disability.

**105.6(6) *Failure to maintain records.*** Failure to maintain records as required by Iowa Code chapter 523A or any associated rules or orders.

**105.6(7)** *Failure to cooperate with an examination or investigation.* Failure to submit to an examination, failure to comply with a reasonable written request of an examiner, or failure to cooperate with an investigation conducted by the commissioner as required by Iowa Code chapter 523A or any associated rules or orders.

**105.6(8)** *Late filings or the failure to submit a report.* Filing reports after the filing deadline or failing to file a report as required by Iowa Code chapter 523A or any associated rules or orders.

**105.6(9)** *Inability to perform.* A preneed seller's failing to be able to provide the cemetery merchandise, funeral merchandise, funeral services, or combination thereof which the licensee purports to sell, including but not limited to failing to employ or have a contractual arrangement with at least one person who is licensed to perform mortuary science services, as described in Iowa Code chapter 156.

**105.6(10)** *Sale of business without notice.* Selling all or part of a licensee's business without proper notice to the commissioner, pursuant to rule 191—103.3(523A).

**105.6(11)** *Improper sale or transfer of purchase agreements.* Selling or transferring purchase agreements as part of the sale of a business or the assets of a business, if an audit expressing the auditor's opinion of the adequacy of funding related to the purchase agreements to be sold or transferred has not been performed by a certified public accountant and filed with the commissioner, as required by Iowa Code section 523A.207.

**105.6(12)** *Sales prohibited by order.* The applicant or licensee has been named in an order issued pursuant to Iowa Code section 523A.807(3).

**105.6(13)** *Failure to complete continuing education.* Failure of a licensee to timely complete the continuing education required for license renewal.

**105.6(14)** *Law violations.* Violating any state or federal law applicable to the conduct of the applicant's or licensee's business including, but not limited to, the following:

- a. The provisions of Iowa Code chapter 156 pertaining to the licensure of funeral directors in the state of Iowa;
- b. Regulations promulgated by the Federal Trade Commission relating to funeral services, or funeral or cemetery merchandise, or funeral or cremation establishments;
- c. Applicable tax or public health laws, ordinances or regulations; or
- d. Laws, rules, ordinances, or regulations occurring outside of Iowa if the commissioner determines that such violation may adversely implicate the licensee's or applicant's compliance with Iowa laws, rules, orders, ordinances, or regulations.

**105.6(15)** *Unsafe practice.* Having any impairment, drug or alcohol addiction, or other act, conduct or condition which adversely impacts the licensee's ability to perform in a safe, competent manner.

**105.6(16)** *Failure to maintain fidelity bond or similar insurance.* A preneed seller's failure to maintain a fidelity bond or similar insurance as required by rule 191—105.5(523A) and Iowa Code section 523A.201(5).

**105.6(17)** *Responsibility for sales activities of others.* A preneed seller's consent or acquiescence to violation of 191—Chapters 100 through 105 or Iowa Code chapter 523A by any person acting on the preneed seller's behalf.