

# **Title 10 MARYLAND DEPARTMENT OF HEALTH**

## **Subtitle 29 BOARD OF MORTICIANS AND FUNERAL DIRECTORS**

### **Chapter 15 Family Security Trust Fund**

**Authority: Health Occupations Article, §§7-4A-01, 7-4A-03(h), 7-4A-04—7-4A-13, Annotated Code of Maryland**

#### **.01 Scope.**

A. This chapter governs the collection of fees from licensed funeral establishments for claimants to recover compensation from the Family Security Trust Fund for an actual pre-need trust fund loss that occurred in this State due to theft, embezzlement, false pretenses, forgery, fraud, or misrepresentation by a licensed mortician, funeral director, or holder of a surviving spouse license.

B. This chapter applies to all preneed contracts entered into by a licensed mortician, funeral director, or a holder of a surviving spouse license with a buyer, including those preneed contracts arranged on behalf of a holder of a corporate license.

#### **.02 Definitions.**

A. In this chapter, the following terms have the meanings indicated.

B. Terms Defined.

- (1) "Advisory Committee" means a committee comprised of three Board members and a representative from two of the trade associations which is assisted by Board Counsel provided by the Attorney General's Office and Board Administrative personnel to administer the Fund.
- (2) "Board" means the Maryland State Board of Morticians and Funeral Directors.
- (3) "Claim" means a request filed in writing, under oath, with supporting documentation by a claimant to obtain compensation from the Family Security Trust Fund for a preneed trust fund loss as a result of malfeasance, default, failure, or insolvency of any licensee under Health Occupations Article, §7-4A-06, Annotated Code of Maryland.
- (4) "Claimant" means an individual, or legal representative of the individual who files a claim for loss.
- (5) "Final order" means a public record issued by the Board resolving a contested case either by consent or after an adjudication, which includes findings of fact, conclusions of law, and a disposition which:
  - (a) Denies a license;
  - (b) Sanctions by reprimand, probation, fine, or suspension or revocation of a license;

- (c) Summarily suspends a license;
  - (d) Dismisses charges;
  - (e) Surrenders a license; or
  - (f) Takes any other action that the Board may do by law.
- (6) "Fund" means the Family Security Trust Fund, a special, nonlapsing, interest bearing account.
- (7) "Preneed contract" means an agreement entered into by a licensed mortician, a licensed funeral director, or a holder of a surviving spouse license with a supervising mortician or a supervising funeral director with a buyer in advance of the death of that individual or beneficiary.
- (8) "Seller" means a licensed mortician or licensed funeral director who agrees to sell certain mortuary sciences services or merchandise in a contractual arrangement between a buyer and a funeral establishment.

### **.03 Mandatory Fees.**

- A. A licensed funeral establishment may not be exempt from the fees outlined in this regulation.
- B. The Board shall send out fee notices to the licensed establishments via first class mail or by any electronic means by September 1.
- C. Annual payments shall be due on November 30 of every year. All active licensed establishments shall be required to pay a fee of \$375 to the Family Security Trust Fund.
- D. A late fee of \$500 will be assessed on December 1 for any licensed establishment that is delinquent in paying the mandatory contribution to the Fund.
- E. If the establishment does not pay the mandatory fee and the late fee by December 30, the Committee shall refer the delinquent establishments to the Board for formal action to include possible suspension of the supervising mortician license.
- F. In addition to any applicable mandatory late fee, the Board:
- (1) Shall assess a \$40 fee for returned checks; and
  - (2) May not issue a license until the payment is made, including the late fee if after December 1.
- G. A licensee is not entitled to a refund of its contribution to the Fund.
- H. Mandatory contributions to the Fund may not be prorated.

### **.04 The Family Security Trust Fund.**

- A. The Board shall:
- (1) Collect the mandatory contributions;
  - (2) Deposit the funds;

(3) Track interest; and

(4) Process claims for loss that occurred on or after January 1, 2010.

B. All fees shall be deposited with the State Treasurer into a separate account known as the Family Security Trust Fund. The Fund may not be transferred to or revert to the General Fund of the State.

C. All moneys deposited in the Fund shall be used only for the purposes expressly authorized by Health Occupations Article, §7-04A-05, Annotated Code of Maryland.

D. The Fund shall accumulate interest income which shall be credited to the Fund.

E. Once the Fund has accumulated a balance of \$1,000,000 the Board shall cease to collect the annual fee.

F. If the Fund falls below \$1,000,000, the Board shall reinstate a fee up to \$375 to be assessed by the Board.

G. The Fund shall be maintained at \$1,000,000 principal level plus interest.

H. The Board may expend monies in the Fund for the following purposes:

(1) To make reimbursements on approved claims; and

(2) To pay the expenses of the Board for administering the Fund, including appropriate experts, or legal counsel, accountants, consultants, and agents.

## **.05 Filing a Claim.**

A. Complaints shall be processed pursuant to COMAR 10.29.11.

B. The Board shall issue a final order against a licensee for violation involving a transaction that relates to preneed funeral planning that occurred in the State and falls within its jurisdiction.

C. The claimant shall:

(1) Complete a claim form devised by the Board;

(2) Provide a signed preneed contract and copies of documentation of any and all money transactions regarding the preneed contract; and

(3) Present all claims for losses to the Board within 1 year:

(a) After the death of the person who is the subject of the preneed contract;

(b) Upon the discovery by the claimant of the defalcation; or

(c) At a later date at the discretion of the Board.

D. The Board shall consider each claim on a case by case basis.

E. All claims shall be filed with the Fund.

F. Claims shall be filed in accordance with Health Occupations Article, §§7-4A-07—7-4A-08, Annotated Code of Maryland.

## **.06 Hearings.**

Hearings shall be conducted in accordance with Health Occupations Article, §7-319, Annotated Code of Maryland.

## **.07 Restitution.**

A. A claimant may receive compensation from the Fund for an actual preneed trust fund loss that occurred on or after January 1, 2010. All payments shall be a matter to be decided by the full Board in its discretion.

B. Restitution may only be obtained from the Fund if adequate funds are not available from the preneed seller.

C. The amount of compensation recoverable by a claimant shall be restricted to the actual monetary loss incurred by the claimant.

D. The President of the Board shall sign claims by designation to appropriate staff for payment from the Fund.

E. The Board shall order full or partial payment of a claim.

F. If at any time there are not sufficient funds on hand to pay all claims in full, the Board may, in its discretion, pay the approved claims pro rata or defer payment until such time as adequate funds are available.

G. The Board shall determine the maximum cumulative amounts which shall be paid in respect to any one claim or multiple claims by a single claimant arising from the same licensee involved in either a client or fiduciary relationship. The percentage of payment on the dollar remains the same for all victims of the same licensee.

## **.08 Recovery of Funds.**

A. In the event restitution is made to a claimant under this chapter, the Board may bring action to the extent authorized by statute against any person, including a licensee who is determined by the Board to be responsible for the claim.

B. A licensee found guilty of malfeasance, misfeasance, default, failure, or insolvency may not be considered for reinstatement to an active status until all money paid from the fund is repaid in full, plus interest from the time the payment is made.

### **Administrative History**

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