

## **Chapter 11. Proceedings other than Rulemaking; General Procedural Rules**

### **§1101. Proceedings by the Board [Formerly §901]**

A. Proceedings initiated by the board, except for the promulgation, amendment or repeal of a rule, shall be commenced by the issuance of an order to show cause directed to the respondent. Such order shall state the acts, conduct, or the failure or omission to act alleged to be contrary to or in violation of any provision of law or of any of the lawful rules, regulations, orders, decisions or opinions issued, rendered and/or promulgated by the board.

AUTHORITY NOTE: Promulgated in accordance with R.S. 8:66 and R.S. 8:67.

HISTORICAL NOTE: Promulgated by the Department of Commerce, Cemetery Board, LR 1:522 (December 1975), amended by the Office of the Governor, Cemetery Board, LR 39:2743 (October 2013).

### **§1103. Proceedings by Persons other than the Board [Formerly §903]**

A. Any person desiring to initiate adjudication proceedings, except for the promulgation, amendment or repeal of a rule, and who is entitled or required by law to do so shall prepare and file with the board a petition in the form and content as set forth in Subsection 503.B of these rules and including, whenever applicable and possible, particular reference to the statute, rule, regulation, order, decision or opinion involved.

B. Any person desiring to initiate adjudication proceedings, except for the promulgation, amendment or repeal of a rule, but who is not entitled or required by law to do so shall prepare and file with the board a petition which shall meet the requirements of Subsection 1103.A. If the board shall determine that the petition is filed in good faith, that the petitioner would be entitled to relief if the allegations of his petition are established and that such allegations otherwise justify the initiation of adjudication proceedings, the board shall initiate adjudication proceedings in accordance with these rules.

AUTHORITY NOTE: Promulgated in accordance with R.S. 8:67.

HISTORICAL NOTE: Promulgated by the Department of Commerce, Cemetery Board, LR 1:522 (December 1975), amended by the Office of the Governor, Cemetery Board, LR 39:2743 (October 2013).

### **§1105. Notice [Formerly §905]**

A. Upon the issuance of an order to show cause by the board, or upon the initiation of adjudication proceedings pursuant to a petition filed by any person in accordance with these rules, the board shall issue a notice in conformity with the provisions of R.S. 49:955.

B. The hearing set by such notice shall be fixed not less than 20 days from the date of such notice.

AUTHORITY NOTE: Promulgated in accordance with R.S. 8:67 and R.S. 8:68.

HISTORICAL NOTE: Promulgated by the Department of Commerce, Cemetery Board, LR 1:523 (December 1975), amended by the Office of the Governor, Cemetery Board, LR 39:2744 (October 2013).

### **§1107. Service of Notice; Pleadings, and other Documents [Formerly §907]**

A. Service of such notice, and of all pleadings, decisions, orders, and other papers and documents shall be made, and shall be deemed valid if made, by delivering one copy to each party or his attorney of record in person or depositing it in the United States mail, first class, postage prepaid, certified or registered mail, return receipt requested, directed to the party or his attorney of record at his post office address. Service by mail shall be deemed complete at the date of mailing. Notwithstanding the foregoing, the parties may mutually agree to another method of service acceptable under the Louisiana *Code of Civil Procedure*.

B. Unless otherwise provided, when any party has appeared through an attorney, service upon such attorney shall be deemed valid service upon the party until written notice of dismissal of such attorney is received by the board and served on all parties of record to the proceeding.

AUTHORITY NOTE: Promulgated in accordance with R.S. 8:67.

HISTORICAL NOTE: Promulgated by the Department of Commerce, Cemetery Board, LR 1:523 (December 1975), amended by the Office of the Governor, Cemetery Board, LR 39:2744 (October 2013).

**§1109. Answer or Appearance**  
**[Formerly §909]**

A. A respondent may file his answer or other appearance personally or through an attorney not later than five days before the date fixed for the hearing.

B. The filing of an answer or other appearance by an attorney constitutes an appearance by the party for whom the pleading is filed, and also constitutes an appearance of the attorney on behalf of such party. An attorney who has appeared on behalf of a party may withdraw from any proceeding upon good cause shown to the board and upon written notice to the board.

AUTHORITY NOTE: Promulgated in accordance with R.S. 8:67.

HISTORICAL NOTE: Promulgated by the Department of Commerce, Cemetery Board, LR 1:523 (December 1975), amended by the Office of the Governor, Cemetery Board, LR 39:2744 (October 2013).

**§1111. Appearances**  
**[Formerly §313]**

A. No person, except an individual appearing on his own behalf or as a representative or witness on behalf of a party, shall be permitted to participate in any proceeding before the board unless such person is represented by an attorney of this state in good standing.

B. Any attorney or counselor from any other jurisdiction, of good standing there, may, at the discretion of the board be admitted, pro hac vice, to associate with an attorney of this state in a proceeding and to participate therein in the same manner as an attorney of this state, provided, however, that all pleadings, briefs, and other papers filed with the board in such matters shall be signed by an attorney authorized to practice in this state who shall be held responsible for them and who shall be present at all times during the proceeding unless excused by the presiding officer.

C. Any person appearing before or transacting business with the board in a representative capacity may be required by the board or the presiding officer to file evidence of his authority to act in such capacity.

AUTHORITY NOTE: Promulgated in accordance with R.S. 8:67.

HISTORICAL NOTE: Promulgated by the Department of Commerce, Cemetery Board, LR 1:520 (December 1975), amended by the Office of the Governor, Cemetery Board, LR 39:2744 (October 2013).

**§1113. Formal Requirements for Pleadings**  
**[Formerly §315]**

A. All pleadings shall be printed or typewritten and shall be prepared on either letter size or legal size paper.

B. All pleadings must be signed in ink by the party or attorneys of record, if any.

C. All pleadings initiating a proceeding or otherwise seeking affirmative relief and all petitions of intervention shall be verified, except for those matters initiated or petitions or orders to show cause brought by the board or upon the motion of the attorney general of the state of Louisiana.

AUTHORITY NOTE: Promulgated in accordance with R.S. 8:67.

HISTORICAL NOTE: Promulgated by the Department of Commerce, Cemetery Board, LR 1:521 (December 1975), amended by the Office of the Governor, Cemetery Board, LR 39:2744 (October 2013).

**§1115. Statutory References in Pleadings**  
**[Formerly §317]**

A. All pleadings shall cite, by appropriate reference, the statutory provision or other authority under which the board's action is sought, and shall refer to any statutes, rules, regulations, decisions, orders, and/or opinions, germane to the particular matter or proceeding involved.

AUTHORITY NOTE: Promulgated in accordance with R.S. 8:67.

HISTORICAL NOTE: Promulgated by the Department of Commerce, Cemetery Board, LR 1:521 (December 1975), amended by the Office of the Governor, Cemetery Board, LR 39:2745 (October 2013).

**§1117. Ex Parte or Emergency Relief**  
**[Formerly §319]**

A. If a petition or other pleading filed by a person other than the board seeks ex parte action or the granting of emergency relief pending full hearing, it shall set forth the necessity or emergency for such requested action and must be supported by affidavits to make a prima facie case.

B. The chair may take any such emergency action as they deem appropriate in their sole discretion.

AUTHORITY NOTE: Promulgated in accordance with R.S. 8:67.

HISTORICAL NOTE: Promulgated by the Department of Commerce, Cemetery Board, LR 1:521 (December 1975), amended by the Office of the Governor, Cemetery Board, LR 39:2745 (October 2013).

**§1119. Contents of Answer**  
**[Formerly §911]**

A. The answer shall:

1. conform to the requirements for answers under the Louisiana *Code of Civil Procedure*;
2. contain a specific detailed statement of any affirmative defense or matter in extenuation or mitigation;
3. contain a clear and concise statement of the facts and matters of law relied upon constituting the grounds of the defense or the basis for extenuation or mitigation.

AUTHORITY NOTE: Promulgated in accordance with R.S. 8:67.

HISTORICAL NOTE: Promulgated by the Department of Commerce, Cemetery Board, LR 1:523 (December 1975), amended by the Office of the Governor, Cemetery Board, LR 39:2745 (October 2013).

**§1121. Default in Answering or Appearing**  
**[Formerly §913]**

A. In the event of the failure of a respondent to answer or otherwise appear within the time allowed, and provided that these rules relative to service and notice have been complied with, such respondent failing to answer or otherwise appear shall be deemed to be in default. At the time fixed for the hearing, the party initiating the proceeding shall present its evidence and in due course, and after due consideration of all of the pleadings, evidence and the entire record, the board shall render its decision or issue its order or ruling, as appropriate.

AUTHORITY NOTE: Promulgated in accordance with R.S. 8:67.

HISTORICAL NOTE: Promulgated by the Department of Commerce, Cemetery Board, LR 1:523 (December 1975), amended by the Office of the Governor, Cemetery Board, LR 39:2745 (October 2013).

**§1123. Leave to Intervene Necessary**  
**[Formerly §915]**

A. Persons, other than the original parties to any proceeding, whose interests are to be directly and immediately affected by the proceeding, shall secure an order granting leave to intervene before being allowed to participate, provided that the granting of leave to intervene in any proceeding shall not be construed to be a finding or determination by the board for purposes of judicial review or appeal.

B. A petition for leave to intervene must clearly identify the proceedings in which the intervention is sought, must set forth the name and address of the petitioner for intervention, and must contain a clear and concise statement of the direct and immediate interest of the petitioner in such proceeding, stating the manner in which such petitioner will be affected by such proceeding, outlining the matters and things relied upon by such petitioner as a basis for his request to intervene, and if affirmative relief is sought, the petition must contain a clear and concise statement of the relief sought and the basis thereof.

C. A petition to intervene and adequate proof of service of a copy thereof on all parties of record to the proceeding shall be filed not less than 10 days prior to the commencement of the hearing. For good cause shown, the board shall allow a petition of intervention to be filed not later than the time of the hearing.

1. If such petition to intervene is not filed in accordance with these rules, such petition will not be considered.
2. If a petition to intervene shows direct and immediate interest in the subject matter of the proceeding or any part thereof, and does not unduly broaden the issues, the board may grant leave to intervene or otherwise appear in

the proceeding with respect to the matters set out in the intervening petition, subject to such reasonable conditions as may be prescribed.

3. If it appears during the course of a proceeding that an intervenor has no direct or immediate interest in the proceeding, and that the public interest does not require participation by such intervenor therein, the board may dismiss such intervenor from the proceeding.

AUTHORITY NOTE: Promulgated in accordance with R.S. 8:67.

HISTORICAL NOTE: Promulgated by the Department of Commerce, Cemetery Board, LR 1:524 (December 1975), amended by the Office of the Governor, Cemetery Board, LR 39:2745 (October 2013).

**§1125. Prehearing Conference**  
**[Formerly §917]**

A. The chair or the chair's appointee may, of their own volition, or upon the motion of any party of record, hold a prehearing conference for the purpose of formulating or simplifying the issues, obtaining admissions of fact and of documents which will avoid unnecessary proof, arranging for the exchange of proposed exhibits or prepared expert testimony, limiting the number of witnesses, and considering such other matters as may expedite the orderly conduct and disposition of the proceeding, or the settlement thereof.

B. The action taken at such prehearing conference, including without limitation, all the agreements, admissions, and/or stipulations made by the parties concerned, shall be made a part of the record. Such action shall control the subsequent course of the proceeding, unless otherwise stipulated by all parties of record with the consent of the chair or the chair's appointee.

C. In any proceeding, the chair or the chair's appointee may, in its discretion, call all parties together for a conference prior to the taking of testimony, or may recess a hearing, after it has commenced, for the purpose of holding a conference.

AUTHORITY NOTE: Promulgated in accordance with R.S. 8:67.

HISTORICAL NOTE: Promulgated by the Department of Commerce, Cemetery Board, LR 1:524 (December 1975), amended by the Office of the Governor, Cemetery Board, LR 39:2745 (October 2013).

**§1127. Hearing**  
**[Formerly §919]**

A. At the date, time and place fixed for the hearing, the board shall hear all matters presented in connection with the proceeding pending before it. The hearing shall be conducted by the chair or the chair's appointee. The board and all other parties may be represented by counsel.

B. Opportunity shall be afforded all interested persons to respond and present evidence on all issues of fact involved and arguments on all issues of law and policy involved and to conduct such cross-examination as may be required for a full and true disclosure of the facts.

C. The chair or the chair's appointee conducting any proceeding subject to these rules shall have the power to direct, control and regulate the order, procedure and course of the hearing, including, but not limited to, opening statements, the order and method of presentation of testimony and evidence by all parties, and closing statements. The chair or the chair's appointee shall have the further power to set the time and place for continued or recessed hearings, fix the time for filing of memoranda and other documents, and generally to do all things necessary and proper for the conduct of a full and fair hearing.

AUTHORITY NOTE: Promulgated in accordance with R.S. 8:67.

HISTORICAL NOTE: Promulgated by the Department of Commerce, Cemetery Board, LR 1:524 (December 1975), amended by the Office of the Governor, Cemetery Board, LR 39:2746 (October 2013).

**§1129. Adjudication Procedure**  
**[Formerly §921]**

In the conduct of adjudication the board shall conform to and comply with, and shall conduct such adjudication in accordance with, the applicable provisions of the Administrative Procedure Act.

AUTHORITY NOTE: Promulgated in accordance with R.S. 8:67.

HISTORICAL NOTE: Promulgated by the Department of Commerce, Cemetery Board, LR 1:525 (December 1975), amended by the Office of the Governor, Cemetery Board, LR 39:2746 (October 2013).

**§1131. Judicial Review of Adjudication**  
**[Formerly §923]**

A. Judicial review of a final decision or order in adjudication proceedings shall be in accordance with, and is governed by, the Administrative Procedure Act.

B. The party seeking such judicial review shall cause to be prepared, and shall transmit to the reviewing court, the original or a certified copy of the entire record of the proceeding under review. All costs of preparing and transmitting the record for review shall be borne by the party prosecuting such appeal.

AUTHORITY NOTE: Promulgated in accordance with R.S. 8:67.

HISTORICAL NOTE: Promulgated by the Department of Commerce, Cemetery Board, LR 1:525 (December 1975), amended by the Office of the Governor, Cemetery Board, LR 39:2746 (October 2013).

**§1133. Informal Proceedings Authorized**  
**[Formerly §925]**

A. Nothing in these rules shall be construed as prohibiting the board from holding informal proceedings, hearings, or conferences for the purpose of aiding the board in ascertaining and determining facts necessary for the performance of its duties. Any person who is aggrieved by any action or determination of the board following such an informal proceeding, hearing, or conference, and who is otherwise entitled thereto, may file a petition requesting the promulgation, amendment, or repeal of a rule, or may file a petition to initiate an adjudication proceeding, under applicable provisions of these rules. Such petitions for exercise of the rulemaking process or for adjudication shall be handled by the board de novo.

AUTHORITY NOTE: Promulgated in accordance with R.S. 8:67.

HISTORICAL NOTE: Promulgated by the Department of Commerce, Cemetery Board, LR 1:525 (December 1975), amended by the Office of the Governor, Cemetery Board, LR 39:2746 (October 2013).

**§1135. Fine Schedules for Willful and Nonwillful Violations of the Louisiana Cemetery Act**

A. The board, at its discretion, after notice and hearing as required by the Administrative Procedure Act, and in lieu of a complete suspension or complete revocation of a certificate of authority or a license, may impose fines for violations of Title 8 and the rules of the board according to the following fine schedule.

B. By agreement of the board and a party alleged to have violated the Louisiana Cemetery Act, a hearing pursuant to Title 8 and the Administrative Procedure Act may be waived and the parties may enter into a consent agreement, stipulating to the facts and law applicable to the alleged violation. In the event that such an agreement is reached, the following fine schedule may apply to each of the enumerated violations.

C. Each willful or nonwillful act shall constitute a separate violation for the purposes of imposing the fines set forth in the following schedule.

D. The schedule of fines shall in no event be less than as follows.

1. For each willful violation:

<b>Violation</b>	<b>Minimum Fine</b>	<b>Maximum Fine</b>
Failure to maintain records pertaining to the operation and business of a cemetery	\$500 per violation	\$10,000 per violation
Operating without a valid, subsisting, and unsuspended certificate of authority	\$500 per violation (each interment is a violation)	\$10,000 per violation
Failure to timely make required deposits to perpetual care or merchandise trust funds	\$500 per violation	\$10,000 per violation
Failure to timely deliver merchandise or services	\$500 per violation	\$10,000 per violation
Failure to maintain or provide proof of adequate insurance on stored merchandise	\$250 per violation (per day)	\$10,000 per violation
Failure to timely file annual perpetual care or merchandise trust fund reports	\$50 (per day, per report)	\$10,000 per violation

<b>Violation</b>	<b>Minimum Fine</b>	<b>Maximum Fine</b>
Failure to timely file application for predevelopment sales projects	\$50 (per day from the date of the first sale within the predevelopment project)	\$10,000 per violation
Failure to timely issue titles or certificates of interment rights	\$25 (per day, per title)	\$10,000 per violation
Failure to timely respond to consumer complaints	\$25 (per day, per complaint)	\$10,000 per violation
Failure to timely respond to violations noted in an examination by the board	\$25 (per day, per examination)	\$10,000 per violation
Any violations not specifically listed in this schedule	Not applicable	\$10,000 per violation

2. For each nonwillful violation:

<b>Violation</b>	<b>Minimum Fine</b>	<b>Maximum Fine</b>
Failure to maintain records pertaining to the operation and business of a cemetery	\$250 per violation	\$1,000 per violation
Operating without a valid, subsisting, and unsuspended certificate of authority	\$250 per violation (each interment is a violation)	\$1,000 per violation
Failure to timely make required deposits to perpetual care or merchandise trust funds	\$250 per violation	\$1,000 per violation
Failure to timely deliver merchandise or services	\$250 per violation	\$1,000 per violation
Failure to maintain or provide proof of adequate insurance on stored merchandise	\$125 per violation (per day)	\$1,000 per violation
Failure to timely file annual perpetual care or merchandise trust fund reports	\$25 (per day, per report)	\$1,000 per violation
Failure to timely file application for predevelopment sales projects	\$25 (per day from the date of the first sale within the predevelopment project)	\$1,000 per violation
Failure to timely issue titles or certificates of interment rights	\$15 (per day, per title)	\$1,000 per violation
Failure to timely respond to consumer complaints	\$15 (per day, per complaint)	\$1,000 per violation
Failure to timely respond to violations noted in an examination by the board	\$15 (per day, per examination)	\$1,000 per violation
Any violations not specifically listed in this schedule	Not applicable	\$1,000 per violation

E. Nothing in this section shall limit the authority of the board or the attorney general to bring any civil or administrative action for alleged violations not covered by any agreement entered into under this section or for breach of any agreement entered into under this Section.

AUTHORITY NOTE: Promulgated in accordance with R.S. 8:66 and R.S. 8:67.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Cemetery Board, LR 39:2746 (October 2013).