

**Title 20-DEPARTMENT OF INSURANCE, FINANCIAL INSTITUTIONS AND
PROFESSIONAL REGISTRATION**

Division 2120-State Board of Embalmers and Funeral Directors

Chapter 3 – Preneed

PROPOSED RULE

What Constitutes Adequate Records for a Seller

- 1. A seller shall maintain a copy of each fully executed preneed contract and all records with regard to all preneed contracts related to the receipt, the deposit, the disbursement of preneed funds, and the performance of the preneed contract and to comply with applicable statutes and regulations.**
- 2. Adequate records for a seller to maintain shall include:**
 - A. For all preneed contracts:**
 - (1) A copy of the executed preneed contract;**
 - (2) A copy of all terms of the preneed contract;**
 - (3) A copy of any attachments, additions, or documents supplemental to the preneed contract;**
 - (4) Records related to the funding source for the preneed contracts, and**
 - (4) All other records required by law to be maintained.**
 - B. For trust and joint account funded preneed contracts:**
 - (1) Records showing the date and amount of the funds received by the seller’s agent;**
 - (2) Records showing the date and amount of funds received by the seller;**
 - (3) Records showing the date and amount of the funds deposited into any account and identifying the institution receiving the deposits and the account into which funds are deposited;**
 - (4) If funds for a preneed contract are paid by the consumer directly to the financial institution, the seller shall maintain, or be able to access, records from the financial institution showing the dates and amounts of each deposit and the name of the preneed contract beneficiary for each deposit made; and**
 - (5) Records showing any disbursement from a preneed trust or joint account for any purpose other than cancellation or fulfillment of a preneed contract with a description of the purpose for the disbursement, and the date, amount and to whom the payment was made.**
 - C. For insurance funded preneed contracts, if the seller or the seller’s agent receives payment from the consumer for the insurance:**
 - (1) Records that show the date, the name of the person paid, a description of any consumer payments received, and records showing any account into which those funds are deposited; and**
 - (2) Records showing the date, the name of the person or entity paid, and description of payments to any insurance company.**

D. For all fulfilled preneed contracts:

- (1) Records showing seller's performance for fulfilled preneed contracts including:**
 - (a) Written certificate(s) of performance for each preneed contract fulfilled;**
 - (b) Requests to the financial institution and/or insurance company for payment;**
 - (c) Evidence of the date the seller received the funds from the financial institution or insurance company;**
 - (d) The account from which the funds were paid to the seller; and**
 - (e) All other records showing the seller's performance of the preneed contract.**
- (2) Documentation showing payment to the provider by the seller including the name of the person or entity to whom payments were made, the date and amount of each payment, and a description of payment to the provider;**
- (3) Records showing payments made to the state of Missouri or to any other person including the amounts paid, the dates paid and the name of the person paid; and**
- (4) If the provider receives payment from an insurance company as the named beneficiary of an insurance policy, then the seller shall maintain the following records:**
 - (a) Records showing notice received from the insurance company or the provider that the preneed contract has been fulfilled; and**
 - (b) Records of any payment from the insurance company that the insurance company provides to the seller or that the seller obtains from the provider or any other source.**

E. For any cancelled preneed contracts:

- (1) All records providing any sort of notice to the seller of the cancellation of a preneed contract; and**
- (2) All records showing the date, name of who is paid, the amount paid out and a description of the type of payment made to any purchaser or any other person upon cancellation of any preneed contract, and the name and address to whom the payments were made.**

F. Copies of any agreements or contracts related to the practice of a preneed seller including, but not limited to, the following:

- (1) Preneed contracts;**
- (2) Trust agreements;**
- (3) trust administration agreements;**
- (4) Provider agreements;**
- (5) Preneed agent agreements,**
- (6) Insurance agreements,**
- (7) Insurance assignments;**
- (8) Insurance beneficiary designations;**
- (9) Investment advisors; and**
- (9) Any other contracts or other agreements between purchasers, beneficiaries, providers, sellers, agents, financial institutions, insurance companies, investment advisors and trustees related to preneed contracts or the holding of preneed funds;**

G. Copies of account statements for joint accounts, trust statements for trust accounts, and any statements received from insurance companies listing the insurance policies in effect and/or the status of any insurance policy that names the seller or the provider, on a preneed contract sold by the seller, as beneficiary or owner.

If these records are maintained in electronic format by the financial institution or insurance company, then the seller shall have the means to access those records and be able to provide the board with appropriate access to those records within the lawful bounds and authorities of the board;

- H. All information obtained or possessed by the seller related to any insurance policy used to fund any preneed contract that may include, but not be limited to, a copy of the insurance policy, any assignment or beneficiary designations, and the status of any insurance policy.**

Nothing in this regulation shall require the seller to affirmatively obtain records from the insurance company, but if the purchaser, beneficiary, insurance company, or any other person provides the seller with this information, the seller shall be required to maintain those records; and

- I. Any written (including electronic) communications between the seller and any preneed agent, provider, trustee, investment advisor, insurance company, purchaser and/or beneficiary of the preneed contract and any other person related to preneed contracts and the funding of those preneed contracts;**

- 3. All records required to be maintained by a seller may be maintained in paper or electronic or a combination of paper and electronic formats, but shall be maintained in a manner such that the required information may be retrieved and provided to the board in a timely manner, upon request in accordance with the statutes and regulations governing the board.**
- 4. The standards set forth in this rule are stated only as minimum standards. Each seller may maintain any records in addition to those set forth in this rule. In addition, if the board determines that it is unable to fulfill its statutory duties from the records maintained by any seller, the board may request records in addition to those listed in this rule so as to complete its statutory duties.**

**MISSOURI
STATE BOARD OF EMBALMERS AND FUNERAL DIRECTORS

FINANCIAL EXAMINATION PROCEDURE HANDBOOK**

AUGUST 2016

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The following directives on pages 3-5 were approved by the board on January 6, 2016.

Board Directives for Preneed Seller Financial Examinations, beginning in 2016

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.

End of directives

* Financial Examination Committee is official name of committee

Implementation

The following outlines staff implementation of the board's directives.

1. PRE ONSITE VISIT

- A random selection of preneed sellers is created using electronic means.
- From that random selection, examination notification letters are mailed to sellers, requesting specific information within thirty (30) days of letter date. Examination information is received in office and scanned for use by the examiners.
- Examiner supervisor assigns examination to examiner via email, pursuant to section 436.470.3.
- Examiner records scanned information from seller into a working document, including details of the contracts as provided, and conducts preliminary analysis of this information prior to the onsite visit.
- Upon completion of the preliminary analysis, examiner contacts seller to schedule the onsite visit.

2. ONSITE VISIT

- Examiner meets with person in charge or their representative to determine location of preneed contracts and related information, as well as the assigned work area. (See Preliminary Interview steps below.)

Preliminary Interview

The examiner may ask, at a minimum, the following questions in order to obtain sufficient information about the seller's practices.

1. Where are the files located?
 2. Who is the contact person for questions during and after the onsite visit?
 3. What are the funding sources used in the past and currently used, including specific names of trust companies, financial institutions, and insurance companies.
 4. How does seller handle cancellations and transfers (if this information was not already provided in the random examination information)?
 5. Discuss and provide the Financial Examination Attestation document and explain its purpose.
 6. Have seller's preneed contracts changed since the last examination?
 7. Ask for consumer payment information and current bank/trust/insurance reports, if not already provided previously.
- Examiner reviews contract files, following specific steps (listed under Scope of Examinations).
 - Examiner explains and obtains seller's signature on "Financial Examination Attestation" form (sample on page 12-13), which states that the seller has not used any preneed contracts as collateral or security for a loan, and that the seller has provided access to all records necessary to conduct the examination.
 - Examiner explains the current status of examination process to the seller's representative, including the possibility of a consumer letter mailing.

3. POST ONSITE VISIT

- Examiner creates a listing of those consumers randomly selected for consumer letters.
 - A. Criteria for consumer letters, which applies only to contracts that are trust funded and joint account funded: send to 100% of those still making payments or some evidence of a less than full payment, 5% of those already paid in full, and 100% of those with contracts but no payment made (that are still considered valid contracts and not just consumer “wishes” lists). Consumer letters are only derived from joint account-funded contracts or trust accounts when the trust is owned by the seller. Insurance-funded contracts and contracts through other sellers are NOT included in the consumer letter mailing, as well as no letters for pre-1982 contracts.
 - B. Discrepancies from consumers are noted (examiner to refer to seller for explanation prior to writing up report).
 - C. If no contact is made by the consumer, the examiner assumes the consumer considers the information as correct.
- Examiner conducts further analysis of data.
- Examiner contacts seller or visits again to discuss any concerns/discrepancies, sending list of any questions to seller.
- Examiner prepares final examination report.

4. POST ONSITE EVALUATION

- Final examination report is reviewed by examiner supervisor and executive director.
- Unless there is a need for immediate action as set forth in sections 333.330.4 or 333.335, RSMo, board staff will send a copy of the financial examination report to the seller and the seller is given at least 30 days to provide a written response to the board. The response may dispute the findings and provide evidence to support the seller’s response, it may present a plan to remedy the exceptions noted, or it may provide any other response the seller wishes the board to consider.
- Examination report and seller’s response is reviewed by the financial examination committee (committee), who may take one of the following actions:
 - a. Accept the final examination report if it has no exceptions or if all exceptions have been resolved and direct staff to close the exam;
 - b. Accept the seller’s plan to resolve the exceptions and give the seller additional time (up to 18 months) to resolve the exceptions, at the committee’s discretion;
 - c. Offer additional direction to the seller as to what is required to resolve the exceptions and the committee may offer the seller additional time to resolve the exceptions, but no longer than 18 months unless there are special circumstances, at the committee’s discretion;
 - d. Refer the financial examination report and the seller’s response to the full board for further action.
- The committee shall have no authority to seek any judicial action or to initiate any disciplinary process.
- Upon direction by either the committee or the full board to close a financial examination, board staff shall provide the seller with a written notice that the financial examination has been closed.

5. SCOPE OF FINANCIAL EXAMINATION

A. General

For all preneed sellers, the examiners shall confirm:

- 1) Seller license is current and active;
- 2) Seller affirms it has provided the board with copies of all preneed contracts by signing the Financial Examination Attestation form;
- 3) Preneed contracts meet the minimum statutory requirements (Section 436.425);
- 4) Seller maintains adequate records of preneed contracts and related agreements;
- 5) Seller obtains written consent from purchaser of any change in funding type for contracts after August 28, 2009;
- 6) Consumer funds are properly and timely deposited and consumer payments are tracked by the seller. Examiner will conduct a sampling of consumer payments (5% of contracts entered since previous exam) to check for timeliness of deposits, depending on the funding source, as required by statutes. (Trust payments must be deposited within 60 days of receipt, insurance payments must be remitted within 30 days of receipt, and joint account funds must be deposited within 10 days of receipt);
- 7) Seller has contracts with its providers and trustee; (examiner will confirm the existence of trust agreements and any agreements with providers, if applicable)
- 8) Seller maintains its fulfilled contracts and related records for 5 years;
- 9) Seller records are in agreement with seller's reporting on annual reports;
- 10) Seller properly handled cancellations or transfers in accordance with statute;
- 11) Seller complies with statutes regarding payments at death of preneed beneficiary;
- 12) 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;
- 13) Staff shall look at 100% of all active preneed contracts that have been sold since the period covered under the last financial examination and may look at a sampling of other active and fulfilled preneed contracts, at the direction of the executive director and examiner supervisor, as required to assure fulfillment of the general directives of the board as set forth in these guidelines.

B. Applicable To All Contracts

- 1) During on-site visit, examiner is to review the actual contract file, checking for the following below, and also recording any additional contracts found onsite but not previously provided to ensure compliance with statutory requirements of Section 436.425 RSMo. (*Note: it is acceptable for seller to use the preprinted contract numbers stamped on the contract, such as standard preneed contracts from an insurance company or other seller*) Each contract shall clearly and conspicuously:
 - a) Be in writing and in a font type and size that are easily read.
 - b) Be sequentially numbered (Examiner will ask seller about their sequential numbering system if clarification is necessary.)
 - c) Include the name, address and phone number of the purchaser, beneficiary, provider and seller;
 - d) Identify the name, address, phone and license number of the provider and the seller;
 - e) Set out in detail the disposition, funeral and burial services and facilities, and merchandise requested, which could include that specifics will be determined at a later date or similar wording;

- f) Identify the funding source as either trust funded, insurance funded, or joint account funded (examiner will also confirm that the contract wording for funding is in agreement with the actual funding source);
 - g) Include notice that the cancellation of the contract shall not cancel any life insurance funding the contract, and that insurance cancellation is required to be made in writing to the insurer;
 - h) Include notice that the purchaser will only receive the cash surrender value of any insurance policy funding the contract if cancelled after a designated time, which may be less than the amount paid into the policy;
 - i) Include notice that the board provides by rule that the purchaser has the right to transfer the provider designation to another provider;
 - j) Prominently identify whether the contract is revocable or irrevocable;
 - k) Set forth the terms for cancellation by the purchaser or by the seller;
 - l) Identify any preneed trust or joint account into which contract payments shall be deposited, including the name and address of the corresponding trustee or financial institution;
 - m) Include the name, address and phone number of any insurance company issuing an insurance policy used to fund the preneed contract;
 - n) Include the name and signature of the purchaser, the provider or its authorized representative, the preneed agent responsible for the sale of the contract, and the seller or its authorized representative;
 - o) Prominently identify whether the contract is a guaranteed or nonguaranteed contract;
 - p) Include any applicable consumer disclosures required by the board by rule;
 - q) Include a disclosure on all guaranteed installment payment contracts informing the purchaser what will take place in the event the beneficiary dies before all installments have been paid, including an explanation of what will be owed by the purchaser for the funeral services in such an event;
 - r) Comply with the provisions of sections 436.400 to 436.520 or any rule promulgated thereunder.
- 2) Examiner will collect copies of any documentation to support any exceptions.
 - 3) For any contract information previously provided by the seller on a printed report (trust report, insurance report, or bank account listing), examiner will compare previously reported information to the actual contract for consumer name, contract amount, consumer payments, etc. and note any differences. Examiner will note any contracts listed on trust, insurance or bank reports but contracts not found onsite, as well as any contracts found onsite but with no supporting funding source as noted in the contract. Examiner will also compare preneed contracts located onsite to preneed contracts listed on the annual renewals.
 - 4) Examiner will also record any additional contracts found onsite but not previously provided, as well as noting any insurance policies naming the seller as beneficiary, or assignee but lacking a preneed contract.
 - 5) Examiner will conduct a sample of cancelled contracts (minimum of 5, or all if less than 5 available) to ensure that cancellations were handled in accordance with statutes (section 436.456 for consumer cancellations and section 436.457 for seller cancellations).
 - 6) Examiner will conduct a sample of payments upon death of beneficiary (5%, minimum of 10 or all if less than 10 available, of fulfilled contracts), to ensure compliance with statutes.

- 7) Examiner will conduct a sample of consumer payments (5%, minimum of 20 or all if less than 20 available, of contracts entered since previous exam) to confirm timeliness of deposits by the seller.

C. Applicable to Trust Funded Preneed Contracts

- For trust funded contracts sold prior to August 28, 2009, seller could request trustee to distribute to the seller an amount up to 20% of the face value of the contract.
- For trust funded contracts sold after August 28, 2009, seller can request trustee to distribute to the seller an amount up to 15% of the face value of the contract, after 15% of consumer payments are made.
- Examiner's work product will include a calculation of the amount that should be in trust, taking into account the amount of consumer payments and allowable retainage percentage. This amount will be compared to the amount of deposits into the trust accounts, and any corresponding shortages will be noted and later forwarded to the seller for explanation.
- Examiner will also verify that while funds relating to two or more contracts may be deposited into and commingled in the same preneed trust, the trustee must maintain records to separately identify the payments, earnings, and distributions for each preneed contract.
- Examiner will confirm the existence of trust agreements, verifying that the seller is listed as the grantor and the financial institution is listed as the trustee.

D. Applicable to Joint Account Funded Preneed Contracts

- Examiner's work product will include a comparison of funds paid by the consumer to the amount held in the bank account on the consumer's behalf.
 - Funds are allowed to be held in savings accounts, checking accounts, passbooks, certificates of deposit, etc.
 - Funds deposited in the bank account must be at least as much as the total consumer payments. Any shortages will be noted and later forwarded to the seller for explanation.
- Examiner will verify that each consumer's funds are held in separate bank accounts.
- Examiner will also verify (by means of a written attestation received from each financial institution used by the seller) that the accounts are under joint control of the seller and consumer. If such joint control confirmation is not received from the financial institution through the initial receipt of examination information prior to the onsite, examiner will request seller to obtain such written confirmation from all financial institutions holding consumer funds.
- Titling of accounts is not specifically reviewed, but examiner will make inquiries for any questions.

E. Applicable to Insurance Funded Preneed Contracts

- A preneed contract is required in situations where seller has written documentation from an insurance company indicating they are the owner, beneficiary, or assignee of an insurance policy.
 - For contracts entered after August 28, 2009, the seller or provider must be named as the beneficiary or assignee of the life insurance policy funding the contract.

- For contracts entered prior to August 28, 2009, the seller was allowed to be the owner of the policy, but seller is prohibited from being the owner of the policy for contracts after August 28, 2009.
- If seller collected payments from the purchaser, payments shall be promptly remitted to the insurer pursuant to Section 436.450.3.
- If the seller is provided with an affiliated insurance report, the examiner will confirm that the report matches the preneed contracts.

F. Contracts of Other Sellers

- The examination process will include a review of any contracts held by other sellers for which the examined seller is provider.
- Any preneed contracts listed on such outside seller reports but not found onsite will NOT be noted, while any outside seller contracts found onsite but not listed on the affiliated report will be noted, taking into account any differences due to cutoff period of the contract report.
- Examiner will later send a letter to the outside seller, asking for confirmation of those contracts found onsite but not listed on the contract report.

G. Other

Chapter 436 vs 214: Prior to August 28, 2010, all preneed sales had to be under Chapter 436; cemeteries could only sell monuments/markers. If contract is prior to August 28, 2010, it is treated as all Chapter 436 except monuments, markers, and grave spaces. For contracts written after August 28, 2010, if the contract mentions 436 or states it is a 436 contract, then the entire contract is treated as under 436. If the contract (after August 28, 2010) is silent as to being 436 or 214, the examiner will analyze all pertinent facts to determine whether it is 436 or 214.