

### **367.958 Sale of mausoleum or underground crypts or columbaria.**

- (1) Every person before engaging in a sale, contract for sale, reservation for sale or agreement for sale of a mausoleum crypt within a mausoleum, underground crypt within a crypt section, or columbarium niche within a mausoleum prior to the completion of the construction thereof, shall give notice in writing to the Attorney General of the commencement of such sale at least thirty (30) days prior thereto and register with the Attorney General. Such registration shall be on forms provided by the Attorney General.
- (2) Every person engaged in the sale of a mausoleum crypt, underground crypt or columbarium niche shall commence construction thereof within twenty-four (24) months of the date of such sale and shall complete such construction within sixty (60) months of the date of such sale. A delay caused by strike, national emergency, shortage of materials, civil disorder, natural disaster or any like occurrence beyond the control of such person shall extend the time of such commencement and completion by the length of such delay. This subsection shall not apply to the sale of mausoleum crypts, underground crypts or columbarium niches if there has been any sale in the same project prior to July 13, 1984. Prior projects shall have commenced construction thereof within thirty-six (36) months of the date of such sale and shall complete construction within seventy-two (72) months of the date of such sale.
- (3) Every person who plans to offer for sale space in a section of a mausoleum or bank of underground crypts prior to its construction shall establish a preconstruction trust account. The trust account shall be administered and operated in the same manner as the merchandise trust account provided for in this chapter and shall be exclusive of the merchandise trust account or such other trust accounts or funds that may be required by law.
- (4) Every person shall place thirty-six percent (36%), not including interest or finance charges, of all payments of money made to any person pursuant to any agreement, contract or any series or combination of agreements or contracts which are for the purchase of sections in a mausoleum, columbarium, or any kind of underground crypt which at the time of the payment of money have not been completely and totally constructed, in a trust fund account in a financial institution within thirty (30) days after each calendar quarter of operations. Excepted therefrom, however, are persons who have constructed in the past their own mausoleum using primarily equipment owned by the self-constructing person and their own personnel with a minimum of subcontracting, and in that event there shall be deposited a minimum of twenty percent (20%) of all payments of money, subject, however, to the actual cost. If, from project to project, their actual cost is in excess of twenty percent (20%), the full cost percentage shall be deposited from project to project, not to exceed thirty-six percent (36%). At the time of notification to the Attorney General's office the self-constructing mausoleum person shall also notify the Attorney General that he intends to self-construct and the percentage of contribution of trust that is required.
- (5) All trust funds mentioned in this section shall be deposited in the name of the person depositing said funds, with the financial institution as trustee, and shall be

held together with the interest, dividends, or accretions thereon, in trust, subject to the provisions of KRS 367.932 to 367.974 and 367.991. The person at the time of making deposit or investment shall furnish to the financial institution the name of each payor, and the amount of payment on each account for which the deposit or investment is being made.

- (6) Deposits to such funds and the amounts deposited may be commingled, but the accounting records shall establish a separate account for each prepaid contract and shall show amounts deposited and the income and loss occurring thereon with respect to each contract.
- (7) All payments made to the preconstruction trust fund account shall remain in the trust fund with the financial institution until the financial institution receives a certified statement from the depositor stating that the particular project for which the preconstruction trust fund has been established is totally completed. During the construction stage, trust funds may be withdrawn by presenting the trustee with appropriate evidence of expenditure for construction cost. The trustee shall thereupon disburse moneys from the trust fund to pay for the expenses of construction presented for payment.
- (8) A trustee may rely upon all certifications and affidavits made pursuant to or required by the provisions of KRS 367.932 to 367.974 and 367.991, and shall not be liable to any person for such reliance.
- (9) If a mausoleum section or bank of underground crypts is not completed within the time limits set out in KRS 367.932 to 367.974 and 367.991, the financial institution acting as trustee, if any, may contract for and cause said project to be completed and paid therefor from the trust account funds deposited to the project's account, paying any balance, less cost and expenses, to the depositor. In the event there is no corporate trustee, or the trustee chooses not to serve in the capacity to complete construction, the Attorney General shall appoint a committee to serve as trustees to trust account funds deposited to the project's account, paying any balance, less cost and expenses, to the cemetery company.
- (10) If it is determined by the trustee after the expiration of the time of construction set out above that there is not enough money in the trust fund account to complete the project, the trustee shall make a refund of all moneys held to all purchasers, or his heirs or assigns, in the amount of the deposit to the credit of their particular contract and all income those funds have earned. The purchasers shall be entitled to receive any remainder of the purchase price paid from the depositor. However, nothing herein contained shall relieve any person from any liability for nonperformance of the contract terms.
- (11) If temporary entombment or inurnment is not used, upon written notification to the seller, the personal representative or any purchaser of such space who dies before completion of construction shall be entitled to a refund of all moneys paid into the preconstruction trust fund for such space, including any income earned thereon, and from the seller, the remainder of the purchase price paid.
- (12) In lieu of the trust fund deposits required herein, the person may post with the Attorney General, Division of Consumer Protection, a good and sufficient bond by a

surety company licensed to do business in Kentucky and in an amount sufficient to cover all payments made by or on account of purchasers who have not received the purchased property and services. This bond shall be held for the benefit of any purchaser, or his or her heir or assign or duly authorized representative, who suffers a loss of money paid for a preconstructed mausoleum crypt or niche or underground crypt after July 13, 1984, due to the insolvency of the registrant, or failure to construct within the time limits set out herein. If a bond is posted, the Attorney General's office shall receive sixty (60) days' written notice in the event of cancellation. On or before the cancellation date, the person shall comply with the trust fund requirements herein or post another good and sufficient bond.

- (13) Any person selling preconstruction mausoleum, columbarium or underground crypt contracts shall pay to the Attorney General five dollars (\$5) for each sale of said contract and all of which fees shall be remitted by the person collecting them to the Attorney General at least once each month, and such funds shall be used by the Attorney General in administering this chapter.

**Effective:** July 13, 1984

**History:** Repealed, reenacted, and amended as KRS 367.958, 1984 Ky. Acts ch. 116, sec. 16, effective July 13, 1984. -- Created 1976 Ky. Acts ch. 294, sec. 9.

**Formerly codified as** KRS 307.170.