

NORTH CAROLINA
WAKE COUNTY

BEFORE THE NORTH CAROLINA
BOARD OF FUNERAL SERVICE
RULING NO. D17-002

In the matter of:

Robert M. Hardy, Jr. and Investors Heritage
Life Insurance Company,

Petitioners.

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**DECLARATORY
RULING**

THIS CAUSE comes before the North Carolina Board of Funeral Service (hereinafter the "Board"), pursuant to North Carolina General Statute § 150B-4 and 21 NCAC 34A .0108, at its offices at 1033 Wade Avenue, Suite 108, in Raleigh, North Carolina, with a quorum present.

PROCEDURAL HISTORY

Robert M. Hardy, Jr., who serves as Executive Vice President and General Counsel to Investors Heritage Life Insurance Company (hereinafter "Petitioners"), filed a request for declaratory ruling on August 31, 2017 (hereinafter the "Request"). Due to the cancelation of the Board's regularly scheduled September meeting following the Governor's declaration of a state of emergency in North Carolina, Petitioners agreed to extend the time requirements, pursuant to of 21 NCAC 34A .0108(a)(3) and (b), for the Board to consider whether to grant the Request until October 11, 2017, and for the Board to issue a ruling on the merits on or before November 8, 2017. Accordingly, the Board considered Petitioners' Request at its next regularly scheduled meeting held to conduct Board business on October 11, 2017. The Board voted at its meeting on October 11, 2017 to grant the Request and to issue a declaratory ruling on the merits.

QUESTION

If the beneficiary of an irrevocable preneed funeral contract and/or the owner of an insurance policy used to fund an irrevocable preneed funeral contract voluntarily surrenders, for the cash value thereof, an insurance policy used to fund an irrevocable preneed funeral contract such that the insurance policy no longer provides any funding for the irrevocable preneed funeral contract, would this constitute an “otherwise cancelled” insurance policy pursuant to N.C. Gen. Stat. § 90-210.65(e)(2)?

RULING

Pursuant to North Carolina General Statute Chapter 150B-4(a), an agency, upon request from a person aggrieved, shall issue a declaratory ruling concerning the validity of a rule or the application of a statute or rule to a particular set of facts. This ruling is based solely on the facts provided to the Board and to the extent the Board can glean pertinent facts necessary to apply the statutes and regulations under its jurisdiction. Pursuant to In re Ford, this Declaratory Ruling and Petitioners’ request for declaratory ruling only shall constitute the record for judicial review. See 52 N.C. App. 569, 572 (1981). The Board is charged by the North Carolina General Assembly with enforcing Chapter 90, Article 13A of the North Carolina General Statutes. See N.C. Gen. Stat. §§ 90-210.18A(a) & 90-210.23(a), (i).

Based on information provided to the Board, Petitioner Robert M. Hardy, Jr. serves as Executive Vice President and General Counsel for Petitioner Investors Heritage Life Insurance Company, a life insurance company that engages several preneed life insurance agents regulated by the Board. Petitioners represent that a consumer complaint has been filed against them with the North Carolina Department of Insurance by an irrevocable preneed funeral contract beneficiary who desires to voluntarily surrender for the cash value

thereof the life insurance policy used to fund the irrevocable preneed funeral contract. Petitioners are seeking the Board's opinion as to whether the life insurance policy at issue, if allowed to be surrendered, would constitute an "otherwise cancelled" policy, pursuant to N.C. Gen. Stat. § 90-210.65(e)(2). If such a scenario did constitute an "otherwise cancelled" policy, then the underlying preneed funeral contract would become revocable. If such a scenario did not constitute an "otherwise cancelled" policy, then the underlying preneed funeral contract would remain irrevocable. If a licensee of the Board improperly revoked or caused to be revoked an irrevocable preneed funeral contract, such conduct would violate Chapter 90, Article 13A, of the North Carolina General Statutes and, therefore, subject a licensee to disciplinary action.

As an initial matter, the Board finds that Petitioners qualify as a "person aggrieved" for purposes of making this declaratory ruling. Petitioner Robert M. Hardy, Jr. serves as Executive Vice President and General Counsel for Petitioner Investors Heritage Life Insurance Company, a life insurance company that engages several preneed life insurance agents regulated by the Board. As such, individual preneed sales licensees so engaged by Petitioner Investors Heritage Life Insurance Company could be subject to disciplinary action if found to have violated any provision of [Article 13A] or any regulations of the Board. N.C. Gen. Stat. § 90-210.25(e)(1). Furthermore, Petitioners represent to the Board that a consumer complaint was filed against Petitioners with the North Carolina Department of Insurance, and that said complaint arises from the same question of statutory interpretation posed by Petitioners in their request for declaratory ruling.

Turning to the substance of Petitioners' Request, the Board relies upon the following statutes in issuing this ruling. First, N.C. Gen. Stat. § 90-210.65(e), the pertinent

parts of which follow, creates limited exceptions to the general rule that irrevocable preneed funeral contracts may not be revoked absent a court order:

(e)...

Irrevocable preneed funeral contracts may only be revoked or any proceeds refunded by the order of a court of competent jurisdiction, except as follows:

...

(2) Irrevocable preneed funeral contracts purchased pursuant to G.S. 90-210.61(a)(3) shall also be revocable when the underlying insurance policy lapses or is otherwise cancelled and the lapsed or cancelled policy no longer provides any funding for the preneed funeral contract.

Second, N.C. Gen. Stat. § 90-210.61(a)(3) provides that a preneed funeral contract may be funded by a “prearrangement insurance policy.” The Board interprets these statutes together to mean that an irrevocable insurance-funded preneed funeral contract may be revocable when both conditions specified by statute are satisfied: (1) that the underlying insurance policy lapses or is otherwise cancelled; and (2) that the lapsed or cancelled policy no longer provides any funding for the preneed funeral contract.

N.C. Gen. Stat. § 90-210.65(e) was most recently amended by the North Carolina General Assembly in 2007. Session Law 2007-531, § 11, rewrote subsection (e), in part, as follows:

(e)...

Irrevocable preneed funeral contracts may ~~not only~~ be revoked ~~nor or~~ any proceeds refunded ~~except by~~ by the order of a court of competent ~~jurisdiction-jurisdiction~~, except as follows:

...

(2) ~~Notwithstanding the previous sentence, irrevocable~~ Irrevocable preneed funeral contracts purchased pursuant to G.S. 90-210.61(a)(3) shall also be revocable when the underlying insurance policy lapses or is otherwise cancelled and the lapsed or cancelled policy no longer provides any funding for the preneed funeral contract.

Because the most recent statutory amendment carved out exceptions to the general rule that irrevocable preneed funeral contracts may not be revoked absent a court order, combined with the deletion of the limiting dependent clause of “Notwithstanding the previous sentence....,” the statutory intent appears to be to decrease barriers to revoking irrevocable preneed funeral contracts in a finite, criterion-based set of scenarios.

The Board interprets a “lapsed” policy to mean one that is no longer active because of the policy owner’s failure to make agreed upon premium payments towards the insurance policy. Generally, a lapsed life insurance policy will not pay out a death benefit or provide any insurance proceeds at the time of death. Once a life insurance policy which is used to fund an irrevocable preneed funeral contract lapses and no longer provides any funding toward a preneed funeral contract, the preneed funeral contract becomes revocable pursuant to N.C. Gen. Stat. § 90-210.65(e). A lapse in policy coverage is not the question posed by Petitioners’ request for declaratory ruling and, therefore, the Board will not further analyze lapsed policies.

Petitioners represent to the Board that there are two scenarios, other than a lapsed policy, which would result in a life insurance policy being terminated, or “otherwise cancelled.” First, a life insurance policy would be cancelled if the policy owner or beneficiary took out a loan against the policy, and the borrower subsequently defaulted on said loan. Second, a life insurance policy would be cancelled if the policy owner or beneficiary voluntarily surrendered the policy for the cash value thereof. Applying the plain meaning of the statutory provisions at issue to the facts at hand, it is unambiguous that a life insurance policy which is “cancelled” for any reason, other than a policy lapse caused by an insured’s failure to pay premiums owed, satisfies the first condition required

for the revocation exception in N.C. Gen. Stat. § 90-210.65(e) to apply. It follows then that if the second condition is also satisfied, namely that the cancelled policy no longer provides any funding for the irrevocable preneed funeral contract, then the preneed funeral contract becomes revocable.

It is important to note that each of the three scenarios – lapse, default, and voluntary cash surrender – addressed herein are analyzed and applied in the context of the actions or omissions of a *consumer* – not a licensee – which would result in the termination of the life insurance policy and/or coverage. Nothing about this decision should be construed to mean that the Board authorizes a preneed funeral establishment and/or a preneed sales licensee listed as a policy owner and/or beneficiary to act or fail to act in such a way that causes an insurance policy to lapse or be otherwise cancelled. A preneed funeral establishment and/or a preneed sales licensee may be subject to disciplinary action by the Board if found to have revoked an irrevocable preneed funeral contract after the establishment and/or licensee’s own actions or omissions resulted in the lapse or cancellation of an insurance policy used to fund a preneed funeral contract.

For the foregoing reasons, the Board holds that it constitutes an “otherwise cancelled” insurance policy, pursuant to N.C. Gen. Stat. § 90-210.65(e)(2), when a *consumer* voluntarily surrenders for the cash value thereof a life insurance policy used to fund an irrevocable insurance-funded preneed funeral contract. In this scenario, an irrevocable insurance-funded preneed funeral contract would become revocable so long as the second condition of the same statute – that the insurance policy no longer provides any funding for the preneed funeral contract – is also satisfied. Accordingly, the Board will not deem it a violation of N.C. Gen. Stat. § 90-210.65(e) if a preneed funeral establishment

and/or preneed sales licensee revokes or refunds proceeds of an irrevocable insurance-funded preneed funeral contract when the *consumer* voluntarily surrenders for the cash value thereof an insurance policy such that is consequently cancelled and no longer provides any funding for the underlying preneed funeral contract.

EFFECT OF RULING

This ruling is binding on Petitioners and the Board consistent with North Carolina General Statute section 150B-4(a).

Issued by the North Carolina Board of Funeral Service, this the 11th day of October, 2017.

CJG

THE NORTH CAROLINA BOARD OF
FUNERAL SERVICE

By: Charles J. Graves

Charles J. Graves
Board President