



STATE OF IOWA

KIM REYNOLDS
GOVERNOR

DOUG OMMEN
COMMISSIONER OF INSURANCE

ADAM GREGG
LT. GOVERNOR

September 21, 2017

Representative Bobby Kaufman, Chair
Government Oversight Committee
1527 330th Street
Wilton, IA 52778

Senator Michael Breitbach, Chair
Government Oversight Committee
2750 Otis Road, S.E.
Cedar Rapids, IA 52403

Regarding: Annual Report regarding regulation of preneed funerals
and cemeteries, including perpetual care cemeteries

Dear Representative Kaufman and Senator Breitbach,

I am writing to submit the annual report as required by Iowa Code sections 523A.801 and 523I.201. Over the last year, the Insurance Division has worked hard to continue a high level of oversight and regulation of the preneed funeral and cemetery industries we regulate.

Electronic Filing and Automation

Until recently, the regulatory activities of the Division's Regulated Industries Unit have never been truly computerized and automated. In the last few years, we have created several new applications to free up a large amount of staff time spent on administrative tasks, which can be better used for enhanced monitoring and oversight.

The first phase went live early in 2016, when a web-based, electronic filing portal went live and began automation of the Division's processing of filings by preneed sellers, preneed sales agents, cemeteries, insurance companies and financial institutions. We are gradually working to automate some of the reconciliation and comparison process between various reports to allow staff to target their review of annual reports to areas of potential discrepancies and eliminate the need to review reports that match up. System-generated reports allow the staff to identify non-compliance with filing requirements in a timely fashion without maintaining time-consuming spreadsheets.

In a second phase that also went live in 2016, we began using the web-based, electronic filing portal for initial license applications by preneed sellers and preneed sales agents and the applications were all electronic and partially automated.

In the third phase, early in 2017, perpetual care cemeteries began using the web-based, electronic filing portal for their annual reports. The Division granted 33 hardship waivers for perpetual care cemeteries.

Eight (8) were allowed to provide the information to Division staff verbally over the telephone and twenty-five (25) were allowed to submit paper annual reports. The information was entered into the electronic filing portal by Division staff.

If funding permits, the Division also intends to develop a project-management type of application that will assist with scheduling and documenting our compliance examination programs. Preneed Sellers and Perpetual Care Cemeteries are examined at least once every five years.

Financial Stress on Funeral Homes and Cemeteries

The death care industry, including funeral homes and cemeteries, is being impacted by a number of trends in funeral and burial practices. The largest trend is the increased number of cremations. The National Funeral Directors Association's 2017 Cremation and Burial Report found that 50.2 percent of Americans chose cremation in 2016. Services involving cremation tend to provide less revenue to funeral homes and cemeteries compared to what were once considered traditional funerals and burial services. In the funeral industry, this has resulted in increased consolidation to increase economies of scale. Licensing of Preneed Sellers is by entity (corporation, etc) versus a physical location. The number continues to trend downward and now stands at only 258. Cemeteries have a harder time consolidating and creating economies of scale.

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), let alone a system to fund the current costs of operating the cemetery. It is our understanding and belief that the Victor Cemetery is now being operated by the city, that the Sixteen Cemetery is now being operated by the township, that Prairie Lawn Cemetery is now under the oversight of Union County, that Pleasant Valley is in discussions with Grundy County and that the Atlantic Cemetery is in discussions with the city of Atlantic.

Perpetual care cemeteries do have some funds in place, even if inadequate, and the Division has been doing what we can to help them leverage the available funds.

Iowa Code Section 523I.810(9): Use of Care Funds

Legislative changes in recent years have created statutory authority for perpetual care cemeteries to borrow from their trust funds for certain expenses. Under the Division's oversight, these provisions allow perpetual care cemeteries to, in essence, borrow from themselves rather than a financial institution. This reduces the cost of financing necessary items, such as the purchase of a lawn mower or backhoe. The care funds are replenished by a five-year repayment schedule. Although the cemetery loses the investment income on the funds used until replenished, that amount is less than what they would pay to borrow the money.

This section requires a filing with the Division. Two cemeteries used this approach in 2015: Atlantic Cemetery in Atlantic and Calvary Cemetery Association in Grand Mound. Three cemeteries used this approach in 2016: Oak Hill Cemetery in Coralville, Oakview Cemetery in De Witt and Sunset Cemetery in Des Moines. To date in 2017 we have received six filings using this approach: Chapel Hill and Sunset Cemeteries in Des Moines, a city cemetery in Sydney, Fairmount Cemetery in Davenport and a corporation with cemeteries located in Burlington, Fairfield, Fort Madison, Iowa City, Keokuk and Ottumwa.

Iowa Code Section 523I.811A: Emergency Use of Care Funds

Statutory authority was added in 2015 to allow perpetual care cemeteries to use care funds for a financial emergency when approved by the Division. The Division approved the emergency use of care funds for cash flow purposes by Fort Dodge Memorial Park in 2017 at a time when they had less than \$100.00 in available funds. While a partial depletion of care funds is not a long-term fix, the emergency withdrawal did avoid the need for a receivership, and receiverships can create hardships for consumers and are very costly and time-consuming for the Division. In addition, receiverships frequently create an unwelcome transition to operation of the cemetery by local government. Local governments are struggling financially and many are not set up to operate a cemetery.

Total Return Distribution Method

The Division adopted Rule 191 IAC 140.8 effective January 1, 2014, which is now 191 IAC 101.8. Low interest rates have impacted many perpetual care cemeteries, because of their typical investment practices. The rule allows perpetual care cemeteries to potentially increase their revenue from their perpetual care trust funds by changing their investment practices.

The rule creates a new option that is intended to encourage investments in appreciating assets (versus solely income-producing assets) with the hope that the trust principal will grow over time and generate increased income as a result. If a perpetual care cemetery adopts the total return distribution method, they are allowed to withdraw the greater of the net ordinary income or a percentage (not to exceed 5%) of the fair market value of the trust fund. A current list is set forth below.

1. Cedar Memorial Cemetery in Cedar Rapids
2. Chapel Hill Cemetery in Des Moines
3. Davenport Memorial Park Cemetery in Davenport
4. Marshall Cemetery dba Riverside Cemetery in Marshalltown
5. Memorial Park Services dba Burlington Memorial Gardens, Iowa City Memory Gardens, Memorial Lawn Cemetery in Fairfield, Memorial Lawn Cemetery in Ottumwa, and Sunset Memorial Park Cemetery.
6. Oakdale Cemetery in Davenport
7. Oak Hill Cemetery in Cedar Rapids
8. Resthaven Cemetery Association in West Des Moines
9. Sunset Memorial Cemetery in Des Moines

Receiverships

The Division proposed changes to the receivership provisions in Chapter 523I regarding cemeteries, to create authorization for a voluntary, uncontested receivership action. This provision was adopted by the legislature in House File 303 during the 2017 legislative session. This provision allows the Division to step in quicker when our assistance is requested and this new provision has already been utilized. Fairmount Cemetery and Crematory requested and consented to a receivership, because of operational and financial issues. An Order was issued by the Polk County District Court on August 8, 2017 appointing the Insurance Division as the receiver. The Division has already stabilized the cemetery's operations and is working to determine whether there is a long-term solution that might prevent a transition of the cemetery's operations to the City of Davenport.

Conclusion

Our ongoing investigation of consumer complaints and our compliance examination program remain an important way to oversee these two industries. As we continue to identify solutions to some of the issues faced by cemeteries and preneed sellers, we will bring them to your attention. Please let me know if you have any questions.

Sincerely,



Doug Ommen
Commissioner of Insurance

Copies to: Deb Kozel, Analyst, Legislative Service Agency (Deb.Kozel@legis.iowa.gov)

Craig Goettsch, Second Deputy Insurance Commissioner

Vincent Ledlow, Assistant Insurance Commissioner

Chance McElhaney, Communications Director and Legislative Liaison

Dennis Britson, Assistant Bureau Chief
Securities and Regulated Industries Bureau