

Board members--qualifications 333.151. 1.

The first proposed addition would be to provide preneed sellers representation on the board. The second change would clarify the member need not be an establishment owner. The third change would eliminate the burden of audited financials.

Cemetery Exemption 333.310

Licensed cemeteries that sell preneed will be subject to regulation by the Office of Endowed Care Cemeteries, and therefore should be exempt from Chapter 333 licensing. The proposal would not exempt a cemetery that is not regulated by the OECC.

Preneed Agent Licensing 333.325

These inserts are intended to provide the board more flexibility in structuring the Missouri law test and establishing internships for preneed agents.

Definitions – Insurance-funded preneed contract 436.405.1.(3)

Restricting insurance funding to single premium annuities provides little protection or benefit to the consumer, and unnecessarily restricts the funeral home.

Definitions – Joint account-funded preneed contract 436.405.1.(4)

Banks are responding to the Patriot Act by imposing greater restrictions on the use of the joint account. To preserve a depository account funding method for the smaller operators, the revision would allow for depository accounts set up in the funeral home's name, that are for the benefit of the purchaser.

Cemetery Exemption 436.410

The Chapter 436 cemetery exemption will need to mirror the Chapter 333 provision.

Contract Form Requirements 436.425.1.(14)

The proposal provides flexibility to operators to include only those disclosures applicable to their contract form.

Contract Form Requirements 436.425.2

The inserted language will avoid strict liability to a seller when a contract has a technical violation of the law.

Trust-funded preneed contract requirements

436.430.2 – Sellers should be permitted to charge fees that are not otherwise prohibited by law (or by Board regulation). Obtaining Board approval of any issue not specifically authorized by statute has been impossible to obtain in the past.

436.430.3 – Deferring distribution of the 5% origination fee until the entire amount has been received creates an administrative burden. As with the 10% fee, the law should permit the seller to request the origination fee as it is received.

436.430.4 – The 10% fee has been discussed as compensation to the seller for guarantying the price of goods and services. Some operators are confused by the current language, and assert the 10% can also be claimed on amounts received for cash advance funds and non-guaranteed contracts.

436.430.5 – The qualification requirements of Missouri's foreign fiduciary statute are strenuous for the entity that only accepts preneed trust funds. The proposed language is intended to provide the Board the authority to set standards for foreign fiduciaries.

436.430.10 – For some operators, this provision is too similar to the prior law (which allowed the withdrawal of current income). The revision is meant to clarify that income can only be withdrawn upon the performance of the contract.

Compliance of contracts entered into prior to effective date 436.435.4

The revision would require the fiduciary to provide an explanation for the decision to not diversify a preneed trust.

Trustee not to make decisions 436.445

The Uniform Trust Act establishes a presumption of conflict for personal trustees. That standard was 'borrowed' and applied to corporate trustees. This language creates a burdensome restriction on fiduciaries that permit the use of independent investment advisors. Certain relationships merit disclosure and supervision, but they should not be strictly prohibited. The code provisions from which this language was borrowed does not impose a strict prohibition.

Joint account-funded preneed contract requirements 436.455

The revision would provide small operators the authority to establish depository accounts 'for the benefit' of the purchaser when a bank's policies preclude the joint account structure contemplated by the current law.

Cancellation of contract 436.456

This revision would clarify that the trustee can only refund a cancellation from the assets of that contract's trust assets.

Alternative provider permitted 436.458

If the alternative provider does not have a trust, the revision would clarify that the alternative provider will be subject to the terms of the existing trust instrument.

Violations, penalties 436.485

The burden of pursuing non-compliant sellers should be shifted from the state fee to the seller when a showing of material non-compliance has been established in an administrative proceeding. If the state fee is driven high by costly litigation, the industry should not be forced to bear that burden.