

CEMETERY AND FUNERAL BUREAU

MODIFIED TEXT concerning Cemeteries: Unitrust Conversion

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.

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 to read as follows:

Article 3.5 Endowment Care Fund Unitrust Distribution

§ 2334. Unitrust Conversion Application.

(a) A cemetery authority, its board of trustees, or its corporate trustee seeking to convert the cemetery authority's endowment care fund from a net income distribution method to a unitrust distribution method shall submit to the bureau a completed form 23-UCA (New 7/21), Unitrust Conversion Application, which is hereby incorporated by reference. Each application shall be accompanied by:

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

(2) The trustee compensation schedule as referenced in Section 8726.2(b)(7)(B) of the Health and Safety Code;

(3) Written investment objectives that promote the mutual goals set forth in Section 8726.2(b)(1) of the Health and Safety Code;

(4) Evidence of how the cemetery authority, its board of trustees, or its corporate trustee will invest and manage the trust under the prudent investor rule as set forth in the Uniform Prudent Investor Act. Evidence shall be in the form of an analysis and shall include:

A. Current investment asset class allocation ranges, with explanations of the role(s) each class of investment plays in the overall portfolio strategy, and how the asset allocation will assist the trustee in managing the fund according to the prudent investor rule.

B. A five (5) year projection for the fund, by year, of anticipated income, expense, and valuation calculations adjusted for inflation and changes in asset values that identify and consider the following:

i. The projected value of the endowment care fund necessary to maintain the cemetery when it no longer has any interment space left to sell, if that condition is expected to occur before the end of the five (5) year projection.

ii. The reasonable administrative expenses attributable to generating income to the endowment care fund. "Reasonable administrative expenses" are the expenses identified in Section 8733 of the Health and Safety Code.

iii. The portion of expenses attributable to care, maintenance and embellishment of the cemetery expected to be paid by the endowment care fund.

iv. The projected contributions to the corpus from: (1) sales of developed property categorized by quantity and type of interment space, including current deposit rates and any anticipated modification of the deposit rates; and (2) sales of undeveloped property, if known and applicable.

v. The projected growth of the fund, with consideration of tax obligations.

vi. The projected annual unitrust amount.

(5) Policies or written procedures that identify any internal controls and reporting systems used by the trustee to manage the fund under the prudent investor rule.

(6) Written financial records showing a separately identifiable reserve account has been created for future maintenance, repair, restoration of property, or embellishments in the cemetery pursuant to Section 8726.2(b)(5) of the Health and Safety Code. The beginning balance of this reserve may include the prior year's ending balance of the Reserve for Future Maintenance under the net income distribution method.

(b) Provision of Relevant Trust Documents

(1) If all relevant trust documents including a proposed trust instrument are not available at the time of application, then the applicant shall include with the application an explanation for why the document(s) are not available and, if applicable, the date the document(s) are expected to become available. Any approval of the application without the relevant trust document(s) may be conditioned upon the applicant's provision of the relevant document(s) within thirty (30) days of the date when the applicant indicates the documents will become available. For the purposes of this section, "relevant trust documents" means all items listed in this section.

(2) If any relevant trust document(s) identified by the bureau in the notice of conditional approval is not provided within thirty (30) days of the date of when the documents become available, then the conditional approval shall be revoked and the application denied. The bureau shall send a notice of revocation of conditional approval and denial of the application to the applicant as set forth in Section 2334.2.

(c) A completed application pursuant to this section 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, 8726.2, 8731, 8733.5, 8736, 8738, 8740, 8751, and 8751.1, Health and Safety Code.

§ 2334.1. Approval of Endowment Care Fund Conversion.

Pursuant to Section 8726.2 of the Health and Safety Code, a cemetery authority shall not convert its endowment care fund to a unitrust distribution method without first complying with Section 2334 and receiving 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 the date of approval from the bureau.

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

§ 2334.2. Denial of Unitrust Conversion Application.

(a) Grounds for denial. The bureau shall deny an application to convert a cemetery authority's 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) of the Health and Safety Code, as applicable.

(2) The bureau finds any of the conditions described in subdivisions (a)-(f) of Section 7613.9 of the Code.

(3) The applicant has not provided all relevant documents to the bureau pursuant to Section 2334.

(b) Written Notice of Denial. The bureau shall provide the cemetery authority with a written notice of the denial of the application to convert to the unitrust distribution method, including the basis for the denial and the process and procedure for appealing the denial according to this section, which will be mailed to the cemetery authority licensee's address of record.

(c) Appeal of Denial. An applicant may file a written appeal of the bureau's decision denying its application to convert to the unitrust distribution method within thirty (30) days after the date of the notice of the bureau's denial. The appeal shall include any documentation the applicant wishes to present to the bureau. The request for an appeal shall be considered a request for an informal hearing under the Administrative Procedure Act (commencing with Section 11445.10 of the Government Code).

(d) Informal Office Conference Option. In addition to requesting a hearing, the applicant may request in writing an informal office conference with the bureau regarding the reasons for the denial within ten (10) days from the date of receipt of the denial notice. The bureau shall, within thirty (30) days from the date of receipt of the request, hold an informal office conference with the applicant. At the conclusion of the informal office conference, the bureau may affirm or dismiss the denial. The bureau shall state in writing the reasons for their action and mail a copy of their findings and decision to the applicant within fifteen (15) days from the date of the informal office conference. The applicant does not waive its request for an informal hearing as provided by this section by requesting an informal office conference. If the denial is dismissed after the informal office conference, the application shall be deemed approved and the request for an informal hearing shall be deemed to be withdrawn.

Note: Authority cited: Section 7606, Business and Professions Code; Section 11445.20, Government Code. Reference: Section 7613.9, Business and Professions Code; Section 8726.2, Health and Safety Code; Sections 11445.10, 11445.20, Government Code.

§ 2334.3. Abandonment of Unitrust Application.

(a) The abandonment date for an application that has been returned to the applicant as incomplete shall be 12 months from the date of returning the application.

(b) An applicant who abandons an application must submit a new application to obtain the bureau's approval to convert its endowment care fund to the unitrust distribution method.

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.

§ 2334.4. Reversion to Net Income Distribution Method.

(a) The bureau may shall require, after sixty (60) days' notice, that 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 for any of the reasons set forth in Section 8726.2(e)(3) of the Health and Safety Code.

(b) Written notice of the bureau's requirement that the cemetery authority revert to the net income distribution method will be mailed to the cemetery authority licensee's address of record and will include the reasons for the requirement to revert to the net income distribution method and the effective date of the reversion. The effective date of reversion may be in the current or the subsequent calendar year or a fiscal year that has been approved by the bureau as set forth in Section 7612.7 of the Code.

(c) After the 60-day time period set forth in subsection (a) has passed, the bureau may require a cemetery authority to show satisfactory proof of reversion. Proof of reversion must be provided within fourteen (14) days of the date of the bureau's written request for such proof. For the purposes of this section, "satisfactory proof" means the documents or other written information, including a new proposed trust instrument, or amendment(s) thereto, showing the cemetery authority's endowment care fund reversion to the net income distribution method.

(d) It shall constitute unprofessional conduct under Section 7711.1 of the Code for a cemetery authority to fail to comply with the bureau's notice requiring the cemetery authority to revert to the use of the net income distribution method or to refuse to provide the satisfactory proof of reversion required by this section.

(e) 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 and receive approval from the bureau as provided in Section 2334.1 prior to conversion.

Note: Authority cited: Section 7606, Business and Professions Code. Reference: Sections 7612.6, 7613.9, and 7711.1, Business and Professions Code; and Sections 8726.2 and 8736, Health and Safety Code.

§ 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) As part of its annual report, a cemetery authority approved for conversion of its endowment care fund to the unitrust distribution method shall provide a copy of all documents that were created, updated, or changed since its approval by the bureau including all relevant trust documents and information provided to the bureau in Section 2334.

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