

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.