

CEMETERY AND FUNERAL BUREAU

Modified Proposed Language

Proposed amendments are shown by ~~strikeout~~ for deleted text and underline for new text.

Modifications are shown by ~~double-strikeout~~ for deleted text and double underline for new modified language.

(1) Amend Section 2326 of Division 23 of Title 16 of the California Code of Regulations to read as follows:

§ 2326. Applications for Cemetery Certificate of Authority and Crematory ~~Certificates of Authority~~ License.

(a) Certificate of Authority. Applications for a certificate of authority to operate a cemetery shall be filed on the bureau form furnished by the bureau 23-COA (rev. 1/156), Application for Certificate of Authority, which is hereby incorporated by reference, at the principal office of the bureau. In addition to the payment of the fees required by ~~§~~Section 2311 of these rules, each application shall be accompanied by the following:

(1) A ~~certified~~ copy of:

(A) ~~Articles of incorporation, if a corporation, or Articles of Organization, if a limited liability company, certified by the Secretary of State.~~

(B) ~~Application for permit to sell and issue securities. Statement of Information for the corporation or organization filed with the Secretary of State.~~

(C) Permit to sell and issue securities. If not applicable, submit a statement certifying that securities will not be sold or issued.

(D) ~~Application to the city or county planning commission for a cemetery use permit or rezoning for cemetery purposes, or both.~~

~~(E)~~(D) Land use or zoning permit certified by the city or county for cemetery use.

~~(F)~~(E) Declaration of dedication to cemetery purposes certified by the county recorder.

~~(G)~~(F) Deed to the property certified by the county recorder, contract of purchase or any other instrument which provides the applicant with merchantable title thereto.

~~(H)~~(G) Endowment care trust agreement executed by the board of directors or limited liability company members of the cemetery authority.

(2) A statement signed by a majority and verified by one of the directors or limited liability company members of the applicant, which statement shall set forth:

(A) Names and addresses of all the incorporators or organizers, directors, corporate officers or limited liability company members, and trustees of the endowment care fund, including the person who will be in charge of sales, together with a statement of their experience and fitness to engage in cemetery business.

(B) Statement of compensation received or to be received by the corporate officers or limited liability company members, directors and all sales agents and/or cemetery managers.

(C) A complete and detailed financial statement showing assets, liabilities and reserve.

1. If the applicant is a new corporation, the statement shall designate the amount of stock subscribed, the consideration paid for all stock issued and the amount of promotional stock involved.

2. If the applicant has engaged in business for a period of time, the statements shall include complete operating profit and loss statements for the preceding three (3) years or such period of time as the applicant has been in business if less than three (3) years.

(D) Itemized statement of estimated receipts (from all sources, capitalization, sales, loans, etc.) and expenditures of the applicant for at least five (5) years or such other period as the ~~board~~ bureau may require by written notice to the applicant.

(E) A statement setting forth the size, location and topography of, and water available for, the property to be used for cemetery purposes.

(F) A statement of the applicant's proposed plan of operation which shall include type of selling, approximate size ~~of~~ of sales department, number of acres initially developed, etc.

(G) Statement of the amount deposited to the endowment care fund, type of investment made or to be made and the proposed rate of contribution for the future.

(3) An independent confirmation from the depository or other such proof of deposit of the initial contribution to the endowment care fund as required by ~~§~~ Section 8738.1 of the Health and Safety Code of the State of California.

(4) A good and substantial map of the proposed cemetery site (scale not less than one inch (1") to five hundred feet (500')) and surrounding area showing highways, access roads, etc., and area to be initially developed delineated thereon. The map should not be submitted with the application. Maps shall be maintained by the cemetery and made available during inspections or upon request by the bureau.

(5) Such other matters as the bureau may require by written notice to the applicant.

(b) In addition to complying with the provisions listed above (all apply, except (a)(2)(C)(1)), a limited liability company applying for a certificate of authority must also include the following:

(1) A completed bureau Form 23-LE (1/156), Bureau Licensed Employee, which is hereby incorporated by reference, for each employee issued a license by the bureau.

(2) Comply with one, or a combination, of the following:

(A) Maintain a policy or policies of insurance of not less than one million dollars (\$1,000,000) for up to five licensed employees plus an additional one hundred thousand dollars (\$100,000) for each licensed employee over five, not to exceed five million dollars (\$5,000,000) accompanied by bureau Form 23-INS (1/156), Certification of Insurance Coverage, which is hereby incorporated by reference.

(B) Maintain in trust or bank escrow, cash, bank certificates of deposit, United States Treasury obligations, bank letters of credit, or bonds of insurance or surety companies as security of not less than one million dollars (\$1,000,000) for up to five licensed employees plus an additional one hundred thousand dollars (\$100,000) for each licensed employee over five, not to exceed five million dollars (\$5,000,000) accompanied by bureau Form 23-INS (1/156), Certification of Insurance Coverage, which is hereby incorporated by reference.

(C) Unless the limited liability company has satisfied the provisions of (b)(2)(D) of this section, each member of a limited liability company automatically guarantees payment of the difference between the maximum amount of security required for the limited liability company, up to five million dollars (\$5,000,000), and the security otherwise provided in accordance with (b)(2)(A) and (b)(2)(B) of this section provided that the aggregate amount paid by all members under these guarantees shall not exceed the difference.

(D) Confirm a net worth equal to or exceeding ten million dollars (\$10,000,000) as of the most recently completed fiscal year accompanied by bureau Form 23-NW (1/156), Certification of Net Worth, which is hereby incorporated by reference.

(3) Names and addresses of all limited liability company members accompanied by bureau a Certification Affidavit, Form 16-CA (rev. 1/156), Certification Affidavit, which is hereby incorporated by reference, for each member.

(4) Operating Agreement; if a corporation is a member of the limited liability company, the Articles of Incorporation must be submitted.

~~(b)~~(c) Crematory License Application. Application for a crematory license shall be filed on the form furnished by the bureau at the principal office of the ~~board~~ bureau. In addition to the payment of the fees required by ~~S~~section 2311 of these rules, each application shall be accompanied by the following:

(1) A certified copy of:

(A) Articles of incorporation, if applicant is a corporation.

(B) Partnership agreement, if applicant is a partnership.

(C) Land use or zoning permit.

(D) Permit to operate a crematory issued by the local air pollution control district.

(E) Deed, lease or other instrument which provides the applicant with the right to possess and use the property where the business will be located.

(2) A statement signed by the applicant if the applicant is an individual; signed by the majority and verified by one (1) of the directors, if the applicant is a corporation; or signed and verified by a majority of the partners, if applicant is a partnership, which statement shall set forth:

(A) A complete and detailed financial statement showing assets, liabilities, and reserves.

(B) A statement of proposed plan of operation which shall include the type of selling.

(C) A full, true, and complete copy of the standard agreement which will be used for funding of prearranged cremations.

(3) Plans and specifications of the crematory and building, which must be sufficient to allow the bureau to determine, among other things:

(A) Fire resistant character.

(B) Adequacy of storage for cremated and uncremated remains.

(4) Such other matters as the bureau may require by written notice to the applicant.

Note: Authority cited: Sections ~~96307606~~ and ~~97837712.5~~, Business and Professions Code. Reference: Sections ~~9653.57613.4~~, ~~9653.67613.5~~, ~~97157652.8~~, ~~97167652.10~~, ~~97177653~~, ~~9765~~, ~~97817712.2~~, ~~97827712.4~~, and ~~97837712.5~~ and 9786, Business and Professions Code; and Section 8738.1, Health and Safety Code.

(2) Amend Section 2326.1 of Division 23 of Title 16 of the California Code of Regulations to read as follows:

§ 2326.1. Managers.

(a) Each cemetery for which a new certificate of authority is required shall be operated under the supervision of a ~~managing officer~~ cemetery manager qualified as such by the bureau. If the applicant for a new certificate of authority is a limited liability company, the cemetery manager shall not have an ownership interest as a member of the limited liability company.

(1) The applicant for a new certificate of authority, in addition to the requirements of ~~§~~section 2326, will designate the ~~managing officer~~ cemetery manager. There shall be submitted with the application ~~the a~~ a written statement of such officer from the cemetery manager demonstrating that he or she has two (2) years' experience in the cemetery business, or equivalent experience, which experience shall be commensurate with the size, type, and scope of the proposed activities of the cemetery authority. Additional ~~managing officers~~ cemetery managers who have been qualified and examined by the bureau may be designated by the applicant and can succeed the ~~managing officer~~ cemetery manager in the event of death, resignation, disability, voluntary surrender of license, or other inability to perform the required duties, as provided for in Business and Professions Code section ~~97237653.6~~.

(b) Each crematory for which a crematory license is required shall be operated under the supervision of a crematory manager designated by the applicant and qualified as such by the bureau. Additional crematory managers who have been qualified and examined by the bureau may be designated by the applicant and can succeed the crematory manager in the event of death, resignation, disability, or other inability to perform the required duties, as provided for in Business and Professions Code section ~~9787.27713~~.

Note: Authority cited: Sections ~~96307606~~ and ~~97177653~~, and ~~9787~~, Business and Professions Code. Reference: Sections ~~9653.57613.4~~, ~~9653.67613.5~~, ~~97157652.8~~, ~~97177653~~, ~~97237653.6~~, and ~~97877712.10~~ and ~~9787.27713~~, Business and Professions Code.

(3) Add Section 2326.2 of Division 23 of Title 16 of the California Code of Regulations to read as follows:

§ 2326.2 Limited Liability Company Certification of Insurance Coverage or Net Worth.

A limited liability company licensed as a certificate of authority shall submit annually, within four months of the completion of the fiscal year, one of the following to the bureau:

(a) ~~Bureau Certification of Insurance Coverage, Form 23-INS (1/156), Certification of Insurance Coverage, which is hereby incorporated by reference, certifying the limited liability company has a policy or policies of insurance for claims against it based upon acts, errors, or omissions of its licensed employees accompanied by a certificate of insurance or proof of adequate security.~~

(b) ~~Bureau Certification of Net Worth, Form 23-NW (1/156), Certification of Net Worth, which is hereby incorporated by reference, certifying that as of the last day of its most recently completed fiscal year, the limited liability company has a net worth equal to or exceeding ten million dollars (\$10,000,000).~~

Note: Authority cited: Section ~~96307606~~, Business and Professions Code. Reference: Section ~~965357613.4~~, Business and Professions Code; and Section 16956, Corporations Code.

(4) Add Section 2326.3 of Division 23 of Title 16 of the California Code of Regulations to read as follows:

§ 2326.3 Record Keeping and Reporting of Changes.

(a) Pursuant to section 17701.13 of the Corporations Code, limited liability companies shall designate and continuously maintain in this state an office and an agent for service of process. Each limited liability company shall maintain a current list of the full name and last known business or residence address of each member.

(b) Any changes the limited liability company makes to the designated office, principal office, agent for service of process, or mailing address by filing a statement of information with the Secretary of State shall be submitted to the bureau.

(c) Change of corporate officers, limited liability company members, or trustees of the endowment care fund, including change of name and/or address of any individual previously reported to the bureau, shall be reported within thirty (30) days of the change on ~~bureau Form 23-NC (1/156), Cemetery Notification of Change, which is hereby incorporated by reference,~~ along with a filing fee of twenty-five dollars (\$25).

(d) Addition of corporate officers, limited liability company members, or trustees of the endowment care fund shall be submitted on ~~bureau Form 23-NC (1/156), Cemetery Notification of Change, which is hereby incorporated by reference,~~

accompanied by bureau a Certification Affidavit, Form 16-CA (rev. 1/156), Certification Affidavit, which is hereby incorporated by reference, for each person along with a filing fee of twenty-five dollars (\$25).

(e) A limited liability company shall notify the bureau within thirty (30) days of employing a bureau licensed employee or upon the resignation or termination of a bureau licensed employee on bureau Form 23-LE (1/156), Bureau Licensed Employee, which is hereby incorporated by reference.

Note: Authority cited: Section 96307606, Business and Professions Code. Reference: Sections 136, 9653-57613.4, 9653-67613.5 and 97617730.3, Business and Professions Code Section 17701.13, Corporations Code.

(5) Amend Section 2326.5 of Division 23 of Title 16 of the California Code of Regulations to read as follows:

§ 2326.5. Approval to Share a Cemetery Manager.

Licensed cemeteries, upon approval by the Bbureau, may designate a licensed cemetery manager to manage more than one licensed cemetery under the following conditions:

(a) The license cemeteries are under common ownership;

(b) The common owner has designated one cemetery as the main office. The main office is defined as a designated location registered with the Bbureau where the principals of the licensed cemetery can be contacted;

(c) The licensed cemeteries are located within a one hour driving distance, not to exceed 60 miles, radius of from the designated main office;

(d) Each licensed cemetery requesting permission from the Bbureau to share one designated cemetery manager, shall make a written request on application Form 21A2 (10/03) to the Bbureau and pay the fee for requesting to share a designated cemetery manager. If the applicant is a limited liability company, the cemetery manager shall not have an ownership interest as a member of the limited liability company. An inspection may be scheduled and completed to ensure that the conditions set forth in this section have been satisfied.

~~(e) The procedure for considering and granting approval to share a cemetery manager under this section shall be as follows:~~

~~(1) The Bureau shall inform an applicant requesting approval to share a cemetery manager, in writing, within 14 days of receipt whether the application is complete and acceptable for filing or is deficient and what specific information is required to complete the application.~~

~~(2) The Bureau shall make a decision within 30 days after the application is deemed to be completed whether the applicant meets the requirements for approval to share a cemetery manager. "Completion of an application" means that the applicant has filed a completed application form together with all required information, documentation, and fee.~~

~~(3) The minimum, median and maximum processing times for an application for approval to share a cemetery manager from the date of acceptance and filing of the initial application until the Bureau makes a final decision on the application are:~~

~~(A) Minimum - 7 days.~~

~~(B) Median - 14 days.~~

~~(C) Maximum - 30 days.~~

Note: Authority cited: Section ~~9630~~7606, Business and Professions Code; and Section ~~15376~~, Government Code. Reference: Sections ~~9653.5~~7613.4, ~~9653.6~~7613.5, ~~9723~~7653.6 and ~~9723.2~~7653.8, Business and Professions Code; and Section ~~15376~~, Government Code.