

ATTORNEY GENERAL AUTHORITY

The Working Group approved the following **UNANIMOUS RECOMMENDATIONS**:

If a violation of Chapter 436 is found after an investigation, audit or examination, the Attorney General, with the consent and cooperation of the Division of Finance, the Office of the Comptroller of Currency or the Federal Deposit Insurance Corporation, should be authorized to initiate a judicial proceeding to:

- Declare rights.
- Approve a nonjudicial settlement.
- Appoint or remove a trustee.
- Interpret or construe the terms of the trust.
- Determine the validity of a trust or its terms.
- Compel a trustee to report or make an accounting.
- Enjoin a trustee from performing a particular act or to grant the trustee any necessary or desirable power.
- Review the actions of the trustee, including the exercise of any discretionary power.
- Determine trustee liability and to grant any available remedy for breach of a trust.
- Approve employment and compensation of agents.
- Determine the propriety of investments.
- Determine the timing and quantity of distributions and disposition of assets.
- Utilize any other power vested in the attorney general.

! Comments:

- *MFDEA recommended that any legislation should clearly provide that liability, remedies and injunctions should be determined by a court and not the Attorney General. Alternatively, Stalter Legal Services also suggested that Missouri should consider a preneed reporting system that provides a grading of a sellers' compliance with preneed law, as currently employed by the Texas Department of Banking. Stalter commented that the industry and consumers should be afforded transparency with regard to preneed compliance or regulators will continue to bear full responsibility for identifying and addressing potential abuses.*
- *The Division of Finance ("DOF") expressed concerns regarding granting the Attorney General authority to pursue judicial remedies against trustees and appears to grant full enforcement authority to the Attorney General, in addition to the powers granted under Chapter 407. DOF commented the proposal would give the Attorney General authority to initiate a review of the discretionary acts of the trustee which would render the Attorney General a de facto bank regulator with respect to pre-need trusts on par with the DOF, the OCC and the FDIC. DOF indicated this approach would raise federal pre-emption issues with federally chartered institutions and could potentially interfere with the discretion and duties of the DOF. If this provision is included, DOF suggested the litigation and reputation risks for banks accepting a preneed account will be higher. Accordingly, DOF suggested that statutory implementation of this proposal would need to be reviewed very carefully.*