

§ 90-210.66. Recovery fund.

(a) There is established the Preneed Recovery Fund. The Fund shall be administered by the Board. The purpose of the Fund is to reimburse purchasers of preneed funeral contracts who have suffered financial loss as a result of the malfeasance, misfeasance, default, failure or insolvency of any licensee under this Article, and includes refunds due a preneed funeral contract beneficiary from a preneed licensee who has retained any portion of the preneed funeral contract payments pursuant to G.S. 90-210.61(a)(2).

(b) From the fee for each preneed funeral contract as required by G.S. 90-210.67(d), the Board shall deposit at least two dollars (\$2.00), but not more than ten dollars (\$10.00), into the Fund. The Board may set the amount of the deposit into the Fund as it deems necessary to meet likely disbursements and to maintain an adequate reserve.

(c) All sums received by the Board pursuant to this section shall be held in a separate account known as the Preneed Recovery Fund. Deposits to and disbursements from the Fund account shall be subject to rules established by the Board.

(d) The Board shall adopt rules governing management of the Fund, the presentation and processing of applications for reimbursement, and subrogation or assignment of the rights of any reimbursed applicant.

(e) The Board may expend monies in the Fund for the following purposes:

- (1) To make reimbursements on approved applications;
- (2) To purchase insurance to cover losses as deemed appropriate by the Board and not inconsistent with the purposes of the Fund;
- (3) To invest such portions of the Fund as are not currently needed to reimburse losses and maintain adequate reserves, as are permitted to be made by fiduciaries under State law; and
- (4) To pay the expenses of the Board for administering the Fund, including employment of legal counsel to prosecute subrogation claims.

(f) Reimbursements from the Fund shall be made only to the extent to which such losses are not bonded or otherwise covered, protected or reimbursed and only after the applicant has complied with all applicable rules of the Board.

(g) The Board shall investigate all applications made and may reject or allow such claims in whole or in part to the extent that monies are available in the Fund. The Board shall have complete discretion to determine the order and manner of payment of approved applications. All payments shall be a matter of privilege and not of right, and no person shall have any right in the Fund as a third-party beneficiary or otherwise. No attorney may be compensated by the Board for prosecuting an application for reimbursement.

(h) In the event reimbursement is made to an applicant under this section, the Board shall be subrogated in the reimbursed amount and may bring any action it deems advisable against any person, including a preneed licensee. The Board may enforce any claims it may have for restitution or otherwise and may employ and compensate consultants, agents, legal counsel, accountants and any other persons it deems appropriate.

(i) The Fund shall apply to losses arising after July 9, 1992, regardless of the date of the underlying preneed funeral contract. (1991 (Reg. Sess., 1992), c. 901, s. 2; 1997-399, s. 26; 2018-78, s. 9.)