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BULLETIN NO. 2009-02

TO: Cemetery authorities
FROM: Jim L. Ridling *JLR*
Commissioner of Insurance
DATE: February 19, 2009
RE: Adjustments to endowment care fund deposits

This Bulletin addresses adjustments in deposits to the endowment care fund a cemetery authority is required to maintain and fund under Ala. Code §§ 27-17A-47 and 27-17A-49 in the event of an allowed cancellation of a transaction after an endowment care fund deposit has been made or the subsequent determination that an excess deposit has been made in a particular transaction due to a calculation error or other error.

1. Payment of net income from the endowment care fund for covering the costs of the cemetery's endowment care is the only legally permissible form of asset withdrawal from an endowment care fund. Ala. Code § 27-17A-50(b).

2. Once a deposit to an endowment care fund has been made for a transaction as required by Ala. Code § 27-17A-49(a), the amount deposited for that transaction cannot be withdrawn from the endowment care fund upon later cancellation of the transaction or in the event of a later-discovered calculation error or other error resulting in an excess deposit over that required under § 27-17A-49(a) or for any other reason outside the scope of § 27-17A-50(b).

3. After a deposit to an endowment care fund has been made for a transaction as required by Ala. Code § 27-17A-49(a), a cemetery authority may recognize and apply a "credit" against future required deposits to the endowment care fund in the following instances:

(a) when the cemetery authority permits a purchaser to cancel a transaction giving rise to a deposit in the endowment care fund and the cemetery authority has refunded 100% of the transaction purchase price (to include any amount allocated to endowment care) to the purchaser; or

(b) as a result of a calculation error or other error, the amount contributed to the endowment care fund for a transaction exceeds what is required under Ala. Code § 27-17A-49(a) or such greater amount, if any, as may be required by the transaction contract.

In these instances, the cemetery authority may decrease the amount of a subsequent deposit into the endowment care fund by the amount of the contribution actually made for a cancelled transaction or the excess amount deposited in error. This type of adjustment should not be reflected as a "withdrawal" from the endowment care fund in the cemetery authority's records.

4. Whether to recognize a "credit" in such instances is at the option of the cemetery authority. The "credit," however, must be recognized not later than four (4) calendar months after the date of the event (cancellation or discovery of an error) giving rise to the "credit."

5. Each cemetery authority using this "credit" method must maintain detailed records that identify the specific contracts involved in any adjustment by "credit" to endowment care fund deposits and, upon examination or otherwise on request, must be able to furnish the Department's examiners or representatives with a summary of all endowment care fund adjustments during the period covered by the examination or request.

JLR/JFM/bc