

# ARTICLE 8. CONSUMER PROTECTION FUNDS

## Rule 1. Preneed Consumer Protection Fund

### 832 IAC 8-1-1 Definitions

Authority: IC 25-15-9-8; IC 30-2-13-34

Affected: IC 30-2-13-29

Sec. 1. The definitions in IC 30-2-13 apply throughout this article. (*State Board of Funeral and Cemetery Service; 832 IAC 8-1-1; filed Mar 11, 2013, 2:50 p.m.: 20130410-IR-832120198FRA*)

### 832 IAC 8-1-2 Purpose of the preneed consumer protection fund

Authority: IC 25-15-9-8; IC 30-2-13-34

Affected: IC 23-14-49-1; IC 30-2

Sec. 2. The purpose of the preneed consumer protection fund established under IC 30-2-13-28 is to provide restitution to the following:

- (1) A purchaser of a preneed contract under IC 30-2-13.
- (2) An individual who has established a funeral trust under IC 30-2-9 or IC 30-2-10.
- (3) An individual who has established a cemetery escrow or trust under IC 23-14-49-1.
- (4) The estate of an individual described in subdivision (1), (2), or (3).
- (5) A funeral home, funeral director, or cemetery owner that performs a defaulted contract when the original seller of the prepaid services or merchandise has defaulted on a contract.

(*State Board of Funeral and Cemetery Service; 832 IAC 8-1-2; filed Mar 11, 2013, 2:50 p.m.: 20130410-IR-832120198FRA*)

### 832 IAC 8-1-3 Requests for restitution

Authority: IC 25-15-9-8; IC 30-2-13-34

Affected: IC 30-2

Sec. 3. (a) Requests for restitution from the preneed consumer protection fund shall be subject to the review and approval of the board. The board has complete discretion to allow or reject the requests for restitution in whole or in part.

(b) Requests for restitution from the preneed consumer protection fund must be in writing and on a form prescribed by the board. The following documentation shall be submitted with the request to the board:

- (1) A copy of the original preneed contract.
- (2) Documentation, such as canceled checks or payment receipts, verifying the total funds paid to the seller on the contract and demonstrating that applicant for restitution has not defaulted on the contract.
- (3) Documentation showing that the seller is incapable or has failed to provide the services or merchandise on a preneed contract.
- (4) Documentation concerning efforts to obtain reimbursement from the seller, insurance companies, trustees, escrow agent, or others.
- (5) Documentation of amounts recovered from any source in partial payment of the loss.

(c) The board has the right to review, investigate, or request additional documentation in order to determine the validity and correct amount of restitution, if any, to be paid. (*State Board of Funeral and Cemetery Service; 832 IAC 8-1-3; filed Mar 11, 2013, 2:50 p.m.: 20130410-IR-832120198FRA*)

### 832 IAC 8-1-4 Board approval of disbursement

Authority: IC 25-15-9-8; IC 30-2-13-34

Affected: IC 25-1-11; IC 30-2-13-33

Sec. 4. 2(a) The board shall determine to its satisfaction that the seller does not possess the financial means to deliver or provide the prepaid services or merchandise based on a review of any of the following:

- (1) A disciplinary proceeding against the seller or other licensee under IC 25-1-11.
- (2) Bankruptcy proceedings.
- (3) Whether the seller has been acquired by a successor who by law has assumed the obligations of the seller, including the preneed funeral contracts.
- (4) Trust or escrow accounts held by or entered into by the seller.
- (5) Assets held by the seller.
- (b) Disbursements from the preneed consumer protection fund shall be determined after consideration of the following

additional criteria:

- (1) Whether the seller was licensed to sell preneed services under IC 30-2-13-33 when the contract was entered into.
- (2) Whether adequate funds in the preneed consumer protection fund are available.
- (3) Whether the requestor of restitution was required to obtain services and merchandise other than from the seller of the preneed contract.
- (4) Whether the losses are not otherwise covered, protected, or reimbursable.
- (5) Whether the requestor is eligible for or seeking reimbursement from a judgment or other right as a result of criminal or civil litigation.
- (6) Whether credit for merchandise delivered or resources still existing in the trust or escrow must be subtracted from the amount of restitution.
- (c) Restitution from the preneed consumer protection fund is not available for any of the following:
  - (1) Defective merchandise or costs associated with reopening a grave in order to take corrective action on defective merchandise.
  - (2) Services or merchandise not included in the original preneed contract.
  - (3) Court costs or other fees associated with the original preneed contract.

*(State Board of Funeral and Cemetery Service; 832 IAC 8-1-4; filed Mar 11, 2013, 2:50 p.m.: 20130410-IR-832120198FRA)*

### **832 IAC 8-1-5 Interest**

Authority: IC 25-15-9-8; IC 30-2-13-34

Affected: IC 30-2

Sec. 5. (a) The amount of restitution shall include interest, calculated at the statutory rate, on the gross amount owed, compounded annually, for each year for which restitution is owed starting from the date of the original preneed contract.

(b) Restitution paid to a funeral home, funeral director, or cemetery owner that performs a defaulted contract shall not exceed the gross amount of the cost of services actually rendered. *(State Board of Funeral and Cemetery Service; 832 IAC 8-1-5; filed Mar 11, 2013, 2:50 p.m.: 20130410-IR-832120198FRA)*

## **Rule 2. Consumer Protection Fund for Cemetery Maintenance**

### **832 IAC 8-2-1 Definitions**

Authority: IC 25-15-9-8

Affected: IC 23-14; IC 30-2-13

Sec. 1. The definitions in IC 30-2-13, except for the following, apply throughout this article:

- (1) "Cemetery" means a cemetery as defined at IC 23-14-33-7 that is eligible for coverage under IC 23-14-48.5-1.
- (2) "Consumer protection fund for cemetery maintenance" means the fund established under IC 23-14-48.5-4.
- (3) "Fund" means the consumer protection fund for cemetery maintenance.
- (4) "Maintenance" means the care of cemetery grounds and graves in keeping with a properly maintained cemetery and includes the following:
  - (A) Cutting grass at reasonable intervals.
  - (B) Raking and cleaning cemetery plots at reasonable intervals.
  - (C) Pruning shrubs and tress *[sic]*.

(D) Keeping in repair and preserving the following:

- (i) Drains.
- (ii) Water lines.
- (iii) Roads.
- (iv) Buildings.
- (v) Fences.
- (vi) Other structures.

(5) "Request for maintenance assistance" or "request" means a verified complaint filed under IC 23-14-48.5.

*(State Board of Funeral and Cemetery Service; 832 IAC 8-2-1; filed Mar 11, 2013, 2:50 p.m.: 20130410-IR-832120198FRA)*

**832 IAC 8-2-2 Purpose of the consumer protection fund for cemetery maintenance**

Authority: IC 25-15-9-8

Affected: IC 23-14-48-10; IC 23-14-48.5

Sec. 2. The purpose of the consumer protection fund for cemetery maintenance is to provide funding for cemetery maintenance when:

- (1) a cemetery owner is unable to maintain a cemetery;
- (2) the perpetual care fund of a cemetery is depleted or otherwise unavailable; and
- (3) interested persons have not organized under IC 23-14-48-10 in order to take over the management, care, and general supervision of the cemetery.

*(State Board of Funeral and Cemetery Service; 832 IAC 8-2-2; filed Mar 11, 2013, 2:50 p.m.: 20130410-IR-832120198FRA)*

**832 IAC 8-2-3 Request for maintenance assistance**

Authority: IC 25-15-9-8

Affected: IC 23-14-48-7; IC 23-14-48.5

Sec. 3. (a) A request for maintenance assistance at a cemetery must be in writing and on a form prescribed by the board.

(b) A request may be filed by the cemetery owner. If the cemetery owner is unable to be determined, the request may be filed by:

- (1) the owner of a lot in the cemetery;
  - (2) the next of kin of a lot owner; or
  - (3) any other interested person.
- (c) The following documentation shall also be considered with the request:
- (1) The accounting and report of the cemetery's perpetual care fund filed with the board under IC 23-14-48-7.
  - (2) Other information the board may require in order to determine the validity of the request, including personal appearances as requested.

*(State Board of Funeral and Cemetery Service; 832 IAC 8-2-3; filed Mar 11, 2013, 2:50 p.m.: 20130410-IR-832120198FRA)*

**832 IAC 8-2-4 Approval or disapproval; notice of termination**

Authority: IC 25-15-9-8

Affected: IC 23-14-48.5

Sec. 4. (a) The board shall issue its written findings of fact approving or disapproving a request for maintenance assistance within thirty (30) days of its receipt.

(b) An approved request shall be reviewed and revised as necessary at least every ninety (90) days.

(c) Upon the termination of its approval for maintenance assistance, the board shall issue a written notice to the cemetery owner or the person who filed the request under section 3(b) of this rule. *(State Board of Funeral and Cemetery Service; 832 IAC 8-2-4; filed Mar 11, 2013, 2:50 p.m.: 20130410-IR-832120198FRA)*

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