Insights

October Hoosier Banker: Compliance Connection with Partner Brett Ashton

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Question: Our bank has several pre-need funeral trust accounts that are funded by insurance policies. We would like to be able to redeem the policy and simply fund the trust with other bank funds. Does Indiana law allow us to do so?

Answer: No. The issue of converting pre-need funeral trust funds has been the subject of recent confusion by some banks and has attracted the attention of the attorney general's office. A careful review of the underlying trust agreement should be the first step in determining how any trust account is administered.

Ind. Code § 30-2-13 provides guidance with respect to the sale and payment of funeral and burial services, and provides that a purchaser may enter into more than one contract for pre-need services or merchandise that may be funded with cash, either in a lump sum or installment payments, or an insurance policy, or both. Thirty days after the pre-need funeral contract is signed by the purchaser, all property that is paid or delivered to the seller to fund the contract must be irrevocably deposited to an authorized trust or escrow account.[1]

Pre-need funeral trusts are governed by the Trust and Fiduciaries section of the Indiana Code. Ind. Code § 32-2-10 dictates how a financial institution is to administer these funeral trust funds.[2] A funeral trust established under Ind. Code §30-2-10 is only valid if, among other conditions, it is irrevocable. Indiana Code § 30-2-13-14 provides that a contract that has been funded with cash may not subsequently be converted to an insurance policy, and conversely a contract that has been funded with an insurance policy may not subsequently be converted into cash.

A person who knowingly violates the provisions of Ind. Code § 30-2-10 is considered to have committed a Class A misdemeanor, subject to imprisonment for up to one year and a fine of as much as $5,000.

[1]Authorized trust or escrow accounts may be established pursuant to Ind. Code § 30-2-10 (fu-neral trusts) or Ind. Code § 23-14-49-1 (cemetery escrow or trust accounts).

[2]For funeral plans and funeral trusts established prior to 1982, see Ind. Code § 32-2-9-1 et. seq.

This information is provided for general education purposes and is not intended to be legal advice. Please consult legal counsel for specific guidance as to how this information applies to your institution's circumstances or situation.