

## **Title 20. Public Health and Welfare**

### **Chapter XXIII. State Board of Embalmers, Funeral Directors, Cemeteries, and Burial Services, State Insurance Department, Department of Commerce**

#### **Subchapter A. Generally**

#### **Part 831. Withdrawal from Permanent Maintenance Fund**

**Codification Notes.** This part as promulgated prior to codification into the Code of Arkansas Rules provided as follows:

##### "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 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."

#### **Subpart 1. Generally**

##### **20 CAR § 831-101. Purpose.**

(a) The purpose of this part is to establish the process by which a cemetery company may make withdrawals from the principal balance of the cemetery's permanent maintenance fund.

(b) The withdrawals shall be used only for funding infrastructure repairs and for making capital improvements.

**Authority.** Arkansas Code § 23-61-1103.

**20 CAR § 831-102. Definitions.**

As used in this part:

(1)(A) "Capital improvement" includes, but is not limited to, the construction or preservation of any:

- (i) Permanent building;
- (ii) Structure;
- (iii) Fence;
- (iv) Wall;
- (v) Road;
- (vi) Pathway; or
- (vii) Utility such as an irrigation system.

(B) A "capital improvement" means an improvement that may enhance the cemetery's overall value or prolong its useful life; and

(2) "Infrastructure repair" means the repair, construction, or preservation of infrastructure items, including but not limited to:

- (A) Roads;
- (B) Pathways;
- (C) Structures;
- (D) Fencing;
- (E) Walls;
- (F) Landscaping; and
- (G) Utilities such as irrigation systems.

**Authority.** Arkansas Code § 23-61-1103.

**20 CAR § 381-103. Requirements.**

(a) The cemetery company shall submit its request in writing, on a form or forms created and approved by the State Board of Embalmers, Funeral Directors, Cemeteries,

and Burial Services 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)(1) The cemetery company shall include, as part of its written request, a detailed description of the infrastructure repair or repairs and/or capital improvement or improvements that are needed to the cemetery property.

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

(c)(1) 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.

(2) The on-site inspection shall be reported back to the board for consideration.

(d)(1) Board staff will obtain an updated statement of account from the permanent maintenance fund trustee or trustees and/or the bank or other financial institution in which the trusted funds are deposited.

(2) 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.

(3) The funds to be used for the infrastructure repair or repairs and/or capital improvement or improvements 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)(1) Upon reported completion of the work by either a third-party vendor or vendors or the cemetery company employees, board staff will conduct an on-site reinspection of the cemetery property to verify that the infrastructure repair or repairs and/or capital improvement or improvements have been satisfactorily completed as originally submitted to the board.

(2) The on-site reinspection shall be reported back to the board.

(f)(1)(A) 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 or trustees 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.

(B) The disbursement amount shall not exceed the percentage of principal approved by the board for the project.

(2)(A) 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 or trustees 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.

(B) The disbursement amount shall not exceed the percentage of principal approved by the board for the project.

(C) 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.

(D) 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.

(3)(A) If a cemetery company employee or employees 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 or repairs and/or capital improvement or improvements.

(B) The board shall review the actual expenses incurred by the cemetery company, and board staff shall submit to the permanent maintenance fund trustee or trustees 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.

(C) 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.

(4) 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.

**Authority.** Arkansas Code § 23-61-1103.