

BEFORE THE IOWA INSURANCE COMMISSIONER

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IN THE MATTER OF	)	Division Case No. 99570
	)	
FOREST CEMETERY ASSOCIATION,	)	<b>ORDER AND</b>
PCC 000082,	)	<b>CONSENT TO ORDER</b>
	)	
Respondent.	)	

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NOW THEREFORE, upon motion of the Iowa Insurance Division (the “Division”) and by the consent of the Respondent, Forest Cemetery Association (“Forest” or the “Respondent”), pursuant to the provisions of Iowa Code Chapter 523I — Iowa Cemetery Act, Doug Ommen, the Iowa Insurance Commissioner (the “Commissioner”), enters the following Order and Consent to Order (the “Consent Order”).

**I. PARTIES AND JURISDICTION**

1. Pursuant to Iowa Code §523I.201(1), the Commissioner, both directly and through his designees, administers and enforces Iowa Code Chapter 523I – Iowa Cemetery Act.
2. Respondent is a nonprofit corporation organized and existing under the laws of the State of Iowa. Respondent’s registered agent and address for service of process is Diane Mathes, 634 North 9<sup>th</sup> Street, Oskaloosa, Iowa 52577.
3. Pursuant to Iowa Code §505.28, the Respondent has consented to the jurisdiction of the Commissioner by committing acts governed and prohibited by Chapter 523I of the Iowa Code.

**II. FINDINGS OF FACT**

4. From at least 2007 through 2012, Respondent, without authorization from the Division, withdrew from its perpetual care fund trust account funds in an amount that is disputed by the parties.

5. The funds referred to in the preceding paragraph were utilized by the Respondent to conduct day-to-day operations of the cemetery and to construct and repair roadways in the cemetery.

6. From at least 2007 through 2012, the Respondent filed incorrect and inaccurate annual reports with the Division by failing to reflect the withdrawals of perpetual care trust funds referred to in paragraph five above.

7. From at least 2007 through 2012, Respondent failed to deposit funds received from the sale of interment rights by the fifteenth day following the close of the month the cemetery received the final payment from the purchaser, leaving the perpetual care fund account underfunded.

### III. CONCLUSIONS OF LAW

8. Perpetual care funds were withdrawn from the Respondent's perpetual care trust fund account in violation of Iowa Code §523I.810.

9. Perpetual care funds were withdrawn from the Respondent's perpetual care trust fund account without the provision of notice to the Division in violation of §523I.810(9).

10. Respondent voluntarily reduced and invaded the *corpus* of the perpetual care trust fund in violation of Iowa Code §523I.810(7).

11. Respondent failed to deposit funds received from the sale of interment rights by the fifteenth day following the close of the month the cemetery received the final payment from the purchaser in violation of Iowa Code §§523I.807(3) and 523I.809(3), leaving the perpetual care fund account underfunded.

12. Respondent has failed to repay funds withdrawn from the perpetual care fund account within the required five year time period after each withdrawal in violation of Iowa Code §523I.810(9).

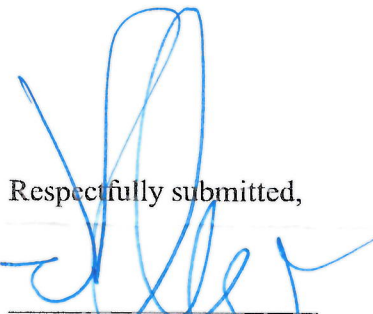
13. Respondent filed incorrect and misleading annual reports for the years 2007 through 2012 in violation of Iowa Code §§523I.209 and 523I.813.

**IV. ORDER**

**WHEREFORE, IT IS ORDERED**, pursuant to the powers granted to the Commissioner by Iowa Code Chapter 523I:

- A. Respondent shall, within fifteen days from the date of this order, deposit \$264,395.00 into its perpetual care trust fund account;
- B. Respondent shall, on or before January 1, 2019, obtain, install, and begin utilization of cemetery management software acceptable to the Division; and,
- C. Respondent shall be subject to two years' oversight by the Division, pursuant to which Respondent shall furnish the Division with quarterly financial statements to include deposit records, profit and loss statements, balance sheets, and general ledger activity.

SO ORDERED on the 25<sup>th</sup> day of October, 2018.



VINCENT LEDLOW  
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DOUGLAS M. OMMEN  
Iowa Insurance Commissioner

Copy to:  
Forest Cemetery Association  
634 N 9<sup>th</sup> St  
Oskaloosa, IA 52577

CERTIFICATE OF SERVICE

The undersigned certifies that the foregoing instrument was served upon all parties to the above cause, or their attorney, at their respective addresses disclosed on the pleadings on October 25, 2018.

By:  First Class Mail  Personal Service  
 Restricted certified mail, return receipt  Email, by consent  
 Certified mail, return receipt  \_\_\_\_\_

Signature: Hilary Foster  
Hilary Foster

CONSENT TO ORDER AND AGREEMENT

I, Jeff Smith, as President of Forest Cemetery Association (Respondent) in this matter, have read, understood, and do knowingly consent to this Order in its entirety. By executing this Consent, I understand that I am waiving my rights to a hearing, to confront and cross-examine witnesses, to produce evidence, and to judicial review.

I further understand that this Order is considered a final administrative action that may be reported by the Division to the National Association of Insurance Commissioners and to other regulatory agencies. I also understand that this Order is a public record under Iowa Code Chapter 22, which will be disclosed to other state regulatory authorities, upon request, pursuant to Iowa Code § 505.8(8)(d). I also understand that this Order will be posted to the Division's website and a notation will be made to the publicly available website record that administrative action has been taken against Forest Cemetery Association.

Dated: 10/18/18

Jeff Smith  
Jeff Smith, as President of Forest Cemetery Association (Respondent)

1807 EDMUNDSON DR.  
Address of Signatory

Subscribed and sworn before me by Jeff Smith on this 18 day of October, 2018.

Janice Dugger  
Notary Public for the State of Iowa

