

involved transferring preneed contracts from establishments unable to provide services due to the cancellation, revocation or inactive status of their licenses to active establishments without the written consent of the trustor and beneficiary, not to active establishments that have merely changed ownership or control.

As a result, these corrective actions have not been implemented.

Finding 8: Refunds to the Trustor Not Made Within 15 Days of Receipt of Written Request for Contract Revocation in Violation of Title 16 CCR Section 1264

Bureau's Reply: The response provided no basis for amending this finding.

In response to the Corrective Actions requested, the FDSC and Comerica Bank state that they disagree with this finding and will "agree to continue" their current practices. They further state that they are "willing to provide further examples of their compliance if so requested by the Bureau." These arguments lack merit and the Bureau disagrees with the characterization of past compliance efforts. The Trustees have therefore, refused to implement these corrective actions for this finding.

Finding 9: Failure To Maintain Preneed Trust Records in California in Violation of Title 16 CCR Section 1267

Bureau's Reply: The response provided no basis for amending this finding.

In response to the Corrective Actions requested, the FDSC and Comerica Bank state that they "have maintained all records required..." and will "continue said practice and maintain all records according to Code of Regulations §1267(a)-(j) and make those records available upon request." FDSC and Comerica Bank further allege that "Comerica Bank maintains a complete copy of the financial records at its office in Palo Alto, California. The auditor for the Bureau had a meeting with the representatives of Comerica wherein he was offered and given any record he requested." A meeting did occur in Palo Alto on December 21, 2007 between Bureau representatives and representatives of Comerica Bank. However, the auditor was not "offered and given any record he requested." Although some financial statements regarding the CMT were provided to the Bureau at the entrance conference for the audit on December 21, 2007, Comerica Bank did not make available for Bureau inspection the "complete financial records of all preneed contracts and arrangements" for the past seven years as requested. Section 1267 requires these records to be maintained and made available to the Bureau. At the December 21, 2007 entrance conference, the following records were not available:

1. Records of individual trustor or beneficiary ledger accounts, which set forth the amount of the contract, all payments received and all income prorated as required by Title 16, CCR 1267(b);
2. Records such as bank statements and reconciliations for checking accounts used to deposit payments received or disbursements made to

- the funeral establishments and/or funeral director, a trustor or investment and accounting for checks not yet presented and outstanding, bank deposits not shown on the bank statements as described in Title 16 CCR section 1267(e);
3. Cash receipts journals showing each payment received as required by Title 16, CCR section 1267(c);
 4. Cash disbursement journals showing each, disbursement to funeral establishments or trustors, and withdrawal for documented expenses as required by Title 16, CCR section 1267(d); and,
 5. A general ledger, posted monthly with respect to all accounts controlling the fiduciary relationship with the individual trustors as required by Title 16, CCR section 1267(f).

Instead, Comerica Bank provided the Bureau with a "transactional summary" document, which it purported provided sufficient detail to comply with the requirements of the regulation. However, that summary did not meet Section 1267's requirements and did not provide the detail requested by the Bureau and required by Section 1267. Further, the document did not cover January 1, 2000 through January 23, 2002 of the audit period.

To date, the Bureau has not received any evidence that all of the records required to be maintained per Title 16, CCR section 1267 are being maintained in California as required. As a result, these corrective actions have not been implemented.

Finding 10: Records Not Made Available For Inspection by The Bureau in Violation of Title 16 CCR Section 1267

Bureau's Reply: The response provided no basis for amending this finding.

In response to the Corrective Actions requested, the FDSC and Comerica Bank state that they "have maintained all records required..." and will "continue said practice and maintain all records according to Code of Regulations §1267(a)-(j) and make those records available upon request." FDSC and Comerica Bank further allege that "the Bureau has also visited the offices of Comerica to view the documents held by Comerica. Comerica handed over boxes of documents to the Bureau in that meeting." The Bureau held an entrance conference for the audit with representatives from Comerica Bank at its offices in Palo Alto, California on December 21, 2007. Although some financial statements regarding the CMT were provided, Comerica Bank did not make available to the bureau the "complete financial records of all preneed contracts and arrangements" for the past seven years as requested.

Section 1267 requires these records to be maintained and made available to the Bureau. At the December 21, 2007 entrance conference, the following records were not made available to the Bureau:

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1. Records of individual trustor or beneficiary ledger accounts, which set forth the amount of the contract, all payments received and all income prorated as required by Title 16, CCR 1267(b);
2. Records such as bank statements and reconciliations for checking accounts used to deposit payments received or disbursements made to the funeral establishments and/or funeral director, a trustor or investment and accounting for checks not yet presented and outstanding, bank deposits not shown on the bank statements as described in Title 16 CCR section 1267(e);
3. Cash receipts journals showing each payment received as required by Title 16, CCR section 1267(c);
4. Cash disbursement journals showing each disbursement to funeral establishments or trustors, and each withdrawal for documented expenses as required by Title 16, CCR section 1267(d); and,
5. A general ledger, posted monthly with respect to all accounts controlling the fiduciary relationship with the individual trustors as required by Title 16, CCR section 1267(f).

Instead, Comerica Bank provided the Bureau with a "transactional summary" document, which it purported provided sufficient detail to comply with the requirements of the regulation. However, that summary did not meet Section 1267's requirements and did not provide the detail requested by the Bureau and required by Section 1267. Further, the document did not cover January 1, 2000 through January 23, 2002 of the audit period.

Section 1267 requires this information to be made available for the Bureau's inspection. To date, the Bureau has not received any evidence that all of the records required to be maintained per Title 16, CCR section 1267 have been made available to the Bureau as required. As a result, these corrective actions have not been implemented.

As stated earlier, the Bureau expects all of its Corrective Actions to be implemented. The Bureau expects to receive a report from you, the licensees, explaining how you have implemented these corrective actions on or before **July 21, 2010**.

Sincerely,



Phillip Harris
Supervising Auditor

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