

- 5) Investments of the type and in the manner as provided in Section §15001 et.seq. of the Probate Code.
- 6) No loan shall be made to any licensed funeral establishment; or to any owner, director, officer, partner or stockholder of any licensed funeral establishment; or to trustees of the trust funds; or to partners, relatives, agents, or employees of any licensed funeral establishment or of such trustees.

Under Probate Code Sections §15001 et.seq., types of investments allowable are ones where trustees have made a sound financial prudent decision, while considering investment risk and general economic conditions, and not to use or deal with trust property for the trustee's own profit. Additionally, the trustee should not take part in any transaction having an adverse interest to the beneficiary.

The Bureau strictly prohibits investments that have the appearance of a conflict of interest, lack of independence, and/or lack of an unrelated party relationship between the funeral establishment owners, partners, stockholders, shareholders, officers, employees, or trustees, and with the people related to marketing, selling or owning the investment.

Therefore, under the above Probate Code sections, an investment in equity investments, such as, stocks and stock mutual funds, and investments in improved real estate generating rental income is allowable.

Use of Trust Income – B&P Code Section §7735

The income from the trust may be used to pay for a reasonable annual fee for administering the trust, including a trustee fee to be determined by the Bureau, and to establish a reserve of not to exceed ten percent (10%) of the corpus (principal) of the trust as a revocation fee in the event of cancellation on the part of the beneficiary. The annual fee for trust administration may be recovered by withdrawals from accumulated trust income, provided that total withdrawals for this purpose shall not exceed the amount determined by the Bureau.

Currently, the Bureau allows a maximum annual administration fee of 4% or current year earned trust income, whichever is **lower** for the fiscal year. For instructions on how to calculate the 4% maximum annual administration fee, see page 10 of 11, Line 9 – “Annual Administration Fees,” instructions on the Preneed Funeral Trust Fund Report.

Income earned from the trust does **not** include unrealized capital gains and losses. Only realized capital gains and losses are included in the calculation of current year earned trust income and the annual administration fee.

In no case shall the total amount withdrawn in a year for trust administration exceed the total amount of posted trust income for the immediate 12 preceding months. In addition to annual administration fees and reserves authorized, a trustee may pay taxes on the earnings on any trust. In no event, however, shall taxes paid on the earnings of any trust be considered part of the fees or reserves authorized by B&P Code Section §7735. All remaining income shall be accumulated in trust.

None of the corpus (principal) of the trust shall be used for payment of any commission nor shall any of the corpus of the trust be used for other expenses of trust administration, or for the payment of taxes on the earnings of the trust.