



The Commonwealth of Massachusetts

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February 27, 2004

Mr. Kevin F. Kiley
Chief Operating Officer
Massachusetts Bankers Association
73 Tremont Street, Suite 306
Boston, MA 02108-3906

Dear Mr. Kiley:

This letter is in response to your correspondence of February 19, 2004 to the Division of Banks (the "Division") relative to the recent amendments to 239 CMR 4.00 *et seq.*, the Pre-Need Funeral Contract and Arrangements promulgated by the Massachusetts Board of Registration in Embalming and Funeral Directing. The regulations become effective with publication in the Massachusetts Register on February 27, 2004.

As outlined in your letter, these amendments removed the authority for a funeral director to act as trustee of a funeral trust account. The regulation as amended retains the authorizing language for a federal or state-chartered banking institution with trust powers, or a trust company within the Commonwealth, to act as a trustee for these accounts. The amendments raised the matter of whether a state-chartered banking institution, other than a trust company, may act as a trustee for funeral trust accounts in the event that the bank does not have an established trust department approved pursuant to G.L. c. 167G.

The Division has reviewed these amendments and discussed same with the Division of Professional Licensure. It is the position of the Division that state-chartered financial institutions seeking to act as trustee with respect to funeral trust accounts may submit for Division review and approval under Chapter 167G a letter request for limited authorization to act as trustee solely with respect to funeral trust accounts established and operated in accordance with the provisions of 239 CMR 4.00 *et seq.* The letter applications should contain detail as to any existing accounts currently maintained by the bank and sufficiently demonstrate the bank's knowledge and anticipated compliance with 239 CMR 4.00 *et seq.* and other applicable laws and principles governing trusts and related trustee obligations. The submissions should also include any additional information which may be helpful to the Division. The Division will endeavor to expedite the review process for these letter applications.

Very truly yours,

Steven L. Antonakes
Commissioner of Banks

cc Anne Collins, Director
Division of Professional Licensure

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