



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 beneficiary. The mortuary trust consists of the payment made for that purpose upon the signing of this agreement and all interest and investment income earned by the fund, less fees and taxes paid pursuant to the terms of this agreement.

**2. Parties**

*Beneficiary.* The beneficiary is the person who will receive the funeral and burial services described in this agreement. The beneficiary is: \_\_\_\_\_

*Payor.* The payor is the person who is funding this mortuary trust. The payor is:

(name) \_\_\_\_\_ (relationship to beneficiary) \_\_\_\_\_

(address) \_\_\_\_\_ (telephone) \_\_\_\_\_

*Funeral home.* The funeral home is the trustee for all money paid into the mortuary trust. The funeral home may be an individual, a firm, an association, a partnership or a corporation. The payor 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 Street, Bangor, Maine 04401 (207) 942-8815**

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

(name) \_\_\_\_\_ (relationship to beneficiary) \_\_\_\_\_

(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 payor or representative of the payor is deceased, incapacitated or otherwise unavailable:

(name) \_\_\_\_\_ (relationship to beneficiary) \_\_\_\_\_

(address) \_\_\_\_\_ (telephone) \_\_\_\_\_

**3. Payment for Guaranteed Services**

The funeral home hereby acknowledges receipt in trust of payment in the amount shown. Payment was made in the form of  cash  check  share draft  money order. *(check one)* If payment was made by check, share draft or money order, a photocopy must be attached to each copy of this agreement.

**4. Deposit of Payment**

The funeral home shall deposit the payment received pursuant to paragraph 3 in a separate account in the financial institution or credit union identified below within ten (10) days after receipt of the initial

\$ \_\_\_\_\_

payment from the payor:

Bangor Savings Bank, 3 State Street, Bangor, ME 04401

Other \_\_\_\_\_ Address: \_\_\_\_\_

**Important Instructions to Payor**

Make your check, share draft or money order payable solely to the financial institution or credit union identified above—*not* to the funeral home.

Write the names of the funeral home and beneficiary on the check, share draft or money order for identification purposes.

For your protection, mail a copy of this agreement to the financial institution or credit union with instructions to contact you if the initial payment is not received from the funeral home.

**5. Payment in Full**

The payor and funeral home agree that the amount shown in paragraph 3 represents payment in full for the funeral goods and services selected pursuant to paragraph 10, with the possible exception of cash advance items for which additional payment may be required pursuant to paragraph 12.

**6. Record of Account; Inspection of Record**

The funeral home shall maintain a complete record of the payment received from the payor and deposited into the mortuary trust pursuant to paragraphs 3 and 4, interest earned on trust funds, and all fees and taxes paid from the trust. The record must contain the name and address of the financial institution or credit union and the dates and amounts of all credits and withdrawals.

The funeral home shall make the amount of the payment into the mortuary trust, cumulative interest, cumulative expenses and current balance available for inspection by the payor without prior notice during

regular office hours. The funeral home shall make the complete record available for inspection within thirty (30) days following receipt of a request for complete inspection from the payor.

**7. Permissible Investments**

The payment made into the mortuary trust pursuant to paragraph 3 must be deposited in:

a federally insured deposit or share account  a trust account. (check one)

A deposit in a trust account may be invested in or used to purchase only the following:

- Federally insured deposit or share accounts;
- Securities issued, insured or guaranteed by the United States or by any agency or corporate or other instrumentality of the United States;
- Municipal securities that are exempt from registration under 32 MRSA §10502(1)(A); and
- Permanent life insurance, other than variable life insurance and annuities, from an insurer authorized to transact insurance in this State, subject to the provisions of 24-A MRSA, chapter 27. A funeral home, its employees and agents may not receive any commission, fee or other consideration from an insurer in connection with the procurement or purchase of insurance permitted by this subparagraph.

If the funeral home subsequently transfers or deposits all or any part of the mortuary trust into the investment category not initially selected by the payor (i.e., federally insured account or trust account), the funeral home shall notify the payor within ten (10) days after making the deposit or transfer. No additional consent of the payor is necessary to authorize the change.

**8. Revocability**

This mortuary trust agreement is  revocable  irrevocable. (check one)

A *revocable* agreement may be terminated by the payor at any time, in which case the funeral home shall refund the entire mortuary trust to the payor, less any fee permitted by paragraph 20 and any taxes paid pursuant to paragraph 21. The refund must be made within thirty (30) days after receipt of written notice of revocation from the payor.

An *irrevocable* agreement may not be terminated by the payor. However, the payor retains the right to transfer the mortuary trust to a different funeral home at any time by requesting the resignation of the trustee pursuant to paragraph 17 and appointing a successor trustee pursuant to paragraph 18.

**9. Guaranteed Service Mortuary Trust**

The mortuary trust created by this agreement is a *guaranteed service* mortuary trust. The funeral home may also offer a *credit for service* mortuary trust, but is not required to do so.

I have explained to the payor the difference between the guaranteed service mortuary trust created by this agreement and a credit for service mortuary trust.

\_\_\_\_\_

(funeral home)

I understand the difference between the guaranteed service mortuary trust created by this agreement and a credit for service mortuary trust.

\_\_\_\_\_

(payor)

**10. Funeral Goods and Services Selected**

Upon the death of the beneficiary, the funeral home shall provide the funeral goods and services selected by the payor 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 payor. *Funeral goods and services must be selected at this time.*

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

**11. Guaranteed Service; Substitute Goods**

The funeral goods and services described on the Statement of Funeral Goods and Services, with the possible exception of cash advance items, must be provided regardless of the account balance of the mortuary trust at the time of the beneficiary’s death. If any of the funeral goods specified in the Statement of Funeral Goods and Services Selected are no longer available at the time of the beneficiary’s death, the trustee shall substitute goods of equal or better quality.

**12. Treatment of Cash Advance Items** *(check one)*

*(Cash advances are out-of-pocket payments made by the funeral home to third parties for newspaper notices, cemetery or crematory charges, clergy honoraria, pallbearers, flowers, death certificates, and the like. The specific cash advance items that the funeral home has agreed to provide are listed on the copy of the Statement of Funeral Goods and Services Selected that is attached to this agreement.)*

The cash advance items described on the Statement of Funeral Goods and Services Selected must be provided regardless of the amount of money in the mortuary trust at the time of the beneficiary’s death. Cash advance items must be selected at this time.

The payor agrees to reimburse the funeral home for cash advance items paid for by the funeral home in excess of the amounts shown for those items on the Statement of Funeral Goods and Services Selected. The payor understands that he or she will be separately billed for these excess amounts upon the conclusion of the funeral.

**13. Permissible Uses of Trust Funds**

The funeral home shall apply the mortuary trust funds solely to—

- The price of the funeral goods and services and cash advance items provided by the funeral home pursuant to paragraphs 10-12;
- Any amounts retained by the funeral home for the funeral home’s own use pursuant to paragraph 14;
- Any complete refund to the payor required by paragraph 14 due to the funeral home’s inability to perform its obligations under this agreement;
- Any complete refund to the payor required by paragraph 8 if this mortuary trust agreement is revocable and the payor has revoked the trust;

- Payment of any fees permitted by paragraph 20; or
- Payment of taxes pursuant to paragraph 21 or otherwise.

#### **14. Amounts Retained by Funeral Home For Its Own Use; Inability of Funeral Home to Perform**

The funeral home may withdraw and retain for its own use any funds remaining in the trust following payment for the funeral goods and services and cash advance items selected (or their substitutes).

If the funeral home is unable for any reason to perform its obligations under this agreement, the funeral home shall return all trust funds to the payor.

#### **15. Transfer of Mortuary Trust**

This agreement constitutes the payor's written consent to the direct transfer of the mortuary trust funds by the funeral home from one financial institution or credit union to another financial institution or credit union, or, if the trust is revocable, to the payor. The funeral home may direct the transfer of the mortuary trust funds to another financial institution or credit union for any reason consistent with the purpose of this agreement and the governing law and rules. No additional written consent of the payor is necessary to authorize the transfer.

#### **16. Withdrawal of Mortuary Trust Funds**

The funeral home may withdraw money from the mortuary trust only upon presentation of a certified copy of the death certificate of the beneficiary and only for the purposes listed in paragraph 13, provided that presentation of the death certificate need not be made for withdrawals to pay fees as permitted by paragraph 20, to pay taxes as permitted by paragraph 21 or otherwise, or to pay the complete refund to the payor permitted by paragraph 8 (if this mortuary trust is revocable and the payor has revoked the trust).

#### **17. 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 payor 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 payor, and to any successor trustee identified by the payor pursuant to paragraph 18:

- Written notice of resignation;
- This mortuary trust agreement, including the Statement of Funeral Goods and Services Selected that is attached to this agreement.
- Control of the trust funds to the payor or successor trustee, as the case may be; and

- An accounting of trust funds as of the date of resignation.

If the payor has requested the resignation, the funeral home shall complete the resignation as described above within thirty (30) days after receiving a written request to resign from the payor.

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 payor 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 payor 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 this paragraph. If the payor chooses resignation, the payor may either name a successor trustee or request a refund of the trust, as the case may be. In the event that the funeral home does not receive a response from the payor within this thirty (30) day period, the funeral home may either transfer the mortuary trust as proposed or resign as trustee.

**18. Appointment of Successor Trustee**

If the funeral home resigns as trustee pursuant to paragraph 17, the payor may appoint a different funeral home as successor trustee.

**19. 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 payor of the change and shall inform the payor that the new owner has assumed the role of trustee under this agreement and will provide all funeral goods and services required by this agreement. The notice must also state that the payor is free at any time to request the resignation of the trustee and designate a different funeral home as successor trustee pursuant to paragraphs 17 and 18.

For purposes of this paragraph, “change of ownership” means the sale or transfer of the entire ownership of a funeral home.

**20. Fees**

No fees may be charged against or deducted from the mortuary trust by the funeral home except for the following:

<b>Description</b>	<b>Amount</b>
Transfer of account by appointment of successor trustee.....	\$250.00
Revocation of revocable agreement.....	\$250.00
Actual financial and tax administration of the account performed by or on behalf of the funeral home.....	1/3 of 1 % of annual income gained not to exceed \$40 per year

**Notice to Payor**

The *maximum* fees the funeral home can charge for the three services listed above are contained in Chapter 16 of the rules of the State Board of Funeral Service. As established by the Board, those maximum amounts are: 7% of trust funds, not to exceed \$250, for a transfer; 7% of trust funds, not to exceed \$250, for a revocation; and 25% of net interest earned per annum, not to exceed \$125, for annual tax and financial administration. This agreement may not contain any other fees.

**21. Taxes** (check one)

Trust earnings shall be treated as personal income of the payor. The payor will be responsible for payment of any tax due on trust earnings.

If the trust is within the applicable contribution limit for treatment as a “qualified funeral trust” under federal tax law, the funeral home shall elect such treatment on behalf of the trust and shall pay any federal income tax due directly from trust funds. The applicable contribution limit recognized by the Internal Revenue Service is currently \$\_\_\_\_\_.

*The funeral home does not provide tax advice to the payor other than as required by the instructions to IRS Form 1041. The payor is encouraged to consult an independent tax advisor to determine which of these two options is more advantageous to the payor. The payor acknowledges that s/he is not relying upon the tax advice of the funeral home.*

**22. 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 §101 et seq., 32 MRSA §1401 and Chapter 16 of the rules of the State Board of Funeral Service.

**23. 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 \_\_\_\_\_, 2\_\_\_\_\_.

Payor: \_\_\_\_\_

Funeral Home: Brookings-Smith, 133 Center Street, Bangor, ME 04401 (207) 942-8815

Funeral Practitioner: \_\_\_\_\_

License Number: \_\_\_\_\_

Position: \_\_\_\_\_

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