

Preneed Contracts and Ownership of Life Insurance

There is an important difference between an existing life insurance policy that is being assigned to fund a preneed contract and a life policy that is written simultaneously with a preneed contract. The difference is in chronology and the first policy **was not purchased** to fund a preneed contract. In fact that policy may have existed prior to any preneed law in Missouri. A policy may or may not have been intended to pay for final expenses. We will never really know the intent. But it does not matter since the law does not include insurance policies which were not purchased to fund a preneed contract. They existed prior to any consideration of entering into a preneed contract.

While the new Chapter 436.450.7(1) requires the purchaser or beneficiary of a preneed contract to be the owner of an insurance policy **purchased** to fund a preneed contract, it does not stipulate that policies written prior to entering into a preneed contract be handled in the same way. There are no requirements set out in 436 that would place any conditions on using those pre-existing policies. To attempt to treat them the same way as a new policy purchased to fund a preneed contract is no less than an attempt to exert someone's implied authority through their interpretation. As has been seen on several issues with 436, the law is not perfect, but it is the law.

Therefore, it seems clear that on preneed contracts funded by a preexisting life insurance policy, there is no prohibition of the seller or provider being the owner of the policy. The seller does have an insurable interest in such a policy and should be able to be the irrevocable assignee whether as owner and/or beneficiary. Chapter 436.450.7(2)

requires that the seller or provider be named as beneficiary or assignee of the life insurance policy funding the contract. It does not stipulate an assignment of ownership or an assignment of beneficiary. For purposes of Chapter 208 RSMO, Medicaid spend down, the assignment of ownership is more feasible as the owner makes decisions of cash surrender, change of beneficiary, loans against the policy, and generally controls the policy.

It would be grossly unfair for the consumer to require preneed contracts written with a pre-existing insurance policy to be placed in trust. While this may be a solution for some, it should not be the only solution. There are most certainly fees and expenses associated with assets in a trust and to impose them on a consumer when trust funding was not selected would be wrong. Insurance funding and trust funding are both separate and distinct methods of funding preneed. Trust funding could have been chosen if that indeed, was the desire.

Respectfully submitted to the State Board of Embalmers and Funeral Directors,
December 8, 2009 by Greg and Darlene Russell