

Board Directives for Preneed Seller Financial Examinations, beginning in 2016

Staff Recommendation

After research, consultation with other agencies and utilizing in house resources, staff and counsel make the following recommendation for preneed seller financial exams to begin in January, 2016 and to continue until such time as the Board determines it is necessary to amend these directives:

General Board Directives to Staff

1. Examinations are done to fulfill the Board's statutory direction in Section 436.470, RSMo, to conduct financial examinations of each preneed seller at least once every 5 years.
2. Examinations are done within the scope of the Board's statutory authority and to fulfill the Board's purpose of protecting the public by ensuring that preneed sellers are complying with their statutory requirements and duties.
3. Examinations are done for the purpose of ensuring that sellers are safeguarding preneed funds and that the funds are properly utilized per contracts with the consumer and in accord with statutory requirements.
4. Staff shall work diligently and with good faith and fairness to ensure that each financial exam is conducted lawfully and with professional conduct to fulfill the Board's directives.
5. Staff is directed to prepare a written financial exam procedures handbook to be used by all examiners in conducting financial examinations. Staff will provide the Board an update as to the status of the procedural handbook at the Fall 2016 meeting of the Board.
6. Staff may request information from sellers, as authorized by statute, as part of any financial examination, may utilize techniques required to confirm information provided by sellers including contacting preneed contract purchasers to confirm payments made and utilizing any of the other statutory authorities granted to the Board to ensure final reports on financial examinations are as accurate as possible. Staff may request information from sellers, consumers, from providers, from preneed agents, from banks and from other fiduciaries, but staff must seek Board approval to utilize any court or administrative process to require any person to comply with any staff request for information.

Scope of Exams

7. For all preneed sellers, the examiners shall confirm:
 - a. Seller's seller license is current and active; (§ 333.320, RSMo)
 - b. Seller affirms that it has provided the Board with copies of all preneed contracts, as requested; (§ 436.420, RSMo)
 - c. Preneed contracts meet the minimum statutory requirements; (§ 436.425, RSMo)
 - d. Seller maintains adequate records of preneed contracts and related agreements; (§436.465, RSMo)
 - e. Seller provides written notification to consumers of any change in funding source; (§436.425, RSMo)

- f. Consumer funds are properly and timely deposited and consumer payments are tracked by the seller; (§§ 436.430, .450 and .456, RSMo)
 - g. Seller has contracts with its providers and trustee; (§§ 333.320 and 436.420, RSMo)
 - h. Seller maintains its fulfilled contracts and related records for 5 years; (§ 436.465, RSMo)
 - i. Seller records confirm seller's reporting on annual reports; (§ 436.460, RSMo)
 - j. Seller properly handled cancellations or transfers in accordance with statute; (§ 436.456, RSMo)
 - k. Seller complies with statutes regarding payments at death of preneed beneficiary; (§§ 436.430, .450, .455, RSMo)
 - l. The examiner shall also note in the financial examination report any other findings that the seller is not in compliance with provisions of Chapters 333, 436, RSMo, related to being a preneed seller;
 - m. Staff shall look at 100% of all active preneed contracts that have been sold since the last financial examination and may look at a sampling of other active and fulfilled preneed contracts, at the direction of the financial supervisor and Executive Director, as required to assure fulfillment of the general directives of the Board as set forth in these guidelines.
8. For trust funded preneed contracts, the examiner shall also:
- a. Confirm that the trust agreement complies with statutory requirements found in Chapters 333 and 436, RSMo.;
9. For joint account funded preneed contracts, the examiner shall also:
- a. Confirm that joint accounts are under joint control of the seller and the purchaser; (§436.455, RSMo)
 - b. Confirm that 100% of consumer paid funds are in the joint account; (§436.455, RSMo)
10. For insurance funded preneed contracts, the examiner shall also:
- a. Confirm that the seller is not the owner of the insurance policy, for preneed contracts under the new law; (§ 436.450, RSMo)

Financial Examination Evaluation Procedures

1. For each financial examination, the examiner shall prepare a financial examination report with any necessary attachments to be submitted to the financial supervisor.
2. Upon receipt of a completed financial examination report, unless there is a need for immediate action as set forth in Sections 333.330.4 or 333.335, RSMo, Board staff shall send a copy of that financial examination report to the licensee for response and the licensee shall be given at least 30 days to file a written response with the Board. This response may dispute the findings and provide evidence to support the seller's response, it may present a plan to remedy the exceptions noted in the final examination report or it may provide any other response the seller wishes the Board to consider.
3. After the response time has passed, the financial examination report and the licensee's response shall be considered by the Examination Committee. The Examination Committee may take one of the following actions:
 - a. The Committee may accept the financial examination report if it has no exceptions or if all exceptions have been resolved and direct staff to close the exam;
 - b. The Committee may accept the seller's plan to resolve the exceptions and give the seller up to 18 months to resolve the exceptions, at the Committee's discretion;
 - c. The Committee may offer additional direction to the licensee as to what is required to resolve the exceptions and the Committee may offer the licensee additional time to resolve the exceptions, but no longer than 18 months unless there are special circumstances, at the Committee's discretion;
 - d. The Committee may refer the financial examination report and the seller's response to the full Board for further action.
4. The Examination Committee shall have no authority to seek any judicial action or to initiate any disciplinary process.
5. Upon direction by either the Examination Committee or the full Board to close a financial examination, Board staff shall provide the seller with a written notice that the exam has been closed.

