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STATE OF NEBRASKA
OFFICIAL
JAN 29 1992
DEPT. OF JUSTICE

DATE: January 9, 1992

SUBJECT: Paid up insurance policy on the life of a veteran which names a trustee as the owner of the policy and held in an irrevocable trust to provide the veteran a funeral is not to be considered a resource in determining maintenance charges to be paid by the veteran in exchange for his or her domiciliary and/or nursing care at a Nebraska veterans' home.

REQUESTED BY: Jonathan F. Sweet, Department of Veterans' Affairs.

WRITTEN BY: Don Stenberg, Attorney General
Harold Mosher, Senior Assistant Attorney General

Subject to certain conditions, the object of the Nebraska veterans' homes is to provide domiciliary and nursing home care and subsistence to all veterans who have served in the armed forces of the United States during a period of war and to certain other persons who are related to such veterans. However, in the event the veteran has income and/or assets in excess of certain amounts, the veteran is required by law to reimburse the State of Nebraska a reasonable amount for the expense of maintenance as determined by the Board of Inquiry and Review. See, Neb.Rev.Stat. §80-301 (Supp. 1991). In turn, the Board of Inquiry and Review has a statutory duty to "prescribe rules of admissions to such homes and in accordance with the provisions and objects of section 80-301." Neb.Rev.Stat. §80-304 (Reissue 1987). It has done so.

Pursuant to such rules, the Board of Inquiry and Review charges those members of a Nebraska veterans' home a maintenance charge which is based upon the income and/or assets of the member. In calculating the maintenance charge, certain assets of the member

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are NOT considered, including an irrevocable burial trust fund. See, 444 NAC §009.01A3 (1989).

We have previously advised you that a particular burial insurance policy did not constitute an irrevocable burial trust because by its own terms the policy could be revoked. As a result, you now ask if revocable burial trust policies should be considered a form of life insurance subject to the asset limitations used in determining a member's maintenance charge at a Nebraska veterans' home. The answer to your question is complex.

In its simplest terms, a burial insurance trust is an arrangement whereby the insured causes insurance on his life to be made payable to a trustee and simultaneously executes a trust agreement directing the trustee to administer the proceeds of the insurance policy after his or her death to provide the insured a burial as directed in the trust agreement. Properly created, an irrevocable burial trust serves a very noble societal function.

The variables which may be encountered in establishing, analyzing, or interpreting the terms of any given trust are numerous. Thus, the term "life insurance" includes a wide variety of contracts, such as ordinary old-line insurance contracts, annuity contracts, endowment contracts, and may include fraternal or mutual benefit society certificates. The terms "revocable" and "irrevocable" are used in trust parlance to distinguish between those trusts which the settlor may properly terminate or modify and those in which he or she has relinquished all powers to deal with the subject matter of the trust or to alter the beneficial interests. Since the quantum of control retained by the settlor varies with each instrument or agreement, trusts may run the entire gamut from one in which the settlor reserves full power to alter, amend or revoke at his or her pleasure to one in which the relinquishment is complete.

While the term "irrevocable" might properly be confined to a trust in which no powers whatsoever are reserved by the settlor, it is in practice frequently used in a somewhat narrow sense to mean only that the settlor has not reserved a power to revoke the trust. It is possible, therefore, to create an "irrevocable" trust (one in which in terms reserves no power of revocation) and yet have the subject matter of the trust contain provisions which purport to give the settlor certain powers. For example, as applied to burial insurance trusts, the settlor could reserve the right to change the designated funeral director if one be designated in the trust agreement.

When applied to the administrative rules of the Board of Inquiry and Review, a valid burial trust, funded by an insurance

policy on the life of a veteran, must provide in the trust agreement, among other things, that the veteran is without authority to:

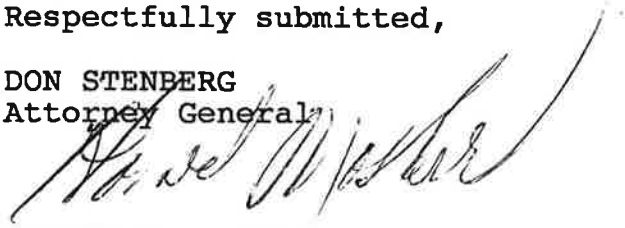
1. cancel or revoke the trust agreement;
2. receive any refund under the terms of the trust agreement;
3. surrender the life insurance policy for cash;
4. obtain a loan against the life insurance policy;
5. change the beneficiary named in the life insurance policy; or
6. assign the life insurance policy.

A fortiori, an insurance policy on the life of a veteran which funds an irrevocable burial insurance trust agreement that is executed in conformity with the administrative rules and conditions stated above cannot be considered an asset or resource in calculating his or her maintenance charge at a Nebraska veterans' home.

To assist you and the Board of Inquiry and Review in administering irrevocable burial insurance trusts, we suggest that you require the trustee to provide you with a certified copy of the trust agreement and also give you its assurance that it will promptly advise you in the event the premium due on the burial insurance policy is in default, if that ever be the case, as well as any other matter that would affect the validity of the trust.

Respectfully submitted,

DON STENBERG
Attorney General



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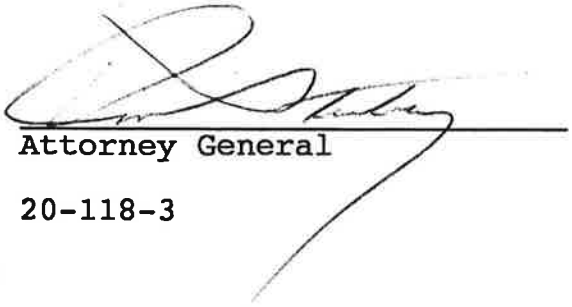

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