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February 17, 2010

Martin Vernon
Missouri State Board of Embalmers and Funeral Directors
3605 Missouri Boulevard
PO Box 423
Jefferson City, MO 65102-0423

Re: SB1 contract compliance

Dear Martin:

I receive calls and e-mails from Missouri funeral directors who question the actions taken (or not taken) by the State Board. Few understand the legal significance of SB1's licensing requirements, and how the Board's emergency rules enabled the preneed industry to continue to operate. But, the emergency rules are a temporary fix, and the Board must now prioritize the issues. I believe the Board acted appropriately on February 4th by making financial exams and the safety of consumer funds one of its priorities. However, the February 11th meeting about preneed agents and the Missouri Law Exam served as an important reminder that the Board must address many SB1 issues that are crucial to the different groups that comprise the preneed industry.

Many important SB1 issues are interrelated, and therefore may need to be addressed collectively. For example, the Board's approval of an internal/expedited financial review system (to reduce the role of the outside auditor) could delay the review of the 'preneed paper' that has been sold to Missouri consumers. Fiduciary institutions are being required to assume a greater role in administering that 'preneed paper', and need more guidance from the Board. The preneed paper issues should also influence the Board's next discussion of the Missouri Law Exam and preneed agent licenses.

Two basic positions emerged during the February 11th conference call. The funeral directors' camp views the preneed contract as the sale of a funeral, which requires the skills of a licensed funeral director. The proactive preneed seller views the preneed contract as a funding vehicle to pay for the goods and services described in the contract, which requires the skills of either a licensed insurance agent or a fiduciary.

Historically, most Missouri preneed contracts were of the guaranteed variety. If the preneed contract was performed with little or no variation to the prearranged funeral, then the contract represents the purchase of a funeral. But, some preneed contracts are not performed according to their terms. Families change the selections. Under those circumstances the contract represents a funding vehicle. Another fact to consider is that the number of non-guaranteed contracts and final expense products are increasing. The non-guaranteed preneed contract does not involve the sale of a funeral. It is a funding vehicle that uses a description of goods and services as a preference list.

Licensing preneed salesmen will curb consumer abuses. But, did SB1's drafters incorporate the Missouri Law Exam because of convenience or because the Exam represents a fair measure of what a preneed salesman should know? If the preneed contract is in the nature of a funding vehicle, how many funeral directors can explain the laws that govern the administration and taxation of insurance and trusts? Should the Missouri Law Exam be expanded to address those issues?

The preneed paper issue should be assigned a high priority, but the ramifications are far reaching. With the exception of the Missouri Law Exam, I would suggest tabling the 'paper issues' until they can be identified and studied. My recommendation would include the mandatory consumer disclosures.

As much as it pains Don Lakin, the days of a uniform preneed contract form are long gone. And if the days of a single contract form are gone, a single, mandatory disclosure form will be problematic.

I have enclosed a redlined copy of mandatory disclosures. Preneed contracts can be very difficult to understand, and the one document the consumer is likely to read will be the disclosures. Sellers should be allowed to tailor the disclosures so long as the end product complies with the spirit of the law. And if they do so, the Board could require the seller to file both their contract and the disclosure for review.

In response to a Board member's remark that SB1 is not difficult to follow, I have enclosed two contract forms from prominent funeral homes who enlisted the help of their attorneys. With their permission, I have deleted the funeral home names and addresses, and highlighted questionable provisions. The attorneys found SB1 to be confusing, and certain contract provisions reflect that confusion.

It has been suggested that the industry's compliance with SB1 contract requirements (and the prior law's requirements for that fact) should be a low priority. In one respect, I agree. Many, if not most, funeral homes honor a preneed contract purchaser's demands regardless of what 'their paper' provides. But the same is not necessarily true when the funeral home is asked to service someone else's contract. SB1's portability requirements will cause more funeral homes to service a competitor's contracts. What the preneed paper says will become very important.

Sincerely,

William Stalter