**Section 760.270 Property Related to Pre-need Death Care Contracts**

a) Illinois Funeral or Burial Funds Act [225 ILCS 45]

1) Funds on deposit or held in trust pursuant to the Illinois Funeral or Burial Funds Act are covered under the Act pursuant to Section 15-201(9).

2) Proceeds of a life insurance policy or annuity contract, even if used to fund a pre-need contract pursuant to the Illinois Funeral or Burial Funds Act, are covered under the Act pursuant to Sections 15-201(8) and 15-211.

3) The relevant provisions of Section 4 of the Illinois Funeral or Burial Funds Act determine the amount to be reported and remitted as unclaimed property under the Act.

A) *If, after the death of the beneficiary, no funeral merchandise or services are provided or if the funeral is conducted by another provider, the seller may keep no more than 10% of the payments made under the pre-need contract or $300, whichever sum is less. The remainder of the trust funds or insurance or annuity proceeds shall be forwarded to the legal heirs of the deceased beneficiary or as determined by probate action.* [225 ILCS 45/4(c-5)] If the legal heirs of the deceased beneficiary cannot be located and there is not an active probate action, the remainder of trust funds should be reported and remitted as unclaimed property pursuant to Section 15-201(9) of the Act and insurance or annuity proceeds should be reported and remitted pursuant to Sections 15-201(8) and 15-211 of the Act.

B) Refunds provided pursuant to Section 4 of the Illinois Funeral or Burial Funds Act may become unclaimed property as the debt of a business association under Section 15-201(5) of the Act.

4) If a pre-need contract requires entrustment under both the Illinois Funeral or Burial Funds Act and the Illinois Pre-Need Cemetery Sales Act [815 ILCS 390] and the only item that requires entrustment under the Illinois Pre-Need Cemetery Sales Act is an outer burial container, then, for the purposes of determining a presumption of abandonment under the Act, all amounts entrusted under the pre-need contract shall be treated as though they were entrusted under the Illinois Funeral or Burial Funds Act.

5) *Funds on deposit or held in trust pursuant to the Illinois Funeral or Burial Funds Act* are presumed abandoned *the earliest of:*

A) *2 years after the date of death of the beneficiary;*

B) *one year after the date the beneficiary has attained, or would have attained if living, the age of 105 when the holder does not know whether the beneficiary is deceased; or*

C) *40 years after the contract for prepayment was executed, unless the apparent owner has indicated an interest in the property more than 40 years after the contract for prepayment was executed, in which case, 3 years after the last indication of interest in the property by the apparent owner.* [765 ILCS 1026/15-201]

6) Pre-need funeral trusts established in jurisdictions other than the State of Illinois are generally not governed by the Illinois Funeral or Burial Funds Act. Pursuant to federal common law (U.S. Supreme Court Texas v. New Jersey, 379 U.S. 674 (1965); Pennsylvania v. New York, 407 U.S. 206 (1972); and Delaware v. New York, 507 U.S. 490 (1993)) and the Act, these non-Illinois pre-need funeral trusts should be reported and remitted to the administrator as unclaimed property when the address of the apparent owner in the records of the holder is in Illinois. The amount to be reported and remitted for these non-Illinois pre-need funeral trusts is determined by applicable law, including but not limited to the pre-need law of the state under which the contract was entered into.

b) Illinois Pre-Need Cemetery Sales Act [815 ILCS 390]

1) Burial rights, along with rights of interment, entombment or inurnment are all interests in real property. Interests in real property are not covered by the Act and do not become unclaimed property under the Act.

2) Refunds provided pursuant to Section 18 of the Illinois Pre-Need Cemetery Sales Act may become unclaimed property as the debt of a business association under Section 15-201(5) of the Act.

3) Funds on deposit or held in trust pursuant to Section 16 of the Illinois Pre-Need Cemetery Sales Act are not property under the Act. Instead, Section 18.5 of the Illinois Pre-Need Cemetery Sales Act provides an alternative mechanism for unclaimed pre-need cemetery trust funds. The Illinois Office of the Comptroller is the primary regulator for these trust funds.

4) Pre-need cemetery trusts established in jurisdictions other than the State of Illinois are generally not governed by the Illinois Pre-Need Cemetery Sales Act. These non-Illinois pre-need cemetery trusts are not exempt from the Act. Instead, pursuant to federal common law and the Act, they must be reported and remitted to the administrator as unclaimed property when the address of the apparent owner in the records of the holder is in Illinois. The amount to be reported and remitted for these non-Illinois pre-need cemetery trusts is determined by applicable law, including but not limited to the pre-need cemetery trusts law of the state under which the contract was entered into.

c) Death Master File

1) The Act does not mandate holders of trust funds under the Illinois Funeral or Burial Funds Act or the Illinois Pre-Need Cemetery Sales Act to compare their records against the Social Security Administration's Death Master File.

2) While the Act does not mandate holders of life insurance or annuities, including those intended to fund a pre-need contract under the Illinois Funeral or Burial Funds Act or Illinois Pre-Need Cemetery Sales Act, to compare their records against the Social Security Administration's Death Master File, holders must still comply with the provisions of the Unclaimed Life Insurance Benefits Act [215 ILCS 185].

3) Nothing in the Act or this Part restricts the ability of the administrator or the administrator's agent to conduct a comparison between the Social Security Administration's Death Master File and a holder's records during an examination conducted pursuant to the Act.

(Source: Amended at 46 Ill. Reg. 16898, effective September 26, 2022)