

**SETTLEMENT AGREEMENT BETWEEN STATE BOARD OF EMBALMERS AND  
FUNERAL DIRECTORS AND OLIVER FUNERAL HOME, LLC**

The State Board of Embalmers and Funeral Directors (the "Board") and Oliver Funeral Home, LLC ("Licensee" or "Oliver Funeral Home"), enter into this "Settlement Agreement Between State Board of Embalmers and Funeral Directors and Oliver Funeral Home, LLC" (the "Settlement Agreement") to resolve the question of whether Oliver Funeral Home violated the terms and conditions of probation on its preneed seller license and, if so, to agree on the appropriate level of discipline to impose on the preneed seller license as a result of this violation.

Pursuant to the terms of Section 536.060 RSMo<sup>1</sup>, the parties hereto waive the right to a hearing before the Board per Section 324.042, RSMo, and stipulate and agree that a final disposition of this matter may be effectuated as described below.

Licensee acknowledges that it understands the various rights and privileges afforded it by law, including the right to a hearing of the charges against it; the right to appear and be represented by legal counsel; the right to have all charges against it proven upon the record by competent and substantial evidence; the right to cross-examine any witnesses appearing at the hearing against it; the right to a decision upon the record by a fair and impartial administrative hearing commissioner concerning the charges pending against it and, subsequently, the right to a hearing before the Board at which time it may present evidence in mitigation of discipline; and the right to potentially recover attorney's fees incurred in defending this action against its license. Being aware of these rights provided it by operation of law, Licensee knowingly and voluntarily waives each and every one of these rights and freely enters into this Settlement Agreement and agrees to abide by the terms of this document, as they pertain to it.

---

<sup>1</sup> All statutory references are to the Revised Statutes of Missouri (2000), as supplemented, unless otherwise indicated.

Licensee acknowledges that it has received a copy of the investigative report and other documents relied upon by the Board in determining there is cause for discipline, along with citations to law and/or regulations the Board believes were violated. For the purpose of settling this dispute, Licensee stipulates that the factual allegations contained in this Settlement Agreement are true and stipulates with the Board that Licensee's license to practice as a preneed seller, license number 2010027221, is subject to disciplinary action by the Board in accordance with the provisions of Chapters 324, 333 and 621 RSMo.

**Relevant Statutes**

Section 324.042, RSMo, states:

Any board, commission, or committee within the division of professional registration may impose additional discipline when it finds after hearing that a licensee, registrant, or permittee has violated any disciplinary terms previously imposed or agreed to pursuant to settlement. The board, commission, or committee may impose as additional discipline any discipline it would be authorized to impose in an initial disciplinary hearing.

**Statement by Licensee Only and Not Stipulated to by the Board**

Licensee enters into this Settlement Agreement for the purpose of resolving this matter without the additional expense of litigation.

**Joint Stipulation of Facts and Conclusions of Law**

The parties agree and stipulate to the following findings of fact and conclusions of law:

1. The Board is an agency of the state of Missouri created and established by Section 333.151, RSMo, for the purposes of executing and enforcing the provisions of Chapter 333, RSMo, and the portions of Chapter 436, RSMo, related to preneed funeral contracts.

2. Oliver Funeral Home is a Missouri limited liability company that has registered its address with the Board as 102 E. Sneed, Centralia, Missouri 65240.

3. Oliver Funeral Home holds preneed seller license number 2010027221.

4. On August 4, 2010, the Board issued its "Order of the State Board of Embalmers and Funeral Directors Issuing a Probationary Preneed Seller License to Oliver Funeral Home" (the "Probated Seller Order"). A true and accurate copy of the Probated Seller Order is attached as Exhibit A to this Settlement Agreement and incorporated herein by reference as if fully set forth.

5. In the Probated Seller Order, the Board found cause to deny the application of Oliver Funeral Home for a preneed seller's license due to Oliver Funeral Home practicing as a preneed seller between November 1, 2009 and July 19, 2010 when it held no such license.

6. In lieu of denial, the Board issued Oliver Funeral Home a preneed seller license on probation for five years beginning on August 4, 2010 and ending on August 3, 2015 and subject to certain terms and conditions as set forth in the Probated Seller Order.

7. In Section III, paragraph D, on page 5 of the Probated Seller Order, a condition of probation requires that Oliver Funeral Home (referred to as OFH in the Probated Seller Order) submit periodic written reports and compliance and states:

OFH shall submit written reports to the Board by no later than January 1 and July , during each year of the Disciplinary period, stating truthfully whether there has been compliance with all terms and conditions of this Order. A copy of the required report may be obtained from the Board.

8. Section III, paragraph M, on page 5 of the Probated Seller Order states:

Any failure by OFH to comply with any condition of discipline set forth herein constitutes a violation of this Order.

9. Oliver Funeral Home's first written report of compliance was due with the Board on or before January 1, 2011 and the second report was due on July 1, 2011.

10. The Board received no written report of compliance from Oliver Funeral Home on or before January 1, 2011 nor did the Board receive a written report of compliance on or before July 1, 2011.

11. On August 31, 2011, the Board filed a Probation Violation Complaint alleging that Oliver Funeral Home failed to comply with the terms and conditions of its probation by failing to file its required written reports of compliance.

12. As of the date of filing the Probation Violation Complaint, Oliver Funeral Home filed no written report of compliance with the Board as required as a condition of probation for its preneed seller license.

13. On September 22, 2011, Oliver Funeral Home requested a continuance of the hearing on the Probation Violation Complaint.

14. On September 27, 2011, the Board issued its Order continuing the hearing on the Probation Violation Complaint.

15. On September 28, 2011, Oliver Funeral Home filed its delinquent written reports of compliance with the Board.

### Jurisdiction and Venue

16. The Board possesses jurisdiction over this matter pursuant to Section 324.042, RSMo, and pursuant to Section III, paragraphs H, I, K and M, on page 6 of the Probated Seller Order.

17. Venue is proper.

#### Violations of terms and conditions of probation

18. Oliver Funeral Home violated condition C of Section III, on page 5 of the Probated Seller Order by failing to file timely its written report of compliance due on January 1, 2011.

19. Oliver Funeral Home violated condition C of Section III, on page 5 of the Probated Seller Order by failing to file timely its written report of compliance due on July 1, 2011.

20. Cause exists for the Board to impose additional disciplinary action against Licensee's preneed seller license as authorized by Section 324.042, RSMo.

21. As of the effective date of this Settlement Agreement, the Probated Seller Order is vacated and this Settlement Agreement sets forth the discipline imposed against Licensee's seller license.

### Jointly Stipulated Disciplinary Order

The parties agree and stipulate that the following shall constitute the disciplinary order entered by the Board in this matter under the authority of Sections 333.330 and 621.045.3, RSMo:

22. Licensee's license to practice as a preneed seller is hereby placed on **PROBATION** for a period of **FIVE YEARS** (the "Disciplinary Period"), beginning on the effective date of this Settlement Agreement. During the period of probation, Oliver Funeral Home shall be entitled to operate as a licensed preneed seller, as defined in Chapters 333 and 436, RSMo, subject to the following terms and conditions of probation:

Terms and Conditions of Probation

23. Licensee shall comply with the following terms and conditions of probation during the Disciplinary Period:

- a. Licensee shall keep the Board informed of Licensee's current work and home telephone numbers and addresses. Licensee shall notify the Board in writing within ten (10) business days of any change in this information. If Licensee utilizes e-mail, Licensee shall provide the Board with his current and active e-mail address;
- b. Licensee shall comply with all applicable provisions of Chapters 194, 333 and 436, RSMo, all Board regulations and all federal, state and local laws and regulations related to business operations in the funeral and death care industry including all insurance and security laws applicable to any insurance or annuity used to fund preneed funeral contracts;
- c. Licensee shall engage in no conduct that would give the Board cause to seek authority to discipline from the Administrative Hearing Commission;
- d. Licensee shall meet in person with the Board or any Board representative at any such time and place as required by the Board or its representative upon reasonable notice. Any such meetings shall be at the Board's discretion;

- e. Licensee shall submit written compliance reports to the Board no later than January 1 and July 1 of each year, but no compliance report shall be filed more than 14 days before it is due. Each of these compliance reports shall state truthfully whether there has been full compliance with the terms and conditions of this Order for the previous six month period and shall fully explain any non-compliance. These compliance reports shall contain all other information required by this Order. Compliance reports may be submitted on a form provided by the Board, but failure to receive such a form from the Board shall not excuse the timely filing of any compliance report;
- f. Upon the request by the Board or its representative, Licensee shall immediately submit any and all records requested to show compliance with these terms and conditions;
- g. Licensee shall renew timely all licenses and/or registrations, shall pay timely all fees required for licensure/registration and shall meet all other requirements necessary to maintain all licenses and registrations issued by the Board current and active; and
- h. Licensee shall accept and cooperate with unannounced visits from the Board, or its representatives, to monitor compliance with the terms and conditions of probation.

24. The terms of this Settlement Agreement are contractual, legally enforceable and binding, not merely recital. Except as otherwise contained herein, neither this Settlement Agreement nor any of its provisions may be changed, waived, 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.

25. Upon the expiration of the Disciplinary Period and successful completion of the probation, Licensee's seller license shall be fully restored if all other requirements of the law have been satisfied; provided however, that in the event the Board determines that Licensee has violated any term or condition of this Settlement 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 Licensee's seller license.

26. The Board shall enter no order imposing further discipline on Licensee's seller license without notice and an opportunity for hearing before the Board in accordance with the provisions of Chapter 536, RSMo.

27. The Board shall enter no order, other than the order contained in this Settlement Agreement, imposing further discipline on Licensee's seller license as a result of Licensee's failure to file written reports of compliance due on January 1 and July 1, 2011.

28. If the Board determines that Licensee has violated a term or condition of this Settlement Agreement, and that violation would also be actionable in a proceeding before the Administrative Hearing Commission or in a circuit court, the Board may elect to pursue any lawful remedies or procedures afforded to it and is not bound by this Order in its determination of appropriate legal actions concerning such violation(s).

29. If any alleged violation of this Settlement Agreement occurs during the Disciplinary Period, the Board may choose to conduct a hearing on the alleged violation either during the Disciplinary Period, or as soon thereafter as a hearing can be held, to determine whether a violation of the terms and conditions of probation occurred and, if so, may impose

further discipline on the seller license of Licensee. The Board has continuing jurisdiction to hold a hearing determine if a violation of the terms and conditions of probation occurred.

30. Licensee, together with its heirs and assigns and its attorney(s), do hereby waive, release, acquit and forever discharge the Board, its respective members and any of its employees, agents or attorneys, including any former Board members, employees, agents and attorneys, of, or from, any liability, claim, actions, causes of action, fees, costs and expenses and compensation, including, but not limited to, any claims for attorney's fees and expenses, including any claims pursuant to Section 536.087 RSMo, or any claim arising under 42 U.S.C. § 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. Licensee acknowledges that this paragraph is severable from the remaining portions of this Settlement Agreement in that it survives in perpetuity even in the event that any court of law deems this Settlement Agreement or any portion thereof void or unenforceable.

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

32. Licensee understands that it may, either at the time the Settlement Agreement is signed by all parties or within fifteen (15) days thereafter, submit the Settlement Agreement to the Administrative Hearing Commission for determination that the facts agreed to by the parties constitute grounds for disciplining Licensee's license. If Licensee desires the Administrative Hearing Commission to review this Settlement Agreement, Licensee may submit its request to: Administrative Hearing Commission, Truman State Office Building, P.O. Box 1557, Jefferson City, Missouri 65102.

33. If Licensee requests review, this Settlement Agreement shall become effective on

the date the Administrative Hearing Commission issues its order finding that the Settlement Agreement sets forth cause for disciplining Licensee's license. If Licensee does not request review by the Administrative Hearing Commission, the Settlement Agreement goes in to effect 15 days after the document is signed by the Executive Director of the Board.

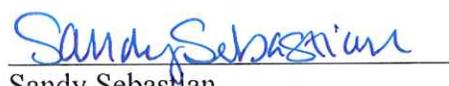
34. This Order of the Board shall be maintained as an open and public record of the Board as provided in Chapters 333, 610 and 324, RSMo.

Licensee

  
John Oliver, \_\_\_\_\_  
Oliver Funeral Home

Dated: 1-7-2013

Board

  
Sandy Sebastian  
Executive Director  
State Board of Embalmers and Funeral Directors  
Dated: 1-17-13

By checking this box, I, John Oliver, certify that I am authorized by Oliver Funeral Home, LLC to enter into this Settlement Agreement on behalf of Oliver Funeral Home, LLC.

Approved:

  
Nicole L. Sublett # 51728  
Newman, Comely & Ruth, P.C.  
601 Monroe Street, Suite 301  
Jefferson City, Missouri 65102  
(573)-634-2266 (voice)  
(573) 636-3306 (fax)  
Niki.s@ncrpc.com

  
Sharon K. Euler # 42950  
Division of Professional Registration  
615 East 13<sup>th</sup> Street, Suite 510  
Kansas City, Missouri 64106  
(816) 889-3687 (voice)  
(816) 889-2345 (fax)  
Sharon.euler@pr.mo.gov

EFFECTIVE DATE  
2.1.13  
STATE BOARD OF EMBALMERS  
AND FUNERAL DIRECTORS



shall be delivered to the parties. Review of the decision of the Administrative Hearing Commission shall be pursuant to Chapter 536, RSMo.

If no written request for review is filed with the Administrative Hearing Commission within the 30-day period, the right to seek review of the Board's decision shall be considered waived. Should OFH file a written request for review of this Order, the terms and conditions of this Order shall remain in force and effect unless or until such time as the Administrative Hearing Commission issues an Order to the contrary.

Based upon the foregoing, the Board states:

I.

**FINDINGS OF FACT**

1. The Board is an agency of the state of Missouri created and established pursuant to § 333.151, and is responsible for executing and enforcing the provisions of Chapter 333 and §§ 436.400 – 436.525, RSMo (as amended), relating to the practice of funeral directing, embalming and preneed funeral contracts.

2. On or about July 19, 2010, Oliver Funeral Home, LLC submitted an application to the Board to be licensed as a preneed seller.

3. OFH was registered as a preneed seller prior to the passage of Senate Bill 1<sup>1</sup>, which became effective on August 28, 2009.

4. OFH did not file a notice of intent to apply pursuant to 20 CSR 2120-3.100 nor an application for preneed seller as required pursuant to 20 CSR 2120-3.100.

---

<sup>1</sup> House Committee Substitute for Senate Substitute for Senate Committee Substitute for Senate Bill No. 1, 95th General Assembly, First Regular Session, effective August 28, 2009.

5. On or about April 19, 2010, the Board notified OFH that it had not filed an application for preneed seller and it needed to either cease doing business or file an application with the Board.

6. The Board conducted an investigation to determine if OFH had sold any preneed contracts since October 31, 2009. The investigation revealed that:

- a. John Oliver (Oliver), owner and funeral director in charge of OFH stated that OFH had not sold any pre-need contracts since October 31, 2009.
- b. Oliver stated that he had not made up his mind about selling pre-need contracts.
- c. Oliver stated that he bought the funeral home from Meadors' Funeral Home and there were approximately fifteen contracts funded with American Prearranged Services and four contracts funded with National Prearranged Services.
- d. Oliver provided the Board a print-out with thirty-three names from Regions Bank where Meadors had the pre-need funds in trust. Oliver stated, however, that three of the individuals were deceased. The document detailed the trusts under OFH's authority at Regions Bank. The total value of the contracts for which trusts had been established at Regions Bank as of September 30, 2009 was \$155,238.18.

## II.

### CONCLUSIONS OF LAW

7. Section 333.320.1, RSMo states, in relevant part:

No person shall sell, perform, or agree to perform the seller's obligations under, or be designated as the seller of, any preneed contract unless, at the time of the sale, performance, agreement, or designation, such person is licensed by the board as a seller and authorized and registered to conduct business in Missouri.

8. The Board has authority to deny or refuse a license application pursuant to

§ 333.330.1, RSMo Cum. Supp. 2009, which provides:

The board may refuse to issue any certificate of registration or authority, permit, or license required under this chapter for one or any combination of causes stated in subsection 2 of this section. The board shall notify the applicant in writing of the reasons for the refusal and shall advise the applicant of his or her right to file a complaint with the administrative hearing commission as provided by chapter 621, RSMo.

9. The Board has cause to deny or refuse OFH's application for a preneed seller license pursuant to § 333.330.2(6), (7), RSMo Cum. Supp. 2009, which provides:

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 or her certificate of registration or authority, permit, or license for any one or any combination of the following causes:

...

(6) Violation of, or assisting or enabling any person to violate, any provision of this chapter, or of any lawful rule or regulation adopted pursuant thereto;

(7) Impersonation of any person holding a certificate of registration of authority, permit, or license or allowing any person to use his or her certificate of registration or authority, permit, license, or diploma from any school[.]

10. The Board has grounds to deny OFH's preneed seller license application under § 333.330.2(6) and (7) in that OFH practiced as a preneed seller from August 28, 2009 to present without being licensed as required by § 333.320, RSMo.

11. As an alternative to denial of an application, the Board may, at its discretion, grant an application subject to probation, pursuant to § 324.038, RSMo Cum. Supp. 2009, which provides:

1. Whenever a board within or assigned to the division of professional

registration, including the division itself when so empowered, may refuse to issue a license for reasons which also serve as a basis for filing a complaint with the administrative hearing commission seeking disciplinary action against a holder of a license, the board, as an alternative to refusing to issue a license, may, at its discretion, issue to an applicant a license subject to probation.

12. The Board issues this Order in lieu of denial of OFH's application for a preneed seller license. The Board has determined that this Order is necessary to ensure the protection of the public.

### III.

#### ORDER

Based on the foregoing, and after having fully considered all the evidence, it is the **ORDER** of the Board that Oliver Funeral Home's preneed seller license shall be placed on probation for a period of five (5) years, beginning upon the effective date of this Order. During the period of probation (Disciplinary period), OFH shall be entitled to operate as a licensed preneed seller as defined in Chapter 333, RSMo, subject to the following terms and conditions:

- A. During the Disciplinary period, OFH shall comply with all applicable provisions of Chapter 333 and §§ 436.400 – 436.525, RSMo, as amended, all applicable Board regulations and all applicable federal and state laws. "State" includes the state of Missouri, all other states and territories of the United States, and the ordinances of their political subdivisions.
- B. OFH shall meet in person with the Board or its representative at any such time and place as required by the Board or its designee upon notification from the Board or its designee. Said meetings will be at the Board's discretion and may occur periodically during the Disciplinary period.
- C. OFH 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 Order. A copy of the required report may be obtained from the Board.
- D. In addition to the required compliance reports, OFH shall immediately submit documents showing compliance with the requirements of this Order to the Board when requested by the Board or its designee.

- E. OFH shall keep the Board apprised at all times of its current address, and telephone number. OFH shall immediately inform the Board in writing within two (2) days of any change in this information.
- F. During the Disciplinary period, OFH shall timely renew its license(s) and registration(s), timely pay all fees required for licensure or registration and comply with all other requirements necessary to maintain her license(s) or registration(s) current and active.
- G. During the Disciplinary period, OFH shall accept and comply with unannounced visits from the Board's representatives to monitor compliance with the terms and conditions of this Order.
- H. If OFH fails to comply with the terms of this order during the probationary period, in any respect, 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 disciplinary action under § 324.042, RSMo. The Board has continuing jurisdiction to hold a hearing to determine if a violation of this Order has occurred.
- I. In the event the Board determines that OFH has violated any term or condition of this Order, the Board may, in its discretion, vacate this Order and may impose additional discipline as deemed appropriate by the Board, including revocation of the license.
- J. This Order does not bind the Board or restrict the remedies available to the Board for any violation of Chapter 333 or §§ 436.400 – 436.525, RSMo, as amended, not specifically mentioned in this document.
- K. Upon the expiration of the Disciplinary period, OFH's preneed seller license shall be fully restored if all other requirements of law have been satisfied provided, however, that in the event the Board determines that OFH has violated any term or condition of this Order, the Board may, in its discretion, vacate and set aside the probation imposed herein and may impose any other lawful discipline the Board shall deem appropriate, including, revocation of said license. No order shall be entered by the Board pursuant to this paragraph without any required notice and opportunity for a hearing before the Board in accordance with Chapter 536, RSMo, as amended.
- L. If the Board determines that OFH has violated a term or condition of this Order, 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 Order in its determination of appropriate legal actions concerning that violation.
- M. Any failure by OFH to comply with any condition of discipline set forth herein constitutes a violation of this Order.

- N. If, at any time during the Disciplinary period, OFH changes its address from the state of Missouri, or ceases to be currently licensed under the provisions of Chapter 333, RSMo, or fails to keep the Board advised of its current places of business, the time of such absence, unlicensed or inactive status, or unknown whereabouts shall not be deemed or taken to satisfy any part of the Disciplinary period.
- O. Unless otherwise specified by the Board, all reports, documentation, evaluations, notices, or other materials required to be submitted to the Board shall be forwarded to: State Board of Embalmers and Funeral Directors, P.O. Box 423, Jefferson City, Missouri 65102.

The Board will maintain this Order as an open record of the Board as provided in Chapters 333, 610 and 324, RSMo.

SO ORDERED EFFECTIVE THIS 4<sup>th</sup> day of August, 2010.

  
\_\_\_\_\_  
Becky Dunn, Executive Director  
Missouri State Board of Embalmers  
and Funeral Directors