

CR 92-131

CERTIFICATE

STATE OF WISCONSIN


DEPARTMENT OF REGULATION AND LICENSING

TO ALL TO WHOM THESE PRESENTS SHALL COME, GREETINGS:

I, Marlene A. Cummings, Secretary of the Wisconsin Department of Regulation and Licensing and custodian of the official records of the Department, do hereby certify that the annexed rules were duly approved and adopted by the Department of Regulation and Licensing on the 2nd day of June, 1993.

I further certify that said copy has been compared by me with the original on file in this office and that the same is a true copy thereof, and of the whole of such original.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the official seal of the Department at 1400 East Washington Avenue, Madison, Wisconsin this 2nd day of June, 1993.



Marlene A. Cummings
Secretary
Department of Regulation
and Licensing

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8-193

STATE OF WISCONSIN
DEPARTMENT OF REGULATION AND LICENSING

IN THE MATTER OF RULE-MAKING	:	ORDER OF THE
PROCEEDINGS BEFORE THE	:	DEPARTMENT OF REGULATION AND LICENSING
DEPARTMENT OF REGULATION	:	ADOPTING RULES
AND LICENSING	:	(CLEARINGHOUSE RULE 92-131)

ORDER

An order of the Department of Regulation and Licensing to create chapter RL 54 of the administrative code relating to the procedures and requirements for making and collecting annual assessments for the Cemetery Consumer Protection Fund established in s. 440.92 (8), Stats., and for reviewing applications, investigating claims, approving and denying applications and making reimbursements to consumers from the fund.

Analysis prepared by the Department of Regulation and Licensing.

ANALYSIS

Statutes authorizing promulgation: ss. 227.11 (2) and 440.92 (8) (d), Stats.

Statutes interpreted: s. 440.92 (8), Stats.

1989 Wisconsin Act 307 established a Cemetery Consumer Protection Fund in section 440.92 (8), Stats. Consumers may seek reimbursement from this fund for losses resulting from any illegal, unprofessional or unethical conduct of a cemetery authority, cemetery salesperson, or preneed seller. The fund is to be administered by the Department of Regulation and Licensing, which is responsible for assessing fees against preneed sellers as the source of the fund, and for reviewing and approving or denying reimbursement applications received from consumers.

Section RL 54.02 sets forth the definitions of various terms which are used within the substantive provisions of the proposed rules.

Section RL 54.03 essentially restates the statutory requirements in making assessments upon preneed sellers and their deposit into the cemetery consumer protection fund.

Section RL 54.04 concerns the filing of claims by consumers. The rule provides that consumers utilize a standard claim form of the department, that it is not necessary for a consumer to bring a civil action in court prior to submitting a claim, and that all claims shall be referred to the department's investigative division for processing and investigation. The rule also provides that such filed claims may be used as the basis for bringing a disciplinary action against a registrant.

Section RL 54.05 permits the department to grant a claim if the investigation indicates it is more likely than not that a law violation occurred. The standard of proof expressed in the rule is the layperson's equivalent to the legal "preponderance of the evidence" burden applied in civil court actions. This section also lists the basis upon which the department may deny a consumer's claim, and requires that the department provide written

notification of its determination of the claim to the consumer and person or entity complained against.

Section RL 54.06 permits those involved in a claim to obtain a formal hearing in the event they object to the department's determination, and sets forth the procedure for requesting such a hearing. However, if a claim has been determined by the department in a formal disciplinary hearing, as provided in RL 54.08, there would be no right to obtain another, second hearing under this section.

Section RL 54.07 outlines the procedures involved in a hearing to contest the department's determination of the claim.

Section RL 54.08 provides that claims may be determined in formal disciplinary hearings against registrants.

TEXT OF RULE

SECTION 1. Chapter RL 54 is created to read:

CHAPTER RL 54 (title)

CEMETERY CONSUMER PROTECTION FUND

RL 54.01 AUTHORITY. This chapter is adopted pursuant to ss. 227.11 and 440.92 (8), Stats.

RL 54.02 DEFINITIONS. As used in this chapter:

(1) "Claim hearing" means a class 1 proceeding as defined in s. 227.01 (3) (a), Stats., held at the request of a petitioner following the determination of a claim by the department under s. RL 54.05.

(2) "Consumer" means a person who has purchased or intends to purchase cemetery merchandise or services or a cemetery lot or mausoleum space from a cemetery authority, cemetery salesperson or preneed seller.

(3) "Department" means the department of regulation and licensing.

(4) "Division" means the division of enforcement in the department.

(5) "Fund" means the cemetery consumer protection fund created under s. 25.85, Stats.

(6) "Nonregistrant" means a cemetery authority, cemetery salesperson or preneed seller not holding a registration issued by the department.

(7) "Petitioner" means a consumer, registrant or nonregistrant who files a written request for a claim hearing.

(8) "Preneed sales contract" means an agreement for the sale of cemetery merchandise that is to be delivered after the date of the initial payment for the merchandise, or for the sale of an undeveloped space, and which is subject to the trusting requirements under s. 440.92 (3) (a) and (b), Stats.

(9) "Registrant" means a cemetery authority, cemetery salesperson or preneed seller holding a registration issued by the department.

RL 54.03 ASSESSMENTS. (1) AMOUNT; PERIOD COVERED. The department shall assess each preneed seller \$5 for each preneed sales contract that has been entered into during the prior 12-month period.

(2) TIME OF ASSESSMENT. The department shall make an assessment when the balance in the fund falls below \$1,000,000, but shall not make more than one assessment during any 12-month period.

(3) DUE DATE OF PAYMENTS. Each preneed seller shall pay the amount of the assessment to the department within 30 days after receiving the assessment.

(4) DEPOSIT. The department shall deposit all monies collected under the assessment into the fund.

RL 54.04 CLAIMS. (1) FORMS. Consumers applying for payments from the fund shall complete and sign the claim form furnished by the department.

NOTE: Claim forms may be obtained upon request from the Department of Regulation and Licensing, Bureau of Direct Licensing and Real Estate, 1400 East Washington Avenue, P.O. Box 8935, Madison, Wisconsin 53708.

(2) CIVIL ACTIONS. It is not necessary that a consumer first bring a civil action against a registrant or nonregistrant for recovery of monetary damages in order to obtain payment from the fund.

(3) PROCESSING OF CLAIMS. All claim forms shall be referred to the division for filing, screening, and, if necessary, investigation. Claim forms filed against a registrant shall be considered an informal complaint within the meaning of s. RL 2.03 (7).

RL 54.05 DETERMINATION OF CLAIMS. (1) BASIS FOR GRANTING. The department may approve claims only if the investigation indicates that it is more likely than not the registrant or nonregistrant has violated s. 440.93, Stats., or has otherwise engaged in illegal, unprofessional or unethical conduct.

(2) BASIS FOR DENYING. The department shall deny a claim if:

(a) The investigation fails to indicate that it is more likely than not the registrant or nonregistrant has violated s. 440.93, Stats., or has otherwise engaged in illegal, unprofessional or unethical conduct.

(b) The conduct for which payment is sought occurred prior to January 1, 1993.

(c) The claim is filed more than 2 years after the consumer discovered, or with reasonable diligence should have discovered, the facts giving rise to the claim.

(d) The consumer has not attempted to execute a final judgment for monetary damages received in a court of competent jurisdiction against the registrant or nonregistrant.

(e) The conduct for which payment is sought is not directly related to the purchase or intended purchase of cemetery merchandise or services or a cemetery lot or mausoleum space.

(f) The claim is based upon facts under which the consumer was acting as a cemetery authority, cemetery salesperson or preneed seller.

(3) NOTIFICATION REQUIRED. The department shall notify the consumer and registrant or nonregistrant in writing of its determination on the claim.

RL 54.06 RIGHT TO PETITION FOR CLAIM HEARING. Except when a claim has been determined in a disciplinary proceeding pursuant to s. RL 54.08, a consumer, registrant or nonregistrant may petition for a hearing within 30 days after the mailing of the notice of the determination by the department on the claim. The petition shall be in writing and contain:

- (1) The petitioner's name and address;
- (2) The reasons why a hearing is requested;
- (3) The facts which the petitioner intends to prove at the hearing;

and,

(4) A description of the mistake the petitioner believes was made, if it is asserted that the determination on the claim is based upon a mistake in fact or law.

RL 54.07 CLAIM HEARINGS. (1) NOTICE OF HEARING. Within 20 days of receipt of a petition for hearing, the department shall grant or deny the request. A hearing shall be granted if the requirements in s. RL 54.06 are met. The department shall notify the petitioner of the time, place and nature of the hearing, as provided in s. 227.44, Stats. A hearing shall be denied, and the department shall inform the petitioner in writing of the reason for denial, if the requirements in s. RL 54.06 are not met.

(2) PARTIES. Parties to a claim hearing are the petitioner and the department.

(3) DISCOVERY. Unless stipulated, no discovery is permitted, except for the taking and preservation of evidence, as provided in ch. 804, Stats., with respect to witnesses described in s. 227.45 (7) (a) to (d), Stats. A petitioner may inspect records under s. 19.35, Stats., the public record law.

(4) FAILURE TO APPEAR. If neither the petitioner nor his or her representative appears at the time and place designated for the hearing, the department may take action based upon the record as submitted.

RL 54.08 CLAIMS DETERMINED IN DISCIPLINARY PROCEEDINGS. A claim which was filed prior to the commencement of a disciplinary proceeding against a registrant pursuant to ch. RL 2 may be determined as a part of the disciplinary proceeding. The basis for determining a claim in a disciplinary proceeding is that set forth in s. RL 54.05.

(END OF TEXT OF RULE)

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.

Dated

6/2/93

Agency

Marlene A. Cummings

Marlene A. Cummings, Secretary
Department of Regulation
and Licensing

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CORRESPONDENCE/MEMORANDUM

STATE OF WISCONSIN

DATE: June 2, 1993

TO: Gary Poulson
Assistant Revisor of Statutes

FROM: Pamela Haack, Administrative Assistant
Department of Regulation and Licensing

SUBJECT: Final Rulemaking Order

RECEIVED
JUN 2 1993
Revisor of Statutes
Bureau

Agency: DEPARTMENT OF REGULATION AND LICENSING

Clearinghouse Rule: 92-131

Attached is a copy and a certified copy of a final order adopting rules.
Would you please publish these rules in the code.

Please stamp or sign a copy of this letter to acknowledge receipt.

Thank you.