

Chapter RL 54

CEMETERY CONSUMER PROTECTION FUND

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

History: Cr. Register, July, 1993, No. 451, eff. 8-1-93.

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.

History: Cr. Register, July, 1993, No. 451, eff. 8-1-93.

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.

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

History: Cr. Register, July, 1993, No. 451, eff. 8-1-93.

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 8936, 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).

History: Cr. Register, July, 1993, No. 451, eff. 8-1-93.

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.

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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 Register, July, 1993, No. 451

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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.

History: Cr. Register, July, 1993, No. 451, eff. 8-1-93.

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.

History: Cr. Register, July, 1993, No. 451, eff. 8-1-93.

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.

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