

MISSOURI  
STATE BOARD OF EMBALMERS AND FUNERAL DIRECTORS

FINANCIAL EXAMINATION PROCEDURE HANDBOOK

2018

PROPOSED FINAL DRAFT

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PROPOSED FINAL DRAFT

### 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 prepared a financial exam procedures handbook to be used by all examiners in conducting financial examinations and to be provided to the industry as a guideline, the handbook shall set out all techniques for confirming data provided by sellers, consumers, financial institutions and insurance companies. .
6. Staff may request information from sellers, consumers, providers, preneed agents, that may be needed to reconcile financial information provided by the seller. The staff may not utilize any court or administrative process to require any person to comply with any staff request for information without prior board approval.
7. 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;
8. For joint account funded preneed contracts, established since the prior financial examination the examiner shall also:
  - a. 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)
  - b. Confirm that 100% of consumer paid funds are deposited to the joint account; (§436.455, RSMo)
9. For insurance funded preneed contracts issued since the prior financial examination, 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) (the examiner may rely upon a certification from the issuing insurance company)
  - b. Seller shall request from the insurance company a report of all premium payments received from the seller.
  - c. Seller shall request from the insurance company a report of all policy surrenders or maturities, and the payee.

## Financial Examination Evaluation Procedures

1. For each financial examination, the examiner shall prepare an exceptions report for review by to the financial examination supervisor.
2. Upon receipt of a financial examination report, unless there is a need for immediate action as set forth in Sections 333.330.4 or 333.335, RSMo, the financial examination committee shall evaluate the exceptions pursuant to the criteria established by the board. Based on such evaluate the the examiner supervisor shall send a copy of the financial examination report to the licensee for response, giving the licensee at least 30 days to file a written response with the 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.

*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. Thirty day extensions will be granted when a reasonable basis for additional time is given by the seller.
- The notification letter shall also request a copy of all preneed contract forms used since the seller's prior financial 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 supervisor will communicate with the seller of any and all items missing from the contract so the seller can make the changes and provide a revised contract. This will be noted on the exam report; however no photos or exceptions will be made solely on this matter for this exam.
- 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.
- 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, 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?
2. Where are the consumer payment reports?
3. Where are the preneed funding agent reports?
4. Who is the contact person for questions during and after the onsite visit?

5. What are the funding sources used in the past and currently used, including specific names of trust companies, financial institutions, and insurance companies.
  6. How does seller handle cancellations and transfers (if this information was not already provided in the random examination information)?
  7. Discuss and provide the Financial Examination Attestation document and explain its purpose.
  8. Has the seller's preneed contract form changed since the last examination?
  9. Copy consumer payment reports and current bank/trust/insurance reports.
- 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.
  - Photos are to be taken of all exceptions.
  - If the examiner notices the seller is not completing the consumer telephone number, listing the provider/seller number on the contract, and disclosure pages the examiner shall document these matters on the report and have a discussion with the seller. This matter will be documented in the financial exam; however the seller will not be required to correct the contracts for this exam. Exams in the future will site these items as exceptions and the seller will be required to correct the exceptions.
  - 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.

### 3. POST ONSITE VISIT

- Consumer letters will only be done at the direction of the financial committee or the full board.
- 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 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, the examiner supervisor will send a copy of the financial examination report to the seller giving the seller 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. The staff may accept the final examination report if it has no exceptions unless otherwise directed.
  - b. If all exceptions have been resolved the committee may direct staff to close the exam;
  - c. The committee may accept the seller's plan to resolve the exceptions and give the seller additional time to resolve the exceptions, at the committee's discretion;
  - d. 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,;
  - e. 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 access to all preneed contracts by signing the Financial Examination Attestation form;
- 3) Preneed contracts meet the applicable statutory requirements (Section 436.425);
- 4) Seller maintains records of preneed contracts, trustee reports, insurance reports and related 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 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) 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) Prior to on-site visit, examiner is to review the contract 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 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 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 numbers 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;

- d) Include 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 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 take photos 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 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 retain from consumer payments an amount up to 20% of the of the total amount agreed to be paid by the purchaser of such prepaid funeral benefits as such total amount is reflected in 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 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, 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.

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. 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.