

In October after accepting the Governor's amendatory veto, the General Assembly returned [SB 1682](#) for certification. SB 1682 is anticipated to take effect on January 31, 2010. SB 1682 amends the [Illinois Funeral or Burial Funds Act](#) [225 ILCS 45/1 to 45/10] and the [Illinois Pre-Need Cemetery Sales Act](#) [815 ILCS 390/1 to 390/27.1].

The Department has published answers to thirteen frequently asked questions. Please find below responses relating to SB 1682. The following is intended to serve as guidance and should not be construed as legal advice. For specific legal advice, private counsel should be consulted.

1.Q: Where can I read the new law?

A: The [full text](#) can be found on the General Assembly's website. [Click here](#) for a summary of the amendments.

2.Q: May funeral homes selling pre-need contracts act as trustees for accounts with less than \$500,000 in assets?

A: No
The exception in the Illinois Funeral or Burial Funds Act which permitted a person holding less than \$500,000 in pre-need funds to serve as trustee has been eliminated. In addition, new language prohibits the seller or provider of funeral services or merchandise from acting as trustee.

3.Q: What is a trustee relationship?

A: A trustee relationship is a legally recognized arrangement where one [the trustee] holds legal title to property for the benefit of another [the beneficiary]. Under the Illinois Funeral or Burial Funds Act, Trustee means a person authorized to hold funds and Beneficiary means the person specified in the pre-need contract who will receive funeral services or merchandise.

4.Q: Will recommending that a customer purchase a certificate of deposit in his or her own name establish a trustee relationship?

A: No

5.Q: Is it permissible for a funeral home to establish a certificate of deposit that names it as trustee, but is held in the beneficiary's account?

A: No
The exception allowing funeral homes to act as trustees has been eliminated.

6.Q: May a funeral home director recommend that an individual establish a payable on death account where funds pass to the funeral director for the payment of expenses related to the burial or cremation of the deceased?

A: Yes

- 7.Q: What types of financial institutions are able to manage pre-need accounts?
A: Illinois State or national banks with trust powers, Illinois state or federal thrifts with trust powers, Illinois trust companies, and out-of-state banks or trust companies that have received a certificate of authority from the Division. [Click here](#) for a list of Illinois state chartered institutions regulated by the Division of Banking that currently hold such powers. To establish whether a national bank has trust powers, consult the Office of the Comptroller of the Currency (1-800-613-6743); for federal thrifts, contact the Office of Thrift Supervision (1-800-842-6929).
- 8.Q: How does an Illinois bank or a savings institution that does not currently have trust powers become qualified to administer trusts?
A: It should apply to the Division of Banking. National Banks and federal thrifts should apply to their federal regulator.
- 9.Q: If a funeral home has pre-need funds in its own account, what should occur?
A: The funeral home should review the accounts to make sure an eligible trustee is designated.
- 10.Q: When a funeral home ceases acting as trustee for a pre-need account what recordkeeping responsibilities remain?
A: The funeral home must continue to hold records related to the original sale of its services and merchandise. The responsibility of managing and accounting for the value of the pre-need trust account will be transferred to the new trustee.
- 11.Q: In an effort to comply with the Act, may a funeral home now serving as trustee for a pre-need account re-title a certificate of deposit held in its name over to a financial institution with trust powers?
A: Yes
- 12.Q: How much can trustees charge in accordance with the administration of pre-need accounts?
A: Trustees may receive reasonable compensation pursuant to the [Trust and Trustees Act](#).
- 13.Q: Under the amended Act trustees are required to provide each purchaser with a statement identifying, among other things, the primary regulator. Who should be listed?
A: Illinois State chartered institutions should list the Illinois Department of Financial and Professional Regulation, Division of Banking and the Federal Deposit Insurance Corporation or the Federal Reserve as appropriate. Trust companies should list the Illinois Department of Financial and Professional Regulation, Division of Banking and their respective federal regulator where applicable. Federally chartered institutions should list their federal regulator. Out-of-state banks and trust companies should list their state and federal regulator as applicable.