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October 1, 2015

Representative Bobby Kaufman, Chair  
Government Oversight Committee  
1527 330<sup>th</sup> Street  
Wilton, Iowa 52778

Senator Rob Hogg, Chair  
Government Oversight Committee  
2750 Otis Road, S.E.  
Cedar Rapids, Iowa 52403

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

Dear Representative Kaufman and Senator Hogg:

I am writing to submit the annual report as required by Iowa Code sections 523A.801 and 53I.201. Over the last year, the Insurance Division has worked hard to provide enhanced oversight and regulation of the preneed funeral and cemetery industries we regulate.

### **Compliance Examinations**

The Division is required to examine preneed funeral sellers and perpetual care cemeteries at least once every five years. During the past year, the Division filled a vacant position and added a fourth examiner dedicated to compliance examinations of preneed funeral sellers and perpetual care cemeteries. This increase in staff has allowed us to reach our goal of completing at least one on-site visit to each licensee by the end of 2016. We will return to the five-year schedule after this current three-year project. In 2014 we conducted 124 examinations and we are on schedule to complete 86 exams in 2015. We expect to conduct at least 65 exams in 2016 to finish the three-year project. Along the way, we continuously identify licensees that need special supervision.

As part of our compliance examination program to oversee perpetual care cemeteries (approximately 300) we recently engaged in a one-year "cemetery sweep." This effort was mentioned in last year's report. From the standpoint of trust fund oversight, the main purpose was to create a "baseline year" that would be the same for all perpetual care cemeteries. The other purpose of the sweep was to test compliance with other requirements, such as the need to have sales contracts, trust agreements and documents transferring ownership of interment rights. We found a very large lack of knowledge and awareness of the requirements. So, we continue to work to assist the cemeteries with deficiencies in these areas, as the non-compliant cemeteries draft documents and improve their practices and procedures. Because many

cemeteries have small staffs (often volunteers) and limited finances, we have been providing above-average levels of assistance and have been very generous in allowing more time for the cemeteries to make changes and draft documents. A recent report by the examiner working in that area noted she is currently working to review 88 responses sent in by perpetual care cemeteries.

### **Electronic Filing and Automation**

The Division's regulatory activities have never been truly computerized and automated, although we do have a basic computer system in place. The functionality of our current computer system is very limited. An amazing amount of our receipt and analysis of sales reports is done by staff without any automation. We also lack any form of record-keeping and case management software for our examination programs. 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.

The Division is moving forward with a software vendor to develop an electronic portal to enable electronic filings by preneed sellers, preneed sales agents, cemeteries, insurance companies and financial institutions. This is the first stage of a multi-stage project, to be done as funding permits. Future stages will automate the licensing process and add a project management type of application that will assist with scheduling and documenting our compliance examination programs.

In the first stage, we will be able to upgrade from a process in which an electronic filing process merely means an electronic document is merely filed and uploaded into the system as a static document to an electronic filing process where the information within the reports will actually be entered into our computer system and we will be able to do comparisons and generate reports. Everything is done manually at this point. This project will automate workflow and assist in reconciliation of sales reports. We will be able to monitor our receipt of sales reports and other required filings and staff will no longer need to periodically check to see whether items have been received.

### **House File 632**

A significant number of legislative amendments proposed by the Division were adopted in the 2015 legislative session.

With respect to our regulation of preneed sellers and sales agents, the key amendment was a change from four-year licenses to one-year licenses. This will prevent out-of-date information, address the short tenure of many sales agents and eliminate an unreasonable amount of staff time "collecting" annual reports. If a preneed seller or sales agent does not file an annual report or pay required fees their license will expire and the burden to act will be on the licensee, not the Division.

Because of reduced income and unpredictable cash flow, it is increasingly difficult for cemeteries to get loans and the interest rates can be high. With respect to providing assistance to meet the needs of perpetual care cemeteries, Iowa Code chapter 523I now provides a total of seven types of items that a perpetual care cemetery can fund with an interest-free, five-year loan from their perpetual care trust fund: 1) the acquisition of additional land for cemetery purposes, 2) repairing a mausoleum or other building or structure intended for cemetery purposes, 3) building, improving, or repairing boundaries, roads and walkways in the cemetery, 4) constructing a columbarium, mausoleum, or similar structure to create additional interment spaces, 5) to purchase equipment for tree, shrub, and lawn care, 6) purchasing backhoes or similar equipment used to open and close interment spaces, and 7) purchasing recordkeeping software used to maintain ownership records or interment records. With the assistance of the legislature,

three of these categories were added in House File 632. Also, a provision has been added to Iowa Code chapter 523I allowing a perpetual care cemetery to apply to the Division and receive permission to withdraw funds from the cemetery's care fund for a financial emergency.

### **Total Return Distribution Method**

The Division adopted Rule 191 IAC 140.8 effective January 1, 2014. This rule 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, 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. Six cemeteries have already filed applications and been approved to use the total return distribution method.

### **Receiverships and Enforcement**

The Division has been involved in a number of enforcement actions and administrative orders as a result of issues found during compliance examinations. We issued 48 Orders and Consent Agreements in 2014. As of September 1, 2015 we have entered into 13 consent agreements.

The Waterloo Memorial Park Cemetery remains in a court-ordered receivership, with the Iowa Insurance Division as the court-appointed Receiver. The receivership has enhanced the cemetery's financial stability and the cemetery adopted better business practices and procedures during the receivership. We expect that receivership to close in the near future.

A receivership of Jasper/Story Memorial Gardens, Ltd., a dissolved corporation doing business as Newton Memorial Park Cemetery was established by court order on June 2, 2015 and the Commissioner of Insurance was appointed as Receiver. The commissioner has powers and duties focused on preserving and protecting the physical integrity of the cemetery and its burial and interment rights records, recreating missing records, operating the cemetery and facilitating a transfer of the cemetery to the City of Newton, Iowa. The current owner, an elderly individual, no longer had the ability or resources to operate the cemetery.

### **Financial Stress on Cemeteries**

As previously reported, the death care industry (including funeral homes and cemeteries) 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.

With the adoption of HF 632, the Division is now able to take several steps to provide cemeteries with cash-flow issues. These include the ability for perpetual care cemeteries to borrow from their trust funds,

the ability for perpetual care cemeteries to apply for emergency withdrawals of trust funds and creation of the total return distribution method, 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. However, that is the likely result for many, many cemeteries.

The agenda for an October 10<sup>th</sup> meeting of the State Association for the Preservation of Iowa Cemeteries (SAPIC) includes a discussion regarding the “lack of funds for some rural non-Pioneer cemeteries who do not believe they can continue with the costs of maintenance and available labor. Some are asking for labor help from the Pioneer Cemetery Commission.”

The Division has already received an application from one perpetual care cemetery for an emergency loan from the cemetery’s trust fund. Sadly, the “emergency” is the lack of sufficient income. An excerpt from the application:

Our usual operating budget comes from the sale of lots and burials. This year we have had only one burial and have had 1 sale. Expenses of insurance and care of the cemetery have used most of our budget. We do not have enough capital to continue to pay for the upkeep – mowing. We would like to be able to borrow \$3000 to see us through the end of the lawn care cycle – the amount owed is \$1220 – and the end of the year. We would pay this sum back with interest within five years as is noted under the Iowa Cemetery Act, 523I.810, #9. The use of this fund would be in compliance with 523I.811, #1, part a.

### **Recommendations**

I recommend continued vigilance in this area to protect consumers. As we continue to identify recommended changes to regulatory oversight, we will bring forth proposed administrative rules and legislation.

Please let me know if you have any questions.

Sincerely,



Nick Gerhart  
Commissioner of Insurance

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