

# **Title 10 DEPARTMENT OF HEALTH AND MENTAL HYGIENE**

## **Subtitle 29 BOARD OF MORTICIANS AND FUNERAL DIRECTORS**

### **Chapter 06 Preneed Contract**

**Authority: Health Occupations Article, §§7-404, 7-405, and 7-504, Annotated Code of  
Maryland**

*10.29.06.01*

#### **.01 Scope.**

These regulations apply to all preneed contracts entered into by a licensed mortician, a licensed funeral director, and a holder of a surviving spouse license with a buyer.

*10.29.06.02*

#### **.02 Definitions.**

A. In this chapter, the following terms have the meanings indicated.

B. Terms Defined.

(1) "Annual Report" means the report required annually to document those preneed trust accounts established in 1998 and after 1998.

(2) "At need" means funeral arrangements made after the death of an individual by one authorized to make those arrangements.

(3) "Beneficiary" means the individual on whose behalf the preneed contract is purchased.

(4) "Board" means the State Board of Morticians and Funeral Directors.

(5) "Buyer" means an individual who agrees to buy certain mortuary science services and merchandise in a preneed contractual arrangement.

(6) "Casket vault" means a combination casket and outer burial enclosure.

(7) "Contract" means preneed contract.

(8) "Irrevocable trust" means an arrangement, which cannot be revoked after its creation, by which property is transferred with the intention that it be administered by a trustee for another's benefit.

(9) "Licensee" means an individual who has been issued either a mortician, funeral director, or surviving spouse license by the Board.

(10) "Preneed addendum form" means the form provided by the Board to show the allocation of preneed funds.

(11) "Preneed contract" means an agreement entered into by a licensed mortician, a licensed funeral director, or holder of a surviving spouse license with a buyer in advance of the death of that individual or beneficiary.

(12) "Seller" means a licensed mortician, licensed funeral director, or a holder of a surviving spouse license who agrees to sell certain mortuary science services or merchandise in a preneed contractual arrangement between a buyer and a funeral establishment.

(13) "Trustee" means the seller of preneed mortuary services or merchandise selected under the terms of an irrevocable trust arrangement established on behalf of the beneficiary for the purpose of eligibility for Social Security or other governmental benefits.

(14) "Unable to perform" means that the seller has died or become disabled, or that the funeral service business has discontinued.

10.29.06.03

### **.03 Execution of Preneed Contract.**

A. Only a licensed mortician, licensed funeral director, or holder of a surviving spouse license may make pre-arrangements and execute preneed contracts with buyers.

B. The seller shall present to the buyer a preneed contract which contains all of the information set forth in Health Occupations Article, §7-404, Annotated Code of Maryland.

C. The seller and buyer of a preneed contract shall execute the contract in duplicate, with a copy of the original contract given to the buyer at the time that the contract is signed.

D. The seller shall state in the preneed contract:

(1) The time required for fulfilling the terms and conditions of the contract;

(2) The cancellation terms; and

(3) The conditions of refunds.

E. On June 15 of every year, the seller shall file with the Board a report on forms provided by the Board which includes:

(1) A certification by a certified public accountant of the seller's compliance with Health Occupations Article, §7-405, Annotated Code of Maryland; and

(2) Any other information the Board considers necessary.

F. A preneed contract may be funded by a life insurance policy or an annuity contract.

G. A seller who funds preneed contracts using a life insurance policy or an annuity shall have an insurance license.

H. A seller who funds preneed contracts using a life insurance policy or annuity shall:

- (1) Give the buyer a copy of the completed contract form signed and executed by the licensee, buyer, and insurance agent at the conclusion of preneed arrangements;
- (2) Ensure that the insurance company listed on the application for insurance is the recipient of the payment when the buyer is executing payment;
- (3) Send a copy of the certificate of insurance to the buyer immediately upon receipt of the approved insurance policy; and
- (4) Present a copy of a filed death certificate policy claim form and any other information required by the insurance company for payment of services provided under the preneed insurance contract.

I. Funds may not be transferred from a money-trust to an insurance-funded vehicle without the approval and signature on the insurance application of the buyer or legal representative of the buyer.

10.29.06.04

#### **.04 Disposition of Preneed Contract Fund.**

A. Within 10 days of receiving payment under a preneed contract, the seller shall deposit into an interest-bearing escrow or trust account that is insured by the Federal Deposit Insurance Corporation (FDIC):

- (1) An amount from the payment that is equal to at least 80 percent of the selling price of a casket or casket vault under the preneed contract; and
- (2) 100 percent of the payment that is for all other goods and services under the preneed contract.

B. The seller need not have a separate interest-bearing escrow or trust account for each preneed contract executed.

C. The seller may place in the escrow account with the other funds up to 100 percent of the price of the casket or casket vault.

D. Interest on Preneed Contract Fund.

- (1) The interest or dividends earned by the interest-bearing escrow or trust account belongs to the buyer of the contract.
- (2) The seller shall send to the buyer a tax form stating the amount of the interest accumulated in the account each year that the contract is in effect until the time of death of the beneficiary.
- (3) It is the responsibility of the buyer to pay the taxes due on that interest.
- (4) Money remaining in the interest-bearing escrow or trust account after the performance of the contract belongs to the seller.

E. The seller may not withdraw from the account the money received from the buyer unless the services and merchandise have been provided as agreed to in the contract or unless the buyer terminates the contract.

F. The seller may withdraw money from the account if one of the following conditions are met:

(1) The buyer or legal representative of the buyer forwards a notarized statement and withdrawal request stating that the seller may:

(a) Cancel the prepaid contract if revocable; or

(b) Transfer the monies to a named substitute trustee if the prepaid contract is irrevocable; or

(2) The funeral home presents a copy of a filed or certified death certificate to the banking institution holding the account funds for payment of services provided under a preneed contract.

*10.29.06.05*

### **.05 Obligations of Seller.**

A. A seller shall provide the buyer with:

(1) A general price list of all goods and services for the buyer to keep;

(2) A statement of goods and services that are reasonably expected to be required at the time of need, but are not included in the preneed contract;

(3) Information concerning cancellation and refund rights under Health Occupations Article, §7-405(d), Annotated Code of Maryland;

(4) A receipt for all monies received and a copy of the completed forms signed and executed by the seller and the buyer; and

(5) A copy of the deposit slip showing the amount of preneed funds deposited into an interest-bearing escrow or trust account with an FDIC insured account under Regulation .04A of this chapter.

B. The seller shall perform the contract according to the contract's terms and at the agreed upon price.

C. The seller shall substitute comparable merchandise when the specified merchandise is unavailable.

D. The seller is not responsible for those events which are beyond the seller's control, such as changes in cemetery requirements.

E. Nothing in this regulation shall prohibit a funeral home from its rights to transfer escrow or trust accounts from one institution to another FDIC insured banking institution. The funeral home shall provide the new account information to the buyer along with a copy of the deposit slip within 30 days after transferring preneed funds.

F. The funeral establishment and the establishment's supervising mortician shall be responsible for providing the services contracted. In the case of a funeral establishment owned by a corporation licensed under Health Occupations Article, §7-309, Annotated Code of Maryland, the supervising mortician and the corporation shall be responsible for the services contracted.

*10.29.06.06*

### **.06 Termination of Preneed Contract.**

A. Except as otherwise provided in this regulation, a preneed contract may not be terminated by the seller.

B. Except as otherwise provided in this section, a seller may not withdraw from the preneed interest-bearing escrow or trust account the money received from a buyer unless the services and merchandise agreed to in the contract have been provided.

C. At the time a preneed contract is terminated, the seller shall refund to the buyer the payments and interest held for the buyer, if any one of the following conditions occur:

(1) The buyer or the legal representative or representatives of the buyer demands in writing a refund of the payments made except as set forth in Regulation .09 of this chapter;

(2) The business of the seller is discontinued;

(3) The seller is unable to perform under the terms and conditions of the preneed contract for reasons other than an increase in the cost of goods and services; or

(4) The buyer fails to pay the entire contract price before the death of the beneficiary.

*10.29.06.07*

### **.07 Premature Death of Beneficiary or Buyer.**

If the death of the buyer or beneficiary occurs before the terms and conditions of the preneed contract are met, the buyer or legal representative of the beneficiary shall be given the option of withdrawing all funds paid and interest accrued or renegotiating a contract with mutually agreed upon financial adjustments.

*10.29.06.08*

### **.08 Sale or Change in the Ownership of a Funeral Corporation or Establishment.**

A. A funeral corporation or establishment which is in the process of being sold shall file with the Board a list of preneed contracts and document that the money resulting from the preneed contracts has been set aside in an interest-bearing, federally insured escrow or trust account.

B. The seller of the funeral corporation or establishment shall document that arrangements have been made with the buyer and with another licensee to honor the preneed contracts.

C. The seller shall notify the buyers of the preneed contract that the business is being sold and give the buyers an opportunity to either continue the same contractual arrangements with the new owner or to demand a refund of the money paid into the interest-bearing escrow or trust account.

D. On the death or disability of the seller or if the seller loses or is unable to use that individual's license, the partners or surviving spouse shall notify the Board and document that the preneed contract money has been set aside and remains inviolate, and that arrangements have been made to honor the preneed contracts.

E. On the death or disability of the seller or if the seller loses or is unable to use that individual's license, the buyer of the preneed contract shall be contacted and given an opportunity to either continue the arrangement with the remaining partners or surviving spouse or to demand a refund of the money paid into the interest-bearing escrow or trust account.

F. If a licensee files for bankruptcy and that bankruptcy involves assets which include preneed contracts and bank accounts, the bankrupt, or the trustee appointed by the court to handle the bankruptcy, shall:

- (1) Notify the Board of that bankruptcy filing;
- (2) Document to the Board the number of preneed accounts that exist;
- (3) Identify the bank accounts for those preneed documents; and
- (4) Make assurances to the Board that the preneed accounts will be honored.

G. If a licensee files for bankruptcy, the licensee shall notify the buyer of a preneed contract of the filing and give the buyer an opportunity to terminate the contract and obtain a full refund of the money paid under the preneed contract or to make arrangements to continue the agreement with the bankrupt seller or another seller.

10.29.06.09

### **.09 Irrevocable Trusts.**

A. A buyer may establish an irrevocable trust with respect to all or any portion of the payment made under the contract in an interest-bearing, federally insured escrow or trust account held by the seller, but only for the purpose of entitling the buyer to be eligible for current Social Security benefits or for benefits under any other plan that restricts eligibility to those with limited assets.

B. The seller shall present to the buyer a document establishing the irrevocable trust which provides:

- (1) The appointment of a trustee to sign all necessary papers to effectuate the contract upon the death of the buyer;
- (2) That the disposition of income earned by the trust inures to the benefit of the buyer;
- (3) The transfer of the trust funds, if required; and
- (4) The disposition of the trust funds if:
  - (a) The business of the seller is discontinued,
  - (b) The seller is unable to perform under the terms and conditions of the preneed contract, or
  - (c) The buyer fails to pay the entire contract price before the death of the beneficiary.

C. The buyer or legal representative of the buyer shall retain the right to appoint, as trustee of the irrevocable trust, a substitute trustee.

D. If the buyer who sets up an irrevocable trust terminates the preneed contract with the seller, the buyer and seller shall take the following actions:

- (1) The seller shall maintain the funds in trust for the beneficiary until a substitute seller is selected;
- (2) The buyer shall enter into a new preneed contract with the substitute seller; and
- (3) The seller shall transfer the trust funds to the substitute seller for placement in a separate interest-bearing escrow account or trust account.

E. Notwithstanding the provisions set forth in these regulations, when a buyer terminates the preneed contract, the funds contained in the irrevocable trust may not be returned to the buyer but the seller shall maintain the funds in trust for the beneficiary.

F. Funds maintained in an irrevocable trust are not counted as assets with respect to the buyer's Social Security benefits, Medical Assistance eligibility, or any other plan which restricts eligibility to those with limited assets.

G. The seller shall provide in the document establishing a trust the following notice, conspicuously displayed in 10-point boldface type:

"This document creates an irrevocable trust. Under the terms of this document, a buyer may not receive a refund of any payments made for the preneed burial or cremation contract."

10.29.06.10

## **.10 Prohibitions.**

A. The following individuals may not enter into a preneed contract with a buyer:

- (1) The owner or director of a corporation license issued by the Board who is not also a licensed mortician, funeral director, or holder of a surviving spouse license;
- (2) A holder of an apprentice license;
- (3) A holder of a courtesy card license; or
- (4) An individual who is not licensed by the Board as a mortician, funeral director, or surviving spouse license holder.

B. The following individuals may not advertise that they provide preneed contracts:

- (1) The owner or director of a corporation license issued by the Board who is not also a licensed mortician, funeral director, or holder of a surviving spouse license;
- (2) A holder of an apprentice license;
- (3) A holder of a courtesy card license; or
- (4) An individual who is not licensed by the Board as a mortician, funeral director, or surviving spouse license holder.

10.29.06.9999

### *Administrative History*

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