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November 22, 2022

Senator Jason Schultz, Chair  
Government Oversight Committee  
611 Cedar Street  
PO Box 70  
Schleswig, Iowa 51461

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

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

Dear Senator Schultz and Representative Brink,

I write to present the annual report on the administration of the Cemetery and Funeral Merchandise and Funeral Services, Iowa Code chapter 523A, and the Iowa Cemetery Act, Iowa Code chapter 523I, by the Iowa Insurance Division (Division). This year the Division has proposed a bill that removes regulatory obstacles, provides clarity to the preneed funeral industry, and protects Iowa consumers investing in preneed services and merchandise, as more fully described below.

#### TRANSFERS OF PRENEED PURCHASE AGREEMENTS

Under current Iowa law, when preneed purchase agreements are transferring from one funeral home to another as part of the sale of a funeral home, the Division receives a substantial number of calls and questions about the agreed-upon procedures requirement to be conducted by a certified public accountant (CPA) when preneed purchase agreements are sold or transferred during the sale of a funeral home. As a result, the Division convened a working group meeting with the Iowa Funeral Directors Association and funeral home directors, allowing for productive information sharing between attendees. Through this meeting the Division learned, in general, that hiring a CPA was expensive and was not valuable to the buyer or the seller. As a solution, the Division proposed revisions to this statutory requirement, removing the CPA requirement and replacing it with disclosure requirements the seller must provide to the buyer. The disclosure requirements were designed to facilitate the buyer's due diligence, while being more economical for the buyer.

#### PAYMENTS MADE PAYABLE TO INSURANCE COMPANIES

The Division has long recommended that preneed sellers have consumers pay an insurance company directly when funding a preneed purchase agreement with the purchase of a new insurance policy or a new

annuity. Although rare, the Division has investigated cases in which preneed sellers commingled funds made out to them and, in some instances, misappropriated preneed funds. For example, in December 2020, Andy Joyce was charged with Ongoing Criminal Conduct, Theft 1st Degree, Selling Funeral Services Without a Sales Permit, and Theft 2nd Degree after he sold preneed purchase agreements to individuals and kept the money instead of putting it in trust or in an insurance product, as required by Iowa law. Crimes of this nature are not possible if the payment is made directly to an insurance company, and never made to the preneed seller.

Accordingly, the Division's proposed statutory revisions would require consumers funding a purchase agreement with a new insurance policy or new annuity to make payment payable only to the insurance company.

#### ONGOING DUTY TO DISCLOSE

As part of the licensing process, current Iowa law requires the Division to obtain a criminal history for all sales agents as well as all directors and individuals with a financial interest in a preneed seller. Additionally, the Division obtains a financial history of directors and those with a financial interest in a preneed seller. Despite these requirements, Chapter 523A currently includes no ongoing duty to disclose criminal offenses or large liens.

As a way to protect consumers from unnecessary risk, the Division has proposed a revision that requires (1) a sales agent and any person owning at least 5% of a preneed seller to disclose (a) felonies and (b) misdemeanors that involve dishonesty or false statements of which a person is found guilty, pleads guilty or no contest, and (2) a sales agent and any person owning at least 5% of a preneed seller to disclose any liens or judgements over \$20,000 entered against them or a bankruptcy filing they make. This ongoing duty to disclose is intended to mirror the initial requirements for licensure and to assist the Division in understanding if any additional risk applies in continuing to license a preneed seller or sales agent.

#### BUSINESS CONTINUITY PLANNING

The Division is currently unwinding the business of a small preneed seller in which the owner passed away with limited, disorganized records. Illness and other threats, such as cyber incidents and terrorism, or natural events like earthquakes and tornadoes, threaten the continuity of business processes for any business, including funeral homes. For this reason, the Division has proposed a statutory requirement for all preneed funeral homes to establish, implement, and maintain procedures relating to a business continuity and succession plan. A business continuity and succession plan prepared by a preneed funeral home will minimize the effects of an unanticipated event on the funeral home's ability to perform the preneed funeral desired by the consumer. While this would not be required to be filed with the Division, it would be an item that the Division would ensure the funeral home would have during the normal examination process.

#### ALLOCATION OF GROWTH OR INTEREST

The Division has seen issues in the application of growth on certain preneed purchase agreements during examinations. An example may clarify the issue. Imagine a \$10,000 purchase agreement, of which 75% of the expense is guaranteed and 25% is nonguaranteed. The \$10,000 has grown 50% to \$15,000 upon the purchaser's death. The \$15,000 should be split in the same manner as the original – 75% is guaranteed (\$11,250) and 25% is nonguaranteed (\$3,750). The Division has seen during some examinations, however, where the allocation ends up being \$12,500 and \$2,500, i.e. where all of the growth accrues to

the preneed seller and the purchaser receives less purchasing power (due to inflation) than when he or she initially made the \$10,000 deposit.

The Division previously provided guidance on this topic through a publication distributed by the Iowa Funeral Directors Association. However, to provide further clarity, the Division has proposed language to address growth and interest for guaranteed, nonguaranteed, and contracts containing portions of each. The clarification matches the benefit and the risk; where the preneed seller takes the risk of price change (guaranteed contracts), the growth or income accrues to its benefit, and where the consumer takes the risk of the price change (nonguaranteed contracts), the growth or income accrues to the consumer's benefit.

#### UPDATE ON PERPETUAL CARE CEMETERY RECEIVERSHIPS

Last year, we reported that the Division was acting as receiver for three perpetual care cemeteries: Springdale Cemetery in Clinton, Fort Dodge Memorial Park in Fort Dodge, and Linwood Cemetery in Dubuque. The Springdale and Fort Dodge receiverships closed during 2021, with only Linwood remaining in receivership. That said, the trend of cremations over traditional services and burials continues to cause financial stress in the cemetery industry. The Division continues to monitor several cemeteries that are either receiving support from municipalities without going into receivership or that may need to go into receivership in the future. The Division will continue to monitor and report on these trends, as they do not appear to be abating.

#### CONCLUSION

As we continue our efforts to identify issues faced by the preneed funeral and cemetery industry 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.

Respectfully,

Doug Ommen  
Commissioner of Insurance

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