

MINUTES

Vermont Board of Funeral Service
National Life Building North Fl 2,
Montpelier, VT 05620-3402
April 13, 2010
9:00AM – Board Meeting

UNAPPROVED MINUTES

Board Members present: John Coffin, Chairman, Lyndon Mann, Robert Covey, Peter Beck. Staff Attending: Chris Winters, Executive Director, Amy Carlson, Chief Investigator, Dan Vincent, OPR Inspector, Terry Gray, Unit Administrator and Kevin Leahy, Board Attorney.

1. Meeting called to order at 9:00AM by Chairman Coffin.
2. Case Update/Disciplinary Action

Chris Winters, Director of OPR presented a claim on the Funeral Service Trust Account. He gave an overview and history of the purpose of establishing this account. In 1997, the Legislature assessed a \$6.00 fee per funeral, burial or disposition to fund the account for the sole purpose of protecting prepaid funeral agreements and to protect consumers in the event of default by a funeral establishment. The current balance in the FSTA this account is \$243,542.00 of as of July 1, 2009. This is the first claim on the account since its creation in 1997.

In December, 2009 an individual filed a claim in the amount of \$7,040.00 against a funeral home provider whose establishment was closed down and his license revoked by the Board in March, 2005 for inadequate record-keeping and for using prepaid funeral monies for his own personal benefit. Prior to the closing of this establishment, the funeral director ran into financial difficulties and began depositing a majority of the monies generated by the “pre-need” contracts into the regular business accounts in the attempt to keep the business afloat.

The funeral establishment was sold and the new owners assumed responsibility for all known prepaid accounts. This claimant was not among the known accounts. This claimant does have proof of a contract with the former funeral director and the amount she prepaid for funeral goods and services.

Board Administrative Rule 7.3 on the FSTA states:

7.3 CONSUMER CLAIMS ON THE FUNERAL SERVICES TRUST ACCOUNT

- A. In the event a funeral establishment is insolvent, bankrupt, or has ceased to do business, and is therefore incapable of performing the prepaid funeral contract into which it has entered, or will therefore be incapable of performing its prepaid funeral contracts at the time of need, holders of prepaid funeral contracts are eligible for payment from the FSTA if the following steps are completed:
 1. The consumer files a copy of the original prepaid funeral contract with the Board.
 2. The Board then determines the value of the contract. The value of the contract shall consist of the total of the payments made on the contract by the consumer, plus interest accrued on those payments. The value determined by the Board shall not serve to enhance the contract

- purchased by the consumer.
3. Within six months of the date the Board receives notice from the consumer, the Board will provide the consumer a determination of the value of the contract and information about goods and services previously purchased and will provide guidance to the consumer for purchasing a new funeral contract for equivalent goods and services with a funeral establishment of the consumer's choice.
 4. The new funeral service contract is filed with the Board within 10 business days of its creation by the consumer or his or her personal representative.
 5. The Board will review and accept or decline to accept the new arrangement according to the value of the contract and information on record about previously-contracted goods and services.
 6. At the time of need, the Board will pay for the newly contracted and Board-approved pre-need funeral from the FSTA.
- B. The Board may make exceptions to the requirements of Rule 7.3(A) on a case-by-case basis. Exceptions will be granted if the Board finds the requirements of Rule 7.3(A) either present an undue hardship, or are substantially impossible to meet, such as in the case of an otherwise eligible consumer who never received the notice explaining the requirements or whose prepaid funeral contract was the subject of default at the time it became at-need.
- C. A consumer who has purchased a prepaid funeral arrangement is not eligible for payment from the FSTA if the funeral establishment ceases to do business for any reason but the consumer is able to recover all of his or her funds, including principal and interest, in the prepaid funeral arrangement escrow account.

Although the rule allows for payment at the time of need (death) the board decided to release the funds immediately pursuant to rule 7.3B.

Director Winters presented a current contract between the claimant and the new owners of the funeral home in excess of the amount requested. Investigator Carlson contacted Interment Trust Services to determine the value of a pre-paid contract that was purchased in 8/2003 for \$7,040.00. The value as of 1/15/10 was \$8,672.66. The Board agreed to use Interment Trust as the industry standard for calculating interest on a prepaid account for purposes of claims such as this one.

MOTION to disburse \$8,672.66 from the Funeral Service Trust Account according to 26 V.S.A. § 1272 to be sent to the new funeral establishment at the complainants request by P. Beck, seconded by L. Mann. MOTION PASSED.

Adjournment at 9:35AM

Respectfully Submitted,

Terry Gray
Unit Administrator