



STATE OF IOWA

KIM REYNOLDS
GOVERNOR

DOUG OMMEN
COMMISSIONER OF INSURANCE

ADAM GREGG
LT. GOVERNOR

October 22, 2018

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.

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 in Davenport 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 stabilized the cemetery and made its operations more efficient, mostly to reduce costs. One example is the purchase of two larger lawn mowers to replace 5 lawn-style riding mowers, thereby significantly reducing the time to mow the cemetery and reducing the size of the necessary maintenance staff. Labor costs are the largest expense of the cemetery. A loan from the cemetery's perpetual care fund provided cash flow to purchase the new mowers (see the discussion below).

The Division 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. The Division entered into an operating agreement with Pine Hill Cemetery and the cemetery's operations have improved dramatically. Structural changes

are being made to reduce expenses and better align the cemetery's expenses with revenue. Attempts are also being made to create new revenue streams. The hope and expectation is that the two cemeteries will operate jointly, thus spreading certain costs over both cemeteries, once the receivership is closed.

The plan is to terminate the receivership on or about March 31, 2019 and we are hopeful at this time that it will not be necessary to transition the cemetery's operations to the City of Davenport.

Enforcement and Oversight Activities

Our ongoing investigation of consumer complaints and our compliance examination program remain an important way to oversee these two industries. Most of the cemetery complaints received in 2017 and 2018 were about aging, financially distressed cemeteries where there was inadequate care and maintenance. Examinations of Preneed Sellers and Perpetual Care cemeteries are conducted at least once every five years. In 2017, we conducted 75 compliance examinations of Preneed Sellers and 18 compliance examinations of Perpetual Care Cemeteries.

Several Perpetual Care Cemeteries are under heightened oversight and supervision: Clinton Lawn Cemetery, the Des Moines Masonic Cemetery, Forest Cemetery (Oskaloosa) and Memorial Park Services (Burlington, Fairfield, Fort Madison, Iowa City, Keokuk and Ottumwa). The annual reports of 28 Perpetual Care Cemeteries are being reviewed to investigate potential principal balance amount discrepancies.

The following enforcement actions are from 2017 and 2018:

1. **Ryan M. Fredregill & Fredregill Funeral Home, Inc.** A **Regulatory Agreement** was executed September 11, 2017 with Ryan M. Fredregill and Fredregill Funeral Home, Inc. settling violations of Chapter 523A involving the failure to file an annual report and remit required fees, failure to submit an audit performed by a certified public accountant to assess the adequacy of funding related to purchase agreements to be transferred and the failure to purchase or legally assume Fredregill's Enterprises, LLC's existing preneed sales contracts in connection with the purchase of assets associated with Fredregill Enterprises, LLC. A civil penalty of \$500.00 was assessed and Fredregill Funeral Home, Inc. agreed to enter into agreements with all impacted consumers whereby Fredregill Funeral Home, Inc. would agree to provide all of the services specified in the relevant existing preneed contracts.
2. **Michael D. Kirsch & Kirsch Funeral Service, Inc.** An **Order and Consent to Order** was executed November 9, 2017 with Michael D. Kirsch and Kirsch Funeral Service, Inc. settling violations of Chapter 523A involving the sale of purchase agreements where the precise goods and services selected were unclear and funds paid by purchasers were not placed in trust, a surety bond was not filed with the Insurance Division and insurance or annuity policies were not created. Proceeds of life insurance policies were irrevocably assigned to Kirsch Funeral Service, Inc. Life insurance premium payments were deposited into the business account of Kirsch Funeral Service. Michael Kirsch and Kirsch Funeral Services, Inc. failed to report numerous purchase agreements.

Micheal D. Kirsch's Iowa resident insurance producer license was revoked and Michael D. Kirsch is permanently barred from being licensed in the state of Iowa as an insurance producer pursuant to Iowa Code § 522.11. Michael D. Kirsch is prohibited from selling, soliciting, or negotiating insurance in the state of Iowa for any line of insurance for which licensure is required in the state of Iowa pursuant to Iowa Code § 522B.17. Michael D. Kirsch's sales agent license was revoked

and Kirsch Funeral Service, Inc's preneed seller license was revoked and Kirsch Funeral Service, Inc. and any other entity of which Kirsch Funeral Service, Inc. has any ownership or control, now or at any time, are permanently barred from being licensed in the state of Iowa as a preneed seller pursuant to Iowa Code § 523A.503. Kirsch Funeral Service, Inc. and Michael D. Kirsch are prohibited from offering and selling preneed purchase agreements, including selling funeral merchandise, cemetery merchandise, funeral services, or a combination thereof, the performance or delivery of which may occur more than 120 days after the initial payment on the account and from managing, operating, or otherwise exercising control over any business entity that is subject to regulation under Iowa Code Chapters 523 and 523I.

Michael D. Kirsch was ordered to pay restitution in the amount of \$32,813.88.

3. **Lincoln Mason and Mason Lindhart Funeral Home, Ltd.** A **Consent Order** was executed February 7, 2018 settling violations of Chapter 523A involving the failure to report a purchase agreement on the 2016 preneed sales agent annual report of Lincoln Mason and the 2016 preneed seller annual report of Mason Lindhart Funeral Home, Ltd. and the failure to place \$10,000.00 of funds paid for the purchase agreement in an irrevocable burial trust in the purchaser's name. Lincoln Mason and Mason Lindhart Funeral Home, Ltd. were ordered to pay the costs of the investigation and prosecution of the matter in the amount of \$950.00. A civil penalty of \$5,000.00 was assessed. The order required a corrective action plan to remediate any and all such violations and requires Mason Lindhart Funeral Home, Ltd. to hire and retain full time or multiple part time staff that will be trained to maintain appropriate records of all activities regulated by the Insurance Division.

Electronic Filing and Automation

Until 2016, the regulatory activities of the Division's Regulated Industries Unit were minimally 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 67 hardship waivers for Perpetual Care Cemeteries, which included 30 township cemeteries, allowing the filers to submit paper annual reports. However, 23 received assistance and were able to file electronically through the filing portal. The information from paper filings was entered into the electronic filing portal by Division staff.

In 2017, the Division developed 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.

As in the common expression about needing to input good data to get good results, our filing system is set up to try to make sure the data coming in is good data. However, that has admittedly made the process more difficult for our filers. Our current efforts are to make the reporting and filing process easier for filers with better error messages so that filers can identify problems with data spreadsheets they need to upload. We believe we have found a vendor who can create an additional “behind the scenes” process that will accept non-CSV spreadsheets (comma separated values) Excel spreadsheets. In addition, if successful, the revisions will permit larger file sizes so that all or almost all of our filers will need to upload only one file. The intent is to have changes made in time for next year’s annual report filings.

Financial Stress on Funeral Homes and Cemeteries

The death care industry, including funeral homes and cemeteries, is being affected 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 262. 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. Only 312 of Iowa’s cemeteries are known to be Perpetual Care Cemeteries with restricted trust funds.

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.

2015: Two cemeteries used this approach in 2015: Atlantic Cemetery in Atlantic and Calvary Cemetery Association in Grand Mound.

2016: Three cemeteries used this approach in 2016: Oak Hill Cemetery in Coralville, Oakview Cemetery in De Witt and Sunset Cemetery in Des Moines.

2017: In 2017 we received seven filings using this approach: Chapel Hill and Sunset Cemeteries in Des Moines, Fort Dodge Memorial Park Cemetery, a city cemetery in Sidney, Fairmount Cemetery in Davenport and Memorial Park Services, with cemeteries located in Burlington, Fairfield, Fort Madison, Iowa City, Keokuk and Ottumwa.

2018: To date in 2018, we have received filings from Atlantic Cemetery, Chapel Hill Cemetery (Des Moines), Fairmount Cemetery and Crematory (Davenport), Oakdale Memorial Gardens (Davenport) and Sunset Cemetery (Des Moines).

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. The Division also approved an emergency use of care funds application from the City of Sidney.

While a partial depletion of care funds is not a long-term fix, these emergency withdrawals can potentially avoid the need for a receivership. Receiverships can create hardships for consumers and are very costly and time-consuming for the Division. In addition, receiverships frequently create a 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

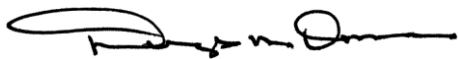
3. Davenport Memorial Park Cemetery in Davenport
4. Fairmount Cemetery and Crematory in Davenport
5. Marshall Cemetery dba Riverside Cemetery in Marshalltown
6. Memorial Park Services dba Burlington Memorial Gardens, Iowa City Memory Gardens, Memorial Lawn Cemetery in Fairfield, Memorial Lawn Cemetery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

Conclusion

Because our goal is regulatory compliance and not disciplinary actions, our efforts in 2017 and 2018 have included discussions, training and educational events in Atlantic (to assist the Atlantic Cemetery and the City of Atlantic), with the City of Des Moines, with board members of the Holland Cemetery, with board members of the Des Moines Masonic Cemetery, with board members of the Islamic Cemetery, at annual conferences of the Iowa Funeral Directors Association and the Iowa Municipal Finance Officers Association and at annual continuing education event for funeral homes and cemeteries held in Waterloo annually that is organized by Locke Funeral Home.

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

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