

STATE OF WISCONSIN
CEMETERY BOARD

IN THE MATTER OF RULE-MAKING : NOTICE OF TIME PERIOD
PROCEEDINGS BEFORE THE : FOR COMMENTS FOR THE
CEMETERY BOARD : ECONOMIC IMPACT ANALYSIS
: (CLEARINGHOUSE RULE 12-)

NOTICE IS HEREBY GIVEN of the time period for public comment on the economic impact of this proposed rule of the Cemetery Board, including how the proposed rule may affect businesses, local government units, and individuals. The proposed rule relates to warehouses and pre-need sales contracts, change of trustees of care or pre-need trust funds, and alternative care funds investments. The Cemetery Board will consider the comments received about this proposal when preparing the Economic Impact Analysis that is required by s. § 227.137, Stats. Written comments may be submitted to:

Kris Anderson, Paralegal
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Department of Safety and Professional Services
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Madison, WI 53708-8935
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The deadline for submitting economic impact comments is February 3, 2012.

TEXT OF RULE

SECTION 1. Chapter RL 52 is renumbered Chapter CB 3.

SECTION 2. RL 52.01, as renumbered, is amended to read:

~~RL 52.01~~CB 3.01 Authority. This chapter is adopted pursuant to ss. 227.11, 440.905, and 440.92 (7), Stats.

SECTION 3. RL 52.02 (1) (Note), (3), 52.03, 52.04, 52.05, 52.06 (1) (intro.), (b), (2), (Note), as renumbered, are amended to read:

Note: Application forms may be obtained upon request from the Department of ~~Regulation and Licensing~~ Safety and Professional Services, Bureau of Direct Licensing and Real Estate ~~Division of Professional Credential Processing~~, 1400 East Washington Avenue, P.O. Box 8935, Madison, Wisconsin 53708.

(3) DETERMINATION OF APPROVAL. The ~~department~~board shall provide the applicant with its determination upon the application within 60 days after receipt of the completed application and required documents.

~~RL 52.03~~CB 3.03 Approval of warehouses located in this state. The ~~department~~board shall approve a warehouse located in this state only if the person who operates the warehouse is licensed as a public warehouse keeper by the department of agriculture, trade and consumer protection under ch. 99, Stats. Proof of licensure as a public warehouse keeper shall be made through the submission of a copy of the current license with the application.

~~RL 52.04~~CB 3.04 Approval of warehouses located outside this state. The ~~department~~board shall approve a warehouse located outside this state upon the following conditions:

(1) Submission of proof that the warehouse is authorized to store cemetery merchandise within its state of location. Proof of such authorization may be made through the submission of a copy of the current license, permit, certificate, registration or other document issued by the agency regulating warehouses in that state, or through the submission of such other information or statements acceptable to the ~~department~~board.

(2) (a) The filing with the ~~department~~board of a bond furnished by a surety company authorized to do business in this state in an amount that is sufficient to guarantee the delivery of cemetery merchandise to purchasers under preneed sales contracts.

(b) The bond shall be payable to the department of ~~regulation and licensing~~safety and professional services for the benefit of purchasers of stored property or their assignees.

(c) The amount of the bond shall be in an amount approved by the ~~department~~board, and in no case less than 100% of the wholesale value of the cemetery merchandise that is stored and to be transported to this state as of the date of the application.

(d) The bond shall remain in effect throughout the time that the warehouse remains approved by the ~~department~~board and the warehouse keeper shall submit a copy of each bond renewal certificate to the ~~department~~board.

~~RL 52.05~~CB 3.05 Term of approval. An approval of a warehouse by the ~~department~~board entitles the warehouse to store cemetery merchandise sold under a preneed sales contract for a period of one year following the issuance of the approval.

~~RL 52.06~~CB 3.06 Cancellation of approval. (1) Any approval previously granted by the ~~department~~board may be cancelled upon the occurrence of any of the following:

(b) The failure of a warehouse located outside this state to maintain the bond required under this chapter. When the ~~department~~board determines that a bond is insufficient, or if the bond lapses or is canceled, the warehouse shall correct the defect within 30 days after written

notice from the ~~department~~board and, if the defect is not corrected within that period, the approval of the warehouse automatically rescinds at the expiration of the 30 day period.

(2) The owner or operator of a warehouse shall notify the ~~department~~board within 30 days after the occurrence of any of the events described in sub. (1).

Note: A current list of the names and addresses of all approved warehouses may be obtained from the department's ~~Bureau of Direct Licensing and Real Estate~~Division of Professional Credential Processing, 1400 E. Washington Ave., P.O. Box 8935, Madison, Wisconsin 53708.

SECTION 4. Chapter RL 53 is renamed and renumbered CB 4.

SECTION 5. Chapter RL 53 (table of contents) as renumbered, is amended to read:

~~RL 53.01~~ CB 4.01 Authority.

~~CB 4.015~~ Definition.

~~RL 53.02~~ CB 4.02 Change of trustee; applications.

~~RL 53.03~~ CB 4.03 Standards for approval.

~~RL 53.04~~ CB 4.04 Compliance with terms of approval.

~~RL 53.05~~ CB 4.05 Verification of deposit.

SECTION 6. RL 53.01, as renumbered, is amended to read:

~~RL 53.01~~CB 4.01 Authority. This chapter is adopted pursuant to ss. 157.11, 157.19, 227.11, and 440.905, Stats.

SECTION 7. CB 4.015 is created to read:

CB 4.015 Definition. In this chapter, "financial institution" has the meaning set forth in s. 705.01 (3), Stats.

SECTION 8. RL 53.02 (1), (2), (2) (Note), (3), (4), 53.03 (1) (intro.), as renumbered, are amended to read:

~~RL 53.02~~CB 4.02 Change of trustee; applications. (1) APPROVAL REQUIRED. A cemetery authority or preneed seller who deposits care funds in a financial institution pursuant to s.157.19 (2) (a), Stats., shall obtain written approval of the ~~department~~board before changing the trustee of a care fund or preneed trust fund.

(2) FORMS. Requests for approval of change of trustee shall be made on forms provided by the department and shall be delivered through the mails or otherwise to the ~~department's~~officeboard.

Note: Forms may be obtained upon request from the Department of ~~Regulation and Licensing~~Safety and Professional Services, ~~Bureau of Direct Licensing and Real Estate~~Division

of Professional Credential Processing, 1400 East Washington Avenue, Madison, Wisconsin 53708.

(3) COMPLETE ANSWERS; CERTIFICATION. No request for approval shall be processed until all questions appearing on the application are fully completed, the applicant has signed a statement confirming the accuracy of the information provided in the application, and all required documents are received by the ~~department~~board.

(4) DETERMINATION OF APPROVAL. The ~~department~~board or its designee shall provide the applicant with its determination upon the request after receipt of the completed application and required documents.

SECTION 9. RL 53.03 (1) (intro.), (d), as renumbered, are amended to read:

~~RL 53.03~~ **CB 4.03 Standards for approval. (1) CARE FUNDS.** The ~~department~~board or its designee may grant approval for a change of trustee of a care fund to a cemetery authority applying for the change of trustee if the cemetery authority submits evidence that the rights and interests of the beneficiary of the care fund will be adequately protected if the change is approved. Such evidence shall include, but is not necessarily limited to:

(d) An affidavit from an officer or director of the financial institution ~~to~~from whom the transfer is requested that it is authorized to act as a financial institution; and is in good standing; in this state. The affidavit shall confirm that all deposits into the care funds being transferred to a different trustee were timely, and that the principal has never withdrawn.

SECTION 10. CB 4.03 (1) (dm) is created to read:

CB 4.03 (1) (dm) An affidavit from an officer or director of the financial institution to whom the transfer is requested that it is authorized to act as a financial institution, and is in good standing, in this state.

SECTION 11. RL 53.03 (2) (d), as renumbered, is amended to read:

CB 4.03 (2) (d) An affidavit from an officer or director of the financial institution ~~to~~from whom the transfer is requested that its license is in good standing; in this state. The affidavit shall confirm that all deposits into the care funds being transferred to a different trustee were timely, and that the principal has never withdrawn.

SECTION 12. CB 4.03 (2) (dm) is created to read:

CB 4.03 (2) (dm) An affidavit from an officer or director of the financial institution to whom the transfer is requested that its license is in good standing in this state.

SECTION 13. RL 53.04, 53.05, as renumbered, are amended to read:

~~RL 53.04~~CB 4.04 Compliance with terms of approval. The ~~department~~board may approve a change of trustee upon such terms and conditions as deemed necessary to assure that the rights and interests of the beneficiary or purchaser will be adequately protected.

~~RL 53.05~~ CB 4.05 Verification of deposit. Within 30 days after the transfer of the care fund or preneed trust fund, the trustee shall submit information to the ~~department~~board verifying the transfer, including the amount deposited, the date the deposit was made, and the account number of the fund.

SECTION 14. Chapter RL 54 is renamed and renumbered CB 5.

SECTION 15. RL 54.02, 54.03 (3), 54.05 (1), (2), as renumbered, are amended to read:

~~RL 54.02~~CB 5.02 Intent. The intent of this chapter is to assure that cemetery authorities which are required to register with the ~~department~~board maintain intact the principal amount in care funds in order to generate sufficient income to maintain cemeteries in perpetuity and to ensure that cemeteries in Wisconsin do not become a financial burden to taxpayers. It is also the intent to prohibit the officers, trustees, and the immediate family of the cemetery authority from directly profiting from the investments that are made by and on behalf of it.

~~RL 54.03~~CB 5.03 (3) “~~Department~~Board” means the ~~department of regulation and licensing~~cemetery board.

~~RL 54.05~~ CB 5.05 Procedures. (1) An officer, a trustee who has been elected pursuant to s. 157.062, Stats., or a certified public accountant acting on behalf of the cemetery authority shall file an affidavit with the ~~department~~board which identifies the class and amount of each investment and certifies that each investment is in compliance with the criteria in s. ~~RL 53.04~~CB 5.04.

(2) If the affidavit submitted to the ~~department~~board pursuant to sub. (1) lists investments in classes other than those described in s. ~~RL 54.04~~CB 5.04 (1) (a) to (d), the affidavit shall be accompanied by a written statement by a licensed investment advisor or a licensed securities broker, stating his or her belief that such investments will provide safety equal to or greater than the investment classes described in s. ~~RL 54.04~~CB 5.04 (1) (a) to (d).

(3) If the investment proposal meets the criteria set forth in s. ~~RL 54.04~~CB 5.04, the ~~department~~board may issue a letter of approval. A decision by the ~~department~~board not to approve an alternative investment may be appealed under ch. ~~RL~~SPS 1.

(4) Affidavits are effective for one year and shall be filed with the ~~department~~board annually. The affidavit shall certify compliance for the period since the last affidavit was filed except that the initial affidavit need only certify compliance as of the date it is made.

(5) Alternative investments made prior to November 1, 1991, are subject to ~~department~~board approval and the ~~department~~board may require divestiture of any alternative investment which does not meet the criteria in s. ~~RL 54.04~~CB 5.04. The cemetery authority shall

divest such alternative investments within 180 days following notification by the ~~department~~board that an alternative investment does not meet the criteria.

(6) After ~~department~~board approval is obtained, the cemetery authority need not obtain further approval to increase the number of shares or units in the same security or investment if the shares or units meet the criteria set forth in s. CB 5.04 (1) (a) to (d), (3) and (4).

SECTION 16. 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), Stats.

(END OF TEXT OF RULE)
