

## **Board members--qualifications--terms--vacancies.**

333.151. 1. The state board of embalmers and funeral directors shall consist of ten members, including one voting public member appointed by the governor with the advice and consent of the senate. Each member, other than the public member, appointed shall possess either **a license to sell preneed**, a license to practice embalming or a license to practice funeral directing in this state or **[both] any** said licenses and shall have been actively engaged in the practice of **preneed selling**, embalming or funeral directing for a period of five years next before his or her appointment. Each member shall be a United States citizen, a resident of this state for a period of at least one year, a qualified voter of this state and shall be of good moral character. Not more than five members of the board shall be of the same political party. The nonpublic members shall be appointed by the governor, with the advice and consent of the senate, one from each of the state's congressional districts be of good moral character and submit **[an audited] financial statements** of the~~[ir]~~ funeral establishment **or preneed seller set out on their license. Said financial statements must be [by an independent auditor]** for the previous five years~~[. This audited financial statement must]~~ **and** include all at-need and preneed business.

## **Applicability of law.**

333.310. The provisions of sections 333.310 to 333.340 shall not apply to a cemetery operator **licensed pursuant to R.S.Mo. Section 214.275** who sells contracts or arrangements for **funeral merchandise or** services for which payments received by, or on behalf of, the purchaser are **deposited either to an escrow account, or a preneed trust, governed by an agreement approved by the Office of Endowed Care Cemeteries** **[required to be placed in an endowed care fund or for which a deposit into a segregated account is required under chapter 214, RSMo;],** provided that a cemetery operator shall comply with sections 333.310 to 333.340 if the contract or arrangement sold by the operator includes services that may only be provided by a licensed funeral director or embalmer.

## **Registration as a preneed agent required--application procedure--renewal of registration--expiration of registration.**

333.325. 1. No person shall sell, negotiate, or solicit the sale of preneed contracts for, or on behalf of, a seller unless registered with the board as a preneed agent except for individuals who are licensed as funeral directors under this chapter. The board shall maintain a registry of all preneed agents registered with the board. The registry shall be deemed an open record and made available on the board's web site.

2. An applicant for a preneed agent registration shall be an individual who shall:

(1) File an application on a form established by the board and pay an application fee in an amount established by the board by rule which shall not exceed fifty percent of the application fee established by the board under this chapter for a funeral director license;

(2) Be eighteen years of age or older;

(3) Be otherwise eligible for registration under section 333.330;

(4) Have successfully passed **those portions of** the Missouri law examination [as] designated by the board **by regulation or rule**;

(5) Provide the name and address of each seller for whom the applicant is authorized to sell, negotiate, or solicit the sale of preneed contracts for, or on behalf of[.]; **and**

**(6) Successfully completed any internship or training that the board may require through regulations or rules.**

### **Definitions.**

436.405. 1. As used in sections 436.400 to 436.520, unless the context otherwise requires, the following terms shall mean:

(3) "Insurance-funded preneed contract", a preneed contract which is designated to be funded by payments or proceeds from an insurance policy or **[single annuity] annuity contract that is purchased within one year of the issuance of the contract**;

(4) "Joint account-funded preneed contract", a preneed contract which designates that payments for the preneed contract made by or on behalf of the purchaser will be deposited and maintained in a joint account in the names of the purchaser and seller, **or in the name of the seller but for the benefit of the purchaser**, as provided in this chapter;

436.410. The provisions of sections 436.400 to 436.520 shall not apply to any contract or other arrangement sold by a cemetery operator **licensed pursuant to R.S.Mo. Section 214.275** for which payments received by or on behalf of the purchaser are **deposited either to an escrow account, or a preneed trust, governed by an agreement approved by the Office of Endowed Care Cemeteries** [required to be placed in an endowed care fund or for which a deposit into a segregated account is required under chapter 214, RSMo;], provided that a cemetery operator shall comply with sections 436.400 to 436.520 if the contract or arrangement sold by the operator includes services that may only be provided by a licensed funeral director or embalmer.

### **Contract form, requirements--voidability of contract--waiver of contract benefits for public assistance recipients.**

436.425. 1. All preneed contracts shall be sequentially numbered and in writing and in a font type and size that are easily read, and shall clearly and conspicuously:

(14) Include **[any applicable] consumer disclosures** required by the board by rule **that are applicable to the seller's preneed contract form**; and

2. A preneed contract shall be voidable and unenforceable at the option of the purchaser, or the purchaser's legal representative, if it is determined in a court of competent jurisdiction that the contract is not in **material** compliance with this section or not issued by a seller licensed under chapter 333, RSMo, or if the provider has not consented to serve as provider at the time the contract was executed. Upon exercising the option by written notice to the seller and provider, all payments made under such contract shall be recoverable by the purchaser, or the purchaser's legal representative, from the contract seller, trustee, or other payee thereof.

### **Trust-funded preneed contract requirements.**

436.430. 1. A trust-funded guaranteed preneed contract shall comply with sections 436.400 to 436.520 and the specific requirements of this section.

2. A seller must deposit all payments received on a preneed contract into the designated preneed trust within sixty days of receipt of the funds by the seller, the preneed sales agent or designee. A seller may not require the consumer to pay any fees or other charges **[except as authorized]** **prohibited** by the provisions of chapter 333, RSMo, and this chapter **and regulations promulgated thereunder**, or **[other state or]** federal law.

3. A seller may request the trustee to distribute to the seller an amount up to the first five percent of the total amount of any preneed contract as an origination fee. The seller may make this request at any time after **[five percent of the total amount of the preneed contract has]** **such funds have** been deposited into the trust. The trustee shall make this distribution to the seller within fifteen days of the receipt of the request.

4. In addition to the origination fee, the trustee may distribute to the seller an amount up to ten percent of the face value of the **good and services guaranteed [contract]** on a preneed contract at any time after the consumer payment has been deposited into the trust. The seller may make written request for this distribution and the trustee shall make this distribution to the seller within fifteen days of the receipt of the request or as may be provided in any written agreement between the seller and the trustee.

5. The trustee of a preneed trust shall be a state- or federally-chartered financial institution authorized to exercise trust powers in Missouri, **or other financial institution having the power to provide trust services that has been approved by the Board**. The trustee shall accept all deposits made to it for a preneed contract and shall hold, administer, and distribute such deposits, in trust, as trust principal, under sections 436.400 to 436.520.

10. The seller and provider of a trust-funded guaranteed preneed contract shall be entitled to all income, including, but not limited to, interest, dividends, capital gains, and losses generated by the investment of preneed trust property regarding such contract as stipulated in the contract between the seller and provider, **upon performance of the contract**. Income of the trust, excluding expenses allowed under this subsection, shall accrue through the life of the trust, except in instances when a contract is cancelled. The trustee of the trust may distribute market

value of all income, net of losses, to the seller upon, but not before, the final disposition of the beneficiary and provision of the funeral and burial services and facilities, and merchandise to, or for, the benefit of the beneficiary. This subsection shall apply to trusts established on or after August 28, 2009.

### **Compliance of contracts entered into prior to effective date--investment of trust property and assets--loans against assets prohibited.**

436.435. 1. To the extent that any provisions in this chapter which come into effect on August 28, 2009, apply to trusts governed under this chapter which are in existence on August 28, 2009, such trusts shall be in compliance with this chapter no later than July 1, 2010.

4. A trustee shall diversify the investments of the trust unless the trustee reasonably determines that, because of special circumstances, the purpose of the trust is better served without diversification. **The trustee shall set out such determination in writing, to be included in the books and records that are made available to the Board and its agents and designees.**

### **Trustee not to make decisions, when.**

436.445. A trustee of any preneed trust, including trusts established before August 28, 2009, shall not after August 28, 2009, **[make any decisions to invest any trust fund] that contracts with any of the following to serve as an investment advisor for the trust shall make a written disclosure in a format as prescribed by the Board:**

- (1) The spouse of the trust[ee] **officer assigned to the trust;**
- (2) The descendants, siblings, parents, or spouses of a seller or an officer, manager, director or employee of a seller, provider, or preneed agent;
- (3) Agents or attorneys of a trustee, seller, or provider; or
- (4) A corporation or other person or enterprise in which the trustee, seller, or provider owns a controlling interest or has an interest that might affect the trustee's judgment.

### **Joint account-funded preneed contract requirements.**

436.455. 1. A joint account-funded preneed contract shall comply with sections 436.400 to 436.520 and the specific requirements of this section.

2. In lieu of a trust-funded or insurance-funded preneed contract, the seller and the purchaser may agree in writing that all funds paid by the purchaser or beneficiary for the preneed contract shall be deposited with a financial institution chartered and regulated by the federal or state government authorized to do business in Missouri in an account in the joint names and under the joint control of the seller and purchaser, beneficiary or party holding power of attorney over the beneficiary's estate. **If the establishment of a joint account pursuant to this section is found**

**to violate the policies of the financial institution, the seller may establish a depository account for the benefit of purchaser, with the seller as owner of the account.** There shall be a separate [joint] account established for each preneed contract sold or arranged under this section. Funds shall only be withdrawn or paid from the account upon the signatures of both the seller and the purchaser or under a pay-on-death designation or as required to pay reasonable expenses of administering the account.

3. All consideration paid by the purchaser under a [joint] **depository** account-funded contract shall be deposited into a joint account as authorized by this section within ten days of receipt of payment by the seller.

### **Cancellation of contract, when, procedure.**

436.456. At any time before final disposition, or before the funeral or burial services, facilities, or merchandise described in a preneed contract are furnished, the purchaser may cancel the contract, if designated as revocable, without cause. In order to cancel the contract the purchaser shall:

(3) In the case of a trust-funded preneed contract, deliver written notice of the cancellation to the seller and trustee. Within fifteen days of receipt of notice of the cancellation, the trustee shall distribute one hundred percent of the trust property including any **income earned by the trust that would be required to fund the** percentage of the total payments received on the trust-funded contract that have been withdrawn from the account under subsection 4 of section 436.430 but excluding the income, to the purchaser of the contract;

(4) In the case of a guaranteed installment payment contract where the beneficiary dies before all installments have been paid, the purchaser shall pay the seller the amount remaining due under the contract in order to receive the goods and services set out in the contract, otherwise the purchaser or their estate will receive full credit for all payments the purchaser has made towards the cost of the beneficiary's funeral at the provider current prices.

### **Alternative provider permitted, when.**

436.458. 1. A purchaser may select an alternative provider as the designated provider under the original contract if the purchaser notifies the seller and original provider in writing of the purchaser's intent, stating the name of the alternative provider and the alternative provider consents to the new designation. Purchasers shall not be penalized or assessed any additional fee or cost for such transfer of the provider designation.

3. In the case of a trust-funded contract and upon written notice to the seller of the purchaser's intent to select an alternative provider under subsection 1 of this section, the seller shall either continue the trust with the new provider in place of, and to receive all payment owed to, the original provider under the original agreement, or pay to the new trust all of the trust property, including principal and income. **If the alternative provider does not transfer the contract's trust property to a new trust, the alternative provider shall be deemed to have agreed to the terms of the trust agreement governing the contract.**

## **Violations, penalties.**

436.485. 1. Any person, including the officers, directors, partners, agents, or employees of such person, who shall knowingly and willfully violate or assist or enable any person to violate any provision of sections 436.400 to 436.520 by incompetence, misconduct, gross negligence, fraud, misrepresentation, or dishonesty is guilty of a class C felony. Each violation of any provision of sections 436.400 to 436.520 constitutes a separate offense and may be prosecuted individually. The attorney general shall have concurrent jurisdiction with any local prosecutor to prosecute under this section.

2. Any violation of the provisions of sections 436.400 to 436.520 shall constitute a violation of the provisions of section 407.020, RSMo. In any proceeding brought by the attorney general for a violation of the provisions of sections 436.400 to 436.520, the court may order all relief and penalties authorized under chapter 407, RSMo, and, in addition to imposing the penalties provided for in sections 436.400 to 436.520, order the revocation or suspension of the license or registration of a defendant seller, provider, or preneed agent, **and the recovery of all expense of any audit or examination conducted of the funding of seller's preneed contracts.**