

## CEMETERY AND FUNERAL BUREAU

### Proposed Text

#### Article 3.5 Endowment Care Fund Unitrust Distribution

##### § 2334. Unitrust Conversion Application.

(a) A cemetery authority, its board of trustees, or its corporate trustee seeking to convert the cemetery authority's endowment care fund from a net income distribution method to a unitrust distribution method shall submit to the bureau a completed form 23-UCA (~~New 7/24~~ rev. 1/22), Unitrust Conversion Application, which is hereby incorporated by reference. Each application shall be accompanied by:

(1) The proposed endowment care fund trust instrument executed by the board of directors or limited liability company members of the cemetery authority;

(2) The trustee compensation schedule as referenced in Section 8726.2(b)(7)(B) of the Health and Safety Code;

(3) Written investment objectives that promote the mutual goals set forth in Section 8726.2(b)(1) of the Health and Safety Code;

(4) Evidence of how the cemetery authority, its board of trustees, or its corporate trustee will invest and manage the trust under the prudent investor rule as set forth in the Uniform Prudent Investor Act. Evidence shall be in the form of an analysis and shall include:

A. Current investment asset class allocation ranges, with explanations of the role(s) each class of investment plays in the overall portfolio strategy, and how the asset allocation will assist the trustee in managing the fund according to the prudent investor rule.

B. A five (5) year projection for the fund, by year, of anticipated income, expense, and valuation calculations adjusted for inflation and changes in asset values that identify and consider the following:

i. The projected value of the endowment care fund necessary to maintain the cemetery when it no longer has any interment space left to sell, if that condition is expected to occur before the end of the five (5) year projection.

ii. The reasonable administrative expenses attributable to generating income to the endowment care fund. "Reasonable administrative expenses" are the expenses identified in Section 8733 of the Health and Safety Code.

iii. The portion of expenses attributable to care, maintenance and embellishment of the cemetery expected to be paid by the endowment care fund.

iv. The projected contributions to the corpus from: (1) sales of developed property categorized by quantity and type of interment space, including current deposit rates and any anticipated modification of the deposit rates; and (2) sales of undeveloped property, if known and applicable.

v. The projected growth of the fund, with consideration of tax obligations.

vi. The projected annual unitrust amount.

(5) Policies or written procedures that identify any internal controls and reporting systems used by the trustee to manage the fund under the prudent investor rule.

(6) Written financial records showing a separately identifiable reserve account has been created for future maintenance, repair, restoration of property, or embellishments in the cemetery pursuant to Section 8726.2(b)(5) of the Health and Safety Code. The beginning balance of this reserve may include the prior year's ending balance of the Reserve for Future Maintenance under the net income distribution method.

(b) Provision of Relevant Trust Documents

(1) If all relevant trust documents including a proposed trust instrument are not available at the time of application, then the applicant shall include with the application an explanation for why the document(s) are not available and, if applicable, the date the document(s) are expected to become available. Any approval of the application without the relevant trust document(s) may be conditioned upon the applicant's provision of the relevant document(s) within thirty (30) days of the date when the applicant indicates the documents will become available. For the purposes of this section, "relevant trust documents" means all items listed in this section.

(2) If any relevant trust document(s) identified by the bureau in the notice of conditional approval is not provided within thirty (30) days of the date of when the documents become available, then the conditional approval shall be revoked and the application denied. The bureau shall send a notice of revocation of conditional approval and denial of the application to the applicant as set forth in Section 2334.2.

(c) A completed application pursuant to this section shall be submitted at least ninety (90) days prior to the beginning of the cemetery authority's reporting year for which the conversion is requested.

Note: Authority cited: Section 7606, Business and Professions Code; and Section 8726.2, Health and Safety Code. Reference: Section 7653.6, Business and Professions Code; and Sections 8726, 8726.2, 8731, 8733.5, 8736, 8738, 8740, 8751, and 8751.1, Health and Safety Code.



BUSINESS, CONSUMER SERVICES AND HOUSING AGENCY • GAVIN NEWSOM, GOVERNOR

**CEMETERY AND FUNERAL BUREAU**  
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### UNITRUST CONVERSION APPLICATION

A cemetery authority, its board of trustees or its corporate trustee seeking to convert its endowment care fund (ECF) from a net income distribution method to a unitrust distribution method must submit this signed application to the Bureau, along with all the documents required by Section 2334 of Title 16 of the California Code of Regulations by email scanned and sent to [unitrust@efbdca.ca.gov](mailto:unitrust@efbdca.ca.gov) or by mail to the physical address listed above.

Please note: Applicants for conversion to a unitrust distribution method must have submitted all annual reports pursuant to Section 7612.6 of the Business and Professions Code in the preceding five (5) consecutive years to qualify for conversion. Applicants who fail to meet this requirement will be denied.

Section 8726.2 of the Health and Safety Code is attached to the application for reference.

SECTION A: APPLICANT AND CEMETERY INFORMATION			
Name(s) and Title(s) of Applicant(s)			
Applicant Type (select one)			
<input type="checkbox"/> Cemetery Authority		<input type="checkbox"/> Board of Trustees	<input type="checkbox"/> Corporate Trustee
Name of Cemetery		COA License Number	
Address of Cemetery	City	State	Zip Code
Mailing Address (Address of Record) (provide if different from above)	City	State	Zip Code
Telephone Number			
Primary Contact Name (First, Last)		Phone Number	Email address (optional)
SECTION B: CORPORATE TRUSTEE INFORMATION, IF APPLICABLE			
Enter information below for corporate trustee (i.e. bank or trust company): If not applicable, skip to Section C			
Department of Financial Protection and Innovation (DFPI) license number, or Office of the Comptroller of the Currency (OCC) charter and certificate number.			
License, Charter or Certificate type: _____ Number: _____			
Name of Financial Institution	Designated Agent	Phone Number	Email address (optional)
Address	City	State	Zip Code

**SECTION C: INDIVIDUAL TRUSTEE(S) OR DESIGNEE OF A CEMETERY AUTHORITY**

Enter information below for the individual trustee(s) or designee responsible for managing the endowment care fund who meet the below knowledge and expertise requirements:

Last Name	First Name	Phone Number	Email address (optional)
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Check all that apply:

Possesses a minimum total of twenty (20) semester units, or the equivalent in quarter units, in one or more of the following academic areas: accounting, auditing, finance, economics, or actuarial science from a college, university, or other institution of higher learning accredited by an association recognized by the Secretary of the United States Department of Education. Documentation for these units shall be provided by sending copies of original transcripts to the Cemetery and Funeral Bureau via email to [unitrust@efbdca.ca.gov](mailto:unitrust@efbdca.ca.gov) or via mail to the Bureau's address listed above.

OR

Holds a current, active, and unrestricted Certified Public Accountant (CPA) or Registered Investment Advisor License or registration from a federal agency, state, or territory in the United States. I am providing the following information:

- Type of License or Registration \_\_\_\_\_
- Issuing Agency \_\_\_\_\_ License/Registration Number \_\_\_\_\_

AND

Do you possess at least two (2) years' work experience in the past ten (10) years immediately prior to filing this application in investing and managing an endowment care fund? under the unitrust distribution method?  
YES  NO

**SECTION D: REQUIRED ATTACHMENTS**

In order to complete your application and to expedite our review, please provide all the documents and information required by Section 2334 of Title 16 of the California Code of Regulations (see attached). If all documents are not available, provide an explanation for why the document(s) are not available and, if applicable, the date when the document(s) are expected to become available.

**SECTION E: CERTIFIED TRUE STATEMENT**

Please select the appropriate section title below and provide each person's full legal name, sign and date where indicated below.

I hereby certify, under penalty of perjury, under the laws of the State of California, that all statements, answers, and representations on this form, and all attachments, are true, complete, and accurate, and that I am authorized to complete this form on behalf of the cemetery authority.

**1. Cemetery Authority: Authorized Representative for Corporation or Managing Member for LLC:**

For Corporation:

Signature of Authorized Representative	Print Name	Title	Date
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For LLC:

Signature of Managing Member or Authorized Representative	Print Name	Title	Date
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**2. Board of Trustees:**

Trustee Signature \_\_\_\_\_ Print Name \_\_\_\_\_ Date \_\_\_\_\_

Trustee Signature \_\_\_\_\_ Print Name \_\_\_\_\_ Date \_\_\_\_\_

Trustee Signature \_\_\_\_\_ Print Name \_\_\_\_\_ Date \_\_\_\_\_

**3. Corporate Trustees**

Signature of Trustee \_\_\_\_\_ Print Name \_\_\_\_\_ Title \_\_\_\_\_ Date \_\_\_\_\_

Attach a separate page if necessary.

*INFORMATION COLLECTION AND ACCESS Except for the email address, the information requested herein is mandatory and is maintained by the Cemetery and Funeral Bureau (Bureau) 1625 North Market Blvd., Suite S208 Sacramento, CA 95834, (916) 574-7870, in accordance with Business and Professions Code (BPC) sections 7600 et seq. The Bureau collects the personal information requested on this form as authorized by BPC sections 27, and 8726.2, and Title 16, California Code of Regulations, sections 2334, 2334.2, and 2334.3. The Bureau uses this information to identify and evaluate applicants for licensure, issue and renew licenses, and enforce licensing standards set by law and regulation, including laws and regulations governing income distribution for endowment care funds.*

*Each individual has the right to review the personal information maintained by the agency unless the records are exempt from disclosure by the Information Practices Act, including Civil Code section 1798.40. The Bureau makes every effort to protect the personal information you provide us; however, it may be disclosed in response to a Public Records Act request as allowed by the Information Practices Act, to another government agency as required by state or federal law or Civil Code section 1798.24; or in response to a court or administrative order, a subpoena, or a search warrant. Failure to provide all of the information required by this application may result in your application being returned to you as incomplete.*

Health and Safety Code § 8726.2

**8726.2.**

(a) On or after January 1, 2021, a cemetery authority, its board of trustees, or its corporate trustee may apply to the Cemetery and Funeral Bureau to convert its endowment care fund from a net income distribution method to a unitrust distribution method.

(b) The bureau shall approve the application described in subdivision (a) only if all of the following conditions are met:

(1) The cemetery authority, its board of trustees, or its corporate trustee provides the investment objectives of the trust and those objectives promote the mutual goals of (A) growing the principal assets to sufficiently cover the cost of future and ongoing care and maintenance of the cemetery and (B) generating income to support the cemetery, as described in Section 8726.

(2) Evidence is provided that the cemetery authority, its board of trustees, or its corporate trustee will invest and manage the trust under the prudent investor rule, as described in Article 2.5 (commencing with Section 16045) of Chapter 1 of Part 4 of Division 9 of the Probate Code, including, but not limited to, the requirements of Section 16050 of the Probate Code.

(3) The cemetery authority, its board of trustees, or its corporate trustee demonstrates sufficient knowledge and expertise in investing and managing an endowment care fund.

(4) The unitrust amount is no more than 5 percent of the average net fair market value of the endowment care fund.

(5) A reserve is created for future maintenance, repair, restoration of property, or embellishments in the cemetery for use when the endowment fund has inadequate funds for full distribution, as described in subparagraph (C) of paragraph (6). The cemetery authority, its board of trustees, or its corporate trustee may set aside a portion of the unitrust amount for the reserve.

(6) (A) The distribution of the unitrust amount may be made to the cemetery authority on a monthly, quarterly, semiannual, or annual basis, unless the endowment care fund has inadequate funds for full distribution.

(B) An endowment care fund has inadequate funds for full distribution if either of the following events occur:

(i) The net fair market value of the endowment care fund, after the distribution, is less than 80 percent of the aggregate fair market value of the endowment care fund as of the end of the immediate preceding fiscal year.

(ii) The endowment care fund is less than the cumulative total of all principal contributions to the fund since inception.

(C) (i) If the endowment care fund has inadequate funds for full distribution, the distribution shall be limited to the lesser of net income distribution or an amount no more than a unitrust distribution of 1.5 percent of the average net fair market value of the assets, and the fees and expenses associated with the management of the fund shall be paid by the cemetery authority.

(ii) The cemetery authority, its board of trustees, or its corporate trustee may draw from the reserve described in paragraph (5) only during a fiscal year where there are inadequate funds for full distribution. An amount drawn from the reserve during that fiscal year shall be the lesser of the difference between the unitrust amount described in paragraph (4) and the limited distribution amount described in clause (i), or one-third of the total amount of the reserve.

(7) (A) Notwithstanding Section 8733 or 8733.5, the compensation of the trustee shall be reasonable and shall meet the following conditions:

(i) If the net fair market value of the endowment care fund as of the end of the immediately preceding fiscal year, as of the last trading day, is less than five hundred thousand dollars (\$500,000), the annual compensation of the trustee shall not exceed three thousand five hundred dollars (\$3,500).

(ii) If the net fair market value of the endowment care fund as of the end of the immediately preceding fiscal year, as of the last trading day, is five hundred thousand dollars (\$500,000) or more, the annual compensation of the trustee shall not exceed:

(I) 0.8 percent of the first one million dollars (\$1,000,000).

(II) 0.6 percent of the next four million dollars (\$4,000,000).

(III) 0.5 percent of the next five million dollars (\$5,000,000).

(IV) 0.15 percent of all amounts above ten million dollars (\$10,000,000).

(B) The payment of the compensation of the trustee as set forth in subparagraph (A) shall be determined by a contractually prescribed schedule that is annual, semiannual, quarterly, or monthly with a schedule adopted for a period of no less than one year, and with relation to the net fair market value of the endowment care fund as of the end of the scheduled period, and the calculation of those fees as a percentage of that value shall be adjusted for that calculation.

(C) Nothing in this paragraph requires the payment of compensation to the trustee in a fiscal year.

(8) The cemetery authority has submitted all annual reports, pursuant to Section 7612.6 of the Business and Professions Code, for the previous five consecutive years.

(c) The bureau shall deny a cemetery authority's application if the bureau has found any of the conditions described in subdivisions (a) to (f), inclusive, of Section 7613.9 of the Business and Professions Code.

(d) To assist the bureau in making its determination, the cemetery authority, its board of trustees, or its corporate trustee shall provide all relevant trust documents, including a proposed trust instrument, if available. If relevant trust documents become available after the bureau makes a determination, the cemetery authority, its board of trustees, or its corporate trustee shall provide it to the bureau.

(e) (1) The bureau shall review on an annual basis whether a cemetery authority continues to meet the conditions of approval, described in subdivision (b), for the use of the unitrust distribution method.

(2) If the net fair market value of an endowment using the unitrust distribution method as of the end of the immediately preceding fiscal year falls to lower than five hundred thousand dollars (\$500,000), the bureau, in its review, shall consider the fees and expenses associated with the management of the fund.

(3) If a cemetery authority is determined not to meet the original conditions of approval described in subdivision (b), or has failed to file an annual report pursuant to Section 7612.6 of the Business and Professions Code, the cemetery authority may be required to revert to the use of the net income distribution method.

(f) The bureau may adopt rules to administer this section and ensure compliance, including, but not limited to, reporting requirements.

(g) The bureau shall evaluate the effectiveness of this section and report 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 that occurs after January 1, 2018.

(h) For the purpose of this section, the following words have the following meanings:

(1) "Average net fair market value" means the net fair market value of the assets in the endowment care fund as of the last trading day for each of the three preceding fiscal



years. Investment adviser fees and other operating expenses shall be deducted in determining the net fair market value.

(2) "Compensation of the trustee" means the total annual sum of all compensation paid to all trustees of an endowment care fund and to all agents and employees of those trustees.

(3) "Net fair market value" means the fair market value of the endowment care fund at a specified point in time after deducting investment adviser fees and other operating expenses.

(i) Nothing in this section relieves the trustee of the obligation to comply with the prudent investor rule, as described in Article 2.5 (commencing with Section 16045) of Chapter 1 of Part 4 of Division 9 of the Probate Code, including, but not limited to, Section 16050 of the Probate Code.

Title 16 California Code of Regulations

§ 2334. Unitrust Conversion Application

(a) A cemetery authority, its board of trustees, or its corporate trustee seeking to convert the cemetery authority's endowment care fund from a net income distribution method to a unitrust distribution method shall submit to the bureau a completed form 23-UCA (New 7/21), Unitrust Conversion Application, which is hereby incorporated by reference. Each application shall be accompanied by:

(1) The proposed endowment care fund trust instrument executed by the board of directors or limited liability company members of the cemetery authority;

(2) The trustee compensation schedule as referenced in Section 8726.2(b)(7)(B) of the Health and Safety Code;

(3) Written investment objectives that promote the mutual goals set forth in Section 8726.2(b)(1) of the Health and Safety Code;

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A. Current investment asset class allocation ranges, with explanations of the role(s) each class of investment plays in the overall portfolio strategy, and how the asset allocation will assist the trustee in managing the fund according to the prudent investor rule.

B. A five (5) year projection for the fund, by year, of anticipated income, expense, and valuation calculations adjusted for inflation and changes in asset values that identify and consider the following:

i. The projected value of the endowment care fund necessary to maintain the cemetery when it no longer has any interment space left to sell, if that condition is expected to occur before the end of the five (5) year projection.

ii. The reasonable administrative expenses attributable to generating income to the endowment care fund. "Reasonable administrative expenses" are the expenses identified in Section 8733 of the Health and Safety Code.

iii. The portion of expenses attributable to care, maintenance and embellishment of the cemetery expected to be paid by the endowment care fund.

iv. The projected contributions to the corpus from: (1) sales of developed property categorized by quantity and type of interment space, including current deposit rates and any anticipated modification of the deposit rates; and (2) sales of undeveloped property, if known and applicable.

v. The projected growth of the fund, with consideration of tax obligations.

vi. The projected annual unitrust amount.

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(6) Written financial records showing a separately identifiable reserve account has been created for future maintenance, repair, restoration of property, or embellishments in the cemetery pursuant to Section 8726.2(b)(5) of the Health and Safety Code. The beginning balance of this reserve may include the prior year's ending balance of the Reserve for Future Maintenance under the net income distribution method.

(b) Provision of Relevant Trust Documents

(1) If all relevant trust documents including a proposed trust instrument are not available at the time of application, then the applicant shall include with the application an explanation for why the document(s) are not available and, if applicable, the date the document(s) are expected to become available. Any approval of the application without the relevant trust document(s) may be conditioned upon the applicant's provision of the relevant document(s) within thirty (30) days of the date when the applicant indicates the documents will become available. For the purposes of this section, "relevant trust documents" means all items listed in this section.

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(c) A completed application pursuant to this section shall be submitted at least ninety (90) days prior to the beginning of the cemetery authority's reporting year for which the conversion is requested.

Note: Authority cited: Section 7606, Business and Professions Code; and Section 8726.2, Health and Safety Code. Reference: Section 7653.6, Business and Professions Code; and Sections 8726.2, 8731, 8733.5, 8736, 8738, 8740, 8751, and 8751.1, Health and Safety Code.