

MISSOURI STATE BOARD OF EMBALMER AND FUNERAL DIRECTOR RULES

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**** Rules still need approval of the Department**

APPROVED

Emergency Rule for Notice of Intent to Apply

Title: Filing of Notice of Intent to Apply

Purpose: This emergency rule describes the Board's procedure for filing a Notice of Intent to Apply for Licensure/Registration under the new requirements contained in Chapters 333 and 436 which will become effective on August 28, 2009 and the result of filing the Notice.

- (1) Any person wishing to conduct business as a preneed seller or preneed provider or wishing to register as a preneed sales agent (the "Applicant") must fully complete and file with the State Board a "Notice of Intent to Apply for Licensure/Registration" ("Notice of Intent") prior to engaging in any conduct for which a preneed seller license, a preneed provider license or a preneed sales agent registration is required. The Board shall provide the Notice of Intent as an electronic document on its website. No fee shall be required to accompany the Notice of Intent. Only the official Notice of Intent form shall be accepted by the Board.
- (2) Applicants may file the Notice of Intent with the Board by hand delivery, by mail, by fax or by other electronic means such as e-mail. If the Notice of Intent is filed by fax or other electronic means, the Applicant shall also provide the original signed document to the Board by mail or other delivery method.
- (3) All Applicants must meet the requirements for licensure as set forth in Chapter 333, RSMo, and must certify that, to the best of their knowledge, they are eligible for licensure/registration.
- (4) If the Board determines that the Applicant lacks the statutory qualifications for licensure/registration, the Board may terminate the temporary authorization to practice under the Notice of Intent by notifying the Applicant in writing of the termination and the reason for the termination. An Applicant may apply for full licensure or registration even if the Board has terminated his/her authority to practice pursuant to the Notice of Intent.
- (5) Any Applicant who has filed a Notice of Intent must file their completed Application for licensure or registration with the Board no later than October 31, 2009.

- (6) The Applicant shall keep a copy of the Notice of Intent and shall prominently display this Notice of Intent as if it were a license or registration issued pursuant to Chapter 333, RSMo.
- (7) Any person with a filed Notice of Intent shall be authorized to engage in the practice of preneed selling, providing or as a sales agent, as so indicated on the Notice of Intent, provided that the Applicant has timely filed his/her Application for Licensure and/or Registration. This authorization to practice shall be effective from the date the Board receives the Notice of Intent and shall end on the date the Board either issues a license or registration or denies the application for licensure/registration or until midnight on December 31, 2009, whichever comes first. The Board shall promptly notify the Applicant of its decision to issue a license/registration or its denial of same.
- (8) Any conduct that may be cause for discipline that occurs between August 28, 2009 and December 31, 2009 shall be considered by the Board in its decision to issue or deny any Application for licensure and/or registration. In addition, if the Board issues a license or registration and later discovers conduct that would be cause for discipline occurred between August 28, 2009 and December 31, 2009, the Board shall have authority to seek discipline against the licensee or registree for that conduct as if the person were fully licensed or registered while operating under the authority of the Notice of Intent.

Authority: 333.011, 333.315, 333.320, 333.325 and 333.340

APPROVED

REVISED Emergency Rule Regarding Filing of Annual Reports

Title: Filing of Annual Reports

Purpose: This emergency rule prescribes the Board's process for the filing of annual reports under the revised sections of Chapter 333 and Sections 436.400 to 436.520, RSMo.

- (1) For sellers:
 - a) For the annual report due on October 31, 2009, sellers registered with the Board prior to August 28, 2009, in lieu of filing the annual report required by Section 436.460, RSMo, may file an annual report, on the form provided by the Board, containing all the information required by Section 436.021.2, RSMo (2000). This report shall report all preneed contracts executed since the reporting period the seller reported in its report due on October 31, 2008 through August 27, 2009. This annual report shall be accompanied by a fee of \$2 per preneed contract sold for the reporting period;
 - b) For the annual report due on October 31, 2010, sellers shall report all contracts executed from August 28, 2009 through August 31, 2010. Thereafter, the annual report shall report all contracts sold between September 1 of the year preceding the annual report through August 31 of the reporting year. Each annual report filed for reporting years ending October 31, 2010 and thereafter shall also be accompanied by the annual fee as established in 20 CSR 2120-2.100;
- (2) For providers:
 - a) For the annual report due as set out below, providers shall file an annual report as provided by Section 333.315.3(4), RSMo (Cum. Supp. 2009) covering the reporting period as set out below.
 - i. For report due October 31, 2009, the reporting period shall be from the date of the provider's last annual report through August 27, 2009. No annual fee shall be required for this reporting period;
 - ii. For report due October 31, 2010, the reporting period shall be August 28, 2009 through August 31, 2010 and accompanied by the renewal fee in 20 CSR 2120-2.100
 - iii. For reports due successive years, reporting period shall be September 1 through August 31 and shall be accompanied by the renewal fee established in 20 CSR 2120-2.100.

Authority: 333.315, 333.320, 333.340, 436.460 and 436.520

APPROVED

Emergency rule: Pre-need agents must take Missouri law exam.

Title: Certifying pre-need agents to take the Missouri law exam.

Purpose: This rule prescribes the process for certifying pre-need seller agents to take the Missouri law exam and a requirement for registration.

All pre-need agents registering with the board shall achieve a grade of seventy-five percent (75%) or greater on the Missouri Law exam. Successful completion of the Law exam shall be a prerequisite to registration. This exam may be taken any time after filing the Notice of Intent to Apply. Pre-need agent applicants must successfully complete the Missouri Law exam on or before December 31, 2009, prior to the expiration of the Notice of Intent to Apply. The Missouri Law exam covers knowledge of Chapter 333, RSMo and the rules governing the practice of embalming, funeral directing and funeral home licensing, along with government benefits, statutes and rules governing the care, custody, shelter, disposition and transportation of dead human bodies. The Missouri Law section also contains questions regarding Sections 436.400 to 436.520, RSMo relating to pre-need statutes and Chapters 193 and 194, RSMo relating to the Missouri Department of Health and Senior Services statutes, as well as questions regarding Federal Trade Commission rules and regulations and Occupational Safety and Health Administration (OSHA) requirements as they apply to Missouri licensees. Notification of intent to take this examination shall be received by the board at least fifteen (15) working days prior to the date the candidate plans to sit for the examination.

Authority: 333.340 and 333.325.5

APPROVED

REVISED Emergency rule: Corporate ownership of a corporate licensee

Title: Corporate ownership of a corporation holding a pre-need provider license.

Purpose: This rule prescribes the requirements regarding corporation application for a pre-need provider or seller's license.

- (1) A corporate applicant for either a seller or provider license shall certify to the Board that each of its officers, directors, managers and controlling shareholders would be eligible for licensure under § 333.330, RSMo if he or she applied for licensure as an individual.
- (2) In any proceeding, the applicant shall have the burden to demonstrate to the Board that its officers, directors, managers and controlling shareholders would be eligible for licensure under § 333.330, RSMo.

Authority: 333.340, 333.320, 333.315, 436.456 and 436.520

APPROVED

Emergency Rule re: Fees

Title: Fees pursuant to Chapter 333 and Sections 436.400 to 436.520

Purpose: This rule sets out all fees contained in Chapter 333 and Sections 436.400 to 436.520.

(1) The following fees hereby are established by the State Board of Embalmers and Funeral Directors:

(A) Embalmer Practicum Student Registration Fee	\$25
(B) Embalmer Application Fee	\$200
(C) Embalmer Oral Examination Fee	\$125
(D) Embalmer Reciprocity Application Fee	\$300
(E) Embalmer Biennial Renewal Fee	\$200
(F) Funeral Director Application Fee	\$200
(G) Funeral Director Limited License Application Fee	\$200
(H) Funeral Director Reciprocity Application Fee	\$300
(I) Funeral Director Biennial Renewal Fee	\$200
(J) Reactivation Fee (up to one year lapse)	\$100
(K) Reactivation Fee (up to two year lapse)	\$200
(L) Establishment Application Fee	\$300
(M) Amended Establishment Application Fee	\$25
(N) Establishment Biennial Renewal Fee	\$250
(O) Reciprocity Certification Fee	\$10
(P) Duplicate Wallhanging Fee	\$10
(Q) Collection Fee for Bad Checks	\$25
(R) Law Book Requests (after initial request)	\$5
(S) Examination Review Fee	\$25
(T) Background Check Fee	
(This fee determined by Missouri State Highway Patrol)	\$ N/A
(U) Provider License Application Fee (If no funeral establishment license)	\$100
(V) Provider License Application Fee (If also Funeral Establishment license)	\$10
(W) Provider Biennial Renewal Fee	\$ **
(X) Seller License Application Fee	\$200
(Y) Seller Biennial Renewal Fee	\$ **
(Z) Seller Agent Registration Fee	\$50
(AA) Seller Agent Biennial Registration Renewal Fee	\$ **
(BB) Seller Annual Report Fee	\$ **
(CC) Seller Annual Report Late Fee	\$ **

(DD) Seller Agent Law Examination Fee	\$ **
(EE) Seller per Contract Annual Reporting Fee	
(For contracts executed on or after August 28, 2009)	\$36
(FF) Amended Provider Application Fee	\$25
(GG) Amended Seller Application Fee	\$25

(2) All fees are nonrefundable.

(3) The provisions of this rule hereby are declared severable. If any fee fixed by this rule is held invalid by a court of competent jurisdiction or by the Administrative Hearing Commission, the remaining provisions of this rule shall remain in full force, unless otherwise determined by a court of competent jurisdiction or by the Administrative Hearing Commission

Authority: 333.340 and 436.520

** This fee not yet determined by the Board.

RESCIND 20 CSR 2120-2.100

APPROVED

Emergency rule: Preneed sellers and providers must be licensed and preneed seller agents must be registered in the State of Missouri to do business.

Title: Pre-need agent; requirements of the agent's seller

Purpose: This rule explains that any licensed pre-need agent in the State of Missouri must be selling pre-need contracts on behalf of a seller who is licensed in the state of Missouri.

- (1) Any pre-need agent registered by the Missouri State Board of Embalmers and Funeral Directors to sell a pre-need contract for or on behalf of a seller must be the agent of a seller who is licensed to sell pre-need contracts by the Missouri State Board of Embalmers and Funeral Directors.

Authorized by: 333.340, 333.011(9), 333.320 and 333.325

APPROVED

Emergency rule: “Final Disposition” as defined in Chapter 193

Title: Use of term “final disposition” consistent with Chapter 193, RSMo

Purpose: This rule explains that use of the term “final disposition” in Chapters 333 and Sections 436.400 to 436.520, RSMo shall be consistent with the definition of the term in Chapter 193, RSMo.

- (1) For purposes of Chapter 333 and Sections 436.400 to 436.520, RSMo, final disposition shall be defined in accordance with the definition contained in Section 193.015(3), RSMo.
- (2) Use of the term final disposition in Chapter 333 and Sections 436.400 to 436.520 shall be consistent with its use in Chapter 193, RSMo.

Authorized by: 333.340, 333.011(10), 193.015, 436.405 and 436.520

APPROVED

Emergency rule: “Provider” includes funeral establishment that has agreed to undertake obligations of pre-need contracts pursuant to Chapter 436

Title: Provider to include funeral establishments engaged in pre-need

Purpose: This rule explains that a provider in a pre-need contract includes, but is not limited to, a funeral establishment that has agreed to undertake the obligations of a pre-need contract under Sections 436.400 through 436.520, RSMo.

- (1) As defined by Section 333.011(10), the provider of services under any pre-need contract pursuant to Sections 436.400 to 436.520, RSMo shall include any licensed funeral establishment that has agreed to undertake the obligations of a pre-need contract pursuant to Sections 436.400 to 436.520, RSMo.
- (2) Any provider who is a licensed funeral establishment who has agreed to undertake the obligations of a pre-need contract pursuant to Sections 436.400 to 436.520, RSMo, must meet all requirements of both a licensed funeral establishment and a pre-need provider pursuant to Chapter 333 and Sections 436.400 to 436.520, RSMo.

Authorized by 333.340 and 333.011(10), RSMo

APPROVED

Emergency rule: Licensed funeral director must report each seller for whom he or she is an agent.

Title: Funeral Director agent registration

Purpose: This rule establishes the reporting requirement for any funeral directors serving as sellers' agents.

- (1) Any funeral director acting as a pre-need agent shall report the name and address of each pre-need seller for whom the funeral director is authorized to sell, negotiate, or solicit pre-need contracts to the Board on a form prescribed by the Board.
- (2) Any funeral director shall also identify him or herself as acting as a pre-need agent on his or her biennial report form to the board by checking the appropriate box on the form prescribed by the board.

Authority: Section 333.340 and 333.325.4

APPROVED

Emergency rule: Financial welfare cause for injunction

Title: Danger to financial welfare is cause for injunction.

Purpose: This rule states that serious danger to an individual's financial welfare is cause for the State Board of Embalmers and Funeral Directors to seek an injunction pursuant to Section 333.335.1(2), RSMo.

- (1) For purposes of Section 333.335, RSMo, the Missouri State Board of Embalmers and Funeral Directors shall be entitled to seek injunctive relief against any person from engaging in any business or practice authorized by a registration or authority, permit, or license issued under this chapter that presents a substantial probability of serious danger to the health, safety or welfare of any resident of this state or client or customer of the licensee or registrant.
- (2) For purposes of Section 333.335, RSMo, serious danger to the welfare of any resident or client or customer shall include, but is not limited to, the financial welfare of the resident, client or customer.

Authority: Section 333.340 and 333.335.

APPROVED

REVISED Emergency Rule: Change in contact information

Title: Licensees shall be required to provide up to date contact information.

Purpose: This rule details the requirements for providers, sellers, and seller's agents for providing the Board with current contact information.

- (1) Providers, sellers and seller's agents shall keep the Board notified of their current address, telephone number, facsimile number and e-mail address, as applicable, at all times.
- (2) Providers, sellers, and seller's agents shall notify the Board within 30 days of any such change by submitting written notice with the new information. The written notice shall comply with the Board's rules regarding written notice.

Authority: 333.340 and 333.320

APPROVED

Emergency rule: Display of License

Title: Licenses issued by the Missouri State Board of Embalmers and Funeral Directors must be displayed.

Purpose: This rule states that pre-need sellers, providers and seller's agents must prominently display their license or registration to practice issued by the Missouri State Board of Embalmers and Funeral Directors.

- (1) All licenses or registrations, and any and all duplicate copies thereof, issued by the Missouri State Board of Embalmers and Funeral Directors shall be prominently displayed at all times in a conspicuous location or manner easily accessible to the public for each office or place of business of the licensee or registrant.
- (2) All licenses or registrations shall be available at all times for inspection by any duly authorized agent of the Missouri State Board of Embalmers and Funeral Directors.

The Missouri State Board of Embalmers and Funeral Directors may cause a complaint to be filed with the Administrative Hearing Commission pursuant to Section 333.330, RSMo, for the failure of a licensee or registrant to display his or her license or registration as required by Section 333.091 and this regulation.

Authorized by 333.340, 333.091 and 333.330

APPROVED

Emergency Rule: Payment is not determining factor of “practice of funeral directing”

Title: Practice of funeral directing; payment not determining factor

Purpose: This rule explains that the receiving of payment for providing funeral services is not the determining factor in identifying the practice of funeral directing.

- (1) In determining whether a person, pursuant to 333.011(6), is engaging in the practice of funeral directing pursuant to 333.011(8), the Board shall consider all activities listed in 333.011(8).
- (2) Receipt of payment by any person for any or all services provided pursuant to this Chapter or Chapter 436, RSMo shall not be the determining factor in determining whether the person is engaging in the practice of funeral directing.

Authorized by: 333.340 and 333.011(8)

APPROVED

Emergency Rule re: Single Premium Annuity Contracts

Title: Replacement single premium annuity contracts

Purpose: This rule states that while only single premium annuity contracts can fund an insurance-funded preneed contract, purchasers may purchase replacement single premium annuity contracts during the contract period.

- (1) An insurance-funded preneed contract may be funded by an insurance policy or a single premium annuity contract.
- (2) An insurance-funded preneed contract may not be funded by an annuity other than a single premium annuity contract.
- (3) If a purchaser funds an insurance-funded preneed contract with a single premium annuity contract, the purchaser may replace the single premium annuity contract with another single premium annuity contract at any time in the duration of the preneed contract.
- (4) Any replacement single premium annuity contract must meet all the requirements of the initial annuity contract, Chapter 333, Sections 436.400 to 436.520, RSMo and any other requirements under state or federal law.

Authority: 333.340, 436.405 and 436.520

APPROVED

Emergency Rule re: Activities that do not constitute preneed under Sections 436.400 to 436.520, RSMo

~~Title: Activities that do not constitute preneed under Sections 436.400 to 436.520, RSMo~~

~~Purpose: This rule identifies activities that do not constitute preneed under Chapter 436 and do not require regulation for preneed under Sections 436.400 to 436.520, RSMo.~~

~~The following activities do not constitute a preneed contract under the terms and conditions of Sections 436.400 to 436.520, RSMo:~~

- ~~(1) Sale of funeral merchandise where the purchaser takes immediate possession of the funeral merchandise;~~
- ~~(2) The preplanning of funeral arrangements with a licensed funeral director where there is no exchange of payment or anything of value for the future services; and~~
- ~~(3) Naming a funeral establishment as the beneficiary to a life insurance policy outside a preneed contract as defined by Section 436.405.1(7).~~

~~Authority: 333.340, 436.405 and 436.520~~

APPROVED

Emergency Rule re: types of financing available; other financing still preneed

Title: Preneed contracts with non-compliant financing mechanisms are still subject to the provisions in Sections 436.400 to 436.520, RSMo.

Purpose: This rule identifies the acceptable funding mechanisms for preneed contracts.

(1) Preneed contracts shall only be funded by:

- (a) A preneed trust as defined by 436.405.1(8);
- (b) An insurance policy or single premium annuity contract as defined by § 436.405.1(3); or
- (c) A joint account as defined by § 436.405.1(4).

(2) Preneed contracts funded by any other mechanism shall be non-compliant with the requirements of Sections 436.400 to 436.520, RSMo. All non-compliant preneed contracts shall still be subject to regulation by the Board under Sections 436.400 to 436.520, RSMo.

Authority: 333.340, 436.405 and 436.520

APPROVED

Emergency Rule re: Cemetery exception

Title: Endowed care cemetery exception.

Purpose: This rule describes the exception to preneed contract requirements under Sections 436.400 to 436.520, RSMo for endowed care cemeteries.

Pursuant to § 333.310, RSMo, a cemetery shall be exempt from the licensure requirements of §§ 333.315 and 333.320, RSMo when all of the following conditions are satisfied:

- (1) The cemetery has a current and valid license issued pursuant to § 214.275, RSMo;
- (2) All sales of merchandise made by the cemetery that would otherwise be defined as a preneed contract for funeral merchandise are made pursuant to a contract whereby such merchandise is either
 - a. Purchased in conjunction with an interment right or grave space subject to § 214.320, RSMo or
 - b. Is made to be delivered to an interment right or grave subject to § 214.320, RSMo that is owned by the purchaser and identified in the contract.
- (3) The cemetery has not been found to be in non-compliance with §§ 214.385 or 214.387, RSMo by the Office of Endowed Care Cemeteries pursuant to a completed examination or audit; and
- (4) The cemetery does not offer for sale caskets or services that may only be provided by a Missouri licensed funeral director or embalmer.

Authority: 333.340, 436.410 and 436.520

APPROVED

Emergency Rule re: seller obligations

Title: Provider and seller obligations under Sections 436.400 to 436.520, RSMo

Purpose: This rule clarifies the duties of the seller of a preneed contract.

Except as otherwise provided in Sections 436.400 to 436.520 and any rules validly promulgated pursuant to those sections:

- (1) The seller shall be obligated to collect and properly deposit and disburse all payments made by, or on behalf of, a purchaser of a preneed contract;
- (2) A purchaser may make payments on any preneed contract by making the payment directly to the trustee, the insurance company, or the financial institution where the joint account is held, as applicable, in lieu of paying the seller;
- (3) All sellers shall designate an individual to serve as manager in charge of the seller's business. This individual shall either reside or work within the State of Missouri. The seller shall designate the manager in charge in its initial application for licensure. If the manager in charge changes, the seller shall provide written notice to the Board within 30 days of the change.

Authority: 333.340, 436.415 and 436.520

APPROVED

Emergency Rule re: Change in Seller Affiliation

Title: Change in seller affiliation

Purpose: This rule explains the process for a change in seller affiliation under a preneed contract.

- (1) After initial application, if there is a change in seller affiliation, the provider shall provide written notice to the Board, pursuant to § 436.420.3, RSMo, that the provider has authorized a new seller to designate the provider on the seller's preneed contracts. This notice shall be provided to the Board within 15 days after the provider authorizes the seller to act and the notice shall contain, at least:
 - a. Name and address of the provider;
 - b. License number of the provider;
 - c. Name and Address of the seller; and
 - d. Effective date of the authorization or agreement.

(2) This notice may be provided to the Board electronically, but the original signed document shall be provided to the Board by mail or hand delivery.

Authority: 333.340, 436.420 and 436.520

APPROVED

Emergency Rule re: Requirements of Preneed Contracts

Title: Preneed Contract Requirements

Purpose: This rule details the requirements of preneed contracts

- (1) All preneed contracts shall be in Times New Roman or a comparable easily read font and at least 8-point type;
- (2) A preneed contract may contain both guaranteed and non-guaranteed items, but the preneed contract shall clearly identify those items which are guaranteed and which are not;
- (3) A preneed contract is voidable by order of court of competent jurisdiction. Upon final judgment finding a preneed contract is voidable, a purchaser may then exercise his or her right to void the contract by providing written notice to the seller and the provider. The purchaser must exercise his or her right to void the contract within 30 days of final judgment;
- (4) The purchaser must be provided a fully executed original or copy of the preneed contract within 30 days of the effective date of the contract;
- (5) Preneed contracts may be either cancelled or rescinded pursuant to the provisions of Sections 436.400 to 436.520, RSMo. The process for cancellation or rescission shall be the same and the purchaser, seller and provider rights and obligations shall be the same whether the contract is cancelled or rescinded;
- (6) Preneed contracts effective and valid prior to August 28, 2009 shall remain effective and valid on and after August 28, 2009; and
- (7) Preneed contracts executed on or after August 28, 2009 shall comply with all requirements of Chapter 333 and Sections 436.400 to 436.520, RSMo and all regulations enacted thereunder. However, preneed contracts that were valid under the relevant portions of Chapter 436 on August 27, 2009 may be used to enter into valid preneed contracts on or after August 28, 2009 so long as any additional requirements in Sections 436.400 to 436.520, RSMo are provided to purchasers no later than December 31, 2009 by supplement addendum to the preneed contract.

Authority: 333.340, 436.412, 436.415, 436.420, 436.425 and 436.520

APPROVED

Emergency Rule re: Trustee investment restrictions

Title: Trustee investment restrictions under a trust funded preneed contract

Purpose: This rule identifies the investment restrictions of a trustee under a trust funded preneed contract.

- (1) A trustee shall not make decisions to invest any trust fund under a preneed contract with those individuals or entities contained in §§ 436.445(1) through (4), who are, or may be, related to that preneed contract or trust;
- (2) The trustee investment restrictions contained in §§ 436.445(1) through (4) shall not apply to those individuals or entities related to other preneed contracts or trusts.

Authority: 333.340, 436.445 and 436.520

APPROVED

Emergency Rule re: Independent financial adviser is agent of trustee

Title: Independent financial adviser is agent of trustee.

Purpose: This rule clarifies that an independent financial advisor is an agent of the trustee in a trust-funded preneed contract.

An independent financial advisor, as provided in § 436.440.6, RSMo, is an agent, as provided in § 436.440, RSMo, of the trustee.

Authority: 333.340, 436.440.6 and 436.520

APPROVED

Emergency Rule re: Seller requirements upon change of provider

Title: Seller requirements for disposition of funds if elect to terminate duties under contract upon change of provider.

Purpose: This rule describes a seller's requirements for disposition of funds if the seller elects to terminate his or her duties upon a change of provider.

- (1) When a purchaser notifies the seller that a new provider has been selected, the seller shall have the option of continuing in the contract with the new provider or terminating his or her obligations under the contract.
- (2) The seller shall have the right to terminate his or her duties upon a change of provider on a contract by contract basis.
- (3) When the seller elects to continue his or her duties, the seller shall pay the new provider pursuant to the terms of the contract with the original provider. If the seller does not have a contract with the new provider, then the original preneed contract shall be cancelled upon the execution of a new preneed contract with the new provider.
- (4) When the seller elects to terminate his or her duties, for trust and joint account funded contracts, the old seller shall direct that the transfer of funds be made by wire transfer or other secure bank to bank transfer to the new seller's trust. At no time shall those funds be in the control of the purchaser. For insurance funded contracts, the policy shall be reassigned to the new seller in accordance with the terms of the policy or relevant insurance law.
- (5) In the event a new preneed contract is executed, the new seller shall not be entitled to an origination fee or any additional payments that the original seller may have been entitled to under Section 436.430.3 or .4.
- (6) For trust funded contracts, all property held in the trust, principal and income, shall be transferred to the new trust.

Authority: 333.340, 436.458 and 436.520

APPROVED

Rule re: What is irrevocable in an irrevocable contract

Title: Irrevocable contracts

Purpose: This rule states what portion of an irrevocable contract is irrevocable and what is revocable.

- (1) A purchaser may change providers pursuant to Section 436.458 even if the contract has been made irrevocable. However, if the contract has been made irrevocable, the purchaser shall not receive any refund of any funds paid on the contract; rather if the contract is trust or joint account funded and the new provider requires a new trust or joint account to hold the preneed funds, that transfer of funds shall be by wire transfer or other secure bank to bank transfer and at no time shall the funds be in the control of the purchaser. If the contract is insurance funded, the insurance policy shall be reassigned in the manner described in the policy or pursuant to relevant insurance law.
- (2) If a contract has been made irrevocable and a purchaser desires to change to a provider that has no contract with the seller, then the original preneed contract shall be cancelled upon the execution of a new preneed contract with the new seller. For trust and joint account funded contracts, the old seller shall direct that the transfer of funds be made by wire transfer or other secure bank to bank transfer to the new seller's trust. At no time shall those funds be in the control of the purchaser. For insurance funded contracts, the insurance policy shall be reassigned in the manner described in the policy or pursuant to relevant insurance law.

Authority: 333.340, 436.456, 436.458, and 436.520

APPROVED

Rule re: Record retention

Title: Seller record retention requirements

Purpose: This rule defines the requirements for maintaining records for preneed sellers.

- (1) All preneed sellers shall maintain adequate records of all preneed contracts and related agreements with providers, trustees, financial institutions and seller's agents.
- (2) The records shall be maintained within the State of Missouri in a format that is readily and easily accessible to the Board and its investigators.
- (3) The records shall be maintained in a manner that will prevent decay or degradation such that the records will be preserved over time.
- (4) Records can be maintained in hard copy or electronically but all must be readily accessible.
- (5) All records must be readily capable of being copied and provided to the State Board upon request either immediately or as otherwise requested by the Board.
- (6) Sellers who maintain electronic records shall make hard copies of the records available to providers, trustees, purchasers, agents or the Board upon request.
- (7) Records may be removed by the seller from the State of Missouri but only after a written request is made for such removal that includes a means to ensure that the records remain available for inspection within the State of Missouri and written approval is provided by the Board.

Authority: 333.340, 436.465 and 436.520

APPROVED

Rule re: Provider ceasing business

Title: Requirements of provider ceasing business

Purpose: This rule sets out requirements for a provider who ceases providing under preneed contracts.

- (1) If a provider of a preneed contract ceases doing business, the provider shall make all reasonable good faith efforts to find a new provider to serve under all existing contracts.
- (2) If a provider is unable to find any new providers to serve under the provider's existing contracts, the provider shall, no later than 30 business days before the provider winds up his business:
 - a. Provide written notice to the seller, seller's agent, purchaser, and Board that despite good faith efforts replacement providers could not be found;
 - b. In the case of trust-funded contracts, provide written notice to the trustee and/or corporate contact that the provider is winding up his business and no replacement provider was found;
 - c. In the case of insurance contracts, provide written notice to the insurance company and/or corporate contact that the provider is winding up his business and no replacement provider was found;
 - d. In the case of joint account funded contracts, provide written notice to the financial institution and/or corporate contract that the provider is winding up his business and no replacement provider was found.
 - e. Provide written notice to the purchaser of their right to obtain a new provider.
- (3) The provider shall provide written notice consistent with the rules promulgated pursuant to Sections 436.400 to 436.520, RSMo.

Authority: 333.340, 436.490 and 436.520

APPROVED

Rule re: Seller ceasing business

Title: Requirements of a seller ceasing business

Purpose: This rule sets out requirements for a seller ceasing business under preneed contracts.

- (1) If a seller of a preneed contract ceases doing business, the seller shall make all reasonable good faith efforts to find a new seller to ensure service of all existing contracts.
- (2) If a seller is unable to find any new sellers to service the seller's existing contracts, the seller shall, no later than 30 business days before the seller winds up his business:
 - a. Provide written notice to each provider, seller's agent, purchaser, and to the Board that despite good faith efforts replacement sellers could not be found;
 - b. In the case of trust-funded contracts, provide written notice to each trustee that the seller is winding up his business and no replacement seller was found;
 - c. In the case of insurance contracts, provide written notice to each insurance company that the seller is winding up his business and no replacement seller was found;
 - d. In the case of joint account funded contracts, provide written notice to each financial institution that the seller is winding up his business and no replacement seller was found.
- (3) As part of its cease doing business report, the seller shall file with the Board a final annual report for a reporting period from September 1 of the previous year to the date of the seller's cease of business. This report shall be made as an attachment to the cease doing business report and shall be made on the form provided by the Board for annual reports and shall comply with all requirements of the seller's annual report.
- (4) The seller shall provide the Board with a written statement showing how it will comply with the seller's contractual, fiduciary and other obligations as set forth in § 436.500.
- (5) Any person with unfulfilled preneed contracts who was registered with the Board as a seller on August 27, 2009 and had not filed cease doing business

forms with the Board before August 28, 2009, shall be required to file a cease doing business report in compliance with Section 436.500 and this and any other rules if they do not seek application for a Seller's license by October 31, 2009. This cease doing business report shall be due by close of business on October 31, 2009.

Authority: 333.340, 436.500 and 436.520

APPROVED

Rule re: Seller cancellation of contracts

Title: Seller cancellation of contracts

Purpose: This rule explains the requirements of a seller upon cancellation of a preneed contract.

- (1) The provisions of Section 436.457, RSMo allowing a seller to cancel a contract shall apply only to joint account and trust-funded contracts.
- (2) An insurance funded preneed contract may be cancelled by the seller if the seller receives notification that the insurance policy funding the contract has been cancelled.

Authority: 333.340, 436.457 and 436.520

APPROVED

Rule re: Requirements of seller annual reports

Title: Requirements for seller's annual reports.

Purpose: This rule clarifies the requirements for a seller's annual report.

- (1) Every seller of preneed contracts shall file an annual report on a form provided by the Board;
- (2) The report shall identify, by a number assigned to the contract, each and every contract sold since the last annual report. Only one number shall be assigned to each contract and no number shall be used more than once.
- (3) Each annual report shall be signed by an officer, director or manager in charge and the signer shall certify, under oath, that the annual report is complete and accurate and the annual report shall be notarized.
- (4) If a seller fails to file its annual report on or before October 31 of each year, then the seller's license shall be suspended as of November 1 and shall remain suspended until the seller has filed its annual report, its annual renewal form and paid all fees due.
- (5) Any seller who continues to engage in any activities of a preneed seller during the time that its license is suspended may be subject to all authorities and powers of the State Board, the Office of the Attorney General and the seller's local prosecutors.

Authority: 333.340, 436.460 and 436.520

APPROVED

Rule re: Disposition of funds upon cancellation by the purchaser

Title: Disposition of funds in a trust-funded contract upon cancellation by the purchaser

Purpose: This rule explains the disposition of funds in a trust-funded contract upon cancellation by the parties.

- (1) When a purchaser elects to cancel a trust-funded preneed contract upon proper notice, the trustee shall distribute to the seller within 15 days of notice:
 - a. The principal of the trust, including all payments received; plus
 - b. The amount of funds distributed from the trust to the seller pursuant to § 436.430.4, RSMo.
- (2) The trustee shall not distribute the origination fee distributed to the seller pursuant to § 436.430.3, RSMo.
- (3) The seller shall within 30 days distribute the funds described in (1) above to the purchaser of the contract.

Authority: 333.340, 436.456 and 436.520

APPROVED

Rule re: Seller Obligations regarding payments

Title: Seller Obligations Regarding Payments

Purpose: This rule clarifies seller obligations regarding payments received.

- (1) Answer per contract fee assessed by the Board is an obligation to be paid by the preneed seller and not by the purchaser. However, if a seller passes this fee along to the purchaser, this fee shall be clearly noted on an invoice or statement provided to the consumer the amount charged and the purpose of this charge;
- (2) If the seller collects this per contract fee assessed by the Board, the seller should maintain records of this collection and be able to provide to the State Board an accounting of these funds. If the seller deposits these fees into the trust, the Trustee shall distribute those fees to the seller in September or October of each year so that the seller will have the funds available to pay those fees to the State Board.

Authority: 333.340, 436.415, 436.430, 436.450, 436.455, 436.460, 436.465 and 436.520

APPROVED

Rule re: Mandatory Consumer Disclosures

Title of Rule: Mandatory consumer disclosures

Purpose: This rule sets forth the mandatory consumer disclosures that must be provided to each purchaser of a preneed contract.

- (1) Each purchaser of a preneed contract shall be provided the following written mandatory consumer disclosures at or before the time the consumer signs the contract unless otherwise provided by rule.

Mandatory Preneed Contract Disclosures to Consumer

This Contract is a Legally Binding Document

Before you sign this contract, you should read it and make sure you understand all terms and conditions. You may wish to consult with your legal counsel before you sign this contract.

Right to Receive a Copy of this Contract

You have a right to receive a copy of this contract and any accompanying documents related to this contract such as any life insurance policies or evidence of a joint account.

Right to Change Providers

The law gives you the right to change the provider named in this contract. The provider is the funeral home or other service provider who will provide the goods and services at the time of your death. If you want to change providers, you must provide both the seller and provider named in this contract with written notice that you wish to change providers and you must include the name and address of who you want to be your new provider. You may NOT be billed for any additional fees or charges to change providers. A change in providers requires the agreement of the new provider and may require a new preneed contract. Your seller and provider can help you determine whether a new contract is required or not.

Qualifying for Public Assistance

If you decide to seek qualification to receive Medicaid or other public assistance, you may sign an agreement to make this contract irrevocable at any time. Even if you have agreed to make this irrevocable as part of your qualification for public assistance, you still may change providers at any time and make changes to the goods and services at any time. However, you cannot cancel this contract and cannot receive any refund.

Your Right to Cancel this Contract

You have a right to cancel this contract at any time before your death. If you cancel this contract, you may not be entitled to receive all funds paid on this contract. If you want to cancel this contract, you must give the seller named in this contract written notice that you wish to cancel this contract.

If your contract is funded with a joint account, you must also provide written notice to the financial institution where your account is held. The financial institution must give you the principal in the account within 15 days of your request. Interest will be distributed as provided in this contract.

If your contract is funded with an insurance policy, canceling the contract will NOT cancel the insurance policy. You must follow the policies of the insurance companies to cancel the insurance policy. If you cancel the insurance policy, you will receive only the cash surrender value of the policy which may be less than what you have paid into the policy.

If your contract is funded with a trust, you must also provide written notice to the trustee. The trustee shall then distribute all funds held on your behalf in the trust within 15 days.

Seller's Right to Cancel This Contract

The seller may cancel this contract if you fail to make any installment payment within 60 days of when it is due. Before the seller can cancel the contract, the seller must provide you with written notice of the intent to cancel the contract and you may bring your account current within 30 days of notice. If you don't pay the balance within 30 days, then the seller can provide the funds to the provider at the time of death to be credited towards your funeral services or the seller can cancel the contract and will refund you 85 percent of your contract payments made.

What Happens if I Die Before My Contract is Paid in Full?

If you die before the contract is paid in full, your survivors have the option in trust funded or joint account funded contracts to pay the balance due on the contract and receive all goods and services that have been price guaranteed. If the balance is not paid, the amount paid on your contract will be applied to the price of your funeral based on the provider's current prices.

If your preneed contract is funded through an insurance policy, you should consult your insurance policy.

Authority: 333.340, 436.425, 436.456, 436.457 and 436.520