

**TITLE 16. CEMETERY AND FUNERAL BUREAU
DEPARTMENT OF CONSUMER AFFAIRS**

Final Statement of Reasons

Effective Date

The Cemetery and Funeral Bureau (Bureau) requests an on filing effective date to align as closely as possible with the statutory implementation date of January 1, 2023, found in Assembly Bill (AB) 293 (Kalra, Chapter 514, Statutes of 2021). This would enable the Bureau to fulfill its primary fiduciary responsibility function of protecting the public from funeral establishments that are holding funeral preneed trust accounts that lie dormant due to death or presumed death of the beneficiary, where the estate is unaware of the arrangement and does not contact the funeral establishment for these services. As of July 2022, the Bureau has 1,101 licensed funeral establishments throughout California. Out of these licenses 713 report having preneed trust funds for a total of about \$682 million in consumer funds they are holding. AB 293 requires funeral establishments to identify preneed consumers who have died and received services elsewhere and to consider the necessity of returning the preneed funds to the beneficiary or escheat the funds.

Sections Affected: Sections 1267, 1274, 1275, 1277.5, and [new] section 1267.1 in Article 8 of Division 12 of Title 16 of the California Code of Regulations (CCR).

Local Mandate

A mandate is not imposed on local agencies or school districts.

Consideration of Alternatives

No reasonable alternative which was considered or that has otherwise been identified and brought to the attention of the Bureau would be more effective in carrying out the purpose for which it was proposed or would be as effective and less burdensome to affected private persons than the adopted regulations or would be more cost effective to affected private persons and equally effective in implementing the statutory policy or other provision of law. The Bureau incorporates by reference the alternatives identified in its Initial Statement of Reasons and did not receive any comments that altered its findings.

Updated Information

The Informative Digest and Initial Statement of Reasons are included in the rulemaking file and incorporated as though set forth herein.

The information contained therein is updated as follows:

The Bureau made non-substantive modifications to the originally approved text.

Section 1267

The Bureau removed the comma between “licensed” and “successor” in subdivision (c) for grammatical correctness, deleted the word “or” between “trustors” and “trustees” and inserted the word “and” for clarity, and deleted “subdivision (c)” because there is no applicable subdivision (c) in BPC section 7737.1.

The Bureau removed the comma after 7685.2 in subdivision (i)(1) for grammatical correctness.

The Bureau added “provided” after accounting in subdivision (j)(2) for grammatical correctness. This was noticed with the addition of “provided”, but was inadvertently not shown in underline.

The Bureau removed the comma after the reference to “(c)” in subdivision (k) for grammatical correctness.

Section 1267.1

The Bureau changed the word “beneficiary” to “beneficiaries”, added “or trustors”, and deleted the word “or” and inserted the word “and” in subdivision (a)(1) for consistency with BPC section 7737.1(a)(1)(A).

The Bureau removed the comma between “licensed” and “successor” in subdivision (b) for grammatical correctness. In addition, the text was modified by removing the phrase “or trustee associated with the establishment’s preneed funeral agreements”, and adding the phrase “of the preneed funeral agreements associated with the original funeral establishment, and the trustees holding the preneed funeral trust associated with the preneed funeral agreements (“consumers”) for consistency with BPC 7737.1(b)(1)(B) and (C).

In section 1267.1(a)(2), the Bureau added the word “of” between “list” and “all.”

Section 1274

The Bureau removed the comma between “licensed” and “successor” for grammatical correctness, removed the word “defined” and replaced it with “set forth”, and included “(b)” to the reference to Section 1267.1. In addition, the Bureau changed the layout of the form, 12-PASFD (New 1/23), Notice of Cancellation of Preneed Contract or

Agreement by shortening the length of some of the fill-in black lines provided for entering information, as well as reducing excessive white space between some lines to enhance consistency and readability. Specifically, at the top of page one, a blank line was eliminated under the “Beneficiary or Trustor” lines. Additionally, the individual fill-in black lines below “Beneficiary or Trustor”, “Trustee”, “Trustee(s) Name”, and “Address” were deleted and replaced by black fill-in lines positioned after those terms on the same line. In the final section on page two under “Contact Information for this Funeral Establishment”, a blank line was eliminated under “Name of Funeral Establishment and Contact Person”. Additionally, the individual fill-in lines following “Address” and “Telephone Number” were deleted and replaced by black fill-in lines positioned after those terms on the same line. The two separate lines for optional “Website” and “Email” following the “Telephone Number” line were combined into one line for both.

The Bureau added the phrase “consumer set forth in Section 1267.1(a)(1)”, and deleted the phrase “beneficiary, trustor, or trustee associated with the establishment’s preneed funeral agreements”, in subdivision (c) for simplicity. Also, the Bureau changed the layout of the form, 12-PASFD (New 1/23), Notice of Transfer of Preneed Contract or Agreement to Successor Funeral Establishment, by shortening the length of some of the fill-in black lines provided for entering information, as well as reducing excessive white space between some lines to enhance consistency and readability. At the top of page one, a blank line was eliminated under the “Beneficiary/Trustor and /or Legal Representative of Beneficiary /Trustor” line as well as the “Trustee” line. Additionally, the individual fill-in black lines below “Trustee”, “Name of Successor Funeral Establishment”, “License Number”, “Telephone Number”, and “Address” were deleted and replaced by black fill-in lines positioned after those terms on the same line. The two separate lines for optional “Website” and “Email” following the “Telephone Number” line were combined into one line for both. At page two under “Contact Information for this Funeral Establishment” a blank line was eliminated under “Name of Funeral Establishment and Contact Person”, and the “Address”, “Telephone Number”, “Website” and “Email” lines were combined into one line for both.

Incorporation by Reference

The forms (Notices) 12-PACE (New 1/23), Notice of Cancellation of Preneed Funeral Contract or Agreement, and 12-PASFD (New 1/23), Notice of Transfer of Preneed Contract or Agreement to Successor Funeral Establishment, incorporated by reference, would be cumbersome, unduly expensive, and otherwise impractical to publish in the CCR. The forms are available on the Bureau’s website and hardcopies are available from the Bureau upon request.

Comments and responses:

The 45-day public comment period began on August 30, 2022, and ended on November 9, 2022. The Bureau did not hold a regulatory hearing.

The Bureau received one letter from Jerry Desmond, Executive Vice President of the Cemetery and Mortuary Association of California (CMAC) containing several comments relating to the proposal. The comments, and the Bureau's responses, are:

Comment #1

Commenter requests the Bureau reorganize the forms incorporated in the regulations by reference: 12 PACE (New 1/23) and 12 PASFD (New 1/23). Commenter requests the Bureau place the written certifications at the end of each form instead of in their present locations (immediately before the contact information for the funeral establishment). Commenter asserts placing the certification at the end enables the provider to recreate all the same items on the copy they keep on file.

Response to Comment #1

The Bureau has reviewed the comment, and declines to change the organization of the forms based thereon.

The Bureau has created easy to use forms that contain the required information in a logical format. The certification on the forms has the same effect wherever placed on the forms, and commenter has not provided a substantial reason to change its placement.

Comment #2

For instances where the funeral establishment is transferring preneed agreements, commenter requests the Bureau allow a schedule of all preneed agreements, with one written certification, as opposed to a separate certification on each form. Commenter asserts that the present rule would be burdensome where hundreds of agreement transfers are being made. Commenter recommends the Bureau allow the funeral establishment to retain this schedule on file, which would contain all of the same data fields as the form.

Response to Comment #2

The Bureau has reviewed the comment, and declines to change the text based thereon.

Business and Professions Code (BPC) section 7737.1 provides that funeral establishments that intend to transfer their preneed funeral agreements to a licensed successor funeral establishment must:

- provide the bureau with a copy of the notice and with a list of all preneed funeral agreements transferred to the licensed successor funeral establishment prior to

the cessation of business operations (Bus. & Prof. Code, § 7737.1, subd. (a)(3)); and

- provide the licensed successor funeral establishment with a copy of the notice provided, and proof that the notice was provided, to the beneficiaries or trustees, or their legal representatives, prior to the cessation of business operations. (Bus. & Prof. Code, § 7737.1, subd. (a)(4)(A); see also proposed section 1267.1(a)(1)-(a)(3).)

BPC section 7737.1(a)(3) requires the funeral establishment provide the Bureau with “a copy of the notice provided” pursuant to section 7737.1(a). The Bureau construes “a copy of the notice provided” as a document completed with all of the information required by 12 PASFD (New 1/23). The Bureau requires a certification and signature on each notice mailed to the individual preneed agreement account holder.

The Bureau does not consider this requirement burdensome for the funeral establishment. The Bureau believes funeral establishments can easily affix an electronic signature to each notice.

Comment #3

Commenter asserts there is an inconsistency between 12 PACE (New 1/23) and 12 PASFD (New 1/23). Specifically, commenter states “[b]oth the transfer without a successor and the transfer with a successor require that copies of the notices provided to each beneficiary be sent to the bureau; however, the language is different. The first appears to require submission of just one sample letter that is being sent and a list of all contracts being transferred. The second requires submission of copies of each of the letters (no sample, no schedule).”

Commenter asserts in both types of instances (transferring and not transferring preneed agreements), the Bureau should allow the funeral establishment to submit one copy of the letter (Bureau assumes commenter means the notice) and a list. According to commenter, this would make the rule consistent with section 1267.1(a)(2) that requires a funeral establishment to provide the Bureau with a copy of the notice provided to consumers and a list of all preneed agreements transferred to a successor funeral establishment.

Response to Comment #3

The Bureau has reviewed the comment, and declines to change the text based thereon.

Commenter’s comment that the forms are inconsistent is not accurate.

The 12 PACE form, applicable to cancellation of preneed agreements without a transfer, states in the footer that “Pursuant to Section 7737.1(b) of the Business and Professions

Code this notice shall be provided at least 60 days prior to the cessation of operations to each beneficiary, trustor or trustee. At least 60 days prior to the cessation of business operations, copies of the notice provided to each beneficiary, trustor or trustee shall also be provided to the Bureau by regular mail in accordance with 16 CCR section 1267.1.” This statement is consistent with section 1267.1(a) in the proposed regulations. Also, commenter misconstrues section 1267.1 – it does not require submission of a sample letter. It requires copies of the notice provided to each beneficiary, which are necessarily different to the extent the beneficiaries are different.

The 12 PASFD form, applicable to cancellations without a transfer, states in the footer that “Pursuant to Section 7737.1(a) of the Business and Professions Code, this notice shall be provided to the beneficiaries, trustors, or legal representatives of the beneficiaries or trustors of the preneed funeral agreements, and the trustees holding the preneed funeral trusts associated with the preneed funeral agreements at least 60 days prior to the cessation of operations.” This form does not state anything about provision of copies of the notice to the Bureau. Consistent with proposed section 1267.1, BPC section 7737.1(a)(3) requires establishments provide the Bureau with a copy of the notice and with a list of all preneed funeral agreements transferred to the licensed successor funeral establishment prior to the cessation of business operations.

In sum, in both instances, funeral establishments are required to submit copies of the notices provided to the Bureau. Each notice is unique because it contains specific information each account holder. Therefore, every notice is different, and no one notice can fulfill the requirement. A list and a mere sample of the notice, in the case of a transfer, do not meet the requirements of the law.