



133 Center Street, Bangor, Maine 04401-5097
(207)942-8815

Owners of Brookings-Smith are Gary W. Smith, Holly Smith Fernald and James R. Fernald CFSP

Maine Mortuary Trust Agreement
For the benefit of

1. Creation

Mortuary Trust. The mortuary trust is the fund created by this agreement to assure the provision of funeral and burial services to the person insured. The mortuary trust consists of one or more insurance policies on the life of the person insured, and all proceeds, dividends, premium rebates, disbursements and payments of every kind made from such policy, including all interest and investment income earned.

_____ (name of issuer and policy number) _____ (name of issuer and policy number)

Date of Issuance _____ Amount _____ Date of Issuance _____ Amount _____

(attach any additional policy information as a separate sheet)

This policy (or policies) *(check one)*:

- Has been assigned to the funeral home as owner and beneficiary and is payable to the funeral home upon the death of the person insured.
- Designates the funeral home as a beneficiary and is payable to the funeral home upon the death of the person insured.

If the funeral home is owner and beneficiary, the policy is attached to this mortuary trust agreement. If the funeral home is beneficiary only, a copy of the policy is attached to this mortuary agreement.

2. Parties

Person Insured. The person insured is the person who will receive the funeral and burial services described in this agreement. The person insured is the sole beneficiary of this trust. The person insured is:

_____ (Name)

Settlor. The settlor is the person who assigned the insurance policy to the funeral home as owner and beneficiary, or designated the funeral home as a beneficiary of the policy. (The settlor may be the person insured, or a different person). The settlor is:

Name _____ Relationship to Deceased _____

Address _____

Telephone _____

Funeral home. The funeral home is the trustee for the mortuary trust. The funeral home may be an individual, a firm, an association, a partnership or a corporation. The settlor hereby appoints the funeral home identified below as trustee. The funeral home need not post bond or enter security. By signing this agreement, the funeral home accepts this appointment as trustee of the mortuary trust.

_____ **Brookings-Smith, 133 Center St., Bangor, Maine 04401** (207)942-8815

Representative of settlor (check if applicable). This is the person for the funeral home to contact and report to in lieu of the settlor for all purposes under this agreement. The representative of the settlor may exercise all powers and authority conferred upon the settlor by this agreement.

Name: _____ (Relationship) _____

Address: _____

Telephone: _____

Alternate contact person (check if applicable). This is the person for the funeral home to contact and report to for all purposes under this agreement in the event that the settlor or representative of the settlor is deceased, incapacitated or otherwise unavailable.

Name: _____ (Relationship) _____

Address: _____

Telephone: _____

3. Receipt of Policy

The funeral home hereby acknowledges receipt in trust of the insurance policy or copy of the policy identified in paragraph 1.

4. Record of Account; Inspection Record

The funeral home shall maintain a complete record of all: (a) policy statements, bills, notices, payments and correspondence received from the insurer, (b) correspondence and notices sent by the funeral home, and (c) premium payments charged against the mortuary trust. The funeral home shall make the complete record available for inspection by the settlor without prior notice during business hours.

5. Revocability

This mortuary trust agreement is revocable irrevocable (check one)

A *revocable* agreement may be terminated by the settlor at any time. Upon receipt of written notice of revocation from the settlor, the funeral home shall promptly execute all documents necessary to assign the insurance policy to the settlor or to effectuate the change of beneficiary, as the case may be.

An *irrevocable* agreement may not be terminated by the settlor. However, the settlor retains the right to transfer the mortuary trust to a different funeral home at any time by requesting the resignation of the trustee and appointing a successor trustee in accordance with paragraphs 13 and 14.

6. Credit for Service Mortuary Trust

The mortuary trust created by this agreement is a credit for service mortuary trust. This means that the insurance policy proceeds will be applied to the cost of the funeral goods and services selected. If the policy proceeds exceed the cost of the funeral goods and services selected, the funeral home has the fiduciary duty to promptly remit the difference to the settlor in accordance with paragraph 10. If the policy proceeds are insufficient to pay for the funeral goods and services selected, adjustments must be negotiated between the settlor and the funeral home in accordance with paragraph 11. The funeral home is not guaranteeing to provide the funeral goods and services selected from the policy proceeds.

7. Funeral Goods and Services Selected (*check one*)

Funeral Goods and Services may be selected at the present time or at any later time. Check one of the two options below.

- Upon the death of the beneficiary, the funeral home shall, to the extent that trust funds are available:
 - Provide the funeral goods and services selected by the settlor on a Statement of Funeral Goods and Services Selected that complies with the Federal Trade Commission Funeral Rule, 16 CFR Part 453. The Statement of Funeral Goods and Services Selected must include the manufacturer, model number and a detailed description of any funeral merchandise selected by the settlor; and
 - Pay the cash advance items identified on the Statement of Funeral Goods and Services Selected.

A copy of the Statement of Funeral Goods and Services Selected is attached to this agreement.

- The settlor has decided not to select any funeral goods and services at this time. The settlor may make this selection at any time up to the death of the beneficiary. After the death of the beneficiary, selection of funeral goods and services may be made by the authorized person as determined pursuant to 22 MRSA Sec.2843-A.

8. Price of Funeral Goods and Services Selected

The price of the Funeral Goods and Services Selected and the designated cash advance items will be the prices in effect at the time of the death of the person insured, which may be higher or lower than the prices presently in effect.

9. Permissible Uses of Trusted Funds

The funeral home shall apply the proceeds, dividends, payments and disbursements from the insurance policy solely to:

- The price of the funeral goods and services and cash advance items provided by the funeral home pursuant to paragraph 7; and
- Any remittance of policy proceeds required by paragraph 10.

10. Partial Remittance of Policy Proceeds to Settlor; Inability of Funeral Home to Perform

If the price of the funeral goods and services and cash advance items selected is less than the amount of the policy proceeds, the funeral home shall promptly remit the difference to (*check one*)

- Other beneficiary(ies) named in the insurance policy(ies)
 - The estate of the person insured, if other than the settlor
 - The settlor
 - The following person or persons (*insert details below*):
-

If the settlor has been designated above to receive any excess policy proceeds, the funeral home as an alternative to remittance of excess policy proceeds to the settlor, may make a separate agreement with the settlor for the purchase of additional or upgraded funeral goods or services or cash advance items from the policy proceeds. This agreement must be documented on a Statement of Funeral Goods and Services Selected.

If the funeral home is unable for any reason to perform its obligations under this agreement, the funeral home shall return all policy proceeds received in accordance with the designation made in this paragraph.

11. Additional Payment by Settlor

If the price of the funeral goods and services and cash advance items selected is greater than the policy proceeds, the settlor and the funeral home shall do either or both of the following:

- Make an agreement for additional payment;
- Modify the goods or services or cash advance items selected.

However, in no event is the funeral home obligated to provide funeral goods or services or make cash advances for which the funeral home will not be compensated.

12. Obligations with Respect to Insurance Policy

Settlor – If the settlor has retained ownership of the life insurance policy identified in paragraph 1 as of the date of this agreement, the settlor agrees that s/he will not assign the policy, surrender the policy for cash value, borrow from the policy, change the beneficiary status of the trustee, or take any other action with respect to the policy to the extent that such action may: (a) jeopardize, impede or prevent the accomplishment of the purpose for which this agreement was created in the event that the person insured were to die immediately after such action was taken, or (b) impair the value of the policy with respect to any funeral goods and services selected. If the policy proceeds are insufficient to pay the funeral home for the funeral goods and services and cash advance items provided pursuant to this agreement, and the insufficiency was caused in whole or in part by action of the settlor in violation of this paragraph, the settlor shall promptly pay the funeral home for the funeral goods and services and cash advance items provided. The funeral director may decline to provide funeral goods and services and cash advance items if the funeral home has a reasonable basis to believe that the policy proceeds may be insufficient to pay for the funeral goods and services and cash advance items selected due to action taken by the settlor in violation of this paragraph.

Funeral Home – If the funeral home has accepted an assignment of ownership of the life insurance policy pursuant to paragraph 1, the funeral home agrees that:

- It will not assign the policy or change the beneficiary of the policy (except in connection with a change of ownership of the funeral home), surrender the policy for cash value, borrow from the policy, or take any other action with respect to the policy that is unrelated to the purpose for which this agreement was created or that is inconsistent with its obligations as trustee;
- It will promptly send to the settlor any bill for payment of premium, any notice of default in payment of premium or any notice regarding the nonrenewal, cancellation or lapse of the policy received by the funeral home. The funeral home is not obligated to pay premiums, and if the policy lapses for nonpayment of premium this agreement will be of no further force and effect notwithstanding any right to reinstatement of the policy. If the funeral home voluntarily elects to pay premiums, the funeral home may deduct the amount of such premium payments from the policy proceeds following the death of the person insured, but may not charge or deduct any interest or fee with respect to such premium payments;
- It will promptly pay all premium rebates, dividends, interest or similar distributions received from the insurer back into the policy, unless such payment is not permitted or is rendered impracticable by the terms of the policy.

I have discussed with the settlor: (a) the difference between assigning the policy to the funeral home vs. naming the funeral home as a beneficiary without an assignment, and (b) the obligations of the settlor and the funeral home with respect to the insurance policy as described in paragraph 12 of this agreement.

(Funeral Home)

I have discussed with the funeral home: (a) the difference between assigning the policy to the funeral home vs. naming the funeral home as a beneficiary without an assignment, and (b) the obligations of the settlor and the funeral home with respect to the insurance policy as described in paragraph 12 of this agreement.

(Settlor)

13. Resignation of Funeral Home as Trustee

The funeral home shall resign as trustee if -

- The funeral home becomes unable or incapable of continuing to act as trustee;
- The settlor for any reason requests the funeral home to resign as trustee; or
- The funeral home closes, and the owner of the home does not own any other funeral home in Maine.

A funeral home resigns as trustee by delivering to the settlor, and to any successor trustee indentified by settlor pursuant to paragraph 14:

- Written notice of resignation;
- This mortuary trust agreement, including the insurance policy or copy attached to this agreement and any Statement of Funeral Goods and Services Selected that is attached to this agreement;
- As assignment of the policy to the successor trustee or change of beneficiary, as the case may be, duly accepted by the insurer; and
- A report of trust funds as of the date of resignation that contains the information described in paragraph 16.

If the settlor has requested the resignation, the funeral home shall use its best efforts to deliver the documents described above within thirty (30) days after receiving a written request to resign from the settlor.

The resignation is effective upon the insurer's acceptance of the assignment of policy or change of beneficiary as noted above, or any earlier date described in the insurance policy.

If the funeral home closes, but the owner of the home owns one or more other funeral homes in Maine, the funeral home may resign as trustee in the manner described above in this paragraph. Alternatively, the funeral home may notify the settlor of its proposal to transfer the mortuary trust, and the obligations of successor trustee, to another funeral home in Maine under common ownership. The notice must be sent by first class mail. If the notice is returned as undeliverable, the returned envelope must be kept in the file. The settlor may, within thirty (30) days of receipt of notice, either (a) accept the proposal, or (b) request the resignation of the trustee as described above in the paragraph. If the settlor chooses resignation, the settlor may either name a successor trustee, or may request assignment of the policy to the settlor or designation of the settlor as beneficiary, as the case may be. In the event that the funeral home does not receive a response from the settlor within this thirty (30) day period, the funeral home may either transfer the mortuary trust as proposed or resign as trustee.

14. Appointment of Successor Trustee

If the funeral home resigns as trustee pursuant to paragraph 13, the settlor may appoint a different funeral Home as successor trustee.

15. Change of Trustee Upon Change of Ownership

Within thirty (30) days after a change of ownership of the funeral home, the new owner, or the funeral home, shall notify the settlor of the change and shall inform the settlor that the new owner has assumed the roll of trustee under this agreement and will provide all funeral goods and services required by this agreement. The notice must also state that the settlor is free at any time to request the resignation of the trustee and designate a different funeral home as successor trustee pursuant to paragraphs 13 and 14 of this agreement. For purposes of this paragraph, "change of ownership" means the sale or transfer of the entire ownership of a funeral home.

16. Annual Report

The funeral home shall annually send to the settlor and the person insured a copy of the most recent policy Statement received from the insurer, if any, plus a statement from the funeral home of any premium payments charged against the mortuary trust.

17. Final Report; Termination of Trust

The funeral home shall furnish the settlor (or the estate of the settlor, as the case may be) with a final report within thirty (30) days after rendition of services. The final report must contain the information described in paragraph 16, and must in addition report the final disposition of all policy proceeds. The mortuary trust terminates upon delivery of this final accounting and payment of any remittance of policy proceeds required by paragraph 10.

18. Fees

No fees may be charged against or deducted from the mortuary trust by the funeral home.

19. Taxes

If the funeral home has accepted an assignment of ownership pursuant to paragraph 1, the funeral home shall promptly send to the settlor any Form 1099 received from the insurer. The settlor is responsible for payment of any taxes on dividend or interest distributions made from the policy.

20. Maine Law Controlling

The situs of this mortuary trust is Maine. The validity, construction and administration of the trust shall be governed by Maine law, including but not limited to the Maine Uniform Trust Code, 18-B MRSA Sec.101 et seq., 32 MRSA Sec.1401, and Chapter 16 of the rules of the State Board of Funeral Service.

21. Binding on Legal Representatives

This agreement is binding upon and runs to the benefit of the heirs, devisees, personal representatives, Successors and assigns of the parties.

Dated at _____, Maine this _____ day of _____, 20 _____,

Settlor _____

Funeral Home _____

Funeral Practitioner _____ License Number _____

Position _____

*Owners of Brookings-Smith are Gary W. Smith, Holly Smith Fernald and James R. Fernald CFSP
as individuals with ownership address at 133 Center Street, Bangor, Maine 04401.*