

**§1401. Prearranged funerals or burial plans**

**1. Plan requirements.** Except as provided in subsection 1-A, any prearranged funeral or burial plan contracted or undertaken within this State must comply with the following.

A. All money paid during a person's lifetime to any individual, firm, association, partnership or corporation, by that person or by someone on behalf of that person, under an agreement that services will be performed or personal property will be delivered in connection with the disposition of that person's body after death must be deposited by the payee within 10 days after receipt of the money in a separate account in a financial institution or credit union authorized to do business in this State, as defined in Title 9-B, section 131, subsections 12-A and 17-A, in the name of the payee as mortuary trustee for the person for whose benefit the payment was made and must be held in that account together with interest if any. If money is paid by check, share draft or money order, the payee shall instruct the payor to make the instrument payable to the financial institution or credit union into which it is to be deposited and to include on the instrument the name of the mortuary trustee and the person for whose benefit the payment was made. [PL 1999, c. 590, §1 (AMD).]

B. The payee shall deposit the money in either a federally insured deposit or share account or a trust account; the type of account must be disclosed to the payor or the payor's representative and a deposit in a trust account may be invested in or used to purchase only the following:

- (1) Federally insured deposit or share accounts;
- (2) Securities issued, insured or guaranteed by the United States or by any agency or corporate or other instrumentality of the United States;
- (3) Municipal securities that are exempt from registration under Title 32, section 16201, subsection 1; and
- (4) Permanent life insurance, other than variable life insurance and annuities, from an insurer authorized to transact insurance in this State, subject to the provisions of Title 24-A, chapter 27. A payee or mortuary trustee may not receive any commission, fee or other consideration from an insurer in connection with the procurement or purchase of insurance permitted by this subparagraph.

Except for fees allowed by this section, all investments made with trust assets remain trust assets. [PL 2005, c. 65, Pt. C, §16 (AMD).]

C. Within 30 days after the deposit of funds by the payee, the financial institution or credit union shall provide a written confirmation of the deposit, including the amount deposited, to the payor or the payor's legal representative. Nothing in this section may be construed to prevent the direct transfer of these funds to another financial institution or credit union by payee transfer, by financial institution or credit union merger or consolidation or by operation of law, provided that within 30 days after the direct transfer of the funds, the recipient financial institution or credit union shall provide a written confirmation of the deposit, including the amount deposited, to the payor or the payor's legal representative. [PL 1999, c. 590, §1 (AMD).]

D. The agreement must be in writing and a copy must be furnished to the payor or the payor's legal representative by the payee when the agreement is executed. The agreement may be revocable or irrevocable; however, if irrevocable, there must be a provision to allow for the transfer of the account by the appointment of successor trustees. The agreement must clearly state the name of the initial financial institution or credit union into which the money will be deposited and must direct the payor to send a copy of the agreement to the named financial institution or credit union. The agreement must clearly state terms providing for disposition of excess funds after funeral goods and services have been provided. The agreement must clearly state any fees that may be charged against the account; fees must be reasonable, as defined by the board, and may be charged only:

- (1) Upon transfer of the account by the appointment of a successor trustee;
- (2) Upon revocation of the agreement if the agreement is revocable; and
- (3) For the actual financial and tax administration of the account.

The payee shall maintain a complete record of the deposit of all funds, including principal and interest. The record must be available for inspection by the payor, the payor's legal representative, the commissioner's designee or an inspector for the board and must contain the name and address of the financial institution or credit union currently in possession of the funds and the dates and amounts of deposits. [PL 2007, c. 402, Pt. J, §1 (AMD).]

E. The funds may be directed by the payee to another financial institution or credit union or directed back to the payor or the payor's legal representative, if otherwise lawful and permitted by contract, on written instructions of the payor or the payor's legal representative. The funds may only be withdrawn by the payee on presentation of a certified copy of the death certificate of the person for whose benefit the funds were paid, in which event they must be used in accordance with the agreement. [PL 1999, c. 590, §1 (AMD).]

[PL 2007, c. 402, Pt. J, §1 (AMD).]

**1-A. Plan funded with proceeds of life insurance policy.** A prearranged funeral or burial plan agreement may be funded with proceeds of a life insurance policy in accordance with this subsection.

A. During a person's lifetime, a person or that person's legal representative may enter into an agreement that services will be performed or personal property will be delivered in connection with the disposition of that person's body after death by:

- (1) Assigning the mortuary trustee as owner and beneficiary of a life insurance policy payable to the mortuary trustee upon that person's death; or
- (2) Designating the mortuary trustee as a beneficiary of a life insurance policy payable to the mortuary trustee upon that person's death. [PL 2003, c. 109, §3 (NEW).]

B. An agreement under paragraph A must be in writing and a copy must be furnished to the person or the person's legal representative by the mortuary trustee when the agreement is executed. The agreement may be revocable or irrevocable; however, if the agreement is irrevocable, there must be a provision to allow for the transfer of the trust account by the appointment of successor trustees. The agreement must clearly state terms providing for disposition of excess funds after funeral goods and services have been provided. The agreement must clearly state any fees that may be charged against the trust account. Fees must be reasonable, as defined by the board, and may be charged only:

- (1) Upon transfer of a trust account by the appointment of a successor trustee;
- (2) Upon revocation of the agreement if the agreement is revocable; and
- (3) For the actual financial and tax administration of the trust account. [PL 2003, c. 109, §3 (NEW).]

C. The mortuary trustee shall maintain a complete record of a trust account established under this subsection. The record must be available for inspection by the person, the person's legal representative, the commissioner's designee or an inspector for the board. [PL 2003, c. 109, §3 (NEW).]

This subsection may not be construed to alter the terms of a life insurance policy or supersede any law governing the regulation of life insurance policies.

[PL 2003, c. 109, §3 (NEW).]

**2. Rulemaking.** The board shall adopt rules regarding prearranged funeral agreements, including, but not limited to:

- A. The form, format and content of trust agreements; [PL 1999, c. 258, §2 (NEW); PL 1999, c. 258, §3 (AFF).]
- B. Standards regarding when service contracts are required in conjunction with trust agreements and the form, format and content of the service contracts; [PL 1999, c. 258, §2 (NEW); PL 1999, c. 258, §3 (AFF).]
- C. The establishment of reasonable fees that may be charged only pursuant to subsection 1, paragraph D; and [PL 1999, c. 258, §2 (NEW); PL 1999, c. 258, §3 (AFF).]
- D. Inspection of trust agreements, account information and any related documentation. [PL 1999, c. 258, §2 (NEW); PL 1999, c. 258, §3 (AFF).]

Rules adopted pursuant to this section are routine technical rules under the Maine Revised Statutes, Title 5, chapter 375, subchapter II-A.

[PL 1999, c. 258, §2 (NEW); PL 1999, c. 258, §3 (AFF).]

**3. Financial institution or credit union liability.** The financial institution or credit union is discharged from liability for direct payment of the funds in an account under subsection 1 to another financial institution or credit union or to the payor, upon presentation of a written consent to withdrawal signed by the payor or the payor's legal representative and by the payee or upon withdrawal of the funds by the payee upon presentation of a certified copy of the death certificate of the person for whose benefit the funds were paid.

[PL 1999, c. 590, §2 (AMD).]

**4. Applicability.** This section does not apply to the sale of cemetery lots, crypts, niches, cemetery burial privileges, cemetery space or perpetual care.

[PL 1999, c. 258, §2 (NEW); PL 1999, c. 258, §3 (AFF).]

**5. Cotrustees.** This section may not be construed as prohibiting any person, including a payor, from serving as a mortuary cotrustee with the payee.

[PL 1999, c. 258, §2 (NEW); PL 1999, c. 258, §3 (AFF).]

**6. Penalties.** Any person who violates this section is guilty of a Class E crime. This section does not preclude prosecution or conviction under other applicable laws, including, but not limited to, disciplinary actions under this chapter.

[PL 1999, c. 258, §2 (NEW); PL 1999, c. 258, §3 (AFF).]

#### SECTION HISTORY

PL 1983, c. 413, §§53,54 (AMD). PL 1983, c. 816, §C1 (AMD). PL 1985, c. 240 (AMD). PL 1989, c. 450, §13 (AMD). PL 1989, c. 674 (AMD). PL 1999, c. 258, §2 (RPR). PL 1999, c. 258, §3 (AFF). PL 1999, c. 590, §§1,2 (AMD). PL 2003, c. 109, §§2,3 (AMD). PL 2005, c. 65, §C16 (AMD). PL 2007, c. 402, Pt. J, §1 (AMD).

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