

### **523A.201 Establishment of trust funds.**

Unless proceeding under section 523A.401, 523A.402, or 523A.403, a seller must establish a trust fund prior to advertising, selling, promoting, or offering cemetery merchandise, funeral merchandise, funeral services, or a combination thereof in this state as follows:

1. The trust fund must be established at a financial institution.
2. If a seller agrees to furnish cemetery merchandise, funeral merchandise, funeral services, or a combination thereof and performance or delivery may be more than one hundred twenty days following the initial payment on the account, a minimum of eighty percent of all payments made under the purchase agreement shall be placed and remain in trust until the person for whose benefit the funds were paid dies.
3. If a purchase agreement for cemetery merchandise, funeral merchandise, funeral services, or a combination thereof provides that payments are to be made in installments, the seller shall deposit eighty percent of each payment in the trust fund until the full amount required to be placed in trust has been deposited. If the purchase agreement is financed with or sold to a financial institution, the purchase agreement shall be considered paid in full and the trust requirements shall be satisfied within fifteen days after the close of the month in which the seller receives funds from the financial institution.
4. A seller shall not invade the trust principal for any purpose.
5. A seller who lacks insurance coverage which protects against the loss of purchaser payments not placed in trust within the time period required by this section and section 523A.202 shall not commingle these payments with any other seller funds. A seller who lacks insurance coverage may use one or more of the following methods to dispose of these payments:
  - a. Deposit purchaser funds into an escrow account until the required amount has been deposited into a trust account at a financial institution.
  - b. Make a prior delivery or warehouse cemetery or funeral merchandise or a combination thereof as provided by this chapter.
  - c. Make a prior filing of a surety bond in lieu of establishing a trust fund as required by this section.
  - d. Make a simultaneous, same-day deposit of the purchaser's payments into the seller's bank account and the required amount into the seller's trust fund.
6. Payments otherwise subject to this section are not exempt merely because they are held in certificates of deposit.
7. Commingling of trust funds with other funds of the seller is prohibited.
8. Interest or income earned on amounts deposited in trust shall remain in trust under the same terms and conditions as payments made under the purchase agreement, except that the seller may withdraw so much of the interest or income as represents the difference between the amount needed to adjust the trust funds for inflation as set by the commissioner based on the consumer price index and the interest or income earned during the preceding year not to exceed fifty percent of the total interest or income on a calendar-year basis. The early withdrawal of interest or income under this provision does not affect the purchaser's right to a credit of such interest or income in the event of a nonguaranteed price agreement, cancellation, or nonperformance by the seller.
9. The commissioner may require amendments to a trust agreement not in accord with the provisions of this

chapter.

10. If a seller voluntarily or involuntarily ceases doing business and the seller's obligation to provide merchandise or services has not been assumed by another establishment holding a current establishment permit, all trust funds, including accrued interest or income, shall be repaid to the purchaser within one hundred twenty days following the seller's cessation of business or, in the event of circumstances where a payment is not possible within one hundred twenty days, as soon as is reasonably practicable.

2001 Acts, ch 118, §19