

# **National Funeral Directors Association**

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# NATIONAL FUNERAL DIRECTORS ASSOCIATION

# MODEL CONSUMER PROTECTION GUIDELINES FOR STATE PRENEED FUNERAL STATUTES

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The National Funeral Directors Association, the largest organization of funeral service professionals in the United States, has adopted the Model Consumer Protection Guidelines for State Preneed Funeral Statutes (the "Guidelines"). The Guidelines are designed to insure that consumers who purchase preneed funeral goods and services make informed decisions, receive protection against the loss of prepaid funds, deal with ethical and licensed preneed sellers and agents, and retain the right to cancel preneed funeral contracts or transfer preneed funding to different funeral providers.

The Guidelines address the following seven areas of preneed regulation:

- Preneed Consumer Contract Disclosures
- Preneed Trusting Requirements

- Licensing of Preneed Sellers and Agents
- Solicitation of Preneed Consumers
- Revocation/Portability of Preneed Contract and Funding
- Preneed Consumer Guaranty Fund
- Enforcement of Preneed Laws

These Guidelines further NFDA's recognized policy that all preneed trust funds and preneed insurance policies are held as a sacred obligation for the benefit and protection of the consumer. No access to, or use of, those funds or policies for any purpose other than that for which they were established should be allowed.

NFDA and its member state funeral associations will work with state legislatures and regulatory authorities to amend existing preneed statutes and/or adopt new preneed statutes to provide the consumer protection provisions set forth in the Guidelines.

# I. PRENEED CONSUMER CONTRACT DISCLOSURES

State preneed statutes or regulations should require that preneed contracts entered into between consumers and sellers of funeral goods or services adhere to the following requirements:

### A. General Requirements in Preneed Contracts.

- 1. The contract shall be in writing, in clear and understandable language, and printed in at least eight-point type.
- 2. The contract shall identify the seller's name, address, telephone number, and funeral home/preneed license number.
- 3. The contract shall identify the purchaser's name, address, telephone number and social security number. If the purchaser is not the beneficiary

- of the contract, the contract shall also contain that information for the beneficiary.
- 4. If the seller is not the funeral provider, the contract shall identify the funeral provider that will provide the services, including the name, address, telephone number and license number.
- If the seller is not the funeral provider, the contract shall include a
  disclosure regarding the relationship between the seller and the funeral
  provider.
- 6. The contract shall list all of the funeral goods and services purchased, or in lieu thereof, require the attachment of the Statement of Funeral Goods and Services Selected.
- 7. The contract shall be signed by both the purchaser and seller and identify the date and place of execution of the contract.
- 8. If the seller is not the funeral provider, the contract must also be signed by the funeral provider in order to be valid.
- 9. The seller shall be required to give a copy of the contract to the purchaser upon execution.

### B. Investment Disclosures in the Preneed Contract.

- The contract shall disclose whether it will be funded by insurance, an annuity, trust funds, or some other method.
- 2. If the preneed funds are used to purchase an insurance policy, a copy of the insurance application shall be attached to the preneed contract.

- 3. If the preneed funds are used to purchase an insurance policy, the contract shall disclose that, except for the initial "free look" period, the insurance policy is not refundable, but may be surrendered for less than face value.
- 4. If the preneed funds are used to purchase an insurance policy, the contract shall disclose that a commission or other renumeration will be paid to the seller or seller's agent on the purchase of the insurance policy.
- 5. If the contract is funded by a trust, the contract shall disclose the name, address and phone number of trustee/financial institution receiving the trust deposit.
- 6. If the contract is funded by a trust, the contract shall disclose when the preneed trust funds will be deposited with the trustee/financial institution.
- 7. If the contract is funded by a trust, the contract shall disclose the percentage or amount of funds that will be deposited and those that will be retained by the seller.
- 8. If the contract is funded by a trust, the contract shall disclose whether and how much of the interest or other accrual on the trust account will remain in trust or will be paid to the seller.
- 9. If the contract is funded by a trust, the contract shall disclose who will be responsible for taxes generated by earnings on the trust account.
- 10. If the contract is funded by a trust, the contract shall disclose if trustee fees or other administrative charges will be deducted from the trust funds.

# C. Price and Payment Disclosures in the Preneed Contract.

- 1. The contract shall disclose whether the price of the funeral contract is guaranteed by the prened seller. If the price is guaranteed, the disclosure should inform the purchaser which goods and services are covered by the price guarantee and which are not.
- 2. The contract shall disclose that if the price of the contract is guaranteed, all funds in the trust account or the insurance policy at the time of death shall be paid to the seller.
- 3. The contract shall disclose that even if the price of the funeral goods and services are guaranteed, there may be additional expenses (such as the cost of shipping) that would not be covered by the contract.
- 4. If the price is not guaranteed, the preneed contract shall disclose that the actual cost of the funeral goods and services shall be determined at the time of death.
- 5. If the price is not guaranteed, the contract shall disclose that the estate of the decedent and/or the responsible party will be legally obligated to pay any shortfall in the trust account and that the estate would be entitled to receive any excess funds in the trust account, after payment of the at-need prices.
- 6. The contract shall disclose how the purchase price is to be paid and, if the price is paid in installments, a disclosure to the consumer regarding what constitutes default under the installment contract and the consequences of the default.

### D. Contract Cancellation Disclosures in the Preneed Contract.

- The contract shall disclose when and how a purchaser can exercise the
  initial right of cancellation after executing the contract. The disclosure
  shall inform the consumer of the right to a full refund within the specified
  cancellation period.
- 2. If the contract is revocable, the contract shall disclose the right of the consumer to revoke the preneed contract and how the consumer may exercise that right.
- 3. If the contract is revocable, the contract shall disclose under what circumstances revocation fees will be imposed and how much those revocation fees will be.
- 4. If the contract is irrevocable, the contract shall disclose that the purchaser does not have a right to revoke the contract and receive a refund of the purchase price paid.
- 5. In order to make a contract irrevocable, the contract shall require the signature of the purchaser next to a contract disclosure that specifically acknowledges that the purchaser understands and agrees that the contract will be irrevocable.
- 6. The contract shall disclose what transfer fees (if any) will be imposed if the consumer transfers the funding for an irrevocable preneed contract to a new funeral provider.
- 7. The contract shall disclose that if the seller is unable to perform the prened contract due to the seller's actions or financial condition, the

- consumer shall be entitled to a full refund of the purchase price paid by the consumer and the accrued interest in the preneed trust account.
- 8. The contract shall disclose that the funeral provider may substitute goods and services of equal quality, value and workmanship if those specified in the contract are unavailable.

# II. PRENEED TRUSTING REQUIREMENTS

# A. 100 Percent Trusting.

If preneed funds are to be placed into trust, state laws and regulations should require that, subject to the specific exemptions set forth below, 100 percent of the preneed funds paid by the purchaser to the seller shall be deposited and remain in trust. Further, all interest, income and accruals earned by the trust fund shall remain in trust, except for the specific exemptions set forth below. Until such time as the preneed contract is revoked or performed, the principal and all earnings thereon shall remain in trust with the following exceptions:

- From the prepaid funds received by the seller, the seller may deduct and pay any applicable sales tax that is due and owing to state and local governments.
- 2. From the prepaid funds received by the seller, the seller may deduct and pay to the applicable state agency fees due and owing for any license, permit, or preneed consumer guaranty fund obligation.
- 3. If the preneed trust is obligated to pay taxes on earnings generated by the trust fund, the trustee shall be authorized to deduct and pay all applicable income and other taxes.

- 4. In accordance with state law and the preneed contract, the trustee of the preneed trust may deduct from the trust fund and pay trustee's fees and other expenses of the trust administration.
- 5. Upon revocation or transfer of the preneed funeral contract by the purchaser, the trustee may deduct and pay any applicable cancellation or termination fee permitted by state law and the preneed contract.

# **B.** Confirmation of Deposit.

State laws must require the preneed contract to disclose to the purchaser that he or she will be notified when the preneed funds are deposited into trust or when they are applied to the purchase of the insurance policy that will fund the preneed contract. The required disclosure should also inform the consumer to contact the appropriate government agency if confirmation is not received by a specified time. Additionally, the preneed law must mandate that any trustee receiving preneed deposits or insurance companies selling preneed insurance issue those notices confirming the deposit or the insurance policy purchase to the consumer by a specified time after receiving the funds.

# C. Prohibition Against Constructive Delivery and Surety Bonds.

State laws and regulations shall not allow a seller to avoid the requirement of trusting preneed funds by constructive delivery of funeral goods to the purchaser, either by storing the funeral goods in a warehouse or other location in the state. In addition, state laws and regulations shall also not allow a seller to avoid the requirement of trusting preneed funds by the posting of any type of surety bond or other security.

#### III. LICENSING OF PRENEED SELLERS AND AGENTS

# A. Requirements for Preneed Sellers.

A seller of preneed funeral goods and/or services, which is not already licensed as a funeral provider in the state, must comply with all of the following requirements in order to receive a license to enter into preneed funeral contracts:

- 1. The seller shall be a resident of the state or qualified to do business in the state.
- 2. The seller must file an application for a preneed license with the appropriate state licensing agency. The application must contain at least the following information:
  - (a) The seller's name, business address and telephone number.
  - (b) The names, addresses and telephone numbers of the seller's officers, directors, managers, or any other individuals holding a 10 percent ownership interest in the seller.
  - (c) The names and addresses of all employees or agents of the seller who will sell preneed funeral goods or services on behalf of the seller.
  - (d) The names and addresses of the funeral homes which are under contract to the seller to provide the funeral services and/or funeral goods sold by the preneed seller.
  - (e) The name and address of the trustee or financial institution to which the preneed trust funds will be deposited.

3. When submitting the application for a preneed license, the seller shall file a copy of the signed trust agreement that the seller has with the trustee or financial institution where the preneed trust funds will be deposited.

## **B.** Requirements of Preneed Agents.

Any individual who arranges or sells funeral **services** on a preneed basis must be a licensed funeral director. A preneed sales agent, who is not a licensed funeral director, may offer or sell funeral **goods** on a preneed basis upon meeting all of the following requirements<sup>1</sup>

- A preneed sales agent must be at least 18 years of age and have received a high school diploma or its equivalent.
- 2. Any individual with a felony conviction shall be ineligible to receive a preneed sales agent license.
- 3. A preneed sales agent must file an application with the appropriate state licensing agency. The application must contain at least the following information:
  - (a) Name, address, telephone number and social security number of the applicant.
  - (b) The names and addresses of all preneed sellers the preneed sales agent will represent.
- 4. With the application for a preneed sales agent's license, the applicant must provide a copy of the written agreement by which the preneed seller certifies that the agent will represent the seller, identifies what preneed

<sup>&</sup>lt;sup>1</sup> If state law permits an individual to arrange or sell preneed funeral services without having a funeral director's license, the licensing requirements set forth in this Section II(B) would apply to those individuals arranging or selling preneed funeral services.

- goods and services the agent will sell, and certifies that the agent has been trained by the preneed seller.
- The applicant must successfully pass an examination administered by the state licensing agency on preneed laws and regulations.

### IV. SOLICITATION OF PRENEED CONSUMERS

State preneed funeral statutes shall include the following solicitation requirements and prohibitions to insure ethical treatment of preneed consumers and to protect the public from undue invasion of privacy.

# A. Requirements for Preneed Solicitation.

All sellers of preneed funeral goods and services, their employees, agents, or anyone soliciting on their behalf, shall comply with the following requirements when engaged in the solicitation of preneed funeral consumers:

- 1. Within 30 seconds of initiating a solicitation by telephone, or upon entering the residence of a solicitation prospect, the solicitor must identify himself or herself, the preneed seller on whose behalf the solicitation is being made, and a general description of the preneed goods and services to be offered for sale.
- When making a preneed sale solicitation, the solicitor must present to the consumer a copy of the General Price List of the preneed seller and any preneed consumer disclosure information that the state requires to be distributed to consumers.

3. Preneed sellers who solicit consumers by telephone are required to maintain a "do-not-call" list and to place on the list the household telephone number of any consumer who requests to be put on the list.

#### **B.** Preneed Solicitation Prohibitions.

All sellers of preneed funeral goods and services, their employees, agents or anyone soliciting on their behalf, are prohibited from undertaking any of the following practices when engaging in the solicitation of preneed funeral consumers:

- 1. The making of any untrue statements of material fact or omission of any material facts when engaged in preneed solicitation.
- 2. The use of any advertisements or offers of preneed funeral goods or services which are false, misleading, deceptive, unfair, coercive or intimidating.
- 3. The solicitation of potential preneed consumers by telephone any time between the hours of 9:00 p.m. and 8:00 a.m.
- 4. The use of the term "trust" or "trust-funded" in any preneed advertisement or solicitation in any misleading way.
- 5. The direct or indirect solicitation of persons in hospitals, rest homes, nursing homes or similar health care facilities by telephone or in-person without having been expressly requested to do so by that person or their representative.

#### V. REVOCATION OF PRENEED FUNERAL CONTRACTS

Preneed purchasers should be given the following rights to cancel, revoke, and/or transfer preneed funeral contracts or funding for preneed funeral contracts:

### A. Initial Cancellation of Preneed Funeral Contracts.

Every preneed consumer who enters into a preneed funeral contract, regardless of whether it is irrevocable or revocable, shall be permitted to cancel the preneed contract within seven (7) days of its execution. Upon cancellation by the consumer, the preneed seller, or the insurance company if the preneed contract is funded by an insurance policy, shall return 100% of the funds that the preneed consumer paid pursuant to the preneed funeral contract.

### **B.** Revocation of Revocable Preneed Contracts.

If the preneed contract is revocable, then the preneed purchaser or, in the event the preneed purchaser has died, the person authorized to direct the disposition of the deceased preneed purchaser, shall have the right to revoke the contract with the original preneed seller. The original preneed seller shall be permitted to retain a reasonable revocation fee, the payment of which would be established by state law.

Upon revocation by the preneed purchaser or his or her personal representative, the trust funds or the insurance policy established to fund the preneed funeral contract shall be returned to the preneed purchaser, after deducting any applicable taxes, trust expenses and fees, and revocation fee as specified by state law. The revocation fee may be in the form of an insurance commission already collected by the preneed seller, a specified portion of the preneed contract purchase price that the seller was originally permitted to retain as an administrative fee, or a fee deducted from the trust funds prior to the refund to the purchaser.

### C. Transfer of Irrevocable Preneed Funeral Contract Funding.

If the preneed contract is irrevocable, then the preneed purchaser or, in the event the preneed purchaser has died, the person authorized to direct the disposition of the deceased preneed purchaser, shall have the right to transfer the trust funds or the insurance policy that will

be used to pay for the preneed funeral contract to another funeral provider. The original preneed seller shall be permitted to retain a reasonable transfer fee, the payment of which would be established by state law. The transfer fee may be in the form of an insurance commission already collected by the preneed seller, a specified portion of the preneed contract purchase price that the seller was originally permitted to retain as an administrative fee, or a fee deducted from the trust funds prior to the transfer of the funds to the new funeral provider.

# D. Notice of Change in Ownership of Funeral Provider.

Within thirty (30) days of a change in the ownership of the funeral home, the new ownership of the funeral home shall send a notice to the last known address of each purchaser of existing preneed contracts informed them of the change in ownership and the assumption by the new ownership of the funeral home's obligation to perform the preneed contract.

### VI. PRENEED GUARANTY FUNDS

State preneed laws and regulations should provide for the funding and administration of a preneed consumer guaranty fund ("Guaranty Fund"), the purpose of which would be to provide restitution to a purchaser of a preneed funeral contract in the event of a default by the seller. The laws and regulations would provide for the following:

#### A. Funding.

For each preneed contract entered into with a consumer, whether funded by insurance or trust funds, the seller shall pay a designated fee, which may be collected from the purchaser. The fee shall be remitted by the seller to the State Agency with oversight of the Guaranty Fund.

#### **B.** Administrator.

A State Agency shall be designated to collect the fees from preneed sellers, deposit the fees in the Guaranty Fund, administer the Guaranty Fund and make determinations as to what claims against the Guaranty Fund will be allowed and in what amounts.

# **C.** Purpose of Guaranty Fund.

The purpose of the Guaranty Fund is to make restitution to any purchaser of a preneed funeral contracts when the seller (or other provider) defaults on its obligations under the preneed contract. The restitution procedure is initiated by the filing of a written complaint by the purchaser with the State Agency. The State Agency investigates the claim and will order restitution or dismissal of the complaint. Restitution may include the principal payment made by the purchaser plus a set amount of interest.

# D. Subrogation.

If the State Agency makes any restitution payments to a purchaser from the Guaranty

Fund, the State Agency is subrogated to the purchaser's right against the seller under the preneed contract. Any amounts recovered by the State Agency shall be deposited into the Guaranty

Fund.

# E. Integrity of Guaranty Fund.

All payments deposited into the Guaranty Fund and all interest thereon may only be used for restitution. The Guaranty Fund is to be established as a separate fund and may not be deposited in the state's general fund or commingled with any other state fund.

# F. Advertising Restrictions.

Preneed sellers are prohibited from advertising in any manner the existence of the Guaranty Fund for the purpose of inducing a consumer to purchase a preneed contract.

# G. Cap.

The State Agency shall annually review the status of the Guaranty Fund. If the review determines that the Guaranty Fund, together with all accumulated interest earned thereon, is sufficient to cover the amount of potential claims against the Guaranty Fund, then payments to the Guaranty Fund may be suspended or adjusted accordingly at the discretion of the State Agency.

### VII. ENFORCEMENT OF PRENEED LAWS

### A. Record Keeping.

All preneed sellers must maintain a separate record for each preneed sale. The record shall contain at least the following information:

- The name and address of each purchaser, and if different, the name and address of each preneed contract beneficiary.
- 2. The amount of preneed funds paid, including any periodic payments, made by the purchaser and the date of each payment.
- An identification of the prened contract as revocable and irrevocable and a listing of the goods and services purchased through the contract.
- 4. The value and balance of each preneed funeral trust fund or the value of each insurance policy, as of the most recent transaction, including all annual reports received from trustees and insurance companies.
- 5. The location of all preneed funds, including name, address and account numbers of any bank accounts or trust funds, the location of any passbook or certificate of deposit, the name of any insurance company receiving preneed funds, and the policy number for any preneed insurance.

All records must be maintained and available for audit by the state agency for up to three years after the date of performance of the preneed contract.

# **B.** Annual Reports.

All preneed sellers must send an annual report to the responsible state agency listing all preneed contracts it holds indicating the name of the contract beneficiary, the date of the preneed contract, the name and address of the trustee or insurance company holding the preneed funding, and the amount of the preneed funds or insurance policy, as of the end of the year.

#### C. Audits.

The state agency receiving the annual reports must have the authority to conduct regular audits of preneed sellers. The state agency conducting the audit is authorized to investigate the books, records and accounts of any preneed seller with respect to trust funds, preneed funeral contracts, and preneed insurance policies.

# D. Sanctions.

Violations of preneed laws involving theft, embezzlement or any intentional misappropriations of preneed funds are to be felonies.