

Clearinghouse Rule 19-149

STATE OF WISCONSIN
CEMETERY BOARD

IN THE MATTER OF RULEMAKING : PROPOSED ORDER OF THE
PROCEEDINGS BEFORE THE : CEMETERY BOARD
CEMETERY BOARD : ADOPTING RULES
: (CLEARINGHOUSE RULE)

PROPOSED ORDER

An order of the Cemetery Board to repeal CB 2.015, 4.015, and 5.03 (2); to consolidate renumber and amend CB 5.03 (intro) and (1); to amend CB 4.05; and to repeal and recreate CB 1.015 relating to change of trustee of care funds and preneed trust funds.

Analysis prepared by the Department of Safety and Professional Services.

ANALYSIS

Statutes interpreted: Section 157.19 (2) (b), (c), and (d), Stats.

Statutory authority: Sections 157.19 (2) (d) and 440.905 (2), Stats.

Explanation of agency authority:

Section 157.19 (2) (d), Stats., provides that “[t]he cemetery board shall promulgate rules establishing reasonable requirements and standards for the approval of changes under pars. (b) and (c). For approval of changes under par. (b), the rules shall require the cemetery authority to submit evidence that the rights and interests of the beneficiary of the care fund will be adequately protected if the change is approved. For approval of changes under par. (c), the rules shall require the trustee to submit evidence that the rights and interests of the purchaser under the preneed sales contract will be adequately protected if the change is approved.”

Section 440.905 (2), Stats., provides “[t]he board has rule-making authority and may promulgate rules relating to the regulation of cemetery authorities, cemetery salespersons, and cemetery preneed sellers...”

Related statute or rule: Section 157.19, Stats.

Plain language analysis: This rule project amends CB 4.05 relating to the verification of deposit that must be submitted to the Cemetery Board following a change of trustee. The rule project clarifies that the cemetery authority must submit the verification notice to the Cemetery Board within 30 days of the transfer and must ask that the new trustee also submit a verification notice to the Cemetery Board.

The rule project also creates a definition for “Preneed trust fund” within ch. CB 1, and moves the definitions for “Care fund,” “Financial institution,” and “Cemetery authority” into to ch. CB 1, so that these definitions apply throughout the CB suite.

Summary of, and comparison with, existing or proposed federal regulation: The FTC does regulate preneed funeral and burial agreement sales but does not regulate the process by which a trustee of either a preneed trust fund or care fund is transferred.

Summary of public comments received on statement of scope and a description of how and to what extent those comments and feedback were taken into account in drafting the proposed rule:

A preliminary public hearing on scope was held at the Cemetery Board’s August 20, 2019 meeting. No comments were received.

Comparison with rules in adjacent states:

Illinois: Illinois statute requires that the trustee notify the Comptroller (a state officer) no less than 28 days prior to the effective date of the trustee change. The provision does not specify whether the transferring or the new trustee needs to inform the Comptroller. (815 ILCS 390/16 (b)).

Iowa: Iowa law does not generally restrict the transfer of care funds from one financial institution to another. (IA Stats. s. 523I.810 4.). Preneed trust funds can be transferred from one financial institution to another if notice is provided to the commissioner within 30 days of the transfer of the trust funds. The party that is required to submit the notice is not specified. (IA Stats. s. 523A.202 4.).

Michigan: Michigan allows cemeteries to change the trustee of care funds at any time, subject to the consent of the commissioner and subject to the terms of the cemetery’s agreement with the trustee. (MI Stats. s. 456.536 (16) (4)). Cemetery preneed sellers or trustees can change the depository or escrow agent of a preneed account at any time, without cause, and without the approval of any other party. The contract purchaser must be notified, however, if the depository or escrow agent is changed. (MI Stats. s. 328.224 (14) (3)).

Minnesota: Minnesota law gives cemetery authorities the ability to appoint multiple trustees to invest their care and improvement fund. Trustee appointments may be revoked by the board of the cemetery authority at any time by a two-third vote of its members. Seven days before any portion of the fund is transferred or withdrawn, the board of the cemetery authority must notify the county auditor of the activity and the destination of the funds withdrawn or transferred. (Minn. Stats. s. 306.77).

Preneed trust fund trustees can be appointed or removed at any time by the purchaser of the preneed contract. The beneficiary of the trust must be made aware of the initial

location of the deposited funds, and any subsequent transfers of funds to a different financial institution. (Minn. Stats. s. 149A.97 (4) and (5)).

Summary of factual data and analytical methodologies:

The Cemetery Board performed a review of its administrative rules pursuant to s. 227.29, Stats., and determined that s. CB 4.05 was ambiguous as to which trustee must submit the verification of trustee transfer to the Cemetery Board required by s. 157.19 (2) (c), Stats. This rule project remedies that ambiguity by revising the rule to require the cemetery authority to submit the verification, as required by the statute. The rule will also be modified to require the cemetery authority to request that the new trustee also submit the verification form to affirm that they are aware of the transfer and have received the funds.

Analysis and supporting documents used to determine effect on small business or in preparation of economic impact analysis:

The rule will be posted for 14 days to receive public comment on the economic impact of the proposed rule.

Fiscal Estimate and Economic Impact Analysis:

The Fiscal Estimate and Economic Impact Analysis will be prepared upon the completion of the 14 day economic impact comment period.

Effect on small business:

These proposed rules do not have an economic impact on small businesses, as defined in s. 227.114 (1), Stats. The Department's Regulatory Review Coordinator may be contacted by email at Daniel.Hereth@wisconsin.gov, or by calling (608) 267-2435.

Agency contact person:

Jon Derenne, Administrative Rules Coordinator, Department of Safety and Professional Services, Division of Policy Development, 4822 Madison Yards Way, P.O. Box 8366, Madison, Wisconsin 53708; telephone 608-266-0955; email at DSPSAdminRules@wisconsin.gov.

Place where comments are to be submitted and deadline for submission:

Comments may be submitted to Jon Derenne, Administrative Rules Coordinator, Department of Safety and Professional Services, Division of Policy Development, 4822 Madison Yards Way, P.O. Box 8366, Madison, WI 53708-8366, or by email to DSPSAdminRules@wisconsin.gov. Comments must be received on or before the hearing scheduled for 9:30 AM on January 21, 2020 to be included in the record of rule-making proceedings.

TEXT OF RULE

SECTION 1. CB 1.015 is repealed and recreated to read:

CB 1.015 Definitions. As used in chs. CB 1 to 6:

- (1) “Board” means the cemetery board.
- (2) “Care fund” has the meaning given in s. 157.061 (1m), Stats.
- (2) “Cemetery authority” has the meaning given in s. 157.061 (2), Stats.
- (3) “Financial institution” has the meaning given in s. 705.01 (3), Stats.
- (4) “Preneed trust fund” has the meaning given in s. 157.061 (13), Stats.

SECTION 2. CB 2.015 is repealed.

SECTION 3. CB 4.015 is repealed.

SECTION 4. CB 4.05 is amended to read:

CB 4.05 Verification of deposit. Within 30 days after the transfer of the care fund or preneed trust fund, the ~~trustee~~ cemetery authority shall submit information to the board verifying the transfer, including the amount deposited, the date the deposit was made, and the account number of the fund. In addition, the cemetery authority shall request that the new trustee submit the same information to the board verifying the receipt of the funds.

SECTION 5. CB 5.03 (intro.) and (1) are consolidated, renumbered, and amended to read:

CB 5.03 Definitions. As used in this chapter “Alternative investment” means the use of care funds received from the sale of cemetery lots by a cemetery authority to purchase investment instruments, rather than depositing the care funds in a financial institution under s. 157.19, Stats., or with the treasurer of the county or city in which the cemetery is located..

SECTION 6. CB 5.03 (2) is repealed.

SECTION 7. EFFECTIVE DATE. The rules adopted in this order shall take effect on the first day of the month following publication in the Wisconsin Administrative Register, pursuant to s. 227.22 (2) (intro.), Stats.

(END OF TEXT OF RULE)

ADMINISTRATIVE RULES

Fiscal Estimate & Economic Impact Analysis

1. Type of Estimate and Analysis <input checked="" type="checkbox"/> Original <input type="checkbox"/> Updated <input type="checkbox"/> Corrected		2. Date November 21, 2019	
3. Administrative Rule Chapter, Title and Number (and Clearinghouse Number if applicable) CB 1, 4, and 5			
4. Subject Change of trustee of care funds and preneed trust funds			
5. Fund Sources Affected <input type="checkbox"/> GPR <input type="checkbox"/> FED <input type="checkbox"/> PRO <input type="checkbox"/> PRS <input type="checkbox"/> SEG <input type="checkbox"/> SEG-S		6. Chapter 20, Stats. Appropriations Affected	
7. Fiscal Effect of Implementing the Rule <input checked="" type="checkbox"/> No Fiscal Effect <input type="checkbox"/> Increase Existing Revenues <input type="checkbox"/> Increase Costs <input type="checkbox"/> Decrease Costs <input type="checkbox"/> Indeterminate <input type="checkbox"/> Decrease Existing Revenues <input type="checkbox"/> Could Absorb Within Agency's Budget			
8. The Rule Will Impact the Following (Check All That Apply) <input type="checkbox"/> State's Economy <input type="checkbox"/> Specific Businesses/Sectors <input type="checkbox"/> Local Government Units <input type="checkbox"/> Public Utility Rate Payers <input type="checkbox"/> Small Businesses (if checked, complete Attachment A)			
9. Estimate of Implementation and Compliance to Businesses, Local Governmental Units and Individuals, per s. 227.137(3)(b)(1). \$0			
10. Would Implementation and Compliance Costs Businesses, Local Governmental Units and Individuals Be \$10 Million or more Over Any 2-year Period, per s. 227.137(3)(b)(2)? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No			
11. Policy Problem Addressed by the Rule This rule project amends CB 4.05 relating to the verification of deposit that must be submitted to the Cemetery Board following a change of trustee. The rule project clarifies that, as required by statute, the cemetery authority must submit the verification notice to the Cemetery Board within 30 days of the transfer.			
12. Summary of the Businesses, Business Sectors, Associations Representing Business, Local Governmental Units, and Individuals that may be Affected by the Proposed Rule that were Contacted for Comments. The proposed rule was posted on the Department of Safety and Professional Services's website for 14 days in order to solicit comments from businesses, representative associations, local governmental units, and individuals that may be affected by the rule. No comments were received.			
13. Identify the Local Governmental Units that Participated in the Development of this EIA. No local governmental units participated in the development of this EIA.			
14. Summary of Rule's Economic and Fiscal Impact on Specific Businesses, Business Sectors, Public Utility Rate Payers, Local Governmental Units and the State's Economy as a Whole (Include Implementation and Compliance Costs Expected to be Incurred) This proposed rule will not have a significant impact on specific businesses, business sectors, public utility rate payers, local governmental units, or the state's economy as a whole.			
15. Benefits of Implementing the Rule and Alternative(s) to Implementing the Rule The benefit of implementing the rule is to bring CB 4.05 into compliance with state statute requiring the cemetery authority to submit a verification of transfer of a preneed trust fund within 30 days following the transfer of the fund to a new trustee.			
16. Long Range Implications of Implementing the Rule The long range implication of implementing the rule is to bring the rule into conformity with statutory requirements and provide			

clarity to cemetery authorities as to what is required of them when a change of trustee is made.

17. Compare With Approaches Being Used by Federal Government

ADMINISTRATIVE RULES

Fiscal Estimate & Economic Impact Analysis

The federal government does not regulate the process for approving a transfer of trustee of a care fund or preneed trust fund.

18. Compare With Approaches Being Used by Neighboring States (Illinois, Iowa, Michigan and Minnesota)

Illinois: Illinois statute requires that the trustee notify the Comptroller (a state officer) no less than 28 days prior to the effective date of the trustee change. The provision does not specify whether the transferring or the new trustee needs to inform the Comptroller. (815 ILCS 390/16 (b)).

Iowa: Iowa law does not generally restrict the transfer of care funds from one financial institution to another. (IA Stats. s. 523I.810 4.). Preneed trust funds can be transferred from one financial institution to another if notice is provided to the commissioner within 30 days of the transfer of the trust funds. The party that is required to submit the notice is not specified. (IA Stats. s. 523A.202 4.).

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Minnesota: Minnesota law gives cemetery authorities the ability to appoint multiple trustees to invest their care and improvement fund. Trustee appointments may be revoked by the board of the cemetery authority at any time by a two-third vote of its members. Seven days before any portion of the fund is transferred or withdrawn, the board of the cemetery authority must notify the county auditor of the activity and the destination of the funds withdrawn or transferred. (Minn. Stats. s. 306.77).

19. Contact Name Jon Derenne, Administrative Rules Coordinator	20. Contact Phone Number (608) 266-0955
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This document can be made available in alternate formats to individuals with disabilities upon request.

ADMINISTRATIVE RULES

Fiscal Estimate & Economic Impact Analysis

ATTACHMENT A

1. Summary of Rule's Economic and Fiscal Impact on Small Businesses (Separately for each Small Business Sector, Include Implementation and Compliance Costs Expected to be Incurred)

2. Summary of the data sources used to measure the Rule's impact on Small Businesses

Did the agency consider the following methods to reduce the impact of the Rule on Small Businesses?

- Less Stringent Compliance or Reporting Requirements
- Less Stringent Schedules or Deadlines for Compliance or Reporting
- Consolidation or Simplification of Reporting Requirements
- Establishment of performance standards in lieu of Design or Operational Standards
- Exemption of Small Businesses from some or all requirements

Other, describe:

4. Describe the methods incorporated into the Rule that will reduce its impact on Small Businesses

5. Describe the Rule's Enforcement Provisions

Did the Agency prepare a Cost Benefit Analysis (if Yes, attach to form)

Yes No
