



# STATE OF IOWA

TERRY E. BRANSTAD  
GOVERNOR

NICK GERHART  
COMMISSIONER OF INSURANCE

KIM REYNOLDS  
LT. GOVERNOR

October 1, 2014

Representative Kevin Koester, Chair  
Government Oversight Committee  
3514 S.W. Edgewood Lane  
Ankeny, Iowa 50023-9565

Senator Janet Petersen, Chair  
Government Oversight Committee  
4300 Beaver Hills Drive  
Des Moines, Iowa 50310

Regarding: Annual Report regarding regulation of preneed funerals  
and cemetery sellers and perpetual care cemeteries

Dear Representative Koester and Senator Petersen:

As previously reported, the death care industry is being impacted financially by a number of trends in funeral and burial practices. Alternative methods of disposition have created less-expensive options for consumers. While this is good for consumers, it has placed financial stress on cemeteries. Cemeteries are struggling to pay their ongoing costs of mowing, trimming, roadway maintenance and other customary and basic cemetery expenses.

A majority of the cemeteries in Iowa 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. Even if a cemetery has perpetual care trust funds, use of the funds is greatly restricted.

The Division is taking several steps that we believe reasonably balance the interests of cemetery operators and the public. These steps are designed to reduce the chances that cemeteries will become public nuisances or a liability and obligation of local governments.

The Division adopted Rule 191 IAC 140.8 effective January 1, 2014, which will allow perpetual care cemeteries to increase the 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, the fair market value of the trust shall be determined at least annually. Rather than looking just at ordinary income generated from investments, the rule allows a "total return distribution method" that allows the cemetery 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. The determination of payout amounts shall take into consideration the cemetery's need to fund both the current and future expenses of care and maintenance and preservation of capital.

The purpose of perpetual care trust funds is to create an ongoing source of revenue that will continue even after revenue from operations cease. As a result, the use of the trust funds is greatly restricted. These perpetual care trust funds do generate some income, but the principal (also known as "corpus") may not be withdrawn. The Division recommends adoption of a statutory provision allowing perpetual care cemeteries to withdraw funds from its perpetual care fund in emergency situations where there is an urgent financial need for a necessary expense and other financial options are not available. Our recommendation, part of the Division's legislative package, requires approval by the Insurance Division and repayment of all or part of the amount withdrawn could be required. As one example, a number of Iowa cemeteries have experienced expenses as the result of straight-line winds and such expenses are difficult to handle, at least from a short-term perspective.

The Division also recommends adoption of a statutory provision to create additional revenue for all cemeteries that are still active and offering interment services. Our proposal, part of the Division's legislative package, will direct cemeteries to impose a surcharge of six percent upon the cemetery's sales price for opening and closing services or the scattering of cremated remains. The funds are retained by the cemetery and will be available for use by the cemetery. The restrictions are designed solely to assure that the funds are applied directly to the costs of maintaining and operating the cemetery.

The Division examines preneed funeral sellers and perpetual care cemeteries at least once every five years. After filling a vacant position and reallocating personnel, the Regulated Industries Unit now has three examiners dedicated to compliance examinations of preneed funeral sellers and perpetual care cemeteries. In addition to our regular compliance examinations of preneed funeral sellers and perpetual care cemetery trust funds, the Division engaged in a cemetery "sweep" this year.

We requested information from every perpetual care cemetery (approximately 300 in number). The main purpose was to create a "baseline year" that would be the same for all perpetual care cemeteries. Unlike most examinations of perpetual care cemeteries, the sweep was broader in scope and also focused on other non-financial issues such as whether the cemeteries are using appropriate sales contracts, have trust agreements and investment policies in place, etc. This year and next we are working to assist cemeteries with deficiencies in these areas to draft documents and improve their practices and procedures.

The Waterloo Memorial Park Cemetery was placed in a court-ordered receivership on May 12, 2014 and the Iowa Insurance Division was appointed as Receiver for the Cemetery. The Receiver has limited powers and duties focused on operating and trust funds of the Cemetery and the Cemetery's financial stability. The Insurance Division has also been involved in a number of other enforcement actions and administrative orders as a result of issues found during compliance examinations.

The licenses of Aaron Sanders and the Sanders Funeral Home in Waterloo are currently in a probationary status. The licenses of Leonard J. Linn and the Linn's Family Services, Inc. dba Linn's Funeral Home and Monument Sales in Iowa Falls are currently in a probationary status. The license of Memorial Park Services, Inc., with locations in Iowa City, Ottumwa, Fort Madison, Burlington and Keokuk is currently in a probationary status. Riverside Cemetery and Marshall Cemetery Association in Marshalltown was ordered to replenish the withdrawal of \$130,642.97 in capital gains from their perpetual care trust fund. The licenses of Daniel W. Ciha, Collette Ciha Soult, and Gay & Gay, Inc. dba Gay & Ciha Funeral and Cremation Service in Iowa City was suspended. The Division identified \$148,123.83 of funds received

from 18 consumers for preneed funeral services or funeral or cemetery merchandise for executed purchase agreements and insurance policy applications where the funds were not paid to the insurance company.

The Division is beginning an initiative to better support our regulation and oversight of preneed funerals and cemeteries, through automation. The Regulated Industries Unit is definitely behind the times, in this regard. The Division's activities in these areas have never truly been computerized and automated, although we do have a computer system in place. Most notably, we do an amazing portion of our work manually in regard to the receipt and analysis of sales reports and we lack case management software for our examination programs.

The Division anticipates working with a software vendor to develop an electronic portal to enable electronic filing for preneed sellers, preneed sales agents, cemeteries, and financial institutions. The hope is to automate workflow and reconciliation of sales reports. We will have automated reports to document and monitor the receipt of sales reports and other required filings. Staff will no longer need to manually check to see whether items have been received. If we can acquire a good system that will do these things and more, we will free up a large amount of staff time spent on administrative tasks, which can be used for better monitoring and oversight.

Please let me know if you have any questions.

Sincerely,



Nick Gerhart  
Commissioner of Insurance

Copies to:            Deb Kozel ([Deb.Kozel@legis.iowa.gov](mailto:Deb.Kozel@legis.iowa.gov))  
                             Rosanne Mead, Assistant Insurance Commissioner  
                             Dennis Britson, Director, Regulated Industries Unit