

CEMETERY AND FUNERAL BUREAU

MODIFIED TEXT concerning Endowment Care Funds

Proposed amendments to the regulatory language are shown in single underline for new text and ~~single strikethrough~~ for deleted text.

Modifications to the proposed regulatory language are shown in double underline for new text and ~~double strikethrough~~ for deleted text

(1) Add Section 2334 of Title 16 of the California Code of Regulations to read as follows:

§ 2334. Endowment Care Fund Conversion Application.

(a) A cemetery authority seeking to convert an endowment care fund from a net income distribution method to a unitrust distribution method shall submit to the bureau form 23-ECFC (New 01/21), Endowment Care Fund Conversion Application, which is hereby incorporated by reference. The form shall be filed at the principal office of the bureau. Each application shall be accompanied by a copy of each of the following:

(1) The endowment care fund trust agreement executed by the board of directors or limited liability company members of the cemetery authority.

(2) Written investment objectives of the endowment care fund, which shall include the current asset class allocation targets and ranges for the fund as well as the benchmark target long-term return for the fund.

(3) The endowment care fund trust deposit rates for all categories.

~~(4) The Cemetery Maintenance Standards.~~

(b) A completed application shall be submitted at least ninety (90) days prior to the beginning of the cemetery authority's reporting year for which the conversion is requested.

Note: Authority cited: Section 7606, Business and Professions Code; and Section 8726.2, Health and Safety Code. Reference: Section 7653.6, Business and Professions Code; and Sections 8726.2, ~~8728~~, 8731, 8733.5, 8736, 8738, 8740, 8751, and 8751.1, Health and Safety Code.

(2) Add Section 2334.1 of Title 16 of the California Code of Regulations to read as follows:

§ 2334.1. Approval of Endowment Care Fund Conversion.

Pursuant to Health and Safety Code section 8726.2, a cemetery authority shall not convert its endowment care fund to a unitrust distribution method without the bureau's written approval. If the bureau approves a cemetery authority's application to convert its endowment care fund to a unitrust distribution method, the conversion to the unitrust distribution method shall become effective on the first day of the cemetery authority's reporting year following approval from the bureau.

Note: Authority cited: Section 7606, Business and Professions Code. Reference: Sections 8726.1, 8726.2, 8738, and 8738.1, Health and Safety Code.

(3) Add Section 2334.2 of Title 16 of the California Code of Regulations to read as follows:

§ 2334.2. Denial of Endowment Care Fund Conversion Application.

(a) The bureau shall deny a cemetery authority's application to convert its endowment care fund from a net income distribution method to a unitrust distribution method if any of the following conditions exist:

(1) The cemetery authority does not meet the conditions of approval described in Section 8726.2(b) and (c) of the Health and Safety Code, as applicable.

(2) The cemetery authority has not provided all relevant trust documents to the bureau pursuant to Section 8726.2(d) of the Health and Safety Code.

(3) The cemetery authority has missed its deadline for submission of its annual report pursuant to Business and Professions Code section 7612.6 and Section 2350 of Title 16 of these regulations two or more times in the three most recent reporting years.

(4) The cemetery authority has been issued an administrative citation or had disciplinary action in the preceding thirty-six (36) months. In making the determination to deny the unitrust conversion application on the basis in this subdivision, the bureau shall consider all of the following:

(A) The severity of the misconduct or act(s) that resulted in the citation or discipline.

(B) The nature of the offense.

(C) Time elapsed since the offense.

(D) The likelihood the cemetery authority will engage in future misconduct based on the licensee's history and any relevant information the bureau may request.

Note: Authority cited: Section 7606, Business and Professions Code. Reference: Section 8726.2, Health and Safety Code.

(4) Add Section 2334.3 of Title 16 of the California Code of Regulations to read as follows:

§ 2334.3. Abandonment of Endowment Care Fund Conversion Application.

(a) An application for conversion of an endowment care fund from the net income distribution method shall be deemed abandoned if the applicant refuses or fails to provide the bureau with supporting documents or information by the date that is one (1) year after the date on which the bureau sends a written request to the applicant for the documents and/or information.

(b) An applicant who abandons an application must submit a new application.

Note: Authority cited: Sections 142 and 7606, Business and Professions Code. Reference: Section 142, Business and Professions Code; and Section 8726.2, Health and Safety Code.

(5) Add Section 2334.4 of Title 16 of the California Code of Regulations to read as follows:

§ 2334.4. Reversion to Net Income Distribution Method.

(a) The bureau may require a cemetery authority that has converted its endowment care fund from a net income distribution method to a unitrust distribution method to revert to the net income distribution method when any of the following conditions exist:

(1) The bureau determines that the cemetery authority no longer meets the conditions of approval described in Section 8726.2(b) of the Health and Safety Code.

(2) The cemetery authority fails to file the annual report required under Section 7612.6 of the Business and Professions Code and Section 2350 of this division.

(3) The bureau determines that the cemetery authority's continued use of the unitrust distribution method would negatively impact its ability to have funds available for maintenance as required under Section 2333 of this division.

(b) The bureau shall determine the reporting period for which a cemetery authority will be required to revert to the net income distribution method under subdivision (a). The cemetery authority must revert effective the first day of the designated reporting period after receiving notification from the bureau.

(c) A cemetery authority may notify the Bureau in writing of its intent to revert to the net income distribution method. It shall revert to the net income distribution method beginning the first day of the cemetery authority's next reporting year following the date on which it receives the bureau's written approval.

(d) A cemetery authority that reverts to the net income distribution method shall re-establish the following accounts:

(1) A Reserve for Principal Losses account pursuant to Section 8726.1(a)(1) of the Health and Safety Code.

(2) A Reserve for Future Maintenance account pursuant to Section 8726.1(a)(2) of the Health and Safety Code.

(e)(1) Except as provided in paragraph (2), a cemetery authority that reverts to the net income distribution method shall deposit into the Reserve for Principal Losses account from the unitrust Reserve for Maintenance account an amount that represents the same percentage the Reserve for Principal Losses account bore to the total unitrust Reserve for Maintenance account at the time the Reserve for Principal Losses account was absorbed into the unitrust Reserve for Maintenance account when the cemetery authority converted to the unitrust distribution method. The remainder of the funds in the unitrust Reserve for Maintenance account shall be deposited into the Reserve for Future Maintenance account re-established under the net income distribution method.

(2) If depositing funds in the re-established Reserve for Future Maintenance account pursuant to paragraph (1) would cause the total amount in the fund to exceed 10 percent of the endowment care fund in violation of Health and Safety Code section 8726.1(a)(3), the excess portion shall instead be deposited into the Reserve for Principal Losses account.

(f) A cemetery authority that reverts to the net income distribution method and seeks to reconvert its endowment care fund to the unitrust distribution method shall submit a new application pursuant to Section 2334.

Note: Authority cited: Section 7606, Business and Professions Code. Reference: Sections 7612.6 and 7613.9, Business and Professions Code; and Sections 8726.2 and 8736, Health and Safety Code.

(6) Add Section 2334.5 of Title 16 of the California Code of Regulations to read as follows:

§ 2334.5. Endowment Care Reserve for Maintenance after Conversion to the Unitrust Distribution Method.

(a) A cemetery authority approved to convert its endowment care fund from the net income distribution method to the unitrust distribution method shall create a Reserve for Maintenance account. The account shall be created by combining the funds in the cemetery authority's Reserve for Principal Losses and Reserve for Future Maintenance accounts described in paragraphs (1) and (2), respectively, of Health and Safety Code section 8726.1(a). The cemetery authority shall create the Reserve for Maintenance account no later than the first day of the cemetery authority's conversion to the unitrust distribution method.

(b) The Reserve for Maintenance account created pursuant to subdivision (a) shall be separately identified from all other cemetery funds.

Note: Authority cited: Section 7606, Business and Professions Code. Reference: Section 7612.6, Business and Professions Code; and Sections 8726.1 and 8726.2, Health and Safety Code.

(7) Amend Section 2350 of Division 23 of Title 16 of the California Code of Regulations to read as follows:

§ 2350. Endowment Care Fund Reports.

~~(a) The terminology of Section 9650(c) of the Code shall be deemed to require the certificate of the accountant or auditor preparing such statement and shall be deemed to have been complied with when~~ The annual audit report required pursuant to Section 7612.6(b) of the Code shall be prepared and signed by a licensed independent certified public accountant or public accountant provided that such statements, and shall fully and accurately disclose the financial position of the endowment care fund and that such certificate does not. ~~The annual audit report shall not contain disclaimers or qualifications such as to preclude the rendering of an independent unmodified opinion.~~

(b) A cemetery authority approved for conversion of its endowment care fund to the unitrust distribution method shall provide the following additional information with its annual report:

~~(1) A~~ a copy of all trust documents that were created, updated, or changed since its last annual report including, but not limited to, the trust agreement, and investment objectives.

~~(2) The total spaces and acres of the endowment care section of the cemetery that have been sold for interment, including preneed sales.~~

~~(3) The total spaces and acres of the endowment care section of the cemetery that remain unsold.~~

~~(4) The total spaces, if known, and acres of the undeveloped section of the cemetery that remain unsold.~~

Note: Authority cited: Section ~~9630~~, 7606, Business and Professions Code. Reference: Section ~~9650~~, 7612.6, Business and Professions Code; Section 8726.2, Health and Safety Code.