

**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. ~~The board has directed the~~ Staff ~~is directed~~ to prepare a written financial exam procedures handbook to be used by all examiners in conducting financial examinations and to be provided to the industry as a guideline. Subject to approval by the board, the handbook shall set out all techniques for confirming data provided by sellers, consumers, financial institutions and insurance companies. 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 additional information from sellers, consumers, ~~from providers, from preneed agents, from banks, insurance companies, and from other fiduciaries,~~ that may be needed to reconcile financial information provided by the seller. ~~but The staff must may not seek board approval to~~ utilize any court or administrative process to require any person to comply with any staff request for information without prior board approval.

#### 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 access to all preneed contracts, ~~as requested;~~ (§ 436.420, RSMo)
  - c. Preneed contracts meet the ~~minimum~~ statutory requirements as interpreted by the board; (§ 436.425, RSMo)

**Comment [A1]:** The staff does not have the authority to implement exam procedures without Board approval.

**Comment [A2]:** This language gives the staff discretion to use those procedures they feel are necessary. This would circumvent the Board's authority to govern the examination process.

**Comment [A3]:** In that the Board has adopted a brief definition of "adequate records", the staff may need authority to seek records necessary to confirm the receipt of consumer funds and their deposit with either insurance companies or banks.

**Comment [A4]:** This section requires the seller to provide access to records, not mass produce records and provide them to the Board

**Comment [A5]:** The Board, not the staff, needs to define the requirements of each type of preneed contract. The staff has come up with burdensome standards for contract requirements that have no benefit to the consumer.

- d. Seller maintains adequate records to demonstrate handling of consumer funds in compliance with Chapter 436 of preneed contracts and related agreements; (§436.465, RSMo)
  - e. If applicable, sSeller 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 adequately documented~~ by the seller so that the examiner can reconcile monthly activity; (§§ 436.430, .450 and .456, RSMo)  
~~— Seller has contracts with its providers and trustee; (§§ 333.320 and 436.420, RSMo)~~
  - g. If the Seller's preneed contracts are performed by a third party funeral home, that it such seller has a written provider agreement with each such funeral home. (§§ 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 filed with the board; (§ 436.460, RSMo)
  - j. Seller ~~properly~~ handled cancellations or transfers in accordance with statute; (§ 436.456, RSMo)
  - k. If a provider funeral home has complained to the board, whether ~~Seller-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:
- i. Confirm that the trust agreement complies with statutory requirements found in chapters 333 and 436, RSMo; (This review may be omitted if the seller retains the same trustee from the prior examination.)
  - ii. Determine if the trustee utilizes the services of an external investment advisor or a third party administrator, and if so, that each service is documented with a current agreement.
  - iii. Request from the trustee for each year subject to the financial examination:
    - a) The trust's asset listing (reflecting cost and market value);
    - b) tax return;
    - c) Annual transaction report(s) of distributions to the seller and contributions from seller;

**Comment [A6]:** The adequacy of records will depend on whether the examiners can track the consumers' funds.

**Comment [A7]:** This purpose may not even be necessary. Why review a seller's payment process to providers unless there is a complaint? If there are provider complaints, that could be handled under the complaint procedures (assuming the Board eventually adopts a rule for handling Chapter 436 complaints.)

**Comment [A8]:** The focus of the exam should be confirming the handling of consumer funds, not general compliance with Chapter 333 or 436.

**Comment [A9]:** This is a waste of consumer funds. Review the contract forms for compliance with 436.425. Review a sampling for how the seller prepares contracts.

**Comment [A10]:** If the seller uses the same trustee since the prior exam, why go through a review of the trustee's qualifications again?

**Comment [A11]:** This review can be done prior to the on site review with a document request for the current trust documents.

**Comment [A12]:** Following the consumers' funds should be the exam goal, and to do so, the Board will need certain reports from the trustee (or the insurance company).

9. For joint account funded preneed contracts established since the prior financial examination, the examiner shall also:
- i. Confirm that joint accounts are under joint control of the seller and the purchaser; (§436.455, RSMo) (the examiner may rely upon a certification from the issuing bank)
  - ii. Confirm that 100% of consumer paid funds are in-deposited to the joint account, POD accounts or FBO accounts; (§436.455, RSMo)
10. For insurance funded preneed contracts issued since the prior financial examination, the examiner shall also:
- i. Confirm that the seller is not the owner of the insurance policy, for preneed contracts under the new law; (§ 436.450, RSMo) (the examiner may rely upon a certification from the issuing insurance company)
  - ii. Request from the insurance company a report of all premium payments received from the seller.
  - iii. Request from the insurance company a report of all policy surrenders or maturities, and the payee.

**Comment [A13]:** To expedite the exam, limit the process to contracts sold since the last exam.

**Comment [A14]:** This language reflects prior Board actions to allow other forms of depository accounts.

#### Financial Examination Evaluation Procedures

1. For each financial examination, the examiner shall prepare an financial examination exceptions report with any necessary attachments to be submitted to for review by the financial examinations supervisor.
2. Insert for supervisor's review before submission to financial examination committee.
3. 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 the financial examination committee shall evaluate the exceptions pursuant to the criteria established by the board. Based on such evaluate the examination committee shall send a copy of that financial examination report to the licensee for response with recommendations for future corrective actions and/or corrective actions to be taken regarding existing exceptions, giving and the licensee shall be given at least 30 days to file a written response with the board examination committee. 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.
4. 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;

**Comment [A15]:** The Board will need input from Lisa regarding recommendations to be made to the exam committee.

**Comment [A16]:** If the Board adopts exam procedures that contemplate different levels of review, Lisa should ultimately make assessments of the seller's compliance risk.

**Comment [A17]:** This language is intended to reflect the Board action taken in October 2017 to provide the seller an assessment of the exceptions.

- 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.
- | 4.5. The examination committee shall have no authority to seek any judicial action or to initiate any disciplinary process.
- | 5.6. 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.~~
- The financial examination supervisor shall confirm to the examiner the seller's level of examination.
- ~~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. Thirty day extensions will be granted when a reasonable basis for additional time is given by the seller.
- The Notification letter will advise the seller the level of examination, the sampling of preneed contract files to be made available to the examiner.
- The Notification letter shall also request a copy of all preneed contract forms used since the seller's prior financial examination.
- Depending upon the level of examination, the notification letter shall specify the monthly consumer payment reports and bank/insurance reports for production for the desk top review of timely deposits.
- The notification letter shall request information about each trustee or insurance company utilized by the seller since the seller's prior financial examination, and shall provide a sample of the report requests to be made of each such entity.
- Examiner supervisor assigns examination to examiner via email, pursuant to section 436.470.3.
- The examiner shall review the preneed contract forms provided by the seller and determine the funding used and whether the contract involves price guarantees. The examiner will review the contract form for Section 436.425 compliance pursuant to the board's directives.
- The examiner shall reconcile the seller's deposit reports to the trust reports or insurance reports, as appropriate.
- 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.
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- Upon completion of the preliminary analysis, examiner contacts seller to schedule the onsite visit.

**Comment [A18]:** If different levels of review are adopted, Lisa would need to confirm to the examiner which process to follow.

**Comment [A19]:** The seller notice should reflect the level of review and the contracts sampling selected for review.

**Comment [A20]:** The contract form review is done before the on site exam. This eliminates the review of all contracts.

**Comment [A21]:** The notification letter would require the seller to seek the initial reports from the funding agent, but the examiner may need to communicate directly with the funding agent to get additional reports.

### 2. ONSITE VISIT

- Examiner meets with person in charge or their representative to determine location of preneed contracts, trustee reports, insurance company reports 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 requested contract files located?

Where are the consumer payment reports?

Where are the preneed funding agent reports?

4.2. Who is the contact person for questions during and after the onsite visit?

2.3. What are the funding sources used in the past and currently used, including specific names of trust companies, financial institutions, and insurance companies.

3.4. How does seller handle cancellations and transfers (if this information was not already provided in the random examination information)?

4.5. Discuss and provide the Financial Examination Attestation document and explain its purpose.

5.6. Have the seller's preneed contracts form changed since the last examination?

6.7. ~~Ask for Copy~~ consumer payment ~~information—reports~~ and current bank/trust/insurance reports, ~~if not already provided previously.~~

- Examiner reviews contract files, following specific steps (listed under Scope of Examinations). (Sampling files if Levels 1 or 2, all files if Level 3)
- 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.
- At the conclusion of the examiners review of contract files, the examiner will meet with the seller's representative to discuss any exceptions regarding missing contract files, trustee or insurance reports, or related files to give the seller an opportunity to locate such records.

**Comment [A22]:** The number of files to review would differ by the level of exam.

**Comment [A23]:** It is very frustrating for examiners to conclude their on site visit and then cite the seller for missing records that could have been produced if requested.

### 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 where~~ 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-~~1982–2009~~ contracts. ~~If the contract payment information letter obtained from the seller is more than 60 days old past the information provided by the seller, obtain an updated report from the seller. Consumer letters should be mailed within 30 days of the information provided by the seller, and should disclose the date of the information to the consumer.~~
  - A-B. ~~Provide a copy of the consumer letters to the seller 5 10 days prior to mailing. If seller has a reasonable basis for excluding one or more consumer letters, substitute additional consumers.~~
  - B-C. Discrepancies from consumers are noted (examiner to refer to seller for explanation prior to writing up report).
  - C-D. 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.

**Comment [A24]:** The Board should not be sending out consumer letters on stale account information.

**Comment [A25]:** Allow sellers to remove consumers from the mail list for reasonable purposes.

### 4. POST ONSITE EVALUATION

- Final examination report is reviewed first by examiner supervisor and executive director, and if no corrections are made, then by the examination committee.
- Unless there is a need for immediate action as set forth in sections 333.330.4 or 333.335, RSMo, ~~board staff~~ the examination committee shall evaluate the exceptions pursuant to the criteria established by the board. Based on such evaluation, the examination committee will send a copy of the financial examination report to the seller with recommendations for future corrective actions and/or corrective actions to be taken regarding existing exceptions 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;

**Comment [A26]:** This is necessary to reflect the October 2017 board vote.

- 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 access to~~ all preneed contracts by signing the Financial Examination Attestation form;
- 3) Preneed contracts meet the ~~minimum- applicable~~ statutory requirements (Section 436.425);
- 4) Seller maintains ~~adequate~~ records of preneed contracts, trustee reports, insurance reports and related ~~agreements documents that are adequate to allow the examiner to reconcile consumer payments received by the seller to the funds reported by the sellers' funding agents;~~
- 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 adequately 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) For Level 3 exams, the 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. For Level 1 or 2 exams, the Staff shall look at a sampling of all active preneed contracts sold since the last financial exam, and a sampling of consumer payment reports compiled since the last financial exam.

**Comment [A27]:** Section 436.425 is applied differently to the various types of contracts. Exception reports reflect that the staff do not fully understand the differences between the various contract forms.

### B. Applicable To All Contract Forms

- 1) ~~During-Prior to~~ on-site visit, examiner is to review the ~~actual~~ contract file forms provided by the seller, checking for the following below, and also recording any additional contracts found onsite but not previously provided to ensure compliance with the board's interpretation of statutory requirements of Section 436.425 RSMo. This will require the examiner to determine the funding contemplated by the contract form, and whether the contract form contemplates price guarantees. (Note: it is acceptable for seller to use the preprinted contract numbers stamped on the

**Comment [A28]:** For sellers that demonstrate proper handling of consumer funds, a sampling review of deposit reports should be sufficient.

contract, such as standard preneed contracts from an insurance company or other seller) Each contract form 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 review the seller's annual report to confirm sequential number is used and ask seller about their sequential numbering system if clarification is necessary.)
  - c) Include space for the name, address and phone number of the purchaser, and beneficiary
  - ~~e)d) Include the names, addresses, phone numbers and license numbers of the;~~ provider and seller;
  - ~~d) Identify the name, address, phone and license number of the provider and the seller;~~
  - e) For guaranteed price contracts, Set out in provide for the detail of 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 if applicable;
  - 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

**Comment [A29]:** This requirement is not important to non-guaranteed contracts.

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) **For Level 3 exams,** 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.

**Comment [A30]:** Except for sellers that have funding problems, the exam would not look at performance records.

#### 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 retain from consumer payments** an amount up to 20% of the face **value-price** 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 **1510%** of the face **value-price** of the **guaranteed price of the contract**, **and 5% of the face price of the entire 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 **in the deposits** 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 **and deposits, earnings, and distributions** for each preneed contract.
- Examiner will confirm the existence of trust agreements, verifying that the seller is listed as the **grantor or trustor** and the financial institution is listed as the trustee.

**Comment [A31]:** This paragraph misstates the old law.

**Comment [A32]:** This paragraph misstates the current law

**Comment [A33]:** Sellers need not explain contracts that have a market value below deposits. The seller may need to provide an explanation if the trust as a whole is below water.

**Comment [A34]:** The term grantor is no longer relevant. In light of Rev. Rul. 87-127, funeral homes can no longer be the 'grantor' of their preneed trust for tax purposes.

#### 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 Preeed 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.~~

**Comment [A35]:** What purpose does this serve?

**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.~~

**Comment [A36]:** Why is this a part of an exam of a licensed seller?



**STATE OF MISSOURI**  
**DIVISION OF PROFESSIONAL REGISTRATION**  
**FINANCIAL EXAMINATION ATTESTATION**

STATE BOARD OF EMBALMERS AND FUNERAL DIRECTORS  
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**I. INSTRUCTIONS**

Please read the below statements and page 2 of this attestation prior to signing the form.

**II. GENERAL INFORMATION**

SELLER NAME (PRINT FULL NAME)

SELLER ADDRESS (CITY, STATE, ZIP)

SELLER LICENSE NUMBER (REQUIRED)

**III. LOAN COLLATERAL AFFIDAVIT (STATUTORY REFERENCES ARE AVAILABLE ON THE REVERSE SIDE OF THIS FORM)**

As a preneed seller, I attest to the following:

As of August 29, 2009, this seller has not used any preneed contracts as collateral or security pledged for a loan, nor have we taken any preneed funds of any existing preneed contract as a loan for any purposes. Further, we have not procured or accepted a loan against any investment, joint account, or insurance contract used to fund a preneed contract.

SIGNATURE OF SELLER REPRESENTATIVE

DATE

PRINTED NAME AND TITLE OF PERSON SIGNING ON BEHALF OF SELLER

**IV. RECORD ACCESS AFFIDAVIT (STATUTORY REFERENCES ARE AVAILABLE ON THE REVERSE SIDE OF THIS FORM)**

As a preneed seller, I attest to the following:

To the best of my knowledge, I have provided the State Board of Embalmers and Funeral Directors full and complete access to all records necessary for the board to conduct a financial examination of the books and records of this seller.

SIGNATURE OF SELLER REPRESENTATIVE

DATE

PRINTED NAME AND TITLE OF PERSON SIGNING ON BEHALF OF SELLER

Below are listed the statutory references relating to the affidavits in sections III and IV on the reverse side of this page. Prior to signing the affidavits on the reverse, please read the below.

#### **LOAN COLLATERAL STATUTORY REFERENCES**

##### **Statute 436.435.6 Compliance of contracts entered into prior to effective date—investment of trust property and assets—loans against assets prohibited:**

No seller, provider, or preneed agent shall procure or accept a loan against any investment or asset of or belonging to a preneed trust. As of August 29, 2009, no preneed seller, provider, or agent shall use any existing preneed contract as collateral or security pledged for a loan or take preneed funds of any existing preneed contract as a loan or for any purpose other than as authorized by this chapter.

##### **Statute 436.450 Insurance-funded preneed contract requirements:**

**436.450.2** As of August 29, 2009, no preneed seller, provider, or agent shall use any existing preneed contract as collateral or security pledged for a loan or take preneed funds of any existing preneed contract as a loan for any purpose other than as authorized by this chapter.

**436.450.4** It is unlawful for a seller, provider, or preneed agent to procure or accept a loan against any insurance contract used to fund a preneed contract.

##### **Statute 436.455.7 Joint account-funded preneed contract requirements:**

Any seller, provider, or preneed agent shall not procure or accept a loan against any investment, or asset of, or belonging to a joint account. As of August 28, 2009, it shall be prohibited to use any existing preneed contract as collateral or security pledged for a loan, or take preneed funds of any existing preneed contract as a loan or for any purpose other than as authorized by this chapter.

#### **RECORDS ACCESS STATUTORY REFERENCES**

##### **333.101 Places of business may be inspected.**

333.101. The board or any member thereof or any agent duly authorized by it may enter the office, premises, establishment or place of business of any licensee or registrant, or any office, premises, establishment or place where the practice of funeral directing, embalming, preneed selling or providing is carried on, or where such practice is advertised as being carried on for the purpose of inspecting said office, premises or establishment and for the purpose of inspecting the license and registration of any licensee or registrant and the manner and scope of training given by the licensee or registrant to the apprentice operating therein.

##### **436.470 Complaint procedure--violation, attorney general may file court action**

436.470.2. The board shall have authority to conduct inspections and investigations of providers, sellers, and preneed agents and conduct financial examinations of the books and records of providers, sellers, and preneed agents and any trust or joint account to determine compliance with sections 436.400 to 436.520, or to determine whether grounds exist for disciplining a person licensed or registered under sections 333.310 to 333.340, at the discretion of the board and with or without cause. The board shall conduct a financial examination of the books and records of each seller as authorized by this section at least once every five years, subject to available funding.

436.470.6. The person conducting the inspection, investigation, or audit may enter the office, premises, establishment, or place of business of any seller or licensed provider of preneed contracts, or any office, premises, establishment, or place where the practice of selling or providing preneed funerals is conducted, or where such practice is advertised as being conducted for the purpose of conducting the inspection, investigation, examination, or audit.

7.. Upon request by the board, a licensee or registrant shall make the books and records of the licensee or registrant available to the board for inspection and copying at any reasonable time, including, any insurance, trust, joint account, or financial institution records deemed necessary by the board to determine compliance with sections 436.400 to 436.520.

8. The board shall have the power to issue subpoenas to compel the production of records and papers by any licensee, trustee or registrant of the board. Subpoenas issued under this section shall be served in the same manner as subpoenas in a criminal case.

9. All sellers, providers, preneed agents, and trustees shall cooperate with the board or its designee, the division of finance, the department of insurance, financial institutions and professional registration, and the office of the attorney general in any inspection, investigation, examination, or audit brought under this section.

##### **436.485 Violations, penalties.**

436.485.1. Any person, including the officers, directors, partners, agents, or employees of such person, who shall knowingly and willfully violate or assist or enable any person to violate any provision of sections 436.400 to 436.520 by incompetence, misconduct, gross negligence, fraud, misrepresentation, or dishonesty is guilty of a class C felony. Each violation of any provision of sections 436.400 to 436.520 constitutes a separate offense and may be prosecuted individually. The attorney general shall have concurrent jurisdiction with any local prosecutor to prosecute under this section.

436.485.2. Any violation of the provisions of sections 436.400 to 436.520 shall constitute a violation of the provisions of section 407.020. In any proceeding brought by the attorney general for a violation of the provisions of sections 436.400 to 436.520, the court may order all relief and penalties authorized under chapter 407 and, in addition to imposing the penalties provided for in sections 436.400 to 436.520, order the revocation or suspension of the license or registration of a defendant seller, provider, or preneed agent.

