

STATE OF WISCONSIN
CEMETERY BOARD

IN THE MATTER OF RULEMAKING : ORDER OF THE
PROCEEDINGS BEFORE THE : CEMETERY BOARD
CEMETERY BOARD : ADOPTING RULES
: (CLEARINGHOUSE RULE 19-149)

ORDER

An order of the Cemetery Board to repeal CB 2.015, 4.015, and 5.03 (2); to consolidate renumber and amend CB 5.03 (intro) and (1); to amend CB 4.05; and to repeal and recreate CB 1.015 relating to change of trustee of care funds and preneed trust funds.

Analysis prepared by the Department of Safety and Professional Services.

ANALYSIS

Statutes interpreted: Section 157.19 (2) (b), (c), and (d), Stats.

Statutory authority: Sections 157.19 (2) (d) and 440.905 (2), Stats.

Explanation of agency authority:

Section 157.19 (2) (d), Stats., provides that “[t]he cemetery board shall promulgate rules establishing reasonable requirements and standards for the approval of changes under pars. (b) and (c). For approval of changes under par. (b), the rules shall require the cemetery authority to submit evidence that the rights and interests of the beneficiary of the care fund will be adequately protected if the change is approved. For approval of changes under par. (c), the rules shall require the trustee to submit evidence that the rights and interests of the purchaser under the preneed sales contract will be adequately protected if the change is approved.”

Section 440.905 (2), Stats., provides “[t]he board has rule-making authority and may promulgate rules relating to the regulation of cemetery authorities, cemetery salespersons, and cemetery preneed sellers...”

Related statute or rule: Sections 157.061 (1m), (2) and (13), and 157.19, Stats.

Plain language analysis:

This rule project amends CB 4.05 relating to the verification of deposit that must be submitted to the Cemetery Board following a change of trustee. The rule project clarifies that the cemetery authority must submit the verification notice to the Cemetery Board within 30 days of the transfer and must ask that the new trustee also submit a verification notice to the Cemetery Board.

The rule project also creates a definition for “Preneed trust fund” within ch. CB 1, and moves the definitions for “Care fund,” “Financial institution,” and “Cemetery authority” into to ch. CB 1, so that these definitions apply throughout the CB suite.

Summary of, and comparison with, existing or proposed federal regulation:

The FTC does regulate preneed funeral and burial agreement sales but does not regulate the process by which a trustee of either a preneed trust fund or care fund is transferred.

Summary of public comments received on statement of scope and a description of how and to what extent those comments and feedback were taken into account in drafting the proposed rule:

A preliminary public hearing on scope was held at the Cemetery Board’s August 20, 2019 meeting. No comments were received.

Comparison with rules in adjacent states:

Illinois: Illinois statute requires that the trustee notify the Comptroller (a state officer) no less than 28 days prior to the effective date of the trustee change. The provision does not specify whether the transferring or the new trustee needs to inform the Comptroller. (815 ILCS 390/16 (b)).

Iowa: Iowa law does not generally restrict the transfer of care funds from one financial institution to another. (IA Stats. s. 523I.810 4.). Preneed trust funds can be transferred from one financial institution to another if notice is provided to the commissioner within 30 days of the transfer of the trust funds. The party required to submit the notice is not specified. (IA Stats. s. 523A.202 4.).

Michigan: Michigan allows cemeteries to change the trustee of care funds at any time, subject to the consent of the commissioner and subject to the terms of the cemetery’s agreement with the trustee. (MI Stats. s. 456.536 (16) (4)). Cemetery preneed sellers or trustees can change the depository or escrow agent of a preneed account at any time, without cause, and without the approval of any other party. The contract purchaser must be notified, however, if the depository or escrow agent is changed. (MI Stats. s. 328.224 (14) (3)).

Minnesota: Minnesota law gives cemetery authorities the ability to appoint multiple trustees to invest their care and improvement fund. Trustee appointments may be revoked by the board of the cemetery authority at any time by a two-third vote of its members. Seven days before any portion of the fund is transferred or withdrawn, the board of the cemetery authority must notify the county auditor of the activity and the destination of the funds withdrawn or transferred. (Minn. Stats. s. 306.77).

Preneed trust fund trustees can be appointed or removed at any time by the purchaser of the preneed contract. The beneficiary of the trust must be made aware of the initial location of the deposited funds, and any subsequent transfers of funds to a different financial institution. (Minn. Stats. s. 149A.97 (4) and (5)).

Summary of factual data and analytical methodologies:

The Cemetery Board performed a review of its administrative rules pursuant to s. 227.29, Stats., and determined that s. CB 4.05 was ambiguous as to which trustee must submit the verification of trustee transfer to the Cemetery Board as required by s. 157.19 (2) (c), Stats. This rule project remedies that ambiguity by revising the rule to require the cemetery authority to submit the verification, as required by the statute. The rule will also be modified to require the cemetery authority to request that the new trustee also submit the verification form to affirm that they are aware of the transfer and have received the funds.

Analysis and supporting documents used to determine effect on small business or in preparation of economic impact analysis:

The proposed rule was posted for 14 days to receive public comment on the economic impact of the proposed rule. No comments were received.

Fiscal Estimate and Economic Impact Analysis:

The Fiscal Estimate and Economic Impact Analysis is attached.

Effect on small business:

These proposed rules do not have an economic impact on small businesses, as defined in s. 227.114 (1), Stats. The Department's Regulatory Review Coordinator may be contacted by email at Daniel.Hereth@wisconsin.gov, or by calling (608) 267-2435.

Agency contact person:

Jon Derenne, Administrative Rules Coordinator, Department of Safety and Professional Services, Division of Policy Development, 4822 Madison Yards Way, P.O. Box 8366, Madison, Wisconsin 53708; telephone 608-266-0955; email at DSPSAdminRules@wisconsin.gov.

TEXT OF RULE

SECTION 1. CB 1.015 is repealed and recreated to read:

CB 1.015 Definitions. As used in chs. CB 1 to 6:

- (1) "Board" means the cemetery board.
- (2) "Care fund" has the meaning given in s. 157.061 (1m), Stats.
- (2) "Cemetery authority" has the meaning given in s. 157.061 (2), Stats.
- (3) "Financial institution" has the meaning given in s. 705.01 (3), Stats.
- (4) "Preneed trust fund" has the meaning given in s. 157.061 (13), Stats.

SECTION 2. CB 2.015 is repealed.

SECTION 3. CB 4.015 is repealed.

SECTION 4. CB 4.05 is amended to read:

CB 4.05 Verification of deposit. Within 30 days after the transfer of the care fund or preneed trust fund, the ~~trustee~~ cemetery authority shall submit information to the board verifying the transfer, including the amount deposited, the date the deposit was made, and the account number of the fund. In addition, the cemetery authority shall request that the new trustee submit the same information to the board verifying the receipt of the funds.

SECTION 5. CB 5.03 (intro.) and (1) are consolidated, renumbered, and amended to read:

CB 5.03 Definitions. As used in this chapter: ~~(1) "Alternative~~ alternative investment means the use of care funds received from the sale of cemetery lots by a cemetery authority to purchase investment instruments, rather than depositing the care funds in a financial institution under s. 157.19, Stats., or with the treasurer of the county or city in which the cemetery is located.

SECTION 6. CB 5.03 (2) is repealed.

SECTION 7. EFFECTIVE DATE. The rules adopted in this order shall take effect on the first day of the month following publication in the Wisconsin Administrative Register, pursuant to s. 227.22 (2) (intro.), Stats.

(END OF TEXT OF RULE)

Dated August 11, 2020



Chair