

ORDER NO. 2012-031

IN THE MATTER OF:	§	BEFORE THE BANKING
	§	
PARKLAWN MEMORIAL GARDENS, INC.	§	
DBA PARKLAWN MEMORIAL GARDENS	§	
(CERTIFICATE OF AUTHORITY NO. 148)	§	
AND	§	COMMISSIONER OF TEXAS
MATTHEW L. GREGORY, GABRIEL R.	§	
GONZALES, AND STEVEN R. POND,	§	
CO-OWNERS	§	
	§	
PLAINVIEW, TEXAS	§	AUSTIN, TRAVIS COUNTY, TEXAS

ORDER TO CEASE AND DESIST ACTIVITY

On this day, the matter of Parklawn Memorial Gardens, Inc. dba Parklawn Memorial Gardens, located in Plainview, Texas, and Matthew L. Gregory, Gabriel R. Gonzales, and Steven R. Pond, co-owners of Parklawn Memorial Gardens, Inc. (Respondents), was submitted to the Texas Banking Commissioner (Commissioner) for consideration and action.

I. Findings of Fact

1. Respondent, Parklawn Memorial Gardens, Inc., is a perpetual care cemetery (PCC) operating under certificate of authority number 148 and located in Plainview, Texas. It is owned equally by Respondents Matthew L. Gregory, Gabriel R. Gonzales, and Stephen R. Pond. Respondent, Mr. Gregory, is responsible for daily administration and management of the cemetery and he is the primary contact person for the certificate holder.
2. The Texas Department of Banking (Department) regulates PCCs under the authority of Texas Health and Safety Code (Health Code), Chapters 711 and 712.
3. Health Code § 712.003(b) requires a corporation that operates a PCC to meet minimum capital requirements.
4. Health Code § 712.0032 requires a corporation operating a PCC to have a certificate of authority issued by the Department.
5. Health Code § 712.041 requires the corporation to file with the Commissioner an Annual Statement of Funds on or before March 1 of each year.
6. Health Code § 712.0036 states that certificates of authority expire March 1 of each year and must be renewed.

7. Health Code § 712.0037(a) states that a certificate holder must apply annually for renewal of its certificate of authority by submitting an annual renewal report and paying an annual renewal fee to the Department.
8. Health Code § 712.028 requires a corporation operating a PCC to deposit a certain amount to its perpetual care fund for each conveyance of cemetery property or interment rights.
9. Health Code § 712.029(c) requires the corporation to deposit the amount required by § 712.028 into its perpetual care fund not later than the 20th day after the end of the month in which the original purchase agreement has been paid-in-full.
10. Health Code § 712.044(b) and Title 7 Texas Administrative Code (TAC) § 26.2(b) require a corporation operating a PCC to keep specific records and to make those records available for examination by the Department upon reasonable notice.
11. Health Code § 712.0039(a)(1) requires a corporation operating a PCC to notify the Department in writing regarding a change in ownership.
12. Title 7 TAC § 26.11(b) requires a corporation operating a PCC to place a specific notice on the corporate website to assist consumers seeking to file a complaint with the Department.
13. Health Code § 712.0443 authorizes the Commissioner to issue a cease and desist order to a person if the Commissioner finds that the person has violated a law of this state relating to PCCs, including a violation of Chapter 712 or a rule of the Texas Finance Commission and the violation was not corrected 31 days after the person received written notice of the violation.
14. Respondent, Parklawn Memorial Gardens, Inc., was most recently examined by the Department commencing May 16, 2012. The examination reviewed information as of March 31, 2012. A Report of Examination (ROE) was issued and sent to Respondents on June 20, 2012, notifying Respondents of the following violations:
 - A. Respondents violated § 712.044(b), Health Code, and Title 7 TAC § 26.2(b), regarding the duty of the certificate holder to make its records available for examination. Matthew L. Gregory, the primary contact person for the certificate holder, was given two weeks advance notice prior to the scheduled examination along with a list of records to be examined. Mr. Gregory was not available for the on-site examination. The following documents were not made available to the examiner: perpetual care recapitulations of

interments rights issued from January 1, 2011 to present, the historical register of interment rights sold from July 1, 2011 to present, the interment/disinterment log from July 1, 2011 to present, a list of all markers sold from January 1, 2011 to present, documentation to support the timely ordering and setting of markers, the recorded map, plat and dedication register, the Annual Statement of 2011 Perpetual Care Activity, and the Certificate of Authority Renewal. Due to the unavailability of required records, and the absence of Mr. Gregory during the examination, the examiner determined that the records and documents available for examination were grossly deficient and unacceptable;

- B. Respondents violated §§ 712.0037(a)(2) and 712.041(c), Health Code, because of the failure of the certificate holder to timely file the cemetery's Annual Statement of 2011 Perpetual Care Activity and failure to timely file the cemetery's Certificate of Authority Renewal by the deadline of March 1, 2012;
- C. Respondents violated § 712.029(c), Health Code, relating to late deposits and a fund shortage because the certificate holder had failed to make all required deposits to the fund in a timely manner since March, 2011, resulting in an outstanding shortage of at least \$708.75 as of the close of the examination;
- D. Respondents violated § 712.003(b), Health Code, relating to the minimum capital requirements of \$15,000. The examiner determined that the certificate holder had a negative equity position of -\$424.65 for the period ending December 31, 2011, and a net loss for the 12 months ending December 31, 2011;
- E. Respondents violated § 712.0032, Health Code, relating to the operation of the cemetery without a valid certificate of authority because the previous certificate of authority expired on March 1, 2012 and was not renewed by Respondents;

F. Respondents violated § 712.0039(a)(1), Health Code, because of the failure to timely notify the Department in writing regarding the change in ownership of the corporation within seven days of the transfer of ownership of 100% of the stock of the corporation on January 1, 2011, to the current owners; and

G. Respondents violated Title 7 TAC § 26.11(b) by failing to properly list the Department's website address in the complaint section of the property sales contract.

15. Respondents were notified by the Department by letter dated June 20, 2012 of these violations and Respondents failed to provide the Department with documentation to support that the violations were corrected within 31 days after receipt of the notice as required by §§ 712.0441 and 712.0443, Health Code.

II. Conclusions

1. Respondents have violated the following laws of Texas relating to perpetual care cemeteries: Health Code §§ 712.044(b), 712.0037(a)(2), 712.041(c), 712.029(c), 712.003(b), 712.0032, and 712.0039(a)(1), and Title 7 TAC §§ 26.11(b) and 26.2(b).
2. Respondents did not correct the violations by the 31st day after the date Respondents received written notice of the violations from the Department.
3. The ROE and other credible evidence of the above-described violations is sufficient cause for issuance of a cease and desist order to Respondents, pursuant to the authority granted by § 712.0443(a), Health Code.

III. Order

In accordance with § 712.0443, Health Code, Respondents are ORDERED to cease and desist from operating a perpetual care cemetery without a valid certificate of authority from the Department, except that Respondents shall continue to: perform burials for persons who owned plots in the cemetery as of the effective date of this Order; set markers purchased before the effective date of this Order; and maintain the property and grounds of the cemetery to the extent that income from the perpetual care fund permits. Respondents are further ORDERED to deposit

within 5 days of the effective date of this Order all perpetual care funds due at that time into its perpetual care trust account.

It is further ORDERED that an administrative hearing be scheduled in this matter to determine the appropriate amount of administrative penalties, if any, to be assessed against Respondents for violations of Chapter 712, Health Code.

IV. Effective Dates

Pursuant to § 712.0443(b), Health Code, this Order to Cease and Desist Activity will take effect on October 9, 2012, which is the 20th day after the date the order is mailed or delivered, unless Respondents request a hearing not later than the 19th day after the date the order is mailed or delivered.

V. Service

This Order shall be served on Respondents in person and by certified mail, return receipt requested and first class mail, sent on September 17, 2012 to:

Matthew L. Gregory
Registered Agent and Owner
Parklawn Memorial Gardens, Inc.
3605 S.W. 3rd
Plainview, Texas 79072

Steven R. Pond
Vice President and Owner
Parklawn Memorial Gardens, Inc.
3605 S.W. 3rd
Plainview, Texas 79072
Gabriel R. Gonzales

Secretary/Treasurer and Owner
Parklawn Memorial Gardens, Inc.
3605 S.W. 3rd
Plainview, Texas 79072

Signed on this 14th day of September, 2012.

/s/ Charles G. Cooper
Charles G. Cooper
Texas Banking Commissioner