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BUSINESS AND PROFESSIONS CODE - BPC

DIVISION 3. PROFESSIONS AND VOCATIONS GENERALLY [5000 - 9998.11] (*Heading of Division 3 added by Stats. 1939, Ch. 30.)*

CHAPTER 12. Cemetery and Funeral Act [7600 - 7746] (*Heading of Chapter 12 amended by Stats. 2015, Ch. 395, Sec. 3.)*

ARTICLE 9. Preneed Funeral Arrangements [7735 - 7746] (*Article 9 added by Stats. 1965, Ch. 1414.)*

7735. No funeral establishment licensed under the laws of the State of California, or the agents or employees of a funeral establishment, shall enter into or solicit any preneed arrangement, contract, or plan, hereinafter referred to as "contract," requiring the payment to the licensee of money or the delivery to the licensee of securities to pay for the final disposition of human remains or for funeral services or for the furnishing of personal property or funeral merchandise, wherein the use or delivery of those services, property or merchandise is not immediately required, unless the contract requires that all money paid directly or indirectly and all securities delivered under that agreement or under any agreement collateral thereto, shall be held in trust for the purpose for which it was paid or delivered until the contract is fulfilled according to its terms; provided, however, that any payment made or securities deposited pursuant to this article shall be released upon the death of the person for whose benefit the trust was established as provided in Section 7737. The income from the trust may be used to pay for a reasonable annual fee for administering the trust, including a trustee fee to be determined by the bureau, and to establish a reserve of not to exceed 10 percent of the corpus of the trust as a revocation fee in the event of cancellation on the part of the beneficiary. The annual fee for trust administration may be recovered by withdrawals from accumulated trust income, provided that total withdrawals for this purpose shall not exceed the amount determined by the bureau. In no case shall the total amount withdrawn in a year for trust administration exceed the total amount of posted trust income for the immediate 12 preceding months. In addition to annual fees and reserves authorized by this section, a trustee may, at its election, pay taxes on the earnings on any trust pursuant to Section 17760.5 of the Revenue and Taxation Code. In no event, however, shall taxes paid on the earnings of any trust be considered part of the fees or reserves authorized by this section. All remaining income shall be accumulated in trust.

None of the corpus of the trust shall be used for payment of any commission nor shall any of the corpus of the trust be used for other expenses of trust administration, or for the payment of taxes on the earnings of the trust.

(Amended by Stats. 2000, Ch. 757, Sec. 1. Effective January 1, 2001.)

7735.5. The preneed funeral arrangement contract shall clearly state if benefits are unavailable or limited for any reason.

(Added by Stats. 2001, Ch. 715, Sec. 4. Effective January 1, 2002.)

7736. For the purposes of this article the term "trustee" shall mean any banking institution or trust company legally authorized and empowered by the State of California to act as trustee in the handling of trust funds or not less than three persons one of whom may be an employee of the funeral establishment; the word "trustor" shall mean any person who pays the money or deposits the securities used for those preneed arrangements; the term "beneficiary" shall be the person for whom the funeral services are arranged; the words "corpus of the trust" shall include all moneys paid and securities delivered by the trustor pursuant to the provisions of the article.

(Amended by Stats. 2000, Ch. 757, Sec. 2. Effective January 1, 2001.)

7737. (a) All securities purchased by the trustor for deposit in trust and all money received from the trustor for deposit in trust shall be placed in trust with a trustee within 30 days of their receipt by the funeral establishment pursuant to a trust agreement executed by the funeral establishment, the trustor, and the trustee. The trust agreement shall provide that the trustee shall hold the money or securities in trust for the purposes for which it was deposited.

(b) The trust agreement shall provide that the trustee, upon the signature of a majority of the trustees, shall deliver the corpus of the trust and any income accrued in the trust, including interest, dividends, and capital gains, as follows:

(1) To the funeral establishment upon the filing of a certified copy of the death certificate or other satisfactory evidence of the death of the beneficiary, together with satisfactory evidence that the funeral establishment has furnished the merchandise and services. In the case of a trust agreement between any of the trustees set forth in Section 7736 and a recipient of public assistance under subdivision (a) of Section 11158 of, or paragraph (1) of subdivision (e) of Section 12152 of, the Welfare and Institutions Code, and if the value limitations of those sections are not exceeded, the trust agreement may further provide that it is irrevocable.

(2) To the trustor or legally appointed representative of the trustor at any time before the funeral establishment has furnished the merchandise and services provided for in the contract if the trustor or the legally appointed representative demands in writing the return of the corpus of the trust, together with any income accrued in the trust, less a revocation fee not to exceed the amount reserved pursuant to Section 7735, provided, however, that if and when the trustor becomes otherwise eligible, or in order to become eligible, for public social services, as provided in Division 9 (commencing with Section 10000) of the Welfare and Institutions Code, the trustor may agree, at the trustor's option, that the trust shall be irrevocable in order to avail themselves of the provisions of Section 11158 or 12152 of the Welfare and Institutions Code.

(3) In accordance with the Unclaimed Property Law (Chapter 7 (commencing with Section 1500) of Title 10 of Part 3 of the Code of Civil Procedure), funds held in a preneed funeral trust or similar account or plan escheat to the state if the conditions in Section 1518.5 of the Code of Civil Procedure are satisfied.

(4) A funeral establishment shall report and pay or deliver, or cause the trustee to release for payment or delivery, to the Controller all unclaimed preneed funeral trust funds, as determined pursuant to Section 1518.5 of the Code of Civil Procedure. The amount to be paid or delivered shall be the corpus of the trust, together with any income accrued, less a revocation fee not to exceed the amount reserved pursuant to Section 7735.

(c) (1) A funeral establishment that intends to cease engaging in business operations, as authorized under this chapter, by reason of dissolution, closure, sale, or revocation may transfer its preneed funeral agreements to another funeral establishment only if that successor funeral establishment is licensed pursuant to this chapter and the transfer satisfies the requirements of paragraph (2).

(2) A funeral establishment shall not transfer its preneed funeral agreements to another funeral establishment that is located 60 or more miles away without prior written approval of the beneficiaries or trustors, or legal representatives of the beneficiaries or trustors, and the trustee.

(d) (1) All funds, including accrued income, maintained in a preneed funeral trust or similar account or plan held by a trustee for a funeral establishment that has been dissolved, sold, or closed, or had its license revoked shall be returned to the beneficiary, the trustor, or the legal representative of either the beneficiary or trustor according to either of the following:

(A) If the funeral establishment does not transfer its preneed funeral agreements to a licensed successor funeral establishment pursuant to subdivision (c), all funds, without deduction of a revocation fee, shall be returned within 30 days of the beneficiary, trustor, or their legal representative providing written notice to the trustee, pursuant to subdivision (b) of Section 7737.1, to return those funds.

(B) If the funeral establishment transfers its preneed funeral agreements to a licensed successor funeral establishment pursuant to subdivision (c), the funds shall be returned within 30 days of the beneficiary, trustor, or their legal representative canceling the agreement pursuant to subdivision (a) of Section 7737.1.

(2) If, pursuant to subparagraph (A) of paragraph (1), the funeral establishment or trustee is unable to locate the beneficiary or trustor, or the legal representative of either the beneficiary or trustor, or if the beneficiary or trustor, or their legal representative, does not provide written direction to the trustee to return the funds to them within six months of receiving the notice in subdivision (b) of Section 7737.1, the funeral establishment shall report and pay or deliver or cause the trustee to release for payment or delivery all funds together with accrued income, and these funds shall escheat to the state in accordance with the Unclaimed Property Law (Chapter 7 (commencing with Section 1500) of Title 10 of Part 3 of the Code of Civil Procedure), except that the revocation fee pursuant to Section 7735 shall not be retained by the funeral establishment.

(3) If the preneed funeral agreement is canceled pursuant to subparagraph (B) of paragraph (1), the revocation fee pursuant to Section 7735 of the Business and Professions Code shall not be retained by the funeral establishment.

(e) The escheatment of preneed funeral trust funds to the Controller shall release the funeral establishment from the obligation of furnishing the personal property, funeral merchandise, or services originally arranged in the preneed agreement associated with the trust. However, if the funeral establishment provided personal property, or funeral merchandise or services to the beneficiary after funds have been escheated, the funeral establishment shall be entitled to recover the escheated funds upon submission to the Controller of a death certificate and a statement detailing the personal property or funeral merchandise or services provided pursuant to Section 1560 of the Code of Civil Procedure.

(f) Nothing in this section, the Unclaimed Property Law (Chapter 7 (commencing with Section 1500) of Title 10 of Part 3 of the Code of Civil Procedure), or any other law or regulation shall require escheatment of any funds received by a funeral establishment,

cemetery, or other person from property or funeral merchandise or services provided under Chapter 4 (commencing with Section 8600) of Part 3 of Division 8 of the Health and Safety Code.

(g) A trustee or a funeral establishment shall not charge the trust, a trustor, or a beneficiary any fees or costs associated with a search or verification conducted pursuant to this section. However, a trustee or funeral establishment may incorporate fees or costs associated with a search or verification as part of the administration of the trust pursuant to Section 7735.

(h) The delivery of the corpus of the trust and the income accrued to the trust to the funeral establishment, the trustor, the beneficiary, or the Controller pursuant to this article shall relieve the trustee of any further liability with regard to those funds.

(i) This section shall become operative on January 1, 2023.

(Repealed (in Sec. 1) and added by Stats. 2021, Ch. 514, Sec. 2. (AB 293) Effective January 1, 2022. Operative January 1, 2023, by its own provisions.)

7737.1 (a) (1) For purposes of Section 7737, a funeral establishment that intends to cease engaging in business operations, as authorized under this chapter, by reason of dissolution, closure, sale, or revocation and that intends to transfer its preneed funeral agreements to a licensed successor funeral establishment, pursuant to subdivision (c) of Section 7737, shall provide written notice, as described in paragraph (2), at least 60 days prior to the cessation of operations to both of the following:

(A) The beneficiaries or trustors, or legal representatives of the beneficiaries or trustors, of the preneed funeral agreements associated with the funeral establishment ceasing business operations.

(B) The trustees holding the preneed funeral trusts associated with the preneed funeral agreements.

(2) The notice provided pursuant to paragraph (1) shall meet all of the following requirements:

(A) The notice shall be on a form created by the bureau pursuant to Section 7737.2.

(B) The notice shall inform the recipients that their preneed funeral agreements will be transferred and fulfilled by the licensed successor funeral establishment.

(C) The notice shall inform the beneficiaries or trustees, or their legal representatives, that they may cancel their agreement up to 60 days after receipt of the notice by contacting the trustee, the funeral establishment ceasing business operations, or the licensed successor funeral establishment.

(3) The funeral establishment ceasing business operations shall provide the bureau with a copy of the notice provided pursuant to this paragraph and with a list of all preneed funeral agreements transferred to the licensed successor funeral establishment prior to the cessation of business operations.

(4) (A) The funeral establishment ceasing business operations shall provide the licensed successor funeral establishment with a copy of the notice provided, and proof that the notice was provided, to the beneficiaries or trustees, or their legal representatives, prior to the cessation of business operations.

(B) The licensed successor funeral establishment shall retain a copy of the notice provided, and proof that the notice was provided, to the beneficiaries or trustors, or their legal representatives, and provide a copy of both to the bureau upon the bureau's request.

(C) The proof required by this paragraph shall be in compliance with the regulations adopted by the bureau pursuant to Section 7737.2.

(b) (1) For purposes of Section 7737, a funeral establishment that intends to cease engaging in business operations, as authorized under this chapter, by reason of dissolution, closure, sale, or revocation without a transfer of the preneed funeral agreements to a licensed, successor funeral establishment shall give written notice, as described in paragraph (2), at least 60 days prior to the cessation of operations to all of the following:

(A) The bureau.

(B) The beneficiaries or trustors of the preneed funeral agreements associated with the original funeral establishment.

(C) The trustees holding the preneed funeral trusts associated with the preneed funeral agreements.

(2) The notice provided pursuant to paragraph (1) shall meet all of the following requirements:

(A) The notice shall be on a form created by the bureau pursuant to Section 7737.2.

(B) The notice shall inform the recipients that their preneed funeral agreements will be canceled and the funds, including the accrued income, will be escheated to the state unless the beneficiary or trustor informs the trustee in writing within six months of receiving the notice that they wish those funds to be returned to them.

(c) This section shall become operative on January 1, 2023.

(Added by Stats. 2021, Ch. 514, Sec. 3. (AB 293) Effective January 1, 2022. Operative January 1, 2023, by its own provisions.)

7737.2. (a) The bureau shall create, and post on its internet website, the forms required by Section 7737.1 by January 1, 2023.

(b) The bureau shall adopt and post on its internet website, by January 1, 2023, regulations regarding the type of proof of notice the funeral establishment ceasing operations and the licensed successor funeral establishment are required to provide or retain for purposes of paragraph (4) of subdivision (a) of Section 7737.1.

(Added by Stats. 2021, Ch. 514, Sec. 4. (AB 293) Effective January 1, 2022.)

7737.3. All commingled preneed trust funds held by a funeral establishment shall be subject to an annual, independent certified financial audit with a copy of the audit to be submitted to the bureau for review within 120 days of the close of the fund's fiscal year. Any findings of noncompliance with existing law regarding preneed trust funds shall be identified by the auditor in a separate report for review and action by the bureau. Audits and reports of noncompliance shall be filed simultaneously.

(Amended by Stats. 2000, Ch. 568, Sec. 144. Effective January 1, 2001.)

7737.5. A trustee may deposit the corpus of the trust in any financial institution insured by the Federal Deposit Insurance Corporation.

(Amended by Stats. 1998, Ch. 970, Sec. 91. Effective January 1, 1999.)

7737.7. A trustee may deposit the corpus of the trust in any credit union which is insured by the National Credit Union Share Insurance Fund.

(Added by Stats. 1987, Ch. 764, Sec. 1.)

7738. A licensed funeral establishment that is also a licensed cemetery authority shall not deposit any money or securities received in connection with preneed funeral arrangements in a special endowment care fund as provided in Article 4 (commencing with Section 8775) of Chapter 5 of Part 3 of Division 8 of the Health and Safety Code, nor shall a licensed funeral establishment permit the deposit of any money or securities received in connection with a special endowment care fund into a preneed funeral trust fund. Nothing in this section shall require the liquidation or conversion of any lawful investment existing on December 31, 1981.

(Amended by Stats. 1996, Ch. 1151, Sec. 44. Effective January 1, 1997.)

7739. Any person willfully violating the provisions of this article or any of them shall be punishable either by imprisonment in a county jail for a period not exceeding six months, or by fine not exceeding five hundred dollars (\$500), or by both imprisonment and fine, or by imprisonment pursuant to subdivision (h) of Section 1170 of the Penal Code for 16 months, or two or three years. If the violator is a funeral establishment licensee, he or she shall also be subject to disciplinary action as provided in Article 6 (commencing with Section 7686).

(Amended by Stats. 2011, Ch. 15, Sec. 19. (AB 109) Effective April 4, 2011. Operative October 1, 2011, by Sec. 636 of Ch. 15, as amended by Stats. 2011, Ch. 39, Sec. 68.)

7740. The bureau is authorized to enforce of its own initiative the provisions of this article and may adopt such rules and regulations as in its opinion may be necessary to perform such duties and to safeguard the trust funds subject to this chapter.

(Amended by Stats. 2000, Ch. 568, Sec. 145. Effective January 1, 2001.)

7740.5. A funeral establishment shall pay to the bureau the fee fixed by this chapter for filing with the bureau any report on preneed trust funds required by rules and regulations of the bureau adopted pursuant to Section 7740.

(Amended by Stats. 2000, Ch. 568, Sec. 146. Effective January 1, 2001.)

7741. Nothing in this article shall apply to cemetery property; cemetery commodities; cemetery service; or merchandise that is delivered as soon as paid for.

(Added by Stats. 1965, Ch. 1414.)

7742. Nothing in this article shall apply to any arrangement, contract, or plan for the issuance of securities now or hereafter authorized under a permit of the Commissioner of Financial Protection and Innovation of this state.

(Amended by Stats. 2022, Ch. 452, Sec. 7. (SB 1498) Effective January 1, 2023.)

7745. Every funeral establishment shall present to the survivor of the deceased who is handling the funeral arrangements or the responsible party a copy of any preneed agreement which has been signed and paid for in full, or in part by, or on behalf of the deceased and is in the possession of the funeral establishment. The copy may be presented in person, by certified mail, or by facsimile transmission, as agreed upon by the survivor of the deceased or the responsible party. A funeral establishment that knowingly fails to present a preneed agreement to the survivor of the deceased or the responsible party shall be liable for a civil fine equal to three times the cost of the preneed agreement, or one thousand dollars (\$1,000), whichever is greater.

(Amended by Stats. 1996, Ch. 1151, Sec. 47. Effective January 1, 1997.)

7746. (a) Notwithstanding any other provision of law, a funeral establishment that is otherwise exempt from the requirement of filing an annual preneed trust report or whose preneed trust funds are reported in a combined preneed annual preneed trust report, shall annually file a declaration of nonreporting status with the bureau.

(b) The declaration shall be filed on or before May 1 of each year and shall also be filed upon the transfer of ownership or the cessation of business.

(c) The declaration shall be filed on a form provided by the bureau and shall include, but shall not be limited to, both of the following:

(1) The basis upon which the funeral establishment is exempt from the annual trust reporting requirement.

(2) The specific kind and nature of the exempt preneed arrangements, if any, in which the funeral establishment engages.

(d) The declaration shall be verified by the funeral establishment's owner, a partner, or in the case of a corporation, by the president or vice president.

(Added by Stats. 2002, Ch. 825, Sec. 4. Effective January 1, 2003.)