



STATE OF IOWA

KIM REYNOLDS
GOVERNOR

DOUG OMMEN
COMMISSIONER OF INSURANCE

ADAM GREGG
LT. GOVERNOR

February 12, 2021

Representative Holly Brink, Chair
Government Oversight Committee
2199 Oxford Avenue
Oskaloosa, IA 52577

Senator Jason Schultz, Chair
Government Oversight Committee
611 Cedar Street, P.O. Box 70
Schleswig, IA 51461

RE: Annual report regarding the regulation of preneed funerals and perpetual care cemeteries

Dear Representative Brink and Senator Schultz,

I am writing to present the annual report on the administration of Iowa Code chapters 523A and 523I by the Iowa Insurance Division (Division). As the Division has provided oversight and regulation of the preneed funeral and cemetery industry over the last year, this report highlights (1) the ways the COVID-19 pandemic has affected the preneed funeral industry and (2) increased concerns of financial stress on funeral homes and cemeteries.

COVID and the Preneed Funeral Industry

The COVID-19 pandemic caused an unusual disruption in the servicing of contracts in which the funeral home had guaranteed the price of certain goods and services. A family dealing with the loss of a loved one that might expect 100 people to gather at a celebration of life could not plan the memorial service they or the funeral home envisioned at the time the preneed purchase agreement was signed.

In general, both funeral homes and Iowans have adjusted. Some have chosen to move memorial services outside. Some have chosen to have visitations and count the number of people in the room at one time with long lines of people waiting to enter in the parking lot. Others have chosen to perform the burial now but to wait to have a memorial service when they could have one without COVID-19 restrictions.

The Division, the Iowa Funeral Directors Association, and 6 funeral homes convened a virtual working group meeting on September 1 to discuss these and other stresses caused by COVID-19. The meeting allowed for good information sharing between attendees, including the Division clarifying certain legal questions. The funeral homes at the meeting chose different ways to handle the scenario where a consumer wanted to postpone a memorial service differently; most were willing to postpone it indefinitely, while at least one was unwilling to postpone the service indefinitely largely due to revenue recognition reasons. Most funeral homes took the disbursement from the trust account for the services they provided and subsequently segregated the funds for services they had not yet provided, while at least one funeral home was not taking money from the trust until all the services were provided.

The result of the working group meeting was to recommend no legislative or regulatory changes. The Division agrees with that approach. Foremost in our mind in making that recommendation is that we have received but two complaints, one of which was easily handled and the other of which we investigated and did not take enforcement action on. Given the limited number of complaints, the diversity of industry practices, the novelty of the issues, and the likelihood that the issues are short-lived, we do not recommend making any changes based on the above-described issues.

Financial Stress on Funeral Homes and Cemeteries

As we described last year, the continued trend of cremations over traditional services and burials is an ongoing cause of financial stress in the cemetery industry. Cemeteries have typically been set up to operate on a model that was based on a high percentage of in-earth burials. Funeral homes have been reliant on traditional funeral services that include a memorial service, casket, and burial. With more people choosing a more economical option of cremation, many cemeteries and funeral homes are encountering financial distress. According to the 2020 National Funeral Directors Association (NFDA) Cremation and Burial Report, the projected burial rate for 2020 is 37.5% (down 7.7% from 2015) and projected cremations rate for 2020 is 56% (up 8.1% from 2015). And the COVID-19 pandemic may be accelerating the trend in cremation. More people are choosing cremation now because they are unable to have a funeral due to social-distancing guidelines. According to the 2020 NFDA Cremation and Burial Report, more than half of funeral directors have experienced increased cremation rates during the COVID-19 pandemic.

A majority of cemeteries have no financial system in place to fund future costs after the cemetery no longer has funds available from operations (the sale of interment rights, opening and closing charges and merchandise sales revenue) to fund the current costs of operating the cemetery. Around three hundred of Iowa’s cemeteries are known to be Perpetual Care Cemeteries with restricted trust funds. However, in general, while in compliance with state trusting requirements, for a growing number of cemeteries, their trust funds will be inadequate to maintain the cemetery as a going concern.

Receiverships

As a result of this financial strain, the Division continues its role as receiver of various cemeteries. While the Division successfully terminated a receivership at the end of 2019 – the Division is no longer receiver of Fairmount Cemetery and Crematory in Davenport – it started a new receivership in Dubuque. Costs for the receiverships of these four cemeteries are listed below:

| CEMETERY | CITY | RECEIVERSHIP DATES | COSTS |
|----------------------------------|------------|-----------------------------|--------------|
| Fairmount Cemetery and Crematory | Davenport | August 2017 – December 2019 | \$356,152.38 |
| Springdale Cemetery | Clinton | January 2019 – Current | \$242,295.78 |
| Fort Dodge Memorial Park | Fort Dodge | June 2019 – Current | \$119,685.21 |
| Linwood Cemetery | Dubuque | May 2020 – Current | \$61,000.00 |

Moreover, the Insurance Division is also assisting one cemetery that is suffering from the same revenue/cost structure imbalance as the four above. This cemetery may avoid receivership only because the local municipality may be willing to assume responsibility without the cemetery first going through receivership. These are not the only financially distressed cemeteries; only the ones in, or close to, receivership.

Receiverships are very costly and time-consuming for the Division. As receiver, the Division not only needs to make operational decisions to keep the cemetery operating, but it also has to try to find long-term solutions to counteract the trends mentioned above and prevent a transition of cemetery operations to local governments. Local governments are often struggling financially, even more in a pandemic, may not be set up to operate a cemetery, and frequently do not want to operate the cemetery.

Recommendations

While the legislature may desire to study the financial impact on local townships, cities, and counties in an attempt to identify ways to reduce that impact or provide assistance, our recommendations are limited to the two statutes we administer, Iowa Code chapters 523A and 523I.

The existing legislative mechanism to transfer cemeteries to local government is Iowa Code section 523I.312, subsection 5, which is linked to Iowa Code section 523I.316.

5. The commissioner may petition the court to terminate a receivership at any time and to enter such orders as are necessary to transfer the duty to preserve and protect the physical integrity of the cemetery or burial site, the interment records, and other records documenting consumer purchases of interment rights to the applicable governmental subdivision, as provided in Section 523I.316, subsection 3. The court shall grant the petition if following the first one hundred twenty days of the receivership such duty to preserve and protect cannot be reasonably assumed by a private entity, association, or by other means.

3. Duty to preserve and protect.

- a. A governmental subdivision having a cemetery, or a burial site that is not located within a dedicated cemetery, within its jurisdiction, for which preservation is not otherwise provided, shall preserve and protect the cemetery or burial site as necessary to restore or maintain its physical integrity as a cemetery or burial site. The governmental subdivision may enter into a written agreement to delegate the responsibility for the preservation and protection of the cemetery or burial site to the owner of the property on which the cemetery or burial site is located or to a public or private organization interested in historical preservation. The governmental subdivision shall not enter into an agreement with a public or private organization to preserve and protect the cemetery or burial site unless the property owner has been offered the opportunity to enter into such an agreement and has declined to do so.
- b. A governmental subdivision is authorized to expend public funds, in any manner authorized by law, in connection with such a cemetery or burial site.....

The costs of these receiverships are funded from special revenue funds created in Iowa Code sections 523A.812 and 523I.213. This year's Division legislative proposal will include a recommendation to eliminate the limits on the size of these two special revenue funds. Also, while reticent to increase cemetery expenses, we propose an increase in the examination fee set forth in Iowa Code section 523I.808 from five dollars to ten dollars.

Conclusion

As we continue our efforts to identify issues faced by cemeteries and preneed sellers and address the ones we can, we will bring them to your attention and report on our efforts. Please let me know if you have any questions.

Sincerely,

Doug Ommen
Commissioner of Insurance

Copies to: Angel Bank Adams, Legislative Service Agency (angel.banks-adams@legis.iowa.gov)

Craig Goettsch, First Deputy Insurance Commissioner

Andrew Hartnett, Assistant Commissioner for Securities and Regulated Industries

Chance McElhaney, Communications Director and Legislative Liaison

Heather Schaffer, Assistant Bureau Chief for Securities and Regulated Industries