

BEFORE THE IOWA INSURANCE COMMISSIONER

---

IN THE MATTER OF	)	
	)	
Waterloo Memorial Park Cemetery	)	ORDER TO CEASE AND DESIST
3430 W. Fourth St.	)	and
Waterloo, Iowa 50701	)	CONSENT TO ORDER
	)	
Preneed Seller PS 00262	)	Division Docket No.: 83329
	)	
Perpetual Care Cemetery	)	
CP 95-95161	)	
	)	

---

COMES NOW the Iowa Insurance Division ("Division") pursuant to the provisions of the Iowa Code Chapter 523A (Iowa Cemetery and Funeral Merchandise and Funeral Services Act), Iowa Code Chapter 523I (Iowa Cemetery Act) and Iowa Code Chapter 507B (Insurance Trade Practices) and Iowa Administrative Code Chapters 191-103, 105 and 106 and alleges the following:

**PARTIES AND JURISDICTION**

1. The Commissioner of Insurance, Nick Gerhart, administers and enforces Iowa Code chapters 523A and 523I and the related administrative rules.
2. Waterloo Memorial Park Cemetery, hereafter WMPC, is an Iowa nonprofit corporation which owns and operates a cemetery in Waterloo, Iowa (Black Hawk County). The corporation was initially formed in 1954 and remains an active nonprofit corporation.

3. WMPC is a perpetual care cemetery subject to Iowa Code chapter 523I (IID No. CP 95-95161) and holds a preneed seller's license (IID No. PS 00262) under Iowa Code chapter 523A.

#### **FACTUAL BACKGROUND**

4. On or about May 14, 2013, the Division and WMPC entered into a Voluntary Settlement and Consent Order. (Division Docket No. 80382) The Consent Order noted a number of deficiencies that required correction, and among other things, that WMPC take actions to cure the deficiencies and take other specified actions. The order was signed by Jim Coontz as President of the Board of WMPC. A copy of the order is attached as Exhibit 'A' to this order.

5. In March 2014, the Division became aware that Mr. Coontz had announced an intention to resign, that the former employees were collecting unemployment and that WMPC had been sued by at least one creditor.

6. Upon further investigation, the Division determined that WMPC has failed to file its Annual Reports and related fees and that WMPC had failed to reply to an information request from the Division that was due on March 28, 2014.

7. Upon further investigation, the Division determined that there was no active management in place at WMPC and the Division was unable to confirm that sound financial practices, cemetery management and preneed seller practices were in place.

8. Representatives of the Division attended a Board of Directors meeting on April 16, 2014. The Board was informed that the Division would require a Consent Order which required WMPC to:

- A. Freeze all accounts with financial institutions;
- B. Retain a qualified person or entity, as approved by the Division, to act as Operations Manager for at least 30 and up to 90 days and to create a business plan and budget;
- C. Retain a qualified accountant or accounting firm, as approved by the Division, to conduct financial reviews as specified by the Division;
- D. Temporarily cease all preneed sales activity;
- E. File all required reports with the Division and respond to the information request of March 2014.
- F. Comply with all provisions listed in the Consent Order of May 2013; and
- G. To establish a fund or a source of available funding of \$50,000 as an operating account to be used by the Operations Manager.

9. During the meeting, and while Division staff were in attendance, Jim Coontz' resignation as President was accepted. On Motion, the Board approved hiring Genesis Memorial Group as Operating Manager and McGladrey, LLP as accountant.

10. During the meeting, Division staff recommended that the Board retain legal counsel to assist in reviewing the various issues of concern to the Division.

11. Division staff has determined that WMPC may have accounts or loans at the following institutions:

- A) Banklowa;
- B) Lincoln Savings Bank;
- C) US Bank
- d) Regions Bank

12. In the summer of 2013, WMPC was found to be in compliance with some of the provisions of the May 2013 Order. At present, Division staff alleges that WMPC is not in compliance or has an ongoing duty to comply with the following provisions of the May 2013 Order:

- Paragraph A. WMPC is still on probation.
- Paragraph B. The cemetery did purchase cemetery software and acquired a digital scanner. Division staff will verify whether the items are actually in use.
- Paragraph C(1). The cemetery has not provided drafts of revised contract forms.
- Paragraph C(2). The cemetery has established a compliant 523A trust account and moved funds into it from the money market account and the securities brokerage account. However, WMPC has not responded to Division concerns that the Preneed Trust account is underfunded.
- Paragraph C(3) The cemetery has not created a full accounting of trust fund balances. WMPC has not responded to Division concerns that the Preneed Trust account is underfunded.
- Paragraph C(4) The cemetery has not created and maintained a perpetual care registry.
- Paragraph C(5) The cemetery appointed and licensed a sales agent, but that employee is no longer with the cemetery.

- Paragraph C(6) The cemetery has not created and maintained a preneed seller sales log.
- Paragraph C(7) In 2013 the cemetery elected a new President of the Board and placed him in charge of the oversight of cemetery operations and regulatory compliance, but that person resigned.
- Paragraph D. WMPC remains under a restriction regarding withdrawal of funds from preneed trust funds.

13. Division staff have discussed with the current president the need for strong consumer protection of funds required by Iowa law to be held in trust and managed in compliance with Iowa law. The president has indicated that WMPC will not object and will consent to the creation of a Limited Receivership for WMPC Trust Funds.

#### **Conclusions of Law**

14. WMPC has engaged in acts and practices constituting violations of Iowa Code chapters 523A, 523I and rules or order adopted or issued pursuant to Iowa Code chapter 523A and 523I. WMPC may be in violation of the Consent Order of May 2013. The Commissioner of Insurance is authorized to issue this Cease and Desist Order and Consent pursuant to Iowa Code chapters 523A and 523I.

15. A Limited Receivership is appropriate to ensure that the funds required to be maintained in trust by Iowa law are in fact being properly maintained.

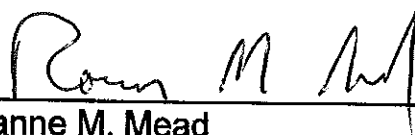
#### **ORDER**

IT IS ORDERED Waterloo Memorial Park Cemetery shall:

- A. Cease and desist from withdrawing any funds from any accounts or trust accounts at financial institutions that are in the name or benefit of Waterloo Memorial Park Cemetery without the written consent of the Division;
- B. Retain a qualified person or entity, as approved by the Division, to act as Operations Manager for at least 30 and up to 90 days;
- C. Retain a qualified accountant or accounting firm, as approved by the Division, to conduct financial reviews as specified by the Division;
- D. Cease and Desist from conducting any preneed sales activity until such time as the Division provides written approval to commence new sales activity;
- E. Comply with all provisions listed in the Consent Order of May 2013;
- F. File the required Annual reports and fees required for preneed sellers and perpetual care cemeteries on or before May 30, 2014.
- G. Take such actions as are required under its Articles of Incorporation and By-Laws to authorize the President to execute this Consent Order on its behalf. Waterloo Memorial agrees that until it fully satisfies all provisions of this Consent Order and the Order of May 2013, the obligations shall bind successors and assigns, including any transferee of the cemetery property or preneed purchase agreements;
- H. Comply with all provisions of Iowa Code chapters 523A and 523I, and related implementing rules;

- I. No later than July 1, 2014 pay the sum of \$15,000 as a civil penalty and toward audit expenses; provided that the Division may waive up to \$10,000 of said penalty upon a demonstration of substantial compliance with this Order, the Order of May 2013 and a demonstrated ability to independently operate in compliance with Iowa laws and rules.
- J. Cooperate with the Division to establish a Limited Receivership for WMPC trust accounts.

Entered this 2 day of May, 2014



\_\_\_\_\_  
Rosanne M. Mead  
Assistant Insurance Commissioner  
Iowa Insurance Division

**NOTICE**

This Cease and Desist and Consent Order is a public record available for inspection and copying pursuant to Iowa Code chapter 22 (2013).

By signing this Consent, Waterloo Memorial Park Cemetery waives its right to a hearing on the allegations contained within. This Order shall be a final Order of the Commissioner of Insurance and shall be enforceable by the Commissioner of Insurance in an administrative or court proceeding.

**CONSENT**

**AGREED AND ACCEPTED:**

By Waterloo Memorial Park Cemetery

Signature 

Printed Name Robert W. Petersen

Title President

Date 4/30/2014