

**TITLE 16. CEMETERY AND FUNERAL BUREAU  
DEPARTMENT OF CONSUMER AFFAIRS**

**NOTICE OF PROPOSED REGULATORY ACTION CONCERNING**

- § 2334, Endowment Care Fund Conversion Application  
§ 2334.1, Endowment Care Fund Conversion Condition  
§ 2334.2, Denial of Endowment Care Fund Conversion Application  
§ 2334.3, Abandonment of Endowment Care Fund Conversion Application  
§ 2334.4, Reversion to Net Income Distribution Method  
§ 2334.5, Endowment Care Fund Maintenance after Conversion to the Unitrust  
Distribution Method  
§ 2350, Endowment Care Fund Reports**
- California Code of Regulations (CCR)**

**NOTICE IS HEREBY GIVEN** that the Cemetery and Funeral Bureau (Bureau) is proposing to take the rulemaking action described below under the heading Informative Digest/Policy Statement Overview. Any person interested may present statements or arguments relevant to the action proposed in writing. Written comments, including those sent by mail, facsimile, or e-mail to the addresses listed under Contact Person in this Notice, must be received by the Board at its office on January 14, 2021.

The board has not scheduled a public hearing on this proposed action. The board will, however, hold a hearing if it receives a written request for a public hearing from any interested person, or his or her authorized representative, no later than 15 days prior to the close of the written comment period.

The Board may, after considering all timely and relevant comments, adopt the proposed regulations substantially as described in this notice, or may modify the proposed regulations if such modifications are sufficiently related to the original text. With the exception of technical or grammatical changes, the full text of any modified proposal will be available for 15 days prior to its adoption from the person designated in this Notice as the contact person and will be mailed to those persons who submit written or oral testimony related to this proposal or who have requested notification of any changes to the proposal.

**AUTHORITY AND REFERENCE:**

Pursuant to the authority vested by sections 7606, and 7740 of the Business and Professions Code (BPC), and to implement, interpret or make specific BPC sections 142, 7612.6, 7613.9, 7653.6, and Health and Safety Code (HSC) sections 8725, 8726, 8726.1, 8726.2, 8726.3, 8728, 8731, 8733.5, 8736, 8738, 8738.1, 8740, 8751, and

8751.1, the Bureau is considering amendments to Division 23 of Title 16 of the CCR as described in this Notice.

## **INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW**

The death care industry transacts business with consumers at a time when they are emotionally vulnerable. Protection of the public is mandated to be the highest priority for the CFB in exercising its licensing, regulatory, and disciplinary functions. CFB achieves its goal of consumer protection through the following primary methods: issuing and renewing licenses; overseeing funeral and cemetery trust funds; investigating complaints; conducting inspections; and disciplining licensees for violations of its laws and regulations.

CFB licenses, regulates, and investigates complaints against 13 different licensure categories in California, totaling approximately 13,500 licensees. These licensing categories include funeral establishments, funeral directors, embalmers, apprentice embalmers, cemetery brokers, cemetery broker branch, cemetery broker additional, cemetery salespersons, cremated remains disposers, crematories, crematory managers, cemetery managers, and private, nonreligious cemeteries.

Existing law requires each privately-owned cemetery authority create an endowment care trust fund through a written trust agreement executed by their board of directors and requires them to deposit funds to the trust for each interment space they sell. There are various types of interments cemeteries sell (graves, crypts, niches, and scattering of cremated remains on the cemetery's property) and each type of interment has a minimum required deposit. The deposits cemeteries make to endowment care trusts, along with the initial contribution required by HSC section 8738.1, form what is known as the corpus of the trust. The corpus along with the portion of accumulated capital gains that have been permanently assigned to the fund form the principal. The law prohibits the expenditure of the fund corpus. Rather, it must be invested with the intent to earn income for the general care and future maintenance of the cemetery.

In 2017, the California Legislature passed Assembly Bill (AB) 926 (Irwin, Chapter 750, Statutes of 2017), making the endowment care fund automatically subject to the net income distribution method, and specifying the requirements for distribution under this method. AB 926 also authorizes a cemetery authority, its directors, or its board of trustees, to apply and obtain prior approval from the Bureau to convert its endowment care fund from the net income distribution method to the unitrust distribution method subject to specific conditions and standards beginning January 1, 2020. These standards include, among other things, imposing a trustee compensation cap and requiring the creation of a reserve account for maintenance. This account must be used in years when the unitrust endowment care fund has inadequate funds for full distribution. These standards also ensure that the trustee maintains investment strategies that promote both the goal of growing the assets and producing income for the cemetery authority. AB 926 requires the Bureau to evaluate the effectiveness of

the unitrust distribution authority and to report its findings at its next two hearings before the Joint Sunset Review Oversight Hearings of the Assembly Committee on Business and Professions and Senate Committee on Business, Professions and Economic Development.

In 2019, AB 795 (Irwin, Chapter 309, Statutes of 2019) was passed and amended AB 926 by delaying its implementation date to January 1, 2021. AB 795 set limits on trustee compensation that should allow for professional management of trust assets and prevent depletion of assets via excessive trustee fees. Additionally, AB 795 places controls on excessive investment adviser fees that could unduly deplete the fund and limits the ability of private creditors to seize trust funds assets. It also makes clear that in the event of a seizure by a public entity, trust funds assets could only be used for care, maintenance, and embellishment of the cemetery for which the funds were originally put in trust.

BPC section 7606 authorizes CFB to adopt, amend, or repeal such rules and regulations as may be reasonably necessary to enable it to carry into effect the provisions of the Cemetery and Funeral Act (Act).

In order to comply with the mandates of AB 926 and AB 795, the Bureau proposes the following amendments:

- **Adopt CCR section 2334, Endowment Care Fund Conversion Application**

The Bureau proposes to adopt a regulation setting forth the timeframe, required contents of, and documents required to be submitted with an “Endowment Care Fund Conversion Application,” and incorporates the form by reference.

- **Adopt CCR section 2334.1, Endowment Care Fund Conversion Condition**

The Bureau proposes to adopt a regulation providing that the Bureau’s approval is required for conversion and stating the effective date of the conversion.

- **Adopt CCR section 2334.2, Denial of Endowment Care Fund Conversion Application**

The Bureau proposes to adopt a regulation setting forth the conditions under which the Bureau will deny a cemetery’s application to convert to the unitrust distribution method.

- **Adopt CCR section 2334.3, Abandonment of Endowment Care Fund Conversion Application**

The Bureau proposes to adopt a regulation providing that an application for an Endowment Care Fund Conversion will be deemed abandoned if the applicant refuses or fails to comply with the provisions of section 2334 within one year of written

notification by the Bureau. In addition, this section provides that, when the application is deemed abandoned, the applicant must re-submit a new application and documents.

- **Adopt CCR section 2334.4, Reversion to Net Income Distribution Method**

The Bureau proposes to adopt a regulation enumerating the conditions under which the Bureau may require the cemetery authority to revert to the net income distribution method from the unitrust distribution method. It provides a method for a cemetery authority to request reversion to net income distribution. It provides a timeframe for the reversion. It describes the method for reestablishing the reserve account required under the net income distribution method. It also requires that a cemetery authority that has been reverted to the net income distribution method will need to reapply to convert to the unitrust distribution method.

- **Adopt CCR section 2334.5, Endowment Care Reserve For Maintenance after Conversion to the Unitrust Distribution Method**

The Bureau proposes to adopt a regulation setting forth the methods for the creation of the reserve for maintenance account a cemetery authority must create prior to the effective date of conversion to the unitrust distribution method. It also specifies that the reserve for maintenance account must be separately identified from all the cemetery funds.

- **Amend CCR section 2350, Endowment Care Fund Reports**

Existing law addresses the annual report required pursuant to BPC section 7612.6(b).

The Bureau proposes to amend the regulation to separate it into two subdivisions to clarify existing regulatory language. Subdivision (a) corrects the terminology of the existing regulation which pertains to the annual report requirements pursuant to BPC section 7612.6(b). Subdivision (b) lists the additional information that must be provided with the endowment care fund report when the cemetery authority is using the unitrust distribution method. It also replaces outdated codes from BPC section 9650(c) to BPC section 7612.6(b) in the text and the Authority and Reference section.

## **ANTICIPATED BENEFITS OF PROPOSED REGULATIONS**

The unitrust distribution method allows expenditures based on the total net value of the endowment care fund assets, regardless of the actual income earned from the investment of those assets. The unitrust distribution method provides a cemetery authority an alternative method that provides potentially higher distribution to properly care for the cemetery. It also allows for more growth of the principal of the trust that will provide the cemetery the ability to use enough money from its trust to provide for the ongoing care and future maintenance of the cemetery.

## **DETERMINATION OF INCONSISTENCY/INCOMPATIBILITY WITH EXISTING REGULATION(S)**

During the process of developing these regulations and amendments, CFB has conducted a search of any similar regulations of these topics and has concluded that these regulations are neither inconsistent nor incompatible with existing state regulations.

## **INCORPORATION BY REFERENCE**

Endowment Care Fund Conversion Application, form 23-ECFC (New 01/21)

## **DISCLOSURES REGARDING PROPOSED ACTION**

### **FISCAL IMPACT ESTIMATES**

#### **Fiscal Impact on Public Agencies Including Costs or Savings to State Agencies:**

The proposed regulations are not anticipated to increase workload or costs to the state.

Current law requires the Bureau to implement and oversee an application process to convert an endowment care fund from a net distribution method to a unitrust distribution method. Any workload and costs of implementation are a result of current law.

**Cost or Savings in Federal Funding to the State:** None

**Nondiscretionary Costs/Savings to Local Agencies:** None

**Local Mandate:** None

**Cost to Any Local Agency or School District for Which Government Code Sections 17500 - 17630 Require Reimbursement:** None

#### **Business Impact:**

CFB has made an initial determination that the proposed regulatory action would not have a significant statewide adverse economic impact directly affecting businesses, including the ability of California businesses to compete with businesses in other states.

#### **Business Reporting Requirement**

The proposed regulations impose additional reporting, recordkeeping, or other compliance requirements:

**BPC section 7612.6(b) addresses the cemetery authority annual report requirements.**

The Bureau has determined that it is necessary for the health, safety, or welfare of the people of the state to add reporting requirements and/or information to the existing regulation that will aid the Bureau in its annual evaluation that will demonstrate the cemetery authority continues to meet the conditions of approval as originally approved.

**Cost Impact on Representative Private Person or Business:**

There is no cost for the cemetery authority to apply for the Bureau’s approval to convert from the net income distribution method to the unitrust distribution method.

The Bureau is unable to project the potential revenue that can be generated by a cemetery authority converting to the unitrust distribution method.

**Effect on Housing Costs: None**  
**EFFECT ON SMALL BUSINESS**

The CFB has determined that the proposed regulations would affect small businesses.

**RESULTS OF ECONOMIC IMPACT ASSESSMENT/ANALYSIS**

**Impact on Jobs/Businesses:**

The Bureau has made an initial determination that the adoption and amendment of this regulatory proposal will not have an adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states.

As of July 2020, the Bureau currently licenses 193 endowment care cemeteries, which are all projected to apply for the unitrust distribution method in the first year. Of the 193, the Bureau anticipates 96 licensees will qualify for the unitrust distribution method. The Bureau expects at least half of all licensees annually will remain utilizing the unitrust distribution method.

The Bureau has determined that this regulatory proposal will have the following effects:

- It will not create or eliminate jobs in the State of California because this proposed regulation applies to the licensed cemetery authorities seeking the Bureau’s approval to convert the endowment care to the unitrust distribution method.
- It will not create new businesses within the State of California because the proposed regulations would only allow existing licensed cemetery authorities to apply for the Bureau’s approval to convert to the unitrust distribution method. The proposed regulation does not negatively impact the existing cemetery industry.

- It will not expand or eliminate existing business because this regulation applies to the existing licensed cemetery authorities in California. The proposed regulations are only applicable to cemeteries that are already licensed by the Bureau and provides the cemetery with the business option to expend funds, which may be available to the cemetery under the unitrust distribution method.
- This regulatory proposal will not affect the health and welfare of California residents because the regulations are aimed toward licensed cemetery authorities seeking the Bureau's approval to convert the endowment care fund to the unitrust distribution method. Although the unitrust distribution method allows approved cemetery authorities to expend more money from their endowment care funds for allowable cemetery expenditures, without proper oversight of cemeteries using the unitrust distribution method consumers could be irreparably harmed if the cemetery's expenditures jeopardize the long-term sustainability of the endowment care fund.

This regulatory proposal may affect worker safety if a sufficient endowment care fund is maintained by the cemetery that would allow the cemetery to expend funds to repair surfaces and ensure the property is kept in a condition so as to prevent a hazard to the worker.

- This regulatory proposal may affect the state's environment if a sufficient endowment care fund is maintained over the life expectancy of the cemetery, which may enhance the condition of the cemetery grounds, thus making a positive impact on the environment.

## **INITIAL STATEMENT OF REASONS AND INFORMATION**

CFB has prepared an initial statement of the reasons for the proposed action and has available all the information upon which the proposal is based.

## **TEXT OF PROPOSAL**

Copies of the exact language of the proposed regulations, and any document incorporated by reference, and of the initial statement of reasons, and all of the information upon which the proposal is based, may be obtained upon request from CFB at 1625 North Market Blvd., Suite S-208, Sacramento, California 95834.

## **AVAILABILITY AND LOCATION OF THE FINAL STATEMENT OF REASONS AND RULEMAKING FILE**

All the information upon which the proposed regulations are based is contained in the rulemaking file that is available for public inspection by contacting the person named below.



You may obtain a copy of the final statement of reasons once it has been prepared, by making a written request to the Contact Person named below or by accessing the website listed below.

## **CONSIDERATION OF ALTERNATIVES**

The Bureau must determine that no reasonable alternative it considered to the regulation or that has otherwise been identified and brought to its attention would be more effective in carrying out the purpose for which the action is proposed, would be as effective and less burdensome to affected private persons than the proposal described in this Notice, or would be more cost effective to affected private persons and equally effective in implementing the statutory policy or other provision of law.

Set forth below are the alternatives that were considered and the reason the alternative was rejected or adopted:

Alternative 1: Maintain the status quo. This alternative was rejected because it would make the CFB non-compliant with the statutory mandates of AB 926 and AB 795.

Alternative 2: Adopt new regulations and amend existing regulatory sections. This alternative was accepted as the most efficient option for the Bureau to evaluate the application to grant approval to licensed cemetery authorities seeking the Bureau's approval to convert the endowment care fund to the unitrust distribution method, in order to comply with AB 926 and AB 795, which mandates CFB to adopt proposed regulations by January 1, 2021.

Any interested person may submit comments to the Bureau in writing relevant to the above determinations at 1625 North Market Blvd., Suite S-208, Sacramento, California 95834.

## **CONTACT PERSON**

Inquiries or comments concerning the proposed administrative action may be addressed to:

Name: Carolina Sammons  
Address: 1625 North Market Boulevard, Suite S-208  
Sacramento, CA 95834  
Telephone No.: (916) 574-7876  
Fax No. (916) 928-7988  
Email Address: [carolina.sammons@dca.ca.gov](mailto:carolina.sammons@dca.ca.gov)

The backup contact person is:



Name: Cheryl Jenkins  
Address: 1625 North Market Boulevard, Suite S-208  
Sacramento, CA 95834  
Telephone No.: (916) 574-8203  
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Inquiries concerning the substance of the proposed regulations may be directed to Carolina Sammons at (916) 574-7876.

Website access: Materials regarding this proposal can be found at [https://www.cfb.ca.gov/laws\\_regs/proposed\\_regs.shtml](https://www.cfb.ca.gov/laws_regs/proposed_regs.shtml)