

ARKANSAS REGISTER

Transmittal Sheet

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For Office

Use Only:

Effective Date _____ Code Number _____

Name of Agency Arkansas State Board of Embalmers, Funeral Directors, Cemeteries and Burial Services

Department Arkansas Department of Commerce

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Statutory Authority for Promulgating Rules Section 1 of Act 343 of 2021, § 20-17-1013 (g), 23-61-1103(a)(5), and 25-15-204

Rule Title: Final Rule: 2 "Withdrawal from Permanent Maintenance Fund"

Intended Effective Date
(Check One)

Date

☐ Emergency (ACA 25-15-204)

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☐ 10 Days After Filing (ACA 25-15-204)

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☒ Other 1/1/2022
(Must be more than 10 days after filing date.)

Reviewed by Legislative Council

November 17, 2021

Adopted by State Agency

December 2, 2021

Electronic Copy of Rule e-mailed from: (Required under ACA 25-15-218)

Clara D. Mezza

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12/2/2021

Contact Person

E-mail Address

Date

CERTIFICATION OF AUTHORIZED OFFICER

I Hereby Certify That The Attached Rules Were Adopted
In Compliance with the Arkansas Administrative Act. (ACA 25-15-201 et. seq.)

Clara D. Mezza

Signature

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Title

12/2/2021

Date

Rule 2

Arkansas State Board of Embalmers, Funeral Directors, Cemeteries, and Burial Services

Withdrawal from Permanent Maintenance Fund

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Section 1. Authority

This Rule is promulgated pursuant to Section One (1) of Act 343 of 2021 of the Arkansas General Assembly, codified at Ark. Code Ann. § 20-17-1013(g); authority is also found in Ark. Code Ann. § 23-61-1103(a)(5), Ark. Code Ann. § 25-15-204, and other applicable laws or rules.

Section 2. Purpose

The purpose of this Rule is to establish the process by which a cemetery company may make withdrawals from the principal balance of the cemetery's Permanent Maintenance Fund. The withdrawals shall be used only for funding infrastructure repairs and for making capital improvements.

Section 3. Definitions

A. "Infrastructure repair" means the repair, construction, or preservation of infrastructure items, including but not limited to roads, pathways, structures, fencing, walls, landscaping, and utilities such as irrigation systems.

B. "Capital improvement" includes, but is not limited to, the construction or preservation of any permanent building, structure, fence, wall, road, pathway, or utility such as an irrigation system. A capital improvement is an improvement that may enhance the cemetery's overall value or prolong its useful life.

Section 4. Requirements

- A. The cemetery company shall submit its request in writing, on form(s) created and approved by the Board or in such form as the Board may require, at least twenty (20) business days prior to the Board Meeting in which the request is to be considered by the Board.
- B. The cemetery company shall include, as part of its written request, a detailed description of the infrastructure repair(s) and/or capital improvement(s) that are needed to the cemetery

property. If the work is to be done by third party vendor(s), then at least three written (3) bids/estimates must also be included.

- C. Board staff will conduct an on-site inspection of the cemetery property to confirm that the request for withdrawal to repair, replace, or improve items or conditions is appropriate. The on-site inspection shall be reported back to the Board for consideration.
- D. Board staff will obtain an updated statement of account from the permanent maintenance fund trustee(s) and/or the bank or other financial institution in which the trusted funds are deposited. The updated statement of account must be based upon the most recent month end period preceding the submission of the written request to the Board, so that the principal balance on-deposit in the permanent maintenance fund can be verified. The funds to be used for the infrastructure repair(s) and/or capital improvement(s) will be based as a percentage of the principal amount, with no more than twenty percent (20%) of the principal balance being authorized for disbursement by the Board.
- E. Upon reported completion of the work by either third-party vendor(s) or the cemetery company employees, Board staff will conduct an on-site re-inspection of the cemetery property to verify that the infrastructure repair(s) and/or capital improvement(s) have been satisfactorily completed as originally submitted to the Board. The on-site re-inspection shall be reported back to the Board.
- F. If a third-party vendor performed the work and was not paid in advance by the cemetery company, then the Board shall submit to the permanent maintenance fund trustee(s) and/or bank or financial institution in which the trusted funds are deposited, a written authorization for payment to be made from the principal balance of the permanent maintenance fund directly to the vendor who completed the work. The disbursement amount shall not exceed the percentage of principal approved by the Board for the project.
 - 1. If a third-party vendor performed the work and was paid in advance by the cemetery company, either in whole or in part, then the Board shall submit to the permanent maintenance fund trustee(s) and/or bank or financial institution in which the trusted funds are deposited, a written authorization for payment to be made from the principal balance of the permanent maintenance fund, to the cemetery company. The disbursement amount shall not exceed the percentage of principal approved by the Board for the project. If the final amount due for the project is greater than the amount approved for disbursement by the Board, then it shall be the cemetery company's responsibility to pay the third-party vendor any remaining amount still due, over and above the amount approved by the Board. The Board is not a direct party to the agreement between the cemetery company and the third-party vendor, and will not be held liable for a breach of contract, failure to pay, or any other cause of action that may arise out of the agreement between the cemetery company and the third-party vendor.
 - 2. If cemetery company employee(s) performed the work rather than a third-party vendor, then the cemetery company must present to the Board, written documentation of all expenses (materials, supplies, equipment rental expenses, etc.) that were incurred to

complete the infrastructure repair(s) and/or capital improvement(s). The Board shall review the actual expenses incurred by the cemetery company, and Board staff shall submit to the permanent maintenance fund trustee(s) and/or bank or financial institution in which the trusted funds are deposited, a written authorization for payment to be made to the cemetery company from the principal balance of the permanent maintenance fund. The amount for disbursement shall be limited to actual expenses incurred, and shall not exceed the percentage of principal approved by the Board for the project.

3. Upon disbursement of the funds from the principal, the cemetery company shall not make another request for additional withdrawals from the principal for at least ten (10) years from the date of the disbursement.

Section 5. Effective Date

This Rule shall apply to cemetery companies who hold a perpetual care cemetery permit. This Rule is effective after review and approval by the Arkansas Legislative Council, ten (10) days after filing of the approved Rule with the Arkansas Secretary of State.