



Advisory Committee
May 21, 2019

DRAFT LANGUAGE
UNITRUST DISTRIBUTION METHOD FOR ENDOWMENT CARE FUNDS

(1) Add Section 2334 of Division 23 of Title 16 of the California Code of Regulations to read as follows:

§ 2334. Application for Endowment Care Fund Conversion

(a) Application for a cemetery authority to convert an endowment care fund from a net income distribution method to a unitrust distribution method shall be filed on bureau form 23-ECFC (01/20), Application for Endowment Care Fund Conversion, which is hereby incorporated by reference, at the principal office of the bureau. Each application shall be accompanied by the following:

(1) The endowment care fund trust agreement executed by the board of directors or limited liability company members of the cemetery authority as required by section 2326 of these rules.

(2) Written investment objectives of the endowment care fund.

(3) The cemetery maintenance standards required by section 2333 of these rules.

(b) Each application shall be signed by the licensed cemetery manager, each endowment care fund trustee, and a designee of the cemetery corporation.

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 Division 23 of Title 16 of the California Code of Regulations to read as follows:

§ 2334.1. Endowment Care Fund Conversion Conditions

A cemetery authority shall not convert its endowment care fund to a unitrust distribution method without written notification of approval from the bureau. Upon approval by the bureau, the following conditions shall apply:

(a) Conversion to the unitrust distribution method shall become effective the first fiscal year following approval from the bureau.

(b) In the first year of conversion to the unitrust distribution method, the cumulative total of all principal contributions shall be equal to all deposits required pursuant to Sections 8726.1(a)(6), 8738, and 8738.1 of the Health and Safety Code.

(c) The trustee(s) shall use the total annual unitrust amount approved by the bureau to determine the availability of funds for a full distribution.

(d) Total annual unitrust distributions shall not exceed the total annual unitrust amount approved by the bureau.

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

(3) Add Section 2334.2 of Division 23 of Title 16 of the California Code of Regulations to read as follows:

§ 2334.2. Denial of Application for Endowment Care Fund Conversion

The bureau shall deny a cemetery authority's Application for Endowment Care Fund Conversion if any of the following conditions exist:

(a) Section 8726.2(b) of the Health and Safety Code has not been met.

(b) If the conditions set forth in Section 8726.2(b)(6)(B) of the Health and Safety Code exist for the year for which the cemetery authority is applying to convert the endowment care fund to the unitrust distribution method.

(c) If the Application for Endowment Care Fund Conversion does not sufficiently address how the trustees will protect consumers' and the general public's long-term interests to ensure the cemetery is maintained after the end of its economic life.

(d) If the cemetery authority is not in compliance with the statutes and regulations enforced by the bureau.

(e) The cemetery authority is on probation for violations of the Cemetery and Funeral Act.

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

(4) Add Section 2334.3 of Division 23 of Title 16 of the California Code of Regulations to read as follows:

§ 2334.3. Abandonment of Application for Endowment Care Fund Conversion

An application shall be deemed abandoned and all fees previously paid shall be deemed forfeited if the applicant for a hydrolysis facility license refuses or fails to comply with the provisions of Section 2334 within one (1) year from the date of written notification by the bureau of the documents or information required to be submitted. Any application so abandoned may not be reinstated; however, the applicant may file a new application accompanied by the required fees and documents.

Note: Authority cited: Section 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 Division 23 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 to revert to the net income distribution method if any of the following conditions exist:

(1) It is determined the cemetery authority no longer meets the conditions of Section 8726.2(b) of approval of Health and Safety Code.

(2) The bureau is assigned conservatorship of the endowment care fund pursuant to Section 7613.9 of the Code.

(3) The cemetery authority fails to file an annual report pursuant to Section 7612.6 of the Code.

(4) The cemetery authority is not in compliance with statutes and regulations enforced by the bureau.

(5) The cemetery authority's continued use of the unitrust distribution method is detrimental to the public interest pursuant to Section 8736 of the Health and Safety Code.

(b) If the bureau causes a cemetery authority to revert to the net income distribution method, the cemetery authority shall revert for the entire fiscal year in which it receives written notification of approval from the bureau.

(c) A cemetery authority may request in writing to revert to the net income distribution method. It may revert to the net income distribution method in the fiscal year in which it receives written notification of approval from the bureau.

(d) A cemetery authority that has reverted to the net income distribution method will need to reapply to convert to the unitrust distribution method.

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) 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~~(e) 7612.6 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 prepared by a licensed independent certified public accountant or public accountant provided that such statements fully and accurately disclose the position of the endowment care fund and that such certificate does not contain disclaimers or qualifications such as to preclude the rendering of an independent opinion.

(b) Cemetery authority approved for unitrust distribution method shall provide the following in addition to subsection (a):

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

(2) The total acres the cemetery has sold for interment, including preneed sales.

(3) Of the total acres listed in subsection (b)(2), the number of acres containing spaces for which endowment care amounts have been deposited to the endowment care fund.

(4) The total acres (developed and undeveloped) of the cemetery that remain unsold.

(5) The total spaces the cemetery has sold for interment, including preneed sales.

(6) Of the total spaces listed in subsection (b)(5), the number of spaces that have contributed to the endowment care fund.

(7) The estimated number of interment spaces of the cemetery that remain unsold in all developed and undeveloped acreage.

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