



## Transfer of a Care and Maintenance Fund

**Article Type:** FAQ/Definition/Resources/Help

**Applicable Act:** *Funeral, Burial and Cremation Services Act, 2002* (the “FBCSA”) and Ontario Regulation 30/11 under the *Funeral, Burial and Cremation Services Act, 2002*

**Product/Service:** care and maintenance funds, trustee oversight

**Issue:** What are the requirements for transferring a cemetery Care and Maintenance (C&M) fund to another trustee, and what rights do cemetery operators have when a transfer is proposed?

### Overview:

Cemetery operators (“Operators”) are required to maintain a C&M fund to generate income for the ongoing care and maintenance of cemetery lands. A C&M fund is held by a trustee that meets the requirements of the FBCSA and its regulations.

Whether an Operator holds a care and maintenance fund or a care and maintenance account is determined by the legal arrangement in place (for example, whether there is a trust agreement with a trustee), and not solely by the dollar amount of the money held.

Section 53(19) of the FBCSA requires that any transfer of a C&M fund from one trustee to another must receive the written consent of the Registrar of the FBCSA (“Registrar”). This article outlines when consent is required, how proposed transfers are handled, and what Operators should expect.

### When Registrar’s Consent is Required:

Consent of the Registrar is required when:

- A proposal by an eligible depositary is made to transfer a C&M fund from the current trustee to another trustee.
- An Operator wishes to move its C&M fund to a new trustee.

Transfers must not occur before written consent from the Registrar has been obtained.

Registrar's consent is assessed on a transfer-by-transfer basis. A proposed "bulk" or automatic transfer does not remove the requirement that the Registrar:

- Review each consent application on its own merits; and,
- Provide written consent for each transfer.

### **Proposed Trustee-Initiated Transfers:**

Where a proposal is made to transfer a C&M fund to another trustee:

- The transfer must not proceed unless Registrar's consent is granted.
- Trustees should not assume that a proposed transfer has been or will necessarily be consented to by the Registrar.

### **Rights of Cemetery Operators:**

Cemetery operators:

- May select the eligible trustee of their choosing.
- May remain with their current trustee where possible.

Operators retain responsibility for ensuring that their C&M fund is held with an eligible trustee in accordance with the FBCSA. Under section 83 of the FBCSA, an eligible trustee for a care and maintenance fund must be:

- [A loan and trust corporation](#); or,
- [A credit union/league](#).

In addition, section 53 of the FBCSA permits the following entities to act as a trustee for care and maintenance money in the prescribed circumstances:

- A local municipality.
- The Public Guardian and Trustee (OPGT), where a prescribed cemetery operator does not have a practical alternative.

### **What Cemetery Operators Should Do if Contacted About a Transfer:**

If a transfer of a C&M fund to a new trustee is proposed, Operators should:

- Ask whether written Registrar's consent has been obtained.
- Confirm the status of consent with the BAO if uncertain.
- Review trustee options.
- Not authorize or participate in a transfer until consent is confirmed.
- Notify the Registrar of any change in trustee within 15 days of the change, in accordance with section 103 of Ontario Regulation 30/11.

When seeking consent, Operators are required to provide supporting documentation to the Registrar, which includes:

- The trust agreement between the cemetery operator and the proposed new trustee.
- A board resolution approving the transfer (including board minutes with authorized signatures).
- The most recent statement from the current trustee.

#### **What the Registrar Looks For:**

When reviewing a proposed transfer, the Registrar may consider whether:

- The Operator has applied to the Registrar for consent.
- The receiving trustee meets regulatory requirements.
- The transfer protects the integrity of the C&M fund.

#### **Additional Resources:**

For more information on the transfer of care and maintenance funds, visit the Bereavement Authority of Ontario website at [www.thebao.ca](http://www.thebao.ca) or contact us directly at 647-483-2645 or 844-493-6356. You may also visit the following Financial Services Regulatory Authority of Ontario (FSRA) directories to identify eligible trustees: [Loan and Trust Companies, Ontario](#) [Credit Unions and Caisses Populaires](#).

**Keywords:** care and maintenance fund, trustee transfer, registrar consent, section 53(19), cemetery trust funds, trustee change, operator rights