

**SETTLEMENT AGREEMENT BETWEEN THE STATE
BOARD OF EMBALMERS AND FUNERAL DIRECTORS, BAUE FUNERAL
HOME CO. D/B/A BAUE FUNERAL HOMES AND LISA A. BAUE**

COMES NOW the State Board of Embalmers and Funeral Directors (the "Board") Baue Funeral Home Co. d/b/a Baue Funeral Homes ("Baue Funeral Home"), and Lisa Baue ("Director") and enter into this Agreement ("Settlement Agreement").

Pursuant to the terms of Section 536.060, RSMo¹, as it is made applicable to the Administrative Hearing Commission ("AHC") by Section 621.135, RSMo, the parties waive the right to the filing of a disciplinary complaint by the Board with the AHC, a hearing of the issues stipulated in this Settlement Agreement in front of the AHC, and, additionally, the right to a disciplinary hearing before the Board pursuant to Section 621.110, RSMo, and jointly stipulate and agree that a final disposition of this matter may be effectuated as described below.

Licensees acknowledge that they are aware of and understand the various rights and privileges afforded to them by law, including: 1) the right to a hearing of the charges against them; 2) the right to appear and be represented by legal counsel; 3) the right to have all charges against them proven upon the record by competent and substantial evidence; 4) the right to cross-examine any witness appearing at the hearing against them; 5) the right to present evidence on their behalf at the hearing; 6) the right to a decision upon the record of the hearing by a fair and impartial Administrative Hearing Commissioner concerning the charges against them; 7) the right to a ruling on questions of law by the AHC; 8) the right to

¹All references are to the 2000 Revised Statutes of Missouri unless otherwise noted.

a disciplinary hearing before the Board at which time they may present evidence in mitigation of discipline; and 9) the right to a claim for attorney's fees and expenses. Being aware of these rights provided them by operation of law, Licensees knowingly and voluntarily waive each and every one of these rights and freely enter into this Settlement Agreement. Licensees further agree to abide by the terms of this document as they pertain to them.

Licensees acknowledge that they have received a copy of the investigative report and other documents relied upon by the Board in determining that there was cause for discipline, along with citations to law and/or regulations the Board believes was violated. Licensees acknowledge that the Board and its attorney followed the procedures enumerated in Section 621.045, RSMo, including but not limited to: 1) providing them with a written description of the specific conduct for which discipline is sought, and a citation to the law and rules violated, together with copies of any documents which are the basis thereof; 2) allowing them at least sixty (60) days from the date of mailing to consider the Board's initial settlement offer and discuss the terms of such settlement offer with the Board; 3) advising them that they may, either at the time the settlement agreement is signed by all parties, or within fifteen (15) days thereafter, submit the agreement to the AHC for determination that the facts agreed to by the parties to the settlement constitute grounds for denying or disciplining their licenses; and 4) advising them that they have the right to consult an attorney at their own expense in any contact pursuant to Section 621.045.3, RSMo, by the Board or its counsel.

For the purpose of settling this dispute, Licensees stipulate that the factual stipulations contained in this agreement are true and stipulate with the Board that Baue Funeral Home's funeral establishment license, license number 001922, and Director's and license to practice as a funeral director, license number 004606, are subject to disciplinary action by the Board in accordance with the provisions of Chapters 333, 436 and 621, RSMo.

Stipulated Findings of Fact

1. The State Board of Embalmers and Funeral Directors is an agency of the state of Missouri created pursuant to Section 333.151, RSMo for the purpose of executing and enforcing the provisions of chapter 333, RSMo.

2. Baue Funeral Home Co. is a Missouri corporation, in good standing, with its principal place of business located at 620 Jefferson Street, St. Charles, Missouri. Baue Funeral Homes is a registered fictitious name of Baue Funeral Home Co.

3. Baue Funeral Home holds Missouri funeral establishment license number 001922. Baue Funeral Home's Missouri funeral establishment license is now, and was at all times relevant herein, current and active.

4. St. Charles County Funeral Plan, Inc. ("St. Charles"), is a Missouri corporation with its principal place of business located at 620 Jefferson Street, St. Charles, Missouri 63301. St. Charles holds no license issued by the Board.

5. Lisa Baue (“Director”) holds Missouri funeral director license number 004606. Director’s Missouri funeral director’s license is now, and was at all times relevant herein, current and active.

6. Director is the President and Chief Executive Officer of Baue Funeral Home Company and St. Charles.

7. On or about August 30, 2005, Baue Funeral Home, St. Charles, and Director entered into an “*Assurance of Voluntary Compliance*” (attached as Exhibit A and incorporated herein by reference) with the State of Missouri, in which the state alleged that Baue Funeral Home, St. Charles, and Director retained as their own money amounts exceeding twenty percent of the total payment agreed to be paid by the purchasers of preneed contracts as such total is reflected in each preneed contract; falsely promised and misrepresented to consumers that at least eighty percent of payments on preneed contracts would be placed in a preneed trust account when, at the time, the practice of Baue Funeral Home, St. Charles and Director was not to deposit the payments in a preneed trust account; and failed to deposit timely funds paid by purchasers of preneed contracts into preneed trust accounts with state or federally chartered financial institutions authorized to exercise trust powers in Missouri.

8. Pursuant to the “*Assurance of Voluntary Compliance*”, Baue Funeral Home, St. Charles, and Director agreed that the “*Assurance of Voluntary Compliance*” could be used as a basis for discipline and agreed to enter into a settlement agreement with the Board

imposing discipline of five years probation subject to certain terms and conditions on the funeral director license held by Director and the funeral establishment license held by Baue Funeral Home, based on the conduct described in the *Assurance of Voluntary Compliance*.

Stipulated Conclusions of Law

9. Jurisdiction and venue are proper before the Administrative Hearing Commission (the "Commission") pursuant to Section 333.121.2, RSMo, and Section 436.063, RSMo.

10. Section 407.020, RSMo, states, in pertinent part:

The act, use or employment by any person of any deception, fraud, false pretense, false promise, misrepresentation, unfair practice or the concealment, suppression, or omission of any material fact in connection with the sale or advertisement of any merchandise in trade or commerce or the solicitation of any funds for any charitable purpose, as defined in section 407.453, in or from the state of Missouri, is declared to be an unlawful practice . . . Any act, use or employment declared unlawful by this subsection violates this subsection whether committed before, during or after the sale, advertisement or solicitation.

11. Section 436.027, RSMo, states:

The seller may retain as his own money, for the purpose of covering his selling expenses, servicing costs, and general overhead, the initial funds so collected or paid until he has received for his use and benefit an amount not to exceed twenty percent 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.

12. Section 333.121.2, RSMo, states, in relevant portion, as follows:

2. The board may cause a complaint to be filed with the administrative hearing commission as provided by chapter 621, RSMo,

against any holder of any certificate of registration or authority, permit or license required by this chapter or any person who has failed to renew or has surrendered his certificate of registration or authority, permit or license for any one or any combination of the following causes:

* * * *

(15) Violation of any of the provisions of chapter 193, RSMo, chapter 194, RSMo, or chapter 436, RSMo;

13. The conduct alleged in the “*Assurance of Voluntary Compliance*”, upon which Baue Funeral Home and Director agreed that discipline could be based is in violation of Section 436.027, RSMo, in that Baue Funeral Home and Director kept funds in excess of the twenty percent authorized by statute.

14. There is cause to discipline the establishment license held by Baue Funeral Home and the funeral director’s license held by Director pursuant to Section 333.121.2(15) because Baue Funeral Home and Director have violated Section 436.027, RSMo.

JOINT AGREED DISCIPLINARY ORDER

Based upon the foregoing, the parties mutually agree and stipulate that the following shall constitute the disciplinary order entered by the Board in this matter under the authority of Sections 621.110, 333.100 and 436.063, RSMo. This disciplinary order will be effective fifteen days from the date it is signed by the Executive Director of the Board.

15. **Probation of licenses.** Missouri funeral establishment license number 001922, held by Baue Funeral Home for its location at 620 Jefferson Street, St. Charles, Missouri, and Missouri funeral director’s license number 004606, held by Lisa Baue, are hereby placed on

PROBATION for a period of five (5) years (the “Disciplinary Period”) subject to the terms and conditions set forth below. During the Disciplinary Period, Baue Funeral Home shall be entitled to operate as a funeral establishment and Director shall be allowed to practice as a funeral director provided they comply with the terms and conditions of the Disciplinary Period.

16. **Terms and Conditions of the Disciplinary Period.** Terms and conditions of the Disciplinary Period are as follows:

A. Baue Funeral Home shall keep the Board apprised at all times in writing of its current business address and telephone number, and Director shall keep the Board apprised at all times in writing of her current home and work addresses and telephone numbers at each place of business. Baue Funeral Home and Director, respectively, shall provide the Board with written notification within ten days of any change in this information.

B. Baue Funeral Home and Director shall timely renew all Board issued licenses and registrations and timely pay all fees for these renewals and comply with all other requirements to maintain her licenses and registrations in a current and active state.

C. If, at any time within the Disciplinary Period, Baue Funeral Home and/or Director change residence and/or place of business from the State of Missouri, cease to be currently licensed under the provisions of Chapter 333 or Chapter 436, or

fail to keep the Board advised of all current places of business and/or residence, the time of absence, or unlicensed status or unknown whereabouts, shall not be deemed or taken as any part of the Disciplinary Period.

D. Baue Funeral Home and Director shall comply with all provisions of Chapter 333, RSMo, Sections 436.005 through 436.071, RSMo, all rules and regulations of the Board, and all state and federal laws related to the performance of duties in the funeral industry.

E. Director and/or an agent of Baue Funeral Home shall appear before the Board or its representatives upon the Board's request.

F. Baue Funeral Home and Director shall accept and cooperate with unannounced visits from the Board's duly authorized representatives to monitor their compliance with these terms and conditions.

G. Baue Funeral Home and Director shall submit written reports to the Board by no later than January 1 and July 1 during each year of the Disciplinary Period stating truthfully whether there has been compliance with all terms and conditions of this Settlement.

H. Baue Funeral Home shall comply with all terms and conditions of the *Assurance of Voluntary Compliance*.

17. Upon the expiration and successful completion of the Disciplinary Period, the establishment license held by Baue Funeral Home and the funeral director license held by

Director shall be fully restored if all other requirements of the law have been satisfied; provided however, that in the event the Board determines that either Baue Funeral Home or Director, or both, have violated any term or condition of this Agreement, the Board may, in its discretion, after an evidentiary hearing, vacate and set aside the discipline imposed herein and may suspend, revoke, or otherwise lawfully discipline Baue Funeral Home's establishment license and/or Director's funeral director's license.

18. No order shall be entered by the Board pursuant to the preceding paragraph of this Agreement without notice and an opportunity for hearing before the Board in accordance with the provisions of Chapter 536, RSMo.

19. If the Board determines that Baue Funeral Home and/or Director has violated a term or condition of this Agreement, which violation would also be actionable in a proceeding before the Administrative Hearing Commission or the circuit court, the Board may elect to pursue any lawful remedies or procedures afforded it and is not bound by this Agreement in its determination of appropriate legal actions concerning such violation.

20. If any alleged violation of this Agreement occurs during the Disciplinary Period, the Board may choose to conduct a hearing before it either during the Disciplinary Period, or as soon thereafter as a hearing can be held, to determine whether a violation occurred and, if so, may impose further disciplinary action. The Board has continuing jurisdiction to hold a hearing to determine if a violation of this Agreement has occurred.

21. The terms of this Agreement are contractual, legally enforceable and binding, not merely recital. Except as otherwise continued herein, neither this Agreement nor any of its provisions may be changed, revised, discharged, or terminated except by an instrument in writing signed by the party against whom the enforcement of the change, waiver, discharge, or termination is sought.

22. Each party agrees to pay all their own fees and expenses incurred as a result of this case and any ensuing litigation.

23. The parties to this Agreement understand that the Board will maintain the Agreement as an open and public record as provided in Chapters 333, 436, 610 and 620, RSMo.

24. Baue Funeral Home and Director, together with their heirs, assigns, agents, employees, representatives and attorneys, do hereby waive, release, acquit and forever discharge the Board, its respective members, employees, agents, and attorneys, including former members, employees, agents, and attorneys, of, or from, any liability, claim, actions, causes of action, fees, costs, expenses, and compensation, including, but not limited to, any claims for attorney's fees and expenses, whether or not now known or contemplated, including, but not limited to, any claims pursuant to Section 536.087, RSMo 2000, or any claim arising under 42 U.S.C. Section 1983, which may be based upon, arise out of, or relate to any of the matters raised in this case, its settlement or from the negotiation or execution of its settlement. Licensees acknowledge that this paragraph is severable from the remaining

portions of this Agreement in that it survives in perpetuity even in the event that any court of law or administrative tribunal deems this Agreement or any portion thereof void or unenforceable.

25. In consideration of the foregoing, the parties consent to the termination of any further proceedings based upon the facts set forth herein.

26. Licensees may, either at the time of signing of this Agreement or within fifteen days thereafter, submit this Agreement to the AHC to determine that the facts agreed to by the parties constitute grounds for disciplining the licenses of Baue Funeral Home and Director. If Baue Funeral Home or Director have requested review, the parties jointly request the AHC determine whether the facts set forth herein are grounds for disciplining the establishment license held by Baue Funeral Home and the funeral director's license held by Director and issue findings of fact and conclusions of law stating that the facts agreed to by the parties are grounds for disciplining the establishment license held by Baue Funeral Home and the funeral director's license held by Director. Effective the date the AHC determines that the Settlement Agreement sets forth cause for disciplining these licenses, the agreed upon discipline set forth herein shall go into effect.

27. If neither Baue Funeral Home nor Director have requested review by the AHC, this Settlement Agreement shall go into effect 15 days after the document is signed by the Executive Director of the Board.

LICENSEES

STATE BOARD OF EMBALMERS AND
FUNERAL DIRECTORS

Lisa A. Baue 1/9/07
Date

Lisa A. Baue

Becky Dunn 1/16/07
Date

Becky Dunn
Executive Director

Baue Funeral Home Co. 1/9/07
Date

JEREMIAH W. (JAY) NIXON
Attorney General

By: Lisa A. Baue 1/9/07
Title: President

Sharon K. Euler
Date

Daniel K. Barklage
Dan Barklage
Missouri Bar Number #26496

Assistant Attorney General
Missouri Bar No. 42950

Barklage, Brett, Martin,
Wibbenmeyer & Hamill
211 N. Third Street
St. Charles, MO 63301

Penntower Office Building
3100 Broadway, Suite 609
Kansas City, MO 64111

Phone: 636-949-2120
Fax: 636-949-8786

Telephone: 816-889-5000
Telefax: 816-889-5006

E-mail: dbarklage@barklage-brett.com

E-mail: sharon.euler@ago.mo.gov

Attorney for Licensees

Attorneys for State Board of Embalmers and
Funeral Directors