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Ken McGhee, Chairman
Missouri State Board of Embalmers and Funeral Directors
3605 Missouri Boulevard
PO Box 423
Jefferson City, MO 65102-0423

Re: Preneed Seller Records and Exam Guidelines

Dear Chairman McGhee:

I am requesting that the State Board's December 13th open agenda include a discussion of whether special meetings are needed for industry input on the scope of preneed financial examinations and seller record keeping requirements.

Please recall that the staff proposals on these matters drew input and criticism from the public at the December 2015 and January 2016 meetings. I also respectfully remind the Board that I and the MFDEA recommended special meetings to afford the industry an opportunity to provide input on these issues. But instead of scheduling a special meeting, the Board gave the staff an instruction to continue preneed examinations under the prior guidelines and to submit revised guidelines and record keeping proposals to the Board at the Fall 2016 meeting. The Board eventually rejected those revised proposals but allowed to stand the authorization of preneed examinations under the original guidelines.

It was generally accepted that the original examination guidelines would have to be broad so that the Board could assess the general state of seller preneed records. But the time has come to narrow the scope of the examination process, and to tailor the record keeping requirements to the Legislature's objective for SB1: verifying the security of consumer funds. Respectfully, I propose the attached examination guidelines and record keeping requirements.

Sincerely,



William Stalter

enclosures

Refocus the Examination Process:

Determining that Consumer Funds Being Remitted on Time

Problems with the current process:

- The current examination procedures are document/record based, and rely upon license discipline for enforcement.
- Too much emphasis is placed on contract compliance, and provider related issues.
- Past exams have proven time consuming and without measurable consumer protections.
- When the examination found the seller to have a funding deficiency, the Board lacked a plan for how to deal with the situation.
- The staff seemed opposed to using Section 436.485 to refer even the most egregious sellers to the local prosecutor.

The examination process should emphasize a goal that licensees can't dispute: ensuring that sellers are complying with SB1's fund handling requirements: Trust deposits within 60 days, joint account deposits within 10 days, and insurance deposits within 30 days.

The examination process will have three levels of review:

1. Level 1 will be used for sellers with no prior exam exceptions, or minor exceptions related to documentation issues. The Level 1 exam is primarily a desk audit conducted at the Division's offices, with a half day on site review of pre-identified serviced/canceled files.
2. Level 2 will be used for sellers with minor exceptions related to consumer funds handling, or multiple exceptions related to contract compliance, recordkeeping, [insert]
3. Level 3 will be used for sellers with multiple exceptions related to consumer funds handling, major exceptions for Chapter 436 compliance.

Sellers would be required to file a short quarterly form that reports aggregate contracts sales, consumer funds received, deposits made to trusts, banks and insurance within the 60/10/30 requirements, and deposits made outside of the required periods.

Failure to timely file two quarterly reports in any one year will elevate the seller from a level one exam to a level two exam.

A finding that two or more quarterly reports were prepared inaccurately will elevate the seller's exam to level two.

Level 1 Examination:

- A desk review of ten randomly picked contracts for compliance. (Desk)

- A review/reconciliation of a quarterly report from each year to the monthly payment/deposit record. (Desk)
- A reconciliation of bank transaction report (filtered for deposits) to quarterly reports (Desk)
- A reconciliation of insurance report to quarterly reports (Desk)
- A review of the trust's asset listing at the end of each year, and the trust report provided with audit document request. (Desk)
- Review of a Level 1 sampling of performed/canceled contract files (on site)
- Review contract files based on any irregularities noted through the desk audit (on site)
- Exit interview to discuss exceptions noted, files not found.

Level 2 Examination:

- A desk review of 10 randomly picked contracts for compliance. (Desk)
- A review/reconciliation of all quarterly reports to the monthly payment/deposit record. (Desk)
- A reconciliation of bank transaction report (filtered for deposits) to quarterly reports (Desk)
- A reconciliation of insurance report to quarterly reports (Desk)
- A review of the trust's asset listing at the end of each year, and the trust report provided with audit document request. (Desk)
- An on-site review of 20 randomly picked contracts for compliance (on site)
- Review of a Level 2 sampling of performed/canceled contract files with disbursement records from trust/bank/insurance (on site)
- Review contract files based on any irregularities noted through the desk audit (on site)
- Exit interview to discuss exceptions noted, files not found.

Level 3 Examination:

- A desk review of Seller's contract form for compliance. (Desk)
- A review/reconciliation of all quarterly reports to the monthly payment/deposit record. (Desk)
- A reconciliation of bank transaction report (filtered for deposits) to quarterly reports (Desk)
- A reconciliation of insurance report to quarterly reports (Desk)
- A review of the trust's asset listing at the end of each year, and the trust report provided with audit document request. (Desk)
- An on-site review of all contracts sold since last exam for compliance (on site)
- Review of a Level 3 review of performed/canceled contract files with disbursement records from trust/bank/insurance (on site)
- Review contract files based on any irregularities noted through the desk audit (on site)

- Meetings with seller and funding agent representatives (on site)
- Exit interview to discuss exceptions noted, files not found.

Corrective Actions

For minor exceptions, offer corrective options without license discipline. The examination can be left open to permit a follow up visit to ensure the correction option has been implemented.

For significant funding issues, offer an agreement to defer discipline proceedings if agreed upon remedial steps are implemented and maintained for one year. (Increasing the trusting percentage; reducing distributions and applying excess funds to the deficiency, -----)

For sellers that obstruct the Board's efforts, or refuse to provide reports or documents, Section 436.485 can provide the Board a more effective tool for obtaining cooperation. The quarterly report system sets up the worst offenders for referral to local prosecutors. This will require the Board staff to coordinate with prosecutors, and educate them. Typically, the prosecutor will perceive preneed fraud as theft committed by the funeral director against the consumer when he fails to provide funeral at the time death. SB1 makes it a class d felony when the seller intentionally disregards the time requirements for remitting consumer funds on time. The quarterly reporting system is meant to create the evidence a prosecutor would need to file charges.

Guidelines are needed for the referral of criminal matters to a local prosecutor. Such situations dictate that the Board be an active partner to the prosecutor, seeking an outcome that best ensures the cooperation of the seller.

**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

Contract and Document Records

A copy of each executed preneed contract, including any attachments, additions, or documents supplemental to the preneed contract;

Copies of agreements or contracts related to each source of preneed funding used by the seller, including any of the following:

- (1) Trust agreements;
- (2) trust administration agreements;
- (3) Investment advisory agreements
- (4) Seller/Provider agreements;
- (4) Preneed agent agreements,
- (6) Insurance broker agreements,
- (7) Insurance assignments;
- (8) Insurance beneficiary designations;

Consumer Payment Records

With regard to consumer funds received by the Seller, or the Seller's agent, the Seller shall create and maintain a monthly consumer payment report that reflects the following:

1. The purchaser's name;
2. The payor name if different than the purchaser;
3. The preneed contract number;
4. The date received;
5. The date the funds were submitted or forwarded to the funding agent;
6. The funding agent (if the consumer receipts journal is maintained for more than one funding agent);

In lieu of consumer payment reports, the seller may maintain individual preneed contract ledgers that reflect:

1. The purchaser's name;
2. The preneed contract number;
3. The date and amount of each payment;
4. The current payment balance;
5. The current trust balance;
6. Any amount requested as origination fee or sales expense from a payment;

Sellers that rely on consumer payment reports for compliance with this regulation shall create a report for every month including those months in which no payments were received.

The seller may, but is not required, to maintain a separate consumer receipts journal for each funding agent used.

The seller shall maintain a copy of each deposit form or report that reflects each consumer payment transmitted during the month. Nothing shall preclude the seller from using the consumer receipts report as its deposit form.

When accepting cash from a consumer, the seller shall provide the consumer a written receipt reflecting the amount and date received, and maintain a copy in the seller's records.

With regard to funds paid by the consumer directly to the Seller's trustee, the seller shall cause the trustee to provide a monthly report that reflects the following for each preneed contract receiving a payment:

1. The purchaser's name;
2. The preneed contract number;
3. The amount deposited to trust;
4. Any amount distributed to the seller as origination fee or sales expense;
5. The ending payment balance;
6. The ending trust balance;

If the Seller uses a commercial banking account to receive and transmit funds to a trustee or insurance company (a clearing account), the seller shall maintain all statements issued with regard to such account as a record required by this regulation.

Individual ledgers and consumer payment reports may be maintained in a paper format or an Excel format.

All records described in this regulation shall be maintained for a period of one year after the seller's most recent financial examination.

Serviced and Canceled Contracts

Copies of certificates of performance and each accompanying Statement of Goods and Services

Documentation of the receipt of funds from the preneed funding agent

Consumer letters of cancellation, and documentation 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.

Funding Agent Reports

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 the bank or insurance company maintains such statements in electronic, then the seller shall access those reports and retain them for access by the board.

Communications with the funding agent regarding specific preneed contracts, or the funding of the seller's contracts.