



STAKEHOLDER WORKSHOP VIA WEBEX MINUTES

Monday, June 21, 2021

Stakeholder Members

Darin Drabing, Forest Lawn
Curtis Cameron, Forest Lawn
Steve Schacht, Service Corporation International (SCI)
Esther Bateman, SCI
Chris Micheli, SCI
Jerry Desmond, Cemetery & Mortuary Association of California (CMAC) A
Cesar Victoria, Ann Fisher, Carolyn Knight, G.K., and Brianna Miller

Advisory Committee Members

Maria Mangini
Chanell O’Farrill

Cemetery and Funeral Bureau (Bureau or CFB) Staff: Gina Chiaverini Sanchez, Bureau Chief, Sandra Patterson, Deputy Bureau Chief, Cheryl Jenkins, Program Operations Manager, Mona Mathews, Associate Management Auditor, and Carolina Sammons, Legislative Analyst

Department of Consumers Affairs Staff: Danielle Rogers, Regulatory Counsel, and Kristy Schieldge, Regulatory Counsel

Meeting Agenda

- Newly Proposed Regulatory Language (Add a New Article 3.5 and Title and Sections 2334, 2334.1, 2334.2, 2334.3, 2334.4, and amend Section 2350 in Article 5 of Division 23 of Title 16 of the California Code of Regulations relating to Endowment Care Funds and the Unitrust Distribution Method)
- Newly Proposed Unitrust Conversion Application (23-UCA (New 7/21))

Bureau Chief Gina Sanchez called the meeting to order at 10:05 a.m. welcoming those in attendance participating in the Bureau’s Stakeholder Workshop. Ms. Sanchez provided instruction on the conduct of the meeting including how to make public comment and introduced the Bureau and Department staff.

Ms. Sanchez explained that documents were available on the CFB website and this workshop was for a new regulatory action for licensed cemeteries, its board of trustees or its corporate trustee who is seeking approval to convert the endowment care fund from a net income distribution method to the unitrust distribution method.

Ms. Sanchez stated that CFB previously filed a unitrust regulatory package with the Office of Administrative Law (OAL). CFB will be withdrawing the previous unitrust regulatory package from the OAL and filing a new one. It was determined that it is in the best interest of implementing Health and Safety Code (HSC) section 8726.2 to refile a new regulatory package by the end of July if not sooner.

Ms. Sanchez began by displaying the screen to show the regulatory text and recommended taking comments on the first section, then moving to the application, then to the remaining sections, noting however that comments could be made on any section at any time.

Ms. Sanchez indicated the first section, 2334 (a) of Title 16 of the California Code of Regulations (CCR), is specifically related to the requirements listed in the HSC section 8726.2(b)(1) through (8) where each condition of approval is identified.

Commenter Darrin Drabing extended his appreciation to the Bureau and staff for this new version of a very complicated topic. Mr. Drabing requested clarification on CCR section 2334 (b) where the regulation requests a trust document and asked if in his case the Bureau expects a cemetery authority to have a trust agreement with itself.

Ms. Sanchez pointed out that in CCR section 2334 (b)(1), where it states that if a trust document is not available, the cemetery will need to provide an explanation for why it is not available. Additionally, Ms. Sanchez pointed to HSC section 8726.2(d) where it references that the cemetery authority, board of trustees or corporate trustees shall provide all relevant trust documents, if available.

Commenter Esther Bateman provided comment on CCR section 2334(a)(4)(B)(iii) specific to the definition of the word “portion” and whether the Bureau is expecting a percentage or an amount.

Ms. Sanchez responded that an amount is needed but she will consider the verbiage to see if additional clarification is needed.

Ms. Bateman’s next comment expressed a concern that the bureau will hold the cemetery accountable to the “projections”, and if the cemetery did not meet the projections, will the Bureau force the cemetery to revert to net income.

Ms. Sanchez responded this is a projection and an assumption and to assess the fund in its status, a new projection may be needed. Ms. Sanchez stated that the original conditions of approval do not state that you have to meet your previous 5-year projection and acknowledged that there would be instances where a cemetery may not meet the projection and still have a healthy fund. Ms. Sanchez appreciated the comment and stated her team would speak to legal counsel on the verbiage to ensure the language is clear.

Ms. Bateman’s next comment is regarding CCR section 2334(a)(4)(B)(v) where it states, ‘projected investment income’. Ms. Bateman requested clarification in the language that better represented the total unitrust growth. Ms. Bateman stated that when people hear income it usually goes with

ordinary income like realized income and realized capital gains. Ms. Bateman stated that when the regulation speaks to income, they are expecting the overall unitrust growth. Ms. Bateman also inquired about the “tax obligations” verbiage.

Ms. Sanchez appreciated the comment and committed to further clarifying what the income projection should include. Ms. Sanchez spoke to the “tax obligations” section as guidance that cemeteries are expected to change or move investments around, and if there are tax obligations that must be met, those must be taken into consideration as part of the projection.

Ms. Schieldge, CFB Regulatory Counsel, commented regarding a previous comment concerning “projection” Ms. Schieldge explained that CCR section 2350 (b) addresses the cemeteries’ annual reporting requirement including language that provides cemeteries the opportunity to report anything that has changed since the original approval. The Bureau would then reevaluate whether the standards and policy objectives of the statute are still being met based upon that changed information. Ms. Schieldge agreed it doesn't mean an automatic reversion to net income would be triggered.

Commenter Jerry Desmond with Cemetery & Mortuary Association of California (CMAC) stated that in addition to himself, Darin Drabing, Esther Bateman, Steve Schacht, Curtis Cameron, and/or Chris Micheli are representing CMAC. Mr. Desmond stated he appreciates this current version of the text and application and the hard work of the Bureau. Mr. Desmond also agreed that one issue is whether a cemetery does not meet the projections in the analysis whether it will be the reason for reversion and he appreciated the comments made regarding that the original condition is not to meet a projection and there is an annual reporting requirement. Mr. Desmond also stressed the fact that the reporting period for cemeteries is typically January 1st, so this package needs to be expedited to meet the 2022 reporting year.

Ms. Sanchez responded that this regulatory package is a high priority and it is expected that this regulatory package will move quickly through the process.

Commenter Curtis Cameron from CMAC stated he appreciated that the 5-year projection is being used as a benchmark for performance and inquired as to what section of the statute this is associated with; specifically, if it was regarding HSC section 8726.2(b)(3).

Ms. Sanchez responded that the requested analysis satisfies HSC section 8726.2(b)(2) where it speaks to evidence that the trustee will invest and manage the fund under the prudent investor rule. Ms. Sanchez added that HSC section 8726.2(b)(3) is addressed in the application; however, agrees that this analysis would complement the requirement for knowledge of how to manage an endowment care fund under the unitrust method.

Commenter Ms. Bateman stated regarding CCR section 2334.1, inquired as to the processing timeframe for approvals and CCR section 2334.4(c) asking for clarification on “satisfactory proof” and what the bureau will accept as it appears the language is very broad.

Ms. Sanchez stated that the Bureau does not currently have mandated timeframes for any application and has not historically had any issues with applications not being processed timely. Ms. Sanchez also stated that CCR section 2334 is specific to approvals but there is a 90-day timeframe included in CCR section 2334(c) to allow for timely staff review and explained that further timeframes for completion of the application are covered in the abandonment language in CCR section 2334.3. Ms. Sanchez also acknowledged that satisfactory proof is broad, and many documents can meet this requirement, such as a simple amendment page to a trust instrument.

Commenter Mr. Drabing stated that the 5-year projection requirement along with the investment policy statement will be the guiding documents of what to expect from the fund and agreed with what the Bureau is requesting.

As there were no further comments on CCR section 2334, Ms. Sanchez displayed the Unitrust Conversion Application on the shared screen and provided details of the beginning instructions and then went section by section identifying the information captured in each section.

Commenter Mr. Cameron stated that there was a formatting error in Section C and that this application required proof of education or a professional license and the two years of experience.

Ms. Sanchez acknowledged the formatting errors then cited HSC section 8726.2(b)(3) where it speaks to knowledge and experience and that Section C captures that information.

Commenter Mr. Drabing stated that he understands how the statute is written in that HSC section 8726.2(b)(3) requires expertise in investing and managing the endowment care fund under the unitrust distribution method but that as this type of method has not been allowed in California, it eliminates those in California who have been managing these endowment care trusts for years.

Ms. Sanchez acknowledged this issue in the statute and added that CFB brought up this issue as technical advice during the creation of the second bill as Ms. Sanchez was not yet appointed during the original bill. Ms. Sanchez stated that without a statutory change, this is how the application must read and a potential solution, although not ideal, would be for a cemetery authority to hire a trustee from another cemetery (who has worked for a cemetery in another state using unitrust) for the first two years to work together until the cemetery can obtain the required experience.

Commenter Mr. Desmond spoke to the fact that CMAC would be interested in having discussions with the department and the legislature to see if there would be an opportunity for a quick legislative fix to the requirement in the statute HSC section 8726.2(b)(3).

Ms. Sanchez thanked Mr. Desmond for his comment and mentioned that the Bureau is available for any technical assistance and discussion on this topic with CMAC and the Departments Legislative staff.

Commenter Ms. Bateman asked if the signatures required in Section E of the application for corporations were required to be the President and Vice President or would the Bureau allow another representative.

Ms. Sanchez responded that the Bureau is open to suggestion on who signs the application, but that whoever provides their signature is attesting to the accuracy and truthfulness of the application, so it should be the person with authority to do so.

As there were no further comments on the application, Ms. Sanchez moved onto the next section of CCR section 2334.1 and explained that this section speaks to the approval of conversion to the unitrust distribution method and that it would become effective the following reporting year.

As there were no comments on CCR section 2334.1, Ms. Sanchez moved on to CCR section 2334.2 and provided a high-level explanation of the denial process and the appeal process stating this is standard verbiage that mirrors other areas of the Cemetery and Funeral Act.

As there were no comments on CCR section 2334.2, Ms. Sanchez moved on to CCR section 2334.3 and provided a high-level explanation of the abandonment process of the Unitrust Conversion Application and that this verbiage mirrors other areas of the Cemetery and Funeral Act and section 142 of the Business and Professions Code.

As there were no comments on CCR section 2334.3, Ms. Sanchez moved on to CCR section 2334.4 and provided a high-level explanation of the reversion from the unitrust distribution method to the net income distribution method.

As there were no comments on CCR section 2334.4, Ms. Sanchez moved on to CCR section 2350 and provided a high-level explanation of the changes made to (a) for clarity and updated industry terminology and (b) the unitrust annual reporting requirement.

Commenter Mr. Drabing stated that the seven-day timeframe to provide the Bureau satisfactory proof of reversion to the net income distribution method under CCR section 2334.4 (c) may not be long enough. He requested 14 days may be better.

Ms. Sanchez clarified that the seven days comes after the initial 60 days that the Bureau provides notice to the trustee to revert but would take the comment into consideration.

Mr. Cameron referenced CCR section 2334(a)(6) and pointed out under the net income distribution method there are multiple reserve accounts and this section only speaks to using the prior years ending balance of the reserve for future maintenance as the beginning balance of the mandated reserve under the unitrust distribution method. Mr. Cameron asked if the reserve for losses would also go into funding the future maintenance reserve under the unitrust distribution method.

Ms. Sanchez responded that the statute does not mandate how the reserve account should be funded so the regulatory language is written to provide a reasonable method to fund this mandated reserve account which would be particularly helpful if a cemetery ever had to revert to the net income distribution method. Ms. Sanchez also acknowledged that it would be up to the trustee to include the reserve for losses under the unitrust reserve or calculate it as unrestricted funds.

Commenter Mr. Desmond asked if CMAC would be able to provide any additional input on this package in the event something comes up.

Ms. Sanchez spoke to the tight time frame to begin the extensive review process and would appreciate any further comments or suggestions to be submitted as soon as possible in hopes of getting a complete package under review by next week.

Commenter Ms. Bateman thanked the Bureau staff for their efforts and that she is pleased with this current version.

As there were no further comments, Ms. Sanchez thanked all of those in attendance and closed the stakeholder workshop at 11:34 a.m.