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MISSOURI STATE BOARD OF EMBALMERS
AND FUNERAL DIRECTORS

CHAPTER 436 LEGISLATION MEETING

MISSOURI COUNCIL OF SCHOOL ADMINISTRATORS
3550 AMAZONAS DRIVE
JEFFERSON CITY, MISSOURI 65109

JULY 29, 2008
10:10 A.M. - 4:15 P.M.

1 CHAIRMAN: I apologize for the late
2 start. It's like being in the doctor's
3 office; you never get in on time. So, we're
4 going to start -- this is going to be very
5 informal today. We're not going to go around
6 and introduce -- or I'm not going to. We're
7 going to start with Tom Kutis and we're going
8 to go around the room. We're going to
9 introduce the public and we're going to get
10 right down to business. So, go ahead, Tom.
11 Tell them where you're from and who you
12 represent.

13 (The committee members and public
14 introduce themselves.)

15 CHAIRMAN: Once again, thank you
16 everybody for coming. A little reminder of
17 how this works. The committee discusses the
18 topic. Kim will introduce the topic. We'll
19 have the discussion here, then we'll enter the
20 public can come up and make their comments,
21 and then we'll close and vote on the topic.
22 Kim, go ahead.

23 MS. GRINSTON: Good morning. I
24 thought we'd start off with something that was
25 a follow-up to what you all asked to look at

1 last meeting. On the table, you should have a
2 handout, and there are lots of handouts and
3 we'll explain them as we go along because we
4 have a lot of paper today. But there is a
5 handout of Section 374.049 on your desks. I
6 believe -- I forget who asked me for this
7 information, but when we were talking about
8 civil penalties and fines as a disciplinary
9 avenue for the Board, you all asked to look at
10 insurance's structure for their civil
11 penalties and/or violations. And so, I'd like
12 to start here with this language, if we could,
13 because this is a copy of how insurance ranks
14 their disciplinary violations and how the civil
15 penalties/fines/forfeitures are assessed with
16 the general structure. I, of course, will
17 defer to the department director for any
18 additional comments on this, but you all
19 wanted to discuss imposing if you, number one,
20 would allow civil penalties, and, number two,
21 if we could come to an agreement on a
22 structure that would be meaningful in the
23 preneed market, so the floor is open.

24 CHAIRMAN: I don't see a lot of red
25 cards going up. Oh, Mary?

1 MS. ERICKSON: Just a clarification
2 for the group. In many of our statutes in
3 the last few years that have been amended
4 regarding particular requirements of either an
5 insurer or a licensee, the statute itself,
6 separate from this 374.049, sets forth what
7 type or what level of violation it is. So,
8 it's an option for you to consider. According
9 to .049, there is a default. If there -- no
10 classification has been denoted in another
11 legislative section, then it is a
12 classification 1. Obviously, there are some
13 areas that are more serious and egregious, and
14 we have taken the time and the energy to put
15 in what classification -- it might be a 2, 3,
16 or a 4, depending on the severity and the type
17 of consumer fraud, perhaps, that's involved.
18 But for a full disclosure, I thought you all
19 should be aware of that.

20 MR. STALTER: Mary, does this apply to
21 insurance companies or equally to agents, or
22 how does this --

23 MS. ERICKSON: Yes and yes.

24 CHAIRMAN: Don?

25 MR. OTTO: Just -- I voiced this

1 concern last time, but I think everybody was
2 getting tired. My only concern with it, I
3 think having civil penalties is a good idea
4 and have it graduated like this seems to be
5 the best way to do it. It's better than
6 taking away somebody's livelihood completely,
7 particularly, if it's the first time. But my
8 only concern still is that unlike insurance,
9 if we did this under 333 or the combined
10 333/436, you could get it up with civil
11 penalties under this and then, again, under
12 407. That can't happen in insurance because
13 407 doesn't apply to insurance, but this would
14 set you up for a double whammy if we just do
15 that. So, I mean, that's a concern I have is
16 where you could get up hit up by two different
17 -- and this has happened, you know, in the
18 past, you know, where -- you know, who should
19 I -- who do I need to make happy. Do I need
20 to make the State Board happy or do I make
21 the attorney general's office happy if they
22 both have powers to come against me?

23 CHAIRMAN: Linda?

24 MS. BOHRER: Couldn't the AG's office
25 propose language that would be an offset? I

1 mean, I know you don't want to eliminate 407
2 enforcement, but where it overlaps with 407,
3 407 would prevail. I mean, couldn't there be
4 language introduced that would make it one or
5 the other with --

6 MR. OTTO: Yeah. This is the civil
7 side. I mean, criminal penalties are
8 different.

9 MS. EULER: And there would never be a
10 situation where the -- well, under the current
11 legal-representation mechanism, the AG's
12 office would be representing the Board. And
13 so, there wouldn't be a situation where the
14 Board would independently be going after you
15 for penalties and the AG's office would be
16 going after you for penalties. But the AG's
17 office would be bringing the action. And I
18 don't think it's necessarily a bad thing to
19 have the authority for both because -- and
20 then, you know, you work that out.

21 MR. OTTO: But my concern is, like,
22 when you have two different separate agencies
23 that each have authority over you, who is it
24 that you should try to make happy? If the
25 State Board says, well, if you do this, we'll

1 only hit you up with a \$1,000 fine, but the
2 attorney general's office wants you to do
3 something else --

4 MS. EULER: And I understand that
5 problem from a theoretical point of view, but
6 from a practical point of view, the AG's
7 office would be representing the Board in
8 this, and so, it would be you would be dealing
9 with one entity, but I understand your
10 situation. And I think that legislation could
11 be drafted to clarify that.

12 MR. OTTO: Particularly, if, in the
13 future, it's not the AG's office that's
14 representing the Board.

15 MS. EULER: Uh-huh. Well, then you
16 shouldn't do bad things.

17 MR. OTTO: Well, yeah. That's --
18 yeah. I shouldn't say what first popped in my
19 head.

20 CHAIRMAN: So, what I'm hearing here,
21 we're not in favor of the double whammy?

22 MS. GRINSTON: So, Don, would your
23 concern be remedied if we had language that
24 said that, you know, that any amounts imposed
25 by the Board would be credited toward any

1 amount assessed under 407 or --

2 MR. OTTO: Well, I'd just say pick
3 one. If you're going to do civil penalties
4 under one, you don't do civil penalties under
5 the other. And I don't care which -- you
6 know, pick one, but if you're going to do
7 civil penalties under one chapter, I don't
8 think you should get hit up with them under
9 the other, as well.

10 CHAIRMAN: Mary?

11 MS. ERICKSON: In terms of actually
12 how it works out, the -- and this is my
13 opinion, not necessarily the opinion of the
14 department -- and having come from consumer
15 protection at the AGO for four years, the
16 penalties that are envisioned in a licensing
17 scheme is strictly for the bad acts committed
18 in violation of the law and this is a penalty
19 against your license as you, as a licensee.
20 The penalties under Chapter 407 are not
21 envisioned as a target towards a licensee, but
22 rather as a public redress for harms done to
23 the public through consumer fraud. They can
24 stand separately. Perhaps legislation can be
25 drafted, but the other consideration is

1 penalties assessed by this Board would be
2 through a hearing, et cetera, with full
3 opportunity for due process. Within 407's
4 structure, a lawsuit is brought within circuit
5 court and it's the circuit judge that
6 determines civil penalties, so you have very
7 different tribunals reaching those
8 conclusions, and perhaps legislation can
9 address that. I do not know. I have not
10 seen that elsewhere in our regulatory system,
11 but just so you understand that it's very
12 different in its purpose and in its -- how
13 it's affected.

14 MR. OTTO: Yeah. But you could still
15 get hit twice for the same bad act, and I
16 didn't even think of this one: You could have
17 a judge say -- you could have one tribunal say
18 you weren't guilty and another one say you
19 were.

20 MS. EULER: Uh-huh.

21 MS. GRINSTON: How does that work now
22 because the attorney general's 407 authority
23 would apply to insurance areas and --

24 (Numerous people answer no.)

25 MS. GRINSTON: It doesn't. Oh, I'm

1 sorry. You're right. Not insurance, but
2 other --

3 MS. ERICKSON: Only by referral.

4 MS. GRINSTON: You're right. You're
5 correct. Not insurance areas, but other
6 regulated areas, like, you know --

7 MS. EULER: Right. Some of the other
8 licensing boards that have civil penalties.

9 MS. GRINSTON: -- people -- yeah.
10 Like health and senior services and everything
11 else. How does that work now? Does the AG's
12 office initiate an independent proceeding, or
13 would the Board have to request civil
14 penalties through the disciplinary process and
15 civil penalties through the 407 process?

16 MS. EULER: The AG's office determines
17 whether to pursue civil penalties under 407
18 regardless of whether it comes over as a
19 referral from the Board or if the AG takes
20 independent action. And the AG has got
21 authority both ways to file a 407 action.

22 MS. GRINSTON: So, would a crediting
23 satisfy your concern, Don, so that you're not
24 being hit twice? If you get hit under 407,
25 that whatever amount you have already paid

1 from the Board -- and I'm assuming, based on
2 your prior conversation, that those amounts
3 from the Board wouldn't be anywhere as high as
4 a 407 action might be. And would a cap
5 and/or a crediting satisfy some of your
6 concerns?

7 MR. OTTO: Well, it helps. It doesn't
8 solve all the problems, but it helps.

9 MS. BOHRER: Would the courts
10 recognize -- if the final outcome -- I'm
11 sorry. I forgot to raise my red card. If
12 the final outcome is coming from the courts in
13 a 407, is there something you can do in
14 statute that would obligate the courts to
15 recognize penalties paid under a statute like
16 this?

17 MS. EULER: The problem would be with
18 the timing because I can envision a situation
19 where a 407 action would get before the court
20 before the administrative process would get
21 before the court for civil penalties. And it
22 would seem to me that that would be a defense,
23 for lack of a better word, something for the
24 licensee to bring up at whatever proceeding to
25 say, you know, I've already paid -- been

1 assessed civil penalties through the AG's
2 office or I've already been assessed civil
3 penalties through the Board process. And
4 maybe we would draft that the court or the
5 administrative process can consider civil
6 penalties paid as a mitigating factor in
7 determining the award. I don't think there
8 should be an offset because I can see
9 situations where that will backfire. But I
10 think allowing the payment of civil penalties
11 to the other party could be seen as a
12 mitigating factor in the determination of
13 award of penalties.

14 CHAIRMAN: Joy?

15 MS. GERSTEIN: As we spoke in the last
16 meeting, this Board, as we all see it now, and
17 with things that are taking place, needs the
18 ability to be able to apply some type of
19 penalties now rather than having to go through
20 -- totally through the attorney general's
21 office. We talked about at one point working
22 together to rewrite this so that it would work
23 for the Board, but still could refer to you
24 all. But they need some type of statute or
25 ability to apply penalties so that we're not

1 having to wait three months or go through the
2 whole process of where we send it to the
3 attorney general's office, it comes back to
4 us, turn around and send it again, and, you
5 know, four months have gone by, six months
6 have gone by before we can do anything.

7 MS. DUNN: That could be two to three
8 years, Joy.

9 MS. GERSTEIN: Right. I was
10 shortening the time.

11 MS. DUNN: Yeah.

12 MS. GERSTEIN: It isn't -- that is a
13 longer time. So, I'm not saying maybe we need
14 to adopt this language, but I'm saying that we
15 need to vote something in to do with that
16 paperwork statement.

17 CHAIRMAN: Bill?

18 MR. STALTER: You know, we still have
19 this issue about whether we license
20 individuals or license the preneed sellers, an
21 entity. But let's say that we decide that
22 we're going to license the entity and allow
23 the individual sellers -- or the salesmen to
24 be registered. And as a preneed seller, I've
25 got policies for these people to follow, but

1 let's say that, you know, one has just been a
2 bad actor. And, you know, he's broken every
3 rule we had, and we -- you know, we didn't
4 know about it. And let's say that he has
5 quit or he's gone. I think if we have a
6 civil penalty under the new 436 or 333 -- okay
7 -- we, as the entity, did everything we could.
8 I mean, we didn't -- we're not culpable for
9 this, but if you've got 407, I think,
10 basically, you don't have to come through the
11 licensure, but you can still go after that
12 individual, and we would prefer, and instead
13 of coming after us, have a separate avenue to
14 go after the individual who is the bad actor.

15 CHAIRMAN: Sharon?

16 MS. EULER: And that's another reason
17 why I feel that the salespeople need to be
18 licensed and not just registered so we've got
19 that authority.

20 MR. STALTER: I understand, but like I
21 said, we haven't decided that yet, but if --
22 okay.

23 MS. EULER: I know, but I'm just
24 saying that that's --

25 MR. STALTER: Yeah.

1 MS. EULER: -- a prime example of why
2 we need licensing for the salespeople.

3 MS. GRINSTON: Okay. Hearing Don's
4 concerns, the consensus of the group, would
5 you like us to work on language that has civil
6 penalties in there with some type of crediting
7 option if there are fines assessed under 407?

8 MS. ERICKSON: Kim, may I ask that you
9 rephrase your question?

10 MS. GRINSTON: Yes, please.

11 MS. ERICKSON: Can we start with the
12 overarching question of whether there should
13 be civil-penalties authority, and then the
14 secondary question would be an offset or
15 something like that.

16 MS. GRINSTON: Sure. I think you're
17 right about that. Let's start with that
18 bigger question: Should the Board have
19 civil-penalty authority?

20 (Numerous people answer yes.)

21 CHAIRMAN: Just all in favor, raise
22 your hands. All those opposed? Okay. That
23 carried. Go ahead.

24 MS. GRINSTON: When we talk about civil
25 penalties, if it's given to the Board, would

1 you like there to be a crediting function if
2 fines or a penalty is assessed under 407, as
3 well?

4 MR. MEIERHOFFER: My comment is I
5 think that's a fantasy. That's a fairy tale.
6 I don't think that's going to happen. I mean,
7 you can do it and make yourself feel better,
8 but when you get into a courtroom, the judge
9 is going to have full discretion on whether he
10 does it or does not, and chances are he won't.
11 So, if that makes everybody feel better, go
12 ahead and do it, but I don't think it gets to
13 the point that Don is talking about, and
14 that's the real question. Do you want double
15 jeopardy? That's my question.

16 MS. GRINSTON: And maybe -- that's a
17 very good point, Mr. Meierhoffer, because when
18 we talk about 407 violations, the standard and
19 burden of proof and what they have to do is a
20 little bit different. And, Sharon, maybe you
21 can speak to this. Under a 407 action, we've
22 just got a licensing violation, you know.
23 You're indicating a provider, you have no
24 contract with them. It's a licensing
25 violation. Under 407, that standard of proof,

1 my understanding is that you have to show
2 conduct that exceeds much greater than I just
3 violated a disciplinary rule, that you've
4 actually done something that is in the public
5 harm, and I may be oversimplifying that.

6 MS. EULER: If I may. As opposed to
7 -- in answer to the question about
8 double-whammy civil penalties, Mary and I just
9 talked a minute, and we think there may be
10 some case law out there that addresses that
11 double imposition of civil penalties, and we
12 can do some checking on that and find out, and
13 maybe we could come back to this maybe this
14 afternoon. Maybe I can get a law clerk to
15 work on that this morning.

16 CHAIRMAN: Does that sound good? Mike?

17 MR. MEIERHOFFER: Yeah. My only point
18 is not -- I don't disagree. I think that's
19 great. I just think it should be very
20 definitive how we design this, and if we want
21 civil penalties, great, but let's not
22 convolute it with two agencies overlapping,
23 not knowing who is going to be doing what.

24 MS. EULER: Right.

25 MR. MEIERHOFFER: That's the only

1 thing I ask of this group, that we make it
2 very understandable as to who's in jeopardy
3 and who reports to who.

4 MR. OTTO: Yeah. See, really, more
5 than the -- I agree with you. Because more
6 than the double penalty, you know, \$5,000
7 here, \$5,000 there. More than that, it's one
8 of your people has done something bad. The
9 State Board says, well, you know -- because
10 after you go through the process, hopefully,
11 the new process that we hopefully have, it'll
12 come back to you and you have the option of
13 probation or a letter of censure or something
14 like this. And you say, well, this is what
15 we want you to do to solve the problem. Then
16 we have a 407 action and the attorney
17 general's office is part of an ABC says this
18 is what we want you to do to solve the
19 problem, and you've got two masters.

20 MR. MEIERHOFFER: And let's get one
21 more setup, and that is then you've got to
22 lawyer up twice. I mean, it's the old story.
23 This costs people time and money even if
24 you're right.

25 MS. GRINSTON: I'm going to play

1 devil's advocate here. 407, you just have a
2 licensing violation, but if you've done
3 something to harm the public, should you not
4 have a separate penalty for the harm you've
5 caused the public under 407?

6 MR. MEIERHOFFER: I won't disagree. I
7 can't disagree.

8 MS. GRINSTON: Because that's -- my
9 understanding is that's the trigger for 407.
10 I can come in and just have a licensing
11 violation, not going to get you a 407
12 problems. You've got to harm the public to
13 get a 407, and if you've harmed the public and
14 a court has found that you've harmed the
15 public, should there be an additional penalty
16 if what you've done is not just a licensing
17 violation, but you've hurt Missouri consumers?

18 MS. GERSTEIN: Yes.

19 MS. ERICKSON: You properly
20 articulated.

21 MR. OTTO: Again, just back -- I mean,
22 because I have personal experience with this.
23 Arguably, a requirement in ABC violates State
24 Board rules and regulations or Chapter 436.
25 It says here is what the attorney general's

1 office says you need to do in an ABC, and,
2 arguably, that's different than what the State
3 Board says you should do or how you should
4 handle something. That's really my one
5 concern when we've had the double -- and,
6 again, I'm not saying it doesn't exist under
7 current law right now, but we're just
8 compounding it with the civil-penalty
9 structure.

10 CHAIRMAN: All right. Do we want to
11 come back to that after lunch and let -- oh.
12 Mary, I'm sorry. Do you all --

13 MS. ERICKSON: Just a practical
14 response to Don's point regarding the AGO
15 wants this, the Board wants that. When an
16 action is brought under 407, it's not operated
17 in a vacuum. I myself worked on 407 funeral
18 issues, Don, and we worked closely with Sharon
19 Euler and the Board's counsel to make sure
20 there was not anything overreaching,
21 overstepping, or contrary to the Board's laws.
22 And any -- there's certainly, in the
23 theoretical, Don, that it could happen, but in
24 my experience, in viewing the history at the
25 AGO, they always worked with the State Boards

1 or whatever other entity has licensure or
2 registration over that person or entity. So,
3 it is a possibility, but I feel, in my
4 experience, is remote. Thank you.

5 CHAIRMAN: All right. Yes, Martin?

6 MR. VERNON: I think that there should
7 be some form of penalty phase of monetary
8 whatever that can be used to work through it.
9 However, with the things that are being
10 discussed in the double whammy and all that,
11 as opposed to the licensing penalties that we
12 deal with now where, really, the biggest,
13 baddest thing is we're going to shut you down
14 for a while. There are funeral directors, and
15 I, myself, as a funeral director, can -- would
16 probably rather just negotiate something, let
17 me just pay my crime and go on. So --

18 MS. GRINSTON: And I'm going to echo
19 that on behalf of the licensing boards. I
20 think with all the licensing boards that don't
21 have civil-penalty authority, sometimes you do
22 have boards that are in a position where they
23 have something that is more serious than
24 suspension, but they don't feel that this is
25 something that you lose your livelihood over.

1 But they're caught between of making a choice.
2 Suspension is too light, so I've got to revoke
3 because I have no other options. And so, I
4 just want to echo, you know, what Mike said,
5 that that is something that we do here at the
6 Division.

7 CHAIRMAN: Barbara?

8 MS. NEUMANN: I just have a question.
9 Has there been a time when the Board has acted
10 and the AG hasn't or the AG has and the Board
11 has and they have not communicated with one
12 another? I mean, I don't see what the problem
13 is. I cannot imagine the Board going after
14 somebody and not talking to the AG at the same
15 time so that you don't have the double. I
16 mean, has it happened? I mean, I guess,
17 that's my question.

18 MS. EULER: Not in my tenure here.

19 MS. NEUMANN: So, I don't know what the
20 problem is as far as a double whammy. If
21 they're working together, and I'm assuming
22 they should be working together, you wouldn't
23 have a double whammy. The Board is going to
24 say this person is guilty, pays \$10,000 fine,
25 that's what the AG will go with. I think

1 what's a little bit serious, but they could
2 negotiate. If he wants \$20,000, they want
3 \$10,000, make it \$15,000. So, I don't know
4 why there would be a double-whammy problem.

5 CHAIRMAN: Bill?

6 MR. STALTER: And I'm back to what
7 Martin's choice. I mean, the way I -- I
8 endorse this because it just gives the Board
9 more flexibility. We don't get into this, you
10 know, the only avenue that we have is to jerk
11 your license. And we need to give the Board
12 some way just to get people's attention. And
13 whether it's a small fine or some graded fine,
14 but, you know, we need just to get out of
15 this the only thing we can do is jerk your
16 license.

17 MS. DUNN: And then they can reapply
18 the next day.

19 MR. MAHN: In some cases, it does seem
20 like there's probably a few people out there
21 that need a double whammy, you know. I mean,
22 they pulled some stunts and it never hurts,
23 you know.

24 MS. GRINSTON: Well, if we can, we can
25 come back with information from Sharon later

1 on today, and maybe just revisit this issue a
2 little bit later on in line with some of the
3 concerns that have been raised. Okay. Let's
4 go from the pan into the fire. One of the
5 issues that -- the issue that we still have to
6 discuss, we have still yet to come to any
7 decision or make a final declaration of an
8 impasse on the funding, trusting, portability
9 issues that surround 436. What I'd like us to
10 do, and I know that there were people who had
11 homework from the chairman -- or, I'm sorry --
12 a review -- a special task force who had some
13 information that they were going to report
14 out. So, Mr. Chairman, I would suggest that
15 we probably start and talk with those people
16 who did some information fact gathering before
17 we try to tackle this mountain again.

18 CHAIRMAN: Bill, we'll start with you.

19 MR. STALTER: Oh, good. Well, I fired
20 off those e-mails, and, basically, asked, you
21 know, feedback on kind of two issues. What do
22 you pay on commissions, basically, how much
23 you pay individuals companywide. And let's
24 talk about hard, firm costs in marketing,
25 legal, and so forth. Basically, the responses

1 I got back from the big guys was, "We'll get
2 back to you," and, you know, they're still
3 trying to gather that type of data. So, I
4 had to start talking to the smaller funeral
5 homes. And, basically, you know, what we see
6 in terms of commission, you know, that 5
7 percent is pretty much the buck in the low
8 individual. You will see something like up to
9 7 or 10 percent. Then if there's a portion
10 of that, the commission goes to the funeral
11 home, and you really can pretty easily exceed
12 10 percent, but that doesn't give any kind of
13 spread of what we call -- you know, or what
14 they pay legal, what they pay me, or what they
15 have in marketing. I was kind of surprised at
16 how much goes into marketing, and, basically,
17 it's kind of a general marketing, just to get
18 people in the door. And with one of the
19 funeral homes, they didn't have fairly hard
20 numbers. And we just took the hard costs and
21 divided them by the number of contracts and
22 came up to about \$150 per contract, and that
23 was their hard cost just to put the contract
24 on the books. And you divide that out, and,
25 you know, basically, where there's a \$5,000

1 contract or a \$3,000 contract, but, you know,
2 it's kind of hard to, you know, to pin it
3 down. So, basically, what I heard is, you
4 know, 10 percent isn't enough. And if you
5 really get into that ballpark, it's somewhere
6 between 10 and 15 percent, and still you're
7 not sure whether you really covered your hard
8 costs or not.

9 CHAIRMAN: All right. Thank you, Bill.
10 George, do you want to address the -- Mr.
11 Kutis, I'm not trying to jump over you, but --

12 MR. KUTIS: That's fine.

13 MR. CLINE: I'll just be brief here.
14 And actually wrote something down this time.
15 Okay. All right. In here, I wrote, "There
16 is no business that I know of that is required
17 to place 100 percent of its income in a trust.
18 Every business has a cost of doing business --
19 it's operating expenses. The good folks who
20 thought long and hard about this and wrote the
21 present 1982 Chapter 436, they examined the
22 preneed business and decided 20 percent was a
23 fair figure to cover expenses at that time.
24 At that time, costs were lower in 1982, and,
25 today, they are rising very quickly. That, I

1 believe, has proven to be true. Any other
2 business out there would be glad to have a
3 20-percent operating cost. For example, in
4 the restaurant industry, the average of 30
5 percent of your income goes to your food costs
6 alone. Now, preneed business has its costs,
7 too. The preneed industry is a service
8 industry. In simple economics, there are two
9 types of businesses; either you can make
10 something or you can provide a service. And
11 to say that preneed customers aren't receiving
12 anything for their money, like we discussed
13 last week, is completely false. They are
14 receiving a service in the present,
15 guaranteeing a service and products in the
16 future at today's prices. Any caps in fees
17 imposed by law and government regulation
18 always leads to higher consumer prices later
19 by imposing restriction on a free market
20 economy. The current 20 percent allowed to be
21 retained by the seller and a provider allows
22 the preneed seller to not only provide a
23 valuable service to the individual consumer
24 and their families, but also serves the
25 community by offering employment. Employees

1 are paid by salary or commission. For
2 example, real estate agents receive 6-percent
3 commission. Some real estate agents receive
4 15-percent commission. So, let's suppose you
5 have a preneed counselor paid at 6 percent or
6 more, a manager might cost you 8 percent, an
7 office staff, and even if it's only one
8 person, your payroll expense right there is
9 already at 8 and a half to 9 percent. Add on
10 to that that the employer must not only be
11 competitive with the wages to retain quality
12 people, they must also pay Social Security
13 taxes, 7.65 percent, probably a 401(k), which
14 is variable, but it could be up to 15 percent,
15 Workmen's Comp, unemployment insurance, health
16 and dental insurance, easily 4 percent or
17 more. There is office space and utilities
18 which keep rising, advertising, printing,
19 postage, and office supplies, and depending on
20 your budget and your location and the type of
21 media you have to use, you know, in one
22 market, you might use one newspaper, in
23 another market, you might use four newspapers.
24 You might have to do direct mailing. You
25 might have to do radio advertising. Add to

1 this taxes, licensing, and accounting and
2 legal fees, and anyone can see that this
3 easily adds up to the 20-percent that we're
4 presently allowed to keep. Because of our
5 history, our experience, and our conservative
6 management, we're able to keep presently our
7 expenses in line with current regulations.
8 Other funeral homes or preneed sellers may
9 have to use all the 20 percent to continue to
10 provide for families and stay in business.
11 And the interest on the trust, by the way, is
12 not skimmed. It is used to cover the
13 inflationary increase that is inevitable and
14 capital improvements and things of that
15 nature. All of the above costs I mentioned
16 are variable. To expect that preneed sellers
17 can operate with less than 20 percent
18 allowable expenses is just not realistic. It
19 will force some out of business and, in the
20 end, result in raising consumer prices, less
21 competition in the market place, and less
22 jobs. And, in conclusion, I just think that
23 the forethought of our predecessors in 1982
24 and the creation of the 80-20 rule was
25 accurate. It's worked well, and the actions

1 of one bad apple should not tarnish the good
2 work and reputation of the Missouri funeral
3 industry, and we were not, I don't think,
4 asked here, if I'm not mistaken, to convene
5 just because there was problems with the trust
6 funds. The trust funds here in Missouri are
7 fine, they're safe, and they're acting in
8 accordance with the laws." And that's what I
9 had as far as expenses are concerned.

10 CHAIRMAN: George, thank you. Thank
11 you very much. You did your homework. I'm
12 not sure about Bill. Okay. Don, do you want
13 to --

14 MR. OTTO: Yeah. I also got the same
15 response as Bill did from, I would say, the
16 big players; they'll get back to me. Talking
17 with a number of individual funeral homes that
18 do commissions, I didn't see 5 percent. The
19 range I got was 6 to 12 percent. The problem
20 I have is I'm not sure the smaller funeral
21 homes that answered that question are fully
22 contemplating and capturing all of their
23 costs. For example, yeah, they say, well, it
24 costs me 8 percent because that's what I pay.
25 Well, what about other things, you know,

1 401(k)s, you know, what about the utilities,
2 what about the contracts. You know, who
3 printed those up, you know. So, my concern
4 is, is that some of our funeral homes don't
5 fully do full-cost accounting and fully
6 distributed costs where everything is actually
7 captured the way it should be. On another
8 level, and take this for what it's worth
9 because I have no hard data to back this up.
10 This is just purely anecdotal from other state
11 executives that I've talked with the last
12 couple days on this issue. The magic number
13 seems to be about somewhere around 10 percent.
14 If it's above 10 percent, the states have an
15 active -- what we called proactive last time
16 -- preneed program going out to the public to
17 do that. If it's much under 10 percent, they
18 don't. It's a passive preneed program where
19 people are coming into the funeral home or
20 they're referred there by an estate planner or
21 somebody like that. They don't have a
22 significant outside sales force that does
23 that. If you're right at 10 percent, it can
24 go either way. Some do a little bit, some
25 don't, but that -- it seems -- that seems to

1 be kind of a break point. If you're at 12 or
2 13 percent, you can have preneed sellers that
3 are out there actively in the marketplace
4 because other states apparently do. If you're
5 much below 10 percent, you don't.

6 CHAIRMAN: Mike?

7 MR. MEIERHOFFER: Okay. I'm going to
8 just echo everything that these gentlemen have
9 said. They're right on. But let me -- I'm
10 good at history lessons, so I'm going to give
11 you another little history lesson. We had a
12 defined benefit plan in our corporation
13 starting in '72. That is, basically, a
14 retirement plan, and there's other kinds of
15 plans, too; they're called defined
16 contribution plans, which most people have now
17 turned to. But we had to leave our defined
18 benefit plan because the cost of administering
19 it was so high that we were spending more
20 money paying actuaries, accountants, bankers,
21 lawyers than we were putting to the plan.

22 MS. GRINSTON: No lawyers. We weren't
23 charging you.

24 MR. MEIERHOFFER: They were there
25 somewhere. But the point is, it was a great

1 plan, but the cost of administering the plan
2 became so egregious, we had to shut it down.
3 I've got an article here out of the "Wall
4 Street Journal" I cut out the other day, and
5 it's about SOX. Does anybody know what SOX is
6 the acronym for?

7 MS. GRINSTON: Sarbanes-Oxley.

8 MR. MEIERHOFFER: Sarbanes-Oxley.

9 Sarbanes-Oxley is a law that was created by
10 our friends in Washington to make people
11 comply on the same things we're talking about
12 here, all with the greatest intentions in the
13 world, but now it's costing our companies, our
14 firms that are public, anywhere from \$3 to \$5
15 million a year just to comply with this
16 nonsense. And as a matter of fact, now, our
17 government is going back to the auditors and
18 saying that they're charging too much for the
19 audits that they have requested. I just want
20 you to keep this stuff in mind because there
21 aren't a lot of us around the table or in
22 this room that really run businesses, but
23 we've got to fight this battle all the time in
24 trying to balance what is fair and equitable
25 and should be done into those things that

1 become just a burden. And I don't want to
2 pile up a bunch of documents and send them
3 down here if they're going to sit on the desk
4 and not be really scrutinized or looked at.
5 So, as we go through this process and we get
6 into the audits and this kind of stuff, keep
7 in mind that to run this business, whether
8 it's the preneed part or it's the other part,
9 we constantly are being squeezed --
10 constantly. Anybody in any business is
11 finding that. Just take the gas part alone.
12 So, just try to keep it simple and keep people
13 honest, yes, but let's not make it egregious
14 to the point we're causing the problems like
15 these monsters that have been created. So,
16 that's my only thought to you all as we go
17 through this. I think there's nobody in this
18 room that doesn't try to run and operate a
19 good business, operate it profitably, if they
20 can, and if they can't, they're not going to
21 stay in business, but they've got be aware of
22 their consumer. But please don't layer this
23 stuff on to the point where it's just totally
24 impractical to comply. Thank you.

25 CHAIRMAN: John.

1 MR. McCULLOCH: Well, I certainly
2 agree with the other gentlemen, and, in our
3 case, it does take that 20 percent to operate
4 and we work within those boundaries. But
5 they've made some great comments and I agree
6 with them totally.

7 CHAIRMAN: So, we're going to raise it
8 to 25; right? All right. Anybody else got
9 any comments? Tom?

10 MR. KUTIS: I just would like to say
11 that we do operate and we actually trust 83
12 percent, but that's a personal decision. I
13 don't think any of us are here because it's
14 80-20, 90-10, or 100 percent. We all know why
15 we're here. There's problems with people who
16 have taken the money and maybe if everybody's
17 grandson or granddaughter got a new Hummer, or
18 somebody bought themselves a nice yacht off of
19 Chesapeake Bay because they used money that
20 wasn't theirs, and I think that's the problem.
21 And we have to make sure to protect the
22 consumer that the money they give us is
23 trusted, that if somebody moves or goes out of
24 town or has to move into a nursing home or
25 whatever, that they get all their money back.

1 And I think that's fair, if you run a
2 reputable company, and even if it costs you a
3 few bucks, that's your reputation. I think
4 you need to do that. Again, all I want to
5 say is that the problem isn't whether it's
6 80-20 or 90-10. The problem is people who
7 don't do what they're supposed to do with the
8 money, and it's that simple. Thank you.

9 MR. STALTER: I'd like to go into that
10 a little bit. And I talked to Dennis Britson,
11 and Iowa is 80-20, and, basically, you know,
12 he's -- I'd say Dennis is a very, what,
13 forthright, honest about giving an opinion
14 about things work within the industry there,
15 and really don't perceive that the NPS problem
16 is an 80-, 90-, or 100-percent issues, but
17 whether somebody is doing the right thing.
18 But I asked him, I said, "I mean, do you
19 think, you know, should it be raised to 85
20 percent or 90 percent," and he said, really,
21 they think that 80-20 works for Iowa. But he
22 believes that there are some other issues that
23 have to be done to offset that 20 percent, and
24 that being the per-payment trusting and the
25 accrual of income. He said, "But, frankly,

1 you know, we're unsure of whether 20 percent
2 is enough to offset," so even though we
3 require accrual of income, we still allow a
4 10-percent penalty if there is a cancellation
5 or if they move away. Still, there is a
6 substantial accrual of income in that trust to
7 provide for portability.

8 CHAIRMAN: Linda?

9 MS. BOHRER: Can I just ask a couple of
10 questions because I don't know all the
11 particulars. What happens when a funeral home
12 that has sold preneeds and trusted 80 percent
13 and has used the interest for overhead and
14 other things -- capital improvements, I think
15 you said or -- and has taken the 20 percent
16 out? What happens if one of those funeral
17 homes goes insolvent or closes down? What
18 happens to the preneed trusts that they've
19 sold that have not yet been executed?

20 MR. STALTER: The trust is supposed to
21 be out there to service those contracts. And,
22 always, the issue is, you know, I think at
23 first when we started into this in the '80s,
24 you didn't think those contracts were going to
25 be on the books that long, but we're finding

1 out, I mean, that they're on there for quite a
2 while. Some of those are out there for 20 or
3 25 years.

4 MS. BOHRER: So, what happens to those
5 contracts with that insolvent or funeral home
6 that goes out of business?

7 MR. STALTER: It works the way it is.
8 I mean, you've got a fiduciary out there who
9 has a fund. The State would have to step in,
10 and, basically, you look for somebody either
11 to buy the assets, take over the business, and
12 then that trust serves as the funding for
13 those remaining contracts.

14 MS. BOHRER: Okay.

15 MR. STALTER: Now, the issue is then
16 that these contracts are on the books so long,
17 they -- we're finding out, you know, may not
18 be enough, probably isn't enough.

19 MS. BOHRER: Right.

20 MR. STALTER: So, then it becomes --
21 the issue is how much do we approve, and you
22 see other states doing it, and all I did for
23 a while was accrue a portion of the income
24 each year that would pass, by regulation,
25 whether it be cost-of-living or some

1 percentage based on that, but Iowa went to
2 full accrual of income in the past year. In
3 Nebraska, they still do it by regulation, but
4 they have 85-percent trusting. So, I mean, I
5 kind of fall in this, you know, it's hard to
6 pin down whether 20 percent -- you know, 20
7 percent should be enough, I mean, at least to
8 get the business on the books, but beyond
9 that, then it is a matter of, you know, income
10 or accrual staying in the trust to service the
11 people if the family goes somewhere else.

12 CHAIRMAN: Don? Or wait a minute,
13 Linda has a question.

14 MS. BOHRER: Just one other question:
15 Has the funeral Board had problems since the
16 passage of the legislation in the '80s where
17 -- I mean, I know the current NPS one and all
18 of that -- but where you've had contracts that
19 were needed to be serviced by an alternate
20 funeral home where there hasn't been
21 sufficient funding in the trust to pay for the
22 needed expenses or generally had a problem
23 with the 80-20 split?

24 MS. GRINSTON: I'm probably going to
25 tag-team this with Sharon because Sharon has a

1 little bit more historical perspective than I
2 do. But I can tell you that what we're
3 dealing with now is that the Board really
4 doesn't have authority when someone ceases
5 business or goes out of business. When they
6 go out of business, they're supposed to file a
7 report with us and tell us where the assets
8 are, tell us that the, you know, assets are
9 going to be set aside to be used, but we have
10 no authority, really, to technically do
11 anything if they don't file the report. We
12 can't go after them if they're not there. If
13 they just shut the doors -- and that has
14 happened, where we've had someone shut the
15 doors, and Becky has come in and said, "Where
16 are the preneeds?" And, technically, we don't
17 even have authority to go in and ask the
18 questions, you know, what's going on and
19 what's happening. And so, our authority is
20 very limited in that situation, and we have --
21 there is nothing we can do to even go in and
22 say, you know, "Are you taking care of these
23 contracts," because once they cease doing
24 business, the Board loses all regulatory
25 jurisdiction right now. So, technically --

1 and no one has any regulatory jurisdiction of
2 them once they close their doors. So -- and
3 some people -- and I hate to say this publicly
4 -- the unscrupulous have gotten smart in what
5 they'll do and threaten us with this, "I'll
6 just close my doors," because they know the
7 Board has no authority to even negotiate or
8 figure out if these plans are being taken care
9 of, which will go back to another issue in
10 annual reporting. That's one of the reasons
11 why this Board has requested more information
12 on the annual reporting so that we know what's
13 out there, so that when this happens, someone,
14 somewhere can track it. The AG's office has
15 helped us in other areas -- not us, but they
16 have stepped in with other trust-funding
17 situations, not necessarily preneed. The
18 situation I'm thinking about is cemetery and
19 endowed-care fund, and they have helped
20 negotiate, you know, a sale to someone else,
21 and they have negotiated a plan, but they've
22 really done that -- I hate to say as a
23 gratuity -- but they've really done that in
24 the interest of consumers and the Board -- you
25 know, the office stayed just involved in the

1 process. But, really, when someone goes out
2 of business, the Board really has no authority
3 to do anything, and so, we just hope the
4 preneeds are somewhere.

5 MS. BOHRER: But that really doesn't
6 have anything to do with whether it's
7 100-percent endowed or whether it's an 80-20
8 trust.

9 MS. GRINSTON: Correct.

10 MS. BOHRER: That problem is sort of
11 independent.

12 MS. GRINSTON: That's correct. That's
13 correct.

14 MS. BOHRER: Has there been problems
15 because of the 80-20 split?

16 MS. DUNN: I can't say that there has
17 been.

18 CHAIRMAN: Sharon?

19 MS. EULER: What I have seen in cases,
20 and we have had situations where funeral homes
21 have just closed their doors and left preneeds
22 hanging. And there is a company out of St.
23 Louis that sold a bunch of preneeds, like, in
24 the '70s.

25 MS. DUNN: J.B. Koonse?

1 MS. EULER: Yeah. Like \$250 plans,
2 something like that, and we still see those
3 pop up. We get complaints about them every
4 once in a while. And what I have seen happen
5 is that other funeral homes have picked those
6 up. I know for a fact funeral homes in
7 Kansas City are still honoring some of those
8 Koonse plans --

9 MS. BOHRER: But there is no money
10 behind them?

11 MS. EULER: There is no money.

12 MS. DUNN: No.

13 MS. EULER: There is no money. A
14 funeral home up in Maryville that closed its
15 doors, there was no money in trust because
16 that's what people will do, they'll raid their
17 trust fund and there will be nothing there.
18 NPS agreed to pick those up because they were
19 sold under their name, and we've had that
20 happen with other providers, that they were
21 sold under a third-party seller's name. I
22 know John has had some experience with it and
23 Don has, too, where the third-party seller has
24 said, you know, that was our agent and they've
25 agreed to pick those up. But there have been

1 funeral homes that have just gone out of
2 business. There is no money, and I know other
3 funeral homes have honored those.

4 MS. BOHRER: But that really, again,
5 is not an issue that would be corrected by
6 changing into 100-percent trusting?

7 MS. EULER: The 80-20 hasn't been the
8 problem there. The problem has been that
9 there's been no money in the trust account,
10 it's been with the trust.

11 CHAIRMAN: Linda, do you have any more
12 questions?

13 MS. BOHRER: No. I'm sorry.

14 CHAIRMAN: No. No. No. That's fine.

15 MR. OTTO: This kind of answers that a
16 little bit more even, Linda. The one funeral
17 home that went out of business, just shut
18 their doors in the last year, it was an 80-20.
19 They took the 20, but the interest had been
20 left in to accumulate. And as it turned out,
21 for those contracts that I'm aware of where
22 that happened, there was more than enough
23 money in the account to cover the funerals, so
24 it was no problem. To some extent, you have
25 to separate your question out whether you're

1 talking about third-party seller or the
2 funeral home being the seller. I know of no
3 consumers that have not gotten their funeral
4 that they paid for that was trusted with a
5 third-party seller. I don't -- I mean, I'm
6 not saying it hasn't happened, but I don't
7 know of any. Of course, we've got the NPS
8 situation out here that we don't know how
9 that's going to shake out completely. So,
10 it's a little bit different situation where
11 you've got a third-party seller where even if
12 the funeral home goes out of business, the
13 third-party seller is still there. It's a
14 little bit more complicated when the funeral
15 home is its own seller and, like you said,
16 sometimes if -- you know, and could raid their
17 own account, and that has nothing to do with
18 the 80-20. If it was 100-percent trusting and
19 they raided their own account, then you've got
20 the problem.

21 MS. BOHRER: Right.

22 MR. OTTO: But we've already voted, I
23 think. Although we haven't dealt with what
24 happens when it's cancellation or they're
25 changing funeral homes, I think we've already

1 voted on the money should accumulate. I think
2 we already voted on that, and we've already
3 voted that regardless of what this percentage
4 is, that 100 percent of it goes into the trust
5 first and then it -- or the money goes in the
6 trust first and then it gets paid out. That
7 solves two of the big problems right there,
8 you know. I mean, nothing solves all the
9 problems, but those are two big helps right
10 there.

11 MS. EULER: Yeah.

12 CHAIRMAN: Mike, do you have a comment?

13 MR. MEIERHOFFER: Yeah. I was just
14 going to say, Linda, practically, this
15 happened in our community and the Board --
16 State Board came to me and said, "We have a
17 funeral home that is out of business. What
18 will you do to help us? What will you do to
19 take these contracts?" And I said, "Well, let
20 me take a look at them," and we did, and we
21 ended up taking the contracts, and that's been
22 24 years ago, and still a few of them come
23 through, but that's typically what happens.
24 Now, do I get paid the full amount? Of
25 course, not. As a businessperson, you have to

1 make a decision, and I looked at it and said,
2 okay, there's a couple of things going here.
3 One is I've got fixed costs. This can offset
4 fixed costs that you've got every day by
5 turning on your lights, even though I'm not
6 receiving the full amount, and, secondly,
7 there should be some goodwill and, hopefully,
8 there will be some possibility of the families
9 coming to use your facility. So, that's the
10 logic that went into it and I know there were
11 other funeral homes that said I don't want any
12 part of because I don't get my 100 percent
13 plus. Well, again, it's a business decision
14 people have to make, but the Board was looking
15 for a place that they could park these things
16 and take care of the public.

17 CHAIRMAN: All right. Kim, I --

18 MS. EULER: May I make one other
19 comment?

20 CHAIRMAN: Go ahead, Sharon, and you're
21 finishing up.

22 MS. EULER: In further answer to
23 Linda's question, the biggest problem is not
24 so much with the 80-20, but it's with the
25 seller having control over the trust assets

1 because in smaller funeral homes that have
2 their own trusts, they just walk through the
3 bank and take all the money out. If they
4 weren't allowed to do that, then if the
5 funeral home went out of business, that money
6 would still be in trust, and any funeral home
7 that provided those services could make claim
8 against the trust to receive the money that
9 was due.

10 MS. BOHRER: At least the 80 percent or
11 whatever it is?

12 MS. EULER: Yeah.

13 MR. OTTO: I might add it's also
14 probably joint accounts, as well.

15 MS. EULER: The situation that we --

16 MR. OTTO: That you did -- yeah.

17 MS. EULER: The situation I'm talking
18 about, it was a trust.

19 MR. OTTO: Yeah, it was a trust, but
20 there's also been that problem with joint
21 accounts, as well.

22 MS. EULER: I'm sure there have been,
23 yeah.

24 CHAIRMAN: All right. Kim has got an
25 example she would like to discuss with you.

1 MS. GRINSTON: I would, and just on
2 that question, I just wanted to say that, you
3 know, a lot of times when someone does close
4 their doors, a lot of, you know, the work is
5 done. Becky gets on the phone and starts
6 calling people and saying, "Does anybody know
7 where this goes? Where are the preneed
8 contracts?" We try to find records. We hope
9 they call us back. They have situations where
10 they don't call Becky back, and we don't even
11 know -- have a good contact phone number for
12 them now, and these preneeds are just floating
13 around in the air. But Becky does -- even,
14 you know, recently, Becky does a lot of that
15 work just trying to really, you know, get the
16 information in so that if anybody has
17 authority to do something, they can do it if
18 the preneeds are out there. This is what I'd
19 like to do. Upside down by your nameplates --
20 your name tags, it's not a test. I thought
21 that was probably bad placement, but I thought
22 that as we talked about this and as we were
23 trying to work through our minds last night
24 from the Division staff, it helped us -- I'm a
25 visual person. It helped me to see something

1 on paper or something charted out so that we
2 can see what we're talking about because I
3 realize that from our previous discussions,
4 that when we've talked about the amount to be
5 funded, we had sort of mixed issues. We have
6 mixed issues as to where does the money go if
7 the contract is fully fulfilled? Where does
8 the money go if the contract is canceled by
9 the purchaser? Where does the money go if
10 it's canceled because of default by the seller
11 -- or by the purchaser for nonpayment, I
12 should say? And what happens on a transfer?
13 All right. I'm sure there are other
14 situations, but I think that these are the
15 four major situations that we keep coming back
16 to. So, what I'd like to do is, if possible,
17 to help guide our discussion, I'd like to
18 start and see if we can separate out these
19 four issues so that while we're talking about
20 trusting, we're not talking portability at the
21 same time because, again, I think it sort of
22 convolutes things and leaves us -- and maybe
23 -- I really think we are closer than we are
24 apart on certain issues, and it may help us
25 identify that. So, what I'd like to do is

1 I'd like to start with the first little box
2 for fulfilled, and I'd like to talk about what
3 -- again, I understand -- I think everyone
4 understands what the current law is. Let's
5 talk about where we would like to go for a
6 contract that is fulfilled. Let's say I go
7 into my local funeral home or I go through
8 John or APS -- I'm sorry, John -- and I
9 bought a preneed. I've designated my
10 provider. My money has been invested.
11 Everything is there. It is now time at-need,
12 we are now ready for the services. The
13 provider stands ready to perform, the seller
14 stands ready to perform, and the services have
15 been provided. Let's look at that scenario.
16 Let's leave portability, transfers,
17 cancellations, and everything else alone, and
18 let's just look at that scenario. And I'd
19 like us to start, if we can -- you guys have
20 got to help me because I'm a visual person;
21 it's the only way I can think. Instead of
22 throwing out numbers, let's see if we can walk
23 through the boxes to see what the consensus is
24 on certain areas. So, again, Bill, did you
25 have a question?

1 MR. STALTER: You need to make a
2 distinction. Are we going to talk about where
3 the seller and the provider are the same
4 entity, the funeral home who sells for
5 himself, or John's, because, I mean, it's a
6 different economic situation.

7 MS. GRINSTON: There is a different
8 economic situation. I guess that's something
9 that this group has to decide. Should there
10 be or would you like -- should there be
11 different trusting rules if you're a
12 third-party seller versus seller-provider.
13 Because if we're going to treat them all the
14 same, a seller's license is a seller's license
15 because while I am my own provider, nothing
16 prohibits me as my own seller-provider entity
17 from allowing -- you know, stretching my
18 seller or my plan out to other entities
19 outside of just my funeral home, if I decide
20 to do a little bit of third-party sales as
21 well as my own sales together. So, I think
22 -- Bill, I think it's a good question whether
23 we should be addressing those two things
24 differently, or is the thought that with
25 trusting that we keep them the same?

1 MR. STALTER: The trusting should be
2 the same, but let's just talk about -- I mean,
3 say, Todd is the seller and he services his
4 own contracts, so how does the money flow
5 through the trust, you know, through each of
6 your scenarios.

7 MS. GRINSTON: Okay.

8 MR. STALTER: And then we can flip over
9 because we can talk about John's, which is
10 different, or we can talk about FSP, and they
11 did it a different way, too, so --

12 MS. GRINSTON: I don't know. I think
13 we probably want to talk about how we want --
14 how, if we were to write the law, what it
15 should look like as opposed to what we're
16 doing now. Can we get started with the first
17 box and let me know when you think we've got
18 a distinction that may need to be separated,
19 if it's going to help us sort of clarify these
20 issues just a little bit. Let's talk about
21 that situation where the plan is fulfilled.
22 Everybody has done what they're supposed to
23 do, everyone is paid, the provider is ready,
24 everybody is happy.

25 MR. OTTO: Was this a guaranteed

1 contract or a nonguaranteed contract?

2 MS. GRINSTON: That's my first
3 question, Don. When we talk about this, let's
4 talk about whether this should be different.
5 I have at the top "contract type." Should we
6 be talking about the trusting-funding issues
7 separately for guaranteed versus
8 nonguaranteed, because that's a principal
9 question. If that's the case, let's run this
10 scenario for guaranteed, and then let's come
11 back and run it again for nonguaranteed. If
12 the consensus of the group is you treat
13 everything the same, then let's go through
14 this with the mindset that this will apply to
15 both guaranteed and nonguaranteed plans.

16 MS. BOHRER: Well, why don't we do it
17 for guaranteed and nonguaranteed separately
18 and see if the answers come out the same.

19 MS. GRINSTON: I think it sounds like
20 a plan.

21 MS. BOHRER: And if the answers come
22 out the same, then you have the same set of
23 rules for both.

24 MS. GRINSTON: I think that's a good
25 idea. I think it's a good idea. Let's start

1 with guaranteed and, hopefully, everybody
2 understands what we're talking about with
3 guaranteed services, you know. You have
4 locked in a price for the consumer. We
5 understand that there are some issues or some
6 prices that cannot be locked in simply because
7 they vary at death, and they can change, like
8 opening and closing costs and obituaries and
9 things of that nature. But let's just say the
10 core services have been guaranteed in this
11 contract. Because I am mathematically
12 challenged, can we use the number \$10,000
13 because anything else, I can't do without a
14 calculator. So, if we start with a \$10,000
15 contract. I've walked in, this was a \$10,000
16 contract. From that \$10,000, how much of that
17 \$10,000 fee -- again, we're not talking
18 portability or anything else. How much do you
19 believe should be trusted? Now, when I say
20 trusted or placed in -- I'm going to say --
21 let's just say trusted right now. We'll deal
22 with joint accounts in just a second. But how
23 much should be trusted from that \$10,000? We
24 are not going to talk about right now whether
25 there's administrative expense allowed or

1 anything else, just how much of the consumer's
2 payments, what percentage of that needs to be
3 placed in trust?

4 MR. MAY: That's the original contract
5 amount that they paid years ago, \$10,000, or
6 that's --

7 MS. GRINSTON: Yeah. That's the
8 original. I'm sorry, Brian. Yes, you're
9 correct. That's the original contract amount.
10 We're not talking about any interest or
11 anything else.

12 MR. MAY: Okay. Okay.

13 MS. GRINSTON: How much of that
14 \$10,000, the original part that the consumer
15 paid on the face value years ago, how much of
16 that should be placed in trust? Mr. Otto?

17 MR. OTTO: And correct me if I'm
18 wrong, but I think we've already voted that it
19 should be 100 percent goes into the trust and
20 then we back out the 10 percent or 20 percent
21 or 15.6 percent or whatever the number would
22 come up to be.

23 MS. GRINSTON: I think that that was
24 the vote last time, but I wanted to make sure
25 --

1 MR. OTTO: I'm not saying we don't
2 change it, but that was our vote last time.

3 MS. GRINSTON: Yeah, 100-percent
4 trusted, that was the vote. I just wanted to
5 walk through this to make sure everybody
6 understood where we were because even after we
7 left yesterday, people still thought we were
8 talking about different things for
9 portability. And so, just to reconfirm, 100
10 percent hits the trust of the \$10,000, which
11 means -- which would be different from you
12 take the first 20 and then, you know, you
13 deposit after that. Everything that comes in
14 hits the trust and then we talk about what you
15 get for your expenses, if anything. Can we
16 take that as a consensus group? Any comments
17 on that concept? Ms. Becky Dunn is now the
18 chairman.

19 MR. McCULLOCH: Are you saying all of
20 it goes in and then we're going to take it
21 off, or we're discussing if that's a good idea
22 or not?

23 MS. GRINSTON: Yes, both. Everything
24 goes in and then you take out an expense fee,
25 if anything, if the group provides it. What I

1 am thinking -- and this is the concept in my
2 mind, this is not a suggestion, but the way
3 I'm posing the question -- 100 percent hits
4 the trust, you then submit a bill to your
5 trustee that says the law says I'm entitled to
6 X amount. Pay me that, you know, as the
7 payments come in or however it's worked out
8 with the trustee.

9 MR. McCULLOCH: Well, if you've got to
10 wait till they're paid in full, that's going
11 to be a problem.

12 MS. GRINSTON: No. I don't think we're
13 talking about waiting until they're paid in
14 full, just as payments -- you know, as they
15 come in. And maybe we can talk about that
16 after we get the numbers down, but how you get
17 your expense out. Do you take it off the top
18 or do you get it from the trustee?

19 MR. McCULLOCH: Okay. So, you put in
20 \$100, you get the \$100 back or do you get \$20
21 back?

22 MR. STALTER: I think that's the
23 question, John. Basically, is if you put
24 \$10,000 in and, you know, how much does the
25 trustee pay back for --

1 MR. McCULLOCH: But it's not paid in
2 full.

3 MS. GRINSTON: Yeah.

4 MR. OTTO: Actually, there should be
5 another line on your box.

6 MS. GRINSTON: Okay. What does the
7 line need to say?

8 MR. OTTO: Another line on your box
9 right under that administrative expense or off
10 to the side --

11 MS. GRINSTON: Okay.

12 MR. OTTO: -- do you get it under the
13 current law, which is the first X percent,
14 whatever percent we decide to of the payments,
15 or is it, like Iowa, I guess, is talking about
16 --

17 MR. STALTER: Per payment.

18 MR. OTTO: -- per payment?

19 MS. GRINSTON: Okay. Can we do that
20 per payment, per trust issue after we figure
21 out if you're going to get anything out of it
22 at all, because if we -- if the expense -- if
23 the vote is, you know, limiting expenses, then
24 can we do that in the miscellaneous box, per
25 trust versus per payment; is that okay?

1 MR. STALTER: Well, no. Now, you're
2 mixing things. What we're talking about the
3 retainage, the commission, 20 percent or 10
4 percent.

5 MS. GRINSTON: Yeah.

6 MR. STALTER: I mean, that's different
7 from expenses. So, basically, we're saying,
8 you know, once we put that \$10,000 in, how
9 much do we take out for sales commissions?

10 MS. GRINSTON: Okay. Let me talk
11 about that when we get to expenses. But do I
12 hear everyone saying, the consensus of the
13 group, 100 percent of what gets paid hits the
14 trust, and then we deal with fees and expenses
15 later? Can I just get a vote on that issue?
16 Or a discussion on that issue?

17 MR. MAY: Yeah.

18 MS. GRINSTON: Brian, we've got to do
19 the roundtable first.

20 MS. EULER: I think it's a great idea.

21 MR. McCULLOCH: I think it's a bad
22 idea.

23 MS. GRINSTON: Bad idea?

24 MR. MEIERHOFFER: Yeah. It won't work
25 in terms of a business model. That's the

1 problem.

2 MS. GRINSTON: Why, Mr. Meierhoffer?
3 If you submit a bill to the trustee, like on
4 a piece of letterhead, the policy is \$10,000.
5 I'm entitled to -- I'm picking 20 percent just
6 because that's what it is -- \$2,000. I submit
7 it to them. As payments come into the trust,
8 you've got to pay me first before -- until I
9 hit my \$2,000 amount. And I'm not saying that
10 that will be your final vote. The difference
11 is just who -- what source is it coming from.
12 You submit a bill to the trustee, I'm owed
13 \$2,000, you pay me like you would any other
14 expense.

15 MS. COLLINS: For the purposes of this
16 discussion or this exercise, I thought that
17 last week we did address this issue about the
18 100-percent trusting and then dealing with
19 those fees later, did we not?

20 MS. GRINSTON: Yeah. Yeah, we did.
21 And that was the last -- I just want to make
22 sure that that is still the vote, and that's
23 what I'm asking now. Are you still at 100
24 percent comes in and hits the trust. If
25 everyone is there, maybe we could take a

1 consensus vote on that. If everyone is there
2 with the 100 percent that gets paid goes into
3 trust, if that is still the vote of this
4 working group, then you could just say aye.
5 Nay?

6 (Numerous people answer both aye and
7 nay.)

8 MS. GRINSTON: Can we do a show of
9 hands?

10 MR. OTTO: I can just tell you -- I
11 mean, I don't know if this addresses Mike's
12 problem or not. I can tell you how the
13 Missouri Funeral Trust prefers to do this.
14 Not that we can require it under the current
15 law or our current contracts, but this is how
16 we prefer to do it. We prefer if 100 percent
17 of the money comes in. Then the funeral home
18 has said -- of course, under the current law,
19 it's the first 20 percent. But 100 percent of
20 the money comes into the trust, which is
21 Regions Bank in St. Louis. Regions Bank then
22 has a separate money-market account for that
23 funeral home, and if the funeral home has
24 elected to take their 20 percent, it goes into
25 the trust, psst, then goes over to their

1 money-market account until the 20 -- so it's
2 electronic. The funeral home has a debit card
3 or a checkbook where they can access that 20
4 percent at any time they want.

5 MS. GRINSTON: Yeah.

6 MR. OTTO: From the trust perspective,
7 we like that because it allows for very good
8 accounting of the consumer's payments that
9 have come in, and then if the consumer calls
10 up, like, under the law, the consumer can call
11 up the trust and say, "I want an accounting of
12 my deposits." Well, if you don't do it that
13 way, I mean, because with a third-party seller
14 -- it's easier if you're your own seller. If
15 you're your own seller, you can do it, but if
16 you're a third-party seller, we don't
17 necessarily know because that person was
18 allowed to take their first 20 percent out.
19 So, that's how we like doing it when it's
20 possible.

21 MR. KUTIS: Are we not simply adding
22 money from the seller or taking the
23 purchaser's money and giving extra money to
24 the bank?

25 MS. GRINSTON: No. Not extra money

1 necessarily.

2 MR. KUTIS: Won't their accounting
3 fees be raised?

4 MR. MEIERHOFFER: Exactly. That's the
5 difference. That's the difference. Yes.

6 MS. GRINSTON: Well, will the
7 accounting fees be raised if you just add it
8 in as another expense? Like, every time you
9 get a new creditor, do they raise the
10 accounting fees on you?

11 MR. STALTER: Well, it's an
12 administrative step and, frankly, it's really
13 a burden for the larger consolidators when you
14 have a huge amount of transactions. I can
15 just tell you that my client, Bank of America,
16 would rather have that screened out before it
17 hits the account -- turned back.

18 MS. GRINSTON: Okay.

19 MR. STALTER: I mean, in some states,
20 I mean, they are forced to do it this way,
21 and they could accommodate. But, frankly,
22 when you get down to some of the smaller
23 accounts, I mean, my administrative company
24 already does it with U.S. Bank, but I don't
25 think that's the norm at all.

1 MS. GRINSTON: Okay. And I'm going to
2 do two things. I'm going to add in the
3 consumer-protection standpoint. When you talk
4 about missing funds and you talk about, you
5 know, protecting consumers, putting on a
6 regulator's hat now, I have no idea how much
7 this person has paid you. I have no idea
8 what's come through your door. I have no idea
9 what you've taken as your first 20 percent.
10 You could tell me it was 20 percent, and it
11 really could be 60 because I have no way of
12 accounting for what came in your door or what
13 you actually paid yourself. You could have
14 paid yourself 45 percent, I just don't know
15 because nobody knows how much has actually
16 come through the door. But that's just from
17 the consumer-protection standpoint. I hear
18 Don and Norma saying that we've already voted
19 this out at 100 percent goes into the deposit.
20 I'm going to just ask this again because I
21 think the discussion is on that issue. Is it
22 still the consensus of this group that 100
23 percent comes into deposit, and it may be best
24 if we do a show of hands on that issue.

25 CHAIRMAN: All in favor, raise your

1 hand.

2 MS. GRINSTON: Is anybody keeping
3 track of that?

4 CHAIRMAN: Well, keep holding your
5 hands up. One, two, three, four, five, six,
6 seven, eight, nine.

7 All right. Those against it? Is that eight
8 to nine?

9 MS. COLLINS: Mr. Chairman, I'm
10 confused, and I'm confused because last week
11 we did take this vote. So, is this group
12 indicating now that they want to change from
13 the vote we took last week, or they're
14 changing the vote just for the purposes of
15 this exercise? Please clarify for me, because
16 I'm confused.

17 CHAIRMAN: Facilitator?

18 MS. GRINSTON: Yeah. I think that
19 this is outside of the purposes of this
20 exercise. We are really asking what is the
21 consensus of the group here. Because what we
22 heard last week, again, with 100 percent, when
23 everyone said 100 percent gets deposited, I
24 left there and there were still questions
25 about what that vote was. So, I just wanted

1 to confirm the vote, to make sure that we are
2 not taking -- and everyone said -- I thought
3 that was the vote, as well. And so, what
4 we're doing is polling the table to make sure
5 that it's still your vote or that was your
6 vote. Now, to the extent that you all don't
7 want to clarify that vote, because I have --
8 there were a lot of questions after the
9 meeting on, now, what did we -- what was that,
10 again? I just need to make sure that we are
11 reflecting accurately what you voted on
12 because that was one issue that we did not
13 have a clear record on.

14 MS. COLLINS: What's in the record?
15 What's in the record from last week? What did
16 we do last week?

17 MS. GRINSTON: I don't think we've
18 gotten the transcript back, and that's why --
19 and we need to go forward.

20 CHAIRMAN: Okay. Mike?

21 MR. MEIERHOFFER: I think I was the
22 one that flushed the vote out through a couple
23 of motions. If you remember, the first motion
24 was nothing, and the last motion was
25 everything. And to my surprise and chagrin,

1 that's what we took. But the dilemma is, I
2 think, and the thing that was added by Kim
3 later is there still could be fees or
4 administration, things of that nature come
5 out. We really didn't identify that piece of
6 it.

7 MS. COLLINS: So, then that piece was
8 not settled?

9 MR. MEIERHOFFER: That piece was left
10 alone because it was so hot at that point, we
11 kind of wanted to leave it alone for a minute.
12 But we're getting at it, and Kim is doing a
13 good job getting us back on line to do that.

14 MS. COLLINS: Okay. So, then I'm still
15 confused. At least I confirmed for myself
16 that I'm confused.

17 MR. MEIERHOFFER: No, it was 100
18 percent. That's right. That is true.

19 MS. GRINSTON: And the majority vote
20 today is still 100 percent.

21 MR. MEIERHOFFER: It seems to be.

22 MS. GRINSTON: I just wanted to do a
23 confirmation that we were last week where we
24 are this week, to make sure I understood what
25 the vote was. But the vote today was 100

1 percent by majority, the vote last week was at
2 100 percent by majority.

3 MS. COLLINS: I don't think so.

4 MR. McCULLOCH: I thought it was a tie.

5 MS. GRINSTON: It was 9-8.

6 MR. McCULLOCH: I thought you said --

7 CHAIRMAN: Nine-eight today.

8 MR. McCULLOCH: Oh.

9 MS. DUNN: Do we need to record the
10 votes? Because if we need to record the votes
11 for the record, we need to go around the room
12 and have everyone say yea or nay.

13 MS. GRINSTON: Yes, ma'am. But --

14 CHAIRMAN: Go ahead. Let her finish.
15 Don, go ahead.

16 MR. OTTO: Well, my concern is -- and
17 I'm not sure that this body was formed to be
18 a democracy and have an 8-9. I mean, I voted
19 -- I'm arguing against -- you know, you made a
20 motion last week that you voted against.

21 MR. MEIERHOFFER: Yes. Exactly.

22 MR. OTTO: And so, I just voted for
23 something and I'm going to, basically, go the
24 other way. Our charge was to come up with a
25 consensus that everybody would support, or as

1 much as -- and an 8-9 vote, like
2 Representative Meadows says, if eight of us
3 are over there saying this is no good, we
4 can't live with that, the whole thing will
5 fall.

6 MR. MEIERHOFFER: We don't move a
7 church on that kind of a vote.

8 MR. OTTO: Yeah. So --

9 MR. MEIERHOFFER: Here was where --
10 where I was going with that -- those motions
11 the other day was really to try to get us to
12 some type of a middle ground, which we never
13 really had a chance to get to. I think
14 you're trying to get us to that right here in
15 terms of calling something something else,
16 meaning we were talking about 80-20 and I
17 don't have -- where that was going to go.
18 So, then you were saying put 100 percent into
19 trust and then come back and maybe take out
20 the fees that you need to after running it
21 through the trust. And the truth of the
22 matter is, from my standpoint, that's a
23 compromise I could probably live with. But I
24 think in order -- if we're going to make a
25 decision to put people out of business and

1 stop selling prearrangements, then we can do
2 that by making it 100 percent -- just that
3 simple. It'll stop it. They'll come in and
4 take them from you and then it's done. It
5 will not still eliminate the problem of
6 somebody putting the money in their pocket and
7 not getting it to the trust. That's still
8 going to happen. It'll always happen. So,
9 that's my consensus.

10 MS. GRINSTON: Yeah. Because if
11 you're going to steal ten, you're going to
12 steal twenty, you're going to steal a hundred.

13 MR. MEIERHOFFER: Sure. And you're
14 not going to know about it until it's gone.

15 MS. GRINSTON: Let me move on because
16 I hope everyone understands. We are still at
17 100 percent as we were last week. I just --
18 I'm sorry. I just thought I needed to clarify
19 to make sure that I was correct and accurate
20 because if I started off with the wrong
21 assumption, today and everything else we do
22 after this will be wrong, and then we'd have
23 to come back and say, "I read the transcript.
24 Let's start all over again." I wanted to make
25 sure I could confirm that for today so that we

1 could go forward. Let's say -- and we're
2 going to go with the majority vote, and we'll
3 look at this whole structure once this is
4 done. If you guys would just follow with me
5 for just a little bit. Let's say we have 100
6 percent deposited into the trust. Now, let's
7 talk about administrative expenses. Should
8 there be an administrative expense, and Bill
9 talked about expenses versus commission. I
10 don't know if those two things should be
11 separated because they're not separated right
12 now in 436. Your commissions come out of that
13 20-percent administrative expense. And so,
14 let me first pose this question to the group,
15 which we didn't vote on last week: Should we
16 separate expenses and commissions, or should
17 we merge it all under one umbrella of just
18 expenses?

19 (Several people respond, "Keep it
20 together.)

21 CHAIRMAN: Everybody hold their hand
22 up to keep it together. Well, look. We all
23 agree.

24 MS. GRINSTON: Oh, God. Okay. Now,
25 I'm going to seek the vote now. Let's talk

1 about what that administrative expense should
2 be or should be allowed back to the seller.
3 This is back to the seller. What is the
4 consensus of the thoughts on what that
5 administrative expense should be? We heard
6 ranges today. I think the average of ranges
7 that we heard, we heard, of course, some 20
8 percent that should go back. We heard as low
9 as 5 percent. I think we heard some people
10 in between the 12- to 15-percent range. What
11 amount of expense do you believe should go
12 back to the seller? This is, again, not
13 considering cancellations, portability, but
14 contract is provided for just as we said in
15 the contract. There are no other issues.

16 MS. NEUMANN: Can I ask a question?
17 We're talking 20 percent. That's per
18 contract. Are you saying it takes 20 percent
19 per person for that prepaid funeral or funeral?

20 (Numerous people answer yes.)

21 MS. GRINSTON: I'm going to use my
22 example.

23 MS. NEUMANN: It does? For every
24 single person, you have a 20 percent cost?

25 MR. McCULLOCH: Yes. Yes.

1 MS. NEUMANN: Twenty percent of your
2 electricity, 20 percent of your rent per
3 person?

4 MR. McCULLOCH: Yes. Yes. Yes.

5 MS. GRINSTON: Well, I don't know if
6 it's 20 percent per the cost, but 20 percent --

7 MR. McCULLOCH: Yes.

8 MS. GRINSTON: -- because let's say
9 you have a \$10,000 contract. I buy it at
10 30-something years old. It has to stay in
11 place for 40 years. I have to pay, you know,
12 trust fees, legal fees, which is what we have
13 heard people talk about, commissions on it. I
14 think that what John has said is that that 20
15 percent helps him maintain that contract for
16 30 years, 40 years, 20 years, 10 years,
17 however long that would be. We heard Bill
18 talk about legal expenses, trust expenses,
19 investment expenses, commissions to get it
20 sold, advertising, and things of that nature.
21 I think that one of the things that is still
22 up to debate is what percentage really
23 reflects those costs.

24 CHAIRMAN: Linda?

25 MS. BOHRER: And, Barbara, that's how

1 the law is now. I mean, the law right now
2 allows the funding 20 percent immediately to
3 be used for other purposes.

4 MS. NEUMANN: I've just come in out of
5 the cold here.

6 MS. BOHRER: Right. I know. And
7 that's why I just wanted to make sure you knew
8 that that's the way it is currently, and has
9 operated since, when, 1982, John?

10 MR. McCULLOCH: Yes.

11 CHAIRMAN: I think what we could do is
12 do like Mike started last week; okay? Let's
13 do 95-5. Anybody think that you could live
14 with that?

15 MS. GRINSTON: You mean, 5 percent for
16 your administrative expense?

17 CHAIRMAN: Five percent for your
18 expenses, 95 goes into trust.

19 MS. GRINSTON: No.

20 CHAIRMAN: Does anybody think you can
21 live with that? How about 10 percent? Let's
22 just do it that way.

23 MS. GRINSTON: Okay. Go ahead.
24 That's fine.

25 CHAIRMAN: How about 90-10? Anybody

1 live with that?

2 MS. COLLINS: Kind of.

3 CHAIRMAN: Well, vote.

4 MS. COLLINS: After I've heard all
5 these compelling comments today.

6 CHAIRMAN: I mean, you know, because
7 you guys are the public people. I mean, we've
8 got three of you. If Josh was here, I'm sure
9 he would throw a ringer in it, but anyhow --
10 she's saying 10 percent expenses.

11 MS. COLLINS: I'll go the ten. Ten.

12 CHAIRMAN: She's saying 10-percent
13 expenses.

14 MS. GRINSTON: Norma Collins for that.

15 CHAIRMAN: Okay. Let's do 15 percent.
16 How many people think you can live with that?
17 Is that Don want to speak, or Don want to vote?

18 MR. OTTO: Oh, yeah. I'm just saying,
19 here -- yeah. No. Both. Both. And this
20 has nothing to do with what's best for the
21 consumer, this is what's going to happen at
22 the Capitol. There's going to be extreme
23 pressure to come off of 80 percent just
24 because, like it or not, that's perceived to
25 be a bad thing. Also, I know for a fact 100

1 percent is not going to happen. That's a
2 physical impossibility, in my opinion. So,
3 100 percent is not going to happen, I don't
4 think the current 80-20 is likely to stay the
5 same.

6 MR. McCULLOCH: I disagree with you,
7 Don, that that's the consensus over there.

8 MR. OTTO: No, I'm not --

9 MR. McCULLOCH: That may be your
10 opinion, but that's not what everybody else
11 thinks.

12 MR. OTTO: No. I think you would
13 agree with me that 100 percent is a no starter?

14 MR. McCULLOCH: Yes, sir.

15 MR. OTTO: Yeah. And I'm not saying
16 it would succeed, but there's going to be
17 pressure to come off the 80 percent.

18 MR. McCULLOCH: Not if this group
19 thinks -- and you've heard all of the people
20 that are in this business tell you that that's
21 what it takes. So, if you want preneed to
22 continue, you're going to have to do something
23 like this. If you don't want preneed to
24 continue, and certain groups would like for
25 that to happen, then, obviously, you'll go a

1 different direction. But the folks over there
2 are going to listen to what we have to say.

3 CHAIRMAN: All right. Yeah, Joy, and
4 then you, Todd.

5 MS. GERSTEIN: Can I ask you guys a
6 question? If we said 100 percent and you
7 cannot take more than 20 percent -- you can
8 take up to, but not more than -- would that
9 work?

10 CHAIRMAN: Well, we're getting there.

11 MS. EULER: That's what the current
12 law says.

13 MR. STALTER: That's the way it is now.

14 MR. MEIERHOFFER: That's really where
15 it is now.

16 CHAIRMAN: Okay, Todd.

17 MR. MAHN: If I can just take a minute
18 and kind of give an example, and Mike -- could
19 I just do that real quick and see how
20 everybody feels about this?

21 CHAIRMAN: Would you like to step to
22 the podium?

23 MR. MAHN: No, I can do it from right
24 here. And you might want to jot this down,
25 but with trusts, the family comes in at 100

1 percent, 100 percent goes in the trust, but 20
2 percent is used for cost or whatever. Now,
3 that's currently, I know, what we have, but
4 you have to follow this chain a little bit.
5 Under a cancellation, the person would only
6 get their original 80 percent under a
7 cancellation; okay? On a transfer, mobile,
8 they would get 90 percent plus a
9 1--and-a-half-percent cap on interest.

10 MS. EULER: Minimum.

11 MR. MAHN: Minimum if the person has a
12 trust, whether it be myself or Mike or Tom or
13 John, whoever, wanted to give out more than
14 that, that's our prerogative, you know. But a
15 minimum would be 90 percent plus a
16 1-and-a-half-percent cap on interest. Can --
17 and I'm going to refer to John because he's
18 got the company, but can that work?

19 MR. McCULLOCH: Yes, I think so.

20 MR. MAHN: Mike?

21 MR. MEIERHOFFER: Yeah.

22 MR. MAHN: Tom, what do you think?

23 MR. KUTIS: Well, the only thing I
24 don't understand with this is you're still --
25 you're going to put 100 percent in and then

1 you're going to take some money out?

2 MR. MAHN: Well, 100 percent in would
3 go in the trust for reporting issues and
4 knowing where it went. There's this idea no
5 one knows where the money goes once it's paid
6 to the home, so the 100 percent would go in
7 the trust, and then --

8 MR. KUTIS: Most people that buy a
9 prearranged funeral don't put 100 percent.

10 MR. STALTER: But the issue is more of
11 an audit trail. It all goes in there.
12 It's really an administrative step for
13 creating an audit trail and, basically, take
14 care of the guys who never do it in the first
15 place so that a regulator can come to the bank
16 and say, "Show us your deposit records for
17 this particular account." But we still say
18 after it hits it, then after at the end month,
19 then it would be that you would get your 20
20 percent.

21 MR. MAHN: Right.

22 MR. KUTIS: Okay. And, of course, it
23 just seems to me that we're adding expenses;
24 am I incorrect?

25 MS. GRINSTON: In the trust agreement

1 -- could you write something in your trust
2 agreement that says I'm entitled to 20 percent
3 based on face value so you don't have to do
4 anything? It's already in your trust
5 agreement. The trustee knows what they have
6 to do and it automatically triggers. On
7 Todd's example, can I do this, Mr. Chairman?

8 CHAIRMAN: Sure.

9 MS. GRINSTON: Can you guys just humor
10 me? In your first box, can we just write
11 down these numbers? Just humor me, please.
12 Money deposited, 100 percent; administrative
13 expenses, 20 percent; interest, seller -- this
14 is not cancellation or anything else. I'm
15 fulfilling the contract, everything is done.
16 Trust account fees come from the trust amount
17 because that's something you guys voted on
18 last week. Looking at that box, for a
19 contract that is fulfilled, tell me what your
20 thoughts are on that box. Mr. Otto?

21 MR. OTTO: I would say that that
22 appears to be the majority view based on what
23 you were going through. Nobody voted for 100
24 percent, nobody voted for 5 percent. A couple
25 people voted for 10, and I think I voted for

1 15. So, just by process of elimination. The
2 one thing we haven't mentioned, though, on
3 this is does that 20 percent come out of the
4 initial payments or is it on a per-payment
5 basis?

6 MS. GRINSTON: Yeah. I'm going to --
7 give me just a second, Don. Looking at those
8 numbers, 100 percent deposited,
9 administrative, you get up to, no more than 20
10 percent in administrative expenses, interest
11 goes to the seller, trust-account fees get
12 paid from the trust, which is what we heard
13 Bill say from the trust people that they would
14 prefer for their fees to come from the trust
15 as opposed to being dependent on the seller to
16 pay trust fees.

17 MR. STALTER: They do come from the
18 trust. I mean, that's just -- that's the way
19 it is now, too.

20 MS. GRINSTON: Okay. Sorry.
21 Let's -- on that concept, can we take comments
22 on that concept?

23 MR. STROUD: Can I just make one
24 comment? I'm not going to stand up there,
25 I'll just -- Larry. A hundred percent is

1 fine, 20 percent is fine. Interest retained
2 by the seller is fine. But there, again, now,
3 you're getting into an area where the trust
4 fees -- okay -- will be -- (inaudible.)

5 MS. GRINSTON: I'm sorry. I
6 didn't hear that last part, Larry.

7 MR. STALTER: We'll get to that.

8 MR. STROUD: Well, if you're your
9 own seller --

10 MS. GRINSTON: Larry, I'm sorry.
11 They're telling me you have to come to the
12 podium because the court reporter can't hear
13 you.

14 MR. STROUD: Because all these
15 people, I mean, everyone does different. Tom
16 does things different, Mike does things
17 different, third party does things different,
18 MFT does things different. So, you've got to
19 take in all the factions of these people.
20 These guys have been in business a long time.
21 They know what they're doing with their
22 business. 80-20 doesn't sound that bad to
23 them. It don't sound that bad to me if it's
24 administered correctly. And as long as the
25 State Board or whatever trust they put into

1 where they've got their own trust, as long as
2 that's reported to the State Board or whoever
3 is going to be overlooking this and our rules
4 and regulations or statutes, that they get a
5 report on this, and they would know exactly
6 how many contracts were sold. We number our
7 contracts and I think that's what the law
8 calls for. You're supposed to have a number
9 on your contract; right or wrong?

10 MS. GRINSTON: No.

11 MR. OTTO: No, it doesn't say that. It
12 should, but it doesn't.

13 MR. STROUD: Well, it should be. It
14 should be.

15 MS. EULER: It will. It will.

16 MR. STROUD: That way, there's
17 accountability for every contract, and if you
18 foul up writing one out, then you've got to
19 account for that. You put a void on it, but
20 that contract is kept somewhere and say, yes,
21 we made a mistake on this contract and we had
22 to rewrite it. I don't think it's such a
23 hard thing to get 80-20 or 80-317, but I think
24 it depends on whether or not you're going to
25 sweep the interest away. You want to keep the

1 interest, that's fine; keep it. If you want
2 to leave it in your fund and let it grow,
3 which would be the smart thing to do if you
4 don't need the money, that's even better. I
5 think there's going to have to be some choices
6 made here by these businesspeople who are in
7 this business to do what's right. And these
8 guys are correct. Everybody does this
9 differently, and we've got a moral obligation
10 to our consumer, and not one of these
11 gentlemen in this room will not treat a
12 consumer right, and you guys know it. So, 100
13 percent, 20 percent is good, the interest are
14 retained by the seller; that's fine. The
15 trust account fees, we don't have a very big
16 charge, 1.26. That's darn cheap. That's darn
17 cheap. So, I don't care how we do it,
18 basically, speaking on behalf of myself and
19 MFDEA. I mean, Don may not agree on
20 everything, and Bob. But I'll tell you one
21 thing, these guys will do what's right. So,
22 let's quit dicking around with this thing and
23 let's just use common sense. And let's put it
24 together. We can put this thing together
25 fast; right or wrong?

1 MS. GRINSTON: I'd like to put that in
2 the statute, "Thou shalt use common sense."

3 MR. STROUD: I wasn't going to preach
4 today.

5 MS. GRINSTON: You did a good job.
6 We're still not giving you an offering,
7 though. We're not going to pass the plate,
8 Larry. Okay. Can we move to canceled by the
9 purchaser. Just follow with me here now, and
10 I'm going off of what Todd just mentioned.
11 The purchaser comes in -- this is a situation
12 where purchaser comes in. We're going to deal
13 with outside the service area, John, if we
14 can, just separately. Let's just say changed
15 my mind, you know. Now I want a plasma TV,
16 not a funeral. So -- or I just -- this is
17 not -- I don't want a preneed anymore. I
18 want to use this money for insurance costs or
19 use it in another investment avenue. It can
20 be legitimate reasons. The purchaser shows up
21 and says, "I want to cancel." Now, amount
22 deposited, I think the previous vote was 100
23 percent -- just hang on with me for a second.
24 How much, in that situation, if we did
25 100-percent trusting and we've already done --

1 we're going to talk about expenses in a
2 minute. How much of that 100 percent that I
3 have paid -- I'm not talking about any
4 interest right now. Just from the amounts
5 that I paid, I paid you \$10,000 -- again, I
6 can't do the math. How much of that should I
7 get back if I cancel?

8 MR. MAHN: \$8,000.

9 MS. GRINSTON: Todd said \$8,000, which
10 is still holding to the 80-20-percent split.

11 MR. OTTO: If you do anything -- based
12 upon the earlier vote of 20 percent, if you do
13 anything different, then you have to go back
14 to your salesperson that you've already paid a
15 commission to and say you've got to cough up
16 five grand.

17 MS. GRINSTON: Yes. Well, that's
18 easy, Don. No, I'm joking.

19 MR. OTTO: Yeah. Yeah. That's real
20 easy, particularly if they've, you know, now
21 live in Florida. So, as a practical matter,
22 if you're 20 percent on fulfilled, I think you
23 have to be 20 percent on canceled by purchaser.

24 MS. GRINSTON: Now, that reimbursement
25 is going to answer the expense question

1 because if it's 80, that means the seller is
2 keeping that 20 percent as the expense. We're
3 going to get to the interest in just a minute.

4 CHAIRMAN: Bob?

5 MR. BAKER: I guess I'm just a little
6 bit confused whenever we talk about canceling.
7 We're here to try to put everything together
8 for an overall picture in preneed, and we're
9 talking about a cash deposit. If we're going
10 to talk about everything for the consumer,
11 then do we not have to bring insurance in here
12 somewhere? Do you get your 80 percent back?

13 MS. GRINSTON: Well, let's deal with
14 insurance separately. Let's just deal with
15 trust funded.

16 MR. BAKER: We're going to deal with
17 that separately? Okay.

18 MS. GRINSTON: Well, because -- and I
19 think that the vote of the group was that we
20 were going to let insurance and the
21 cancellation of insurance things be handled
22 through the insurance department for the
23 insurance policy. But for right now, let's
24 just deal with trusts because that --

25 MR. BAKER: We're talking cash only?

1 Okay.

2 MS. GRINSTON: Yeah. Let's just talk
3 about cash only and trusts for right now. If
4 we've got -- I heard a suggestion -- I'm going
5 to do an auction, going once, going twice, you
6 know, sold. Sharon?

7 MS. EULER: I would suggest 90-percent
8 reimbursement by the purchaser. This is the
9 number-one thing we get complaints about is
10 why do I only get 80 percent back. I
11 canceled my policy, it's my money, they've
12 gotten the interest, they get all the interest
13 plus they get 20 percent.

14 MS. GRINSTON: Let's decide if they
15 get the interest first, and then we'll come
16 back to that question.

17 MS. EULER: But, currently -- what I'm
18 saying, currently, that's the complaint we get.

19 MS. GRINSTON: Yeah. Got it.

20 MS. EULER: And it seems like maybe 90
21 percent is splitting the baby.

22 MS. GRINSTON: Okay. So, we've got a
23 suggestion on a 90-10.

24 CHAIRMAN: John?

25 MR. McCULLOCH: I mean, I still think

1 it should be the money in trust because it
2 depends on if it's not paid in full or not,
3 but it's money in trust would get refunded.

4 MS. GRINSTON: Does that include
5 interest?

6 MR. McCULLOCH: No. Just the 80
7 percent.

8 MS. GRINSTON: So, what's been put in,
9 80 percent?

10 MR. McCULLOCH: The money in trust.
11 Uh-huh.

12 MS. GRINSTON: Got it.

13 MR. McCULLOCH: Less interest.

14 MR. KUTIS: Our current policy is we
15 refund 100 percent, but it does not include
16 the interest, and that's a business decision.
17 I don't think, as funeral homes go -- I'm not
18 talking about third-party sellers, but there's
19 very few cancellations. Again, most of the
20 time, it's somebody that's moving to Arizona
21 to be with their daughter or their son,
22 they're not able to take care of themselves
23 anymore. As a business decision, we refund
24 100 percent and --

25 MS. GRINSTON: And, Mr. Kutis, having

1 heard that, let me back in something because
2 maybe this will help us with the 80-20, 90-10
3 issue. On a cancellation by purchaser, not
4 talking transfer or anything else,
5 cancellation by purchaser, who should get that
6 interest?

7 MR. KUTIS: The funeral home should
8 retain the interest for expenses, sure.

9 MS. GRINSTON: I've got one funeral
10 home -- well, the seller, technically, but we
11 understand how it trickles down. The seller
12 does it. Who should keep the interest if the
13 purchaser cancels this contract? Who keeps
14 the interest? I hear seller. Anybody object
15 to that?

16 (Several people answer "seller.")

17 MS. GRINSTON: I'm going to write
18 "seller" in the interest box -- in the --
19 yeah, in the interest box. Okay. Hundred
20 percent deposited, the seller gets the
21 interest. The question is: Do we give back
22 80 percent to the customer or 90 percent?
23 I've got one vote for 90 on this side of the
24 table. I had an 80 on that side.

25 MS. COLLINS: Two votes for 90.

1 MS. GRINSTON: Two votes for 90.
2 Three for -- five votes for 90. And we're
3 going to do a voice vote for the court
4 reporter.

5 CHAIRMAN: Let's hold your hands up on
6 the 90. Let's count them up.

7 MS. DUNN: Nine.

8 MS. GRINSTON: For purposes of the
9 record, can we just get every -- ten.
10 Everybody who voted on the 90 percent, can you
11 just please go around the table and give your
12 organization, because we probably need to
13 record that for the record.

14 MR. STALTER: I'm not confused, but
15 we're saying that the refund right -- now,
16 this, we're just talking about cancellation;
17 right?

18 MR. MAHN: Cancellation only.

19 MR. STALTER: It's going to be just 90
20 percent of the face?

21 MR. MAHN: Right.

22 MS. GRINSTON: Ninety percent of what
23 they paid in.

24 MR. OTTO: I have a question then;
25 okay? If I may.

1 MS. GRINSTON: I'm sorry. John?

2 MR. McCULLOCH: If it's paid in full,
3 but if it's not paid in full --

4 MS. GRINSTON: Do they still get 90
5 percent of what they paid in if it's not paid
6 in full?

7 MR. McCULLOCH: Well, if we're
8 retaining the first 20 percent of it.

9 MS. GRINSTON: Okay. Let me -- I see
10 what you mean.

11 MR. OTTO: Okay. So, first off, that
12 was question number one. We're dealing with a
13 fully paid contract?

14 MS. GRINSTON: Yeah.

15 MR. OTTO: Okay. So, let's just --

16 MS. GRINSTON: For purposes of
17 clarification, can we deal with a fully paid
18 contract --

19 MR. OTTO: Good.

20 MS. GRINSTON: -- because you're
21 right, John.

22 MR. OTTO: Question two, if we go 90
23 percent, where is that other 10 percent coming
24 from?

25 MR. MEIERHOFFER: Exactly.

1 MS. GRINSTON: Interest.

2 MR. MEIERHOFFER: Somebody else's --

3 MS. GRINSTON: Well, no. No. They
4 paid in \$10,000 --

5 MR. OTTO: No No. They've paid in
6 \$10,000. By our first vote, we allow the
7 seller to keep 20 percent.

8 UNIDENTIFIED: That's right.

9 MR. OTTO: That means 80 percent is in
10 there.

11 MR. MEIERHOFFER: Right.

12 MR. OTTO: If they cancel, they get 90
13 percent back. That means in your -- and let's
14 just use your \$10,000 example. The consumer
15 paid \$10,000.

16 MS. GRINSTON: Yeah.

17 MR. OTTO: The seller kept \$2,000.

18 MS. GRINSTON: So, it's \$8,000 in
19 there now.

20 MR. OTTO: Forty-five days later or a
21 year, ten years later, whatever it is, they
22 cancel it. They're entitled, under this
23 proposal, \$9,000 back, but you put \$8,000 is
24 in the trust.

25 MR. STROUD: No, Don. It's 90 percent

1 of the 80 percent.

2 MR. OTTO: No. No.

3 (Numerous people disagree.)

4 MS. EULER: No. Ninety percent of
5 what they paid.

6 MS. GRINSTON: It's a good point.
7 It's a good point.

8 CHAIRMAN: Whoa. Whoa. Whoa. Whoa.
9 Hold it. You run a trust, don't you?

10 MR. OTTO: Yes.

11 CHAIRMAN: John McCulloch, you've got
12 a trust?

13 MR. McCULLOCH: Yes.

14 CHAIRMAN: Mr. Kutis gives 100 percent
15 back. Where does that other -- if you had a
16 contract that you took \$2,000, you give it --

17 MR. KUTIS: It's out of my pocket.

18 CHAIRMAN: That's exactly right. You
19 know where that money comes from. Quit asking
20 those silly questions.

21 (Several people talking simultaneously.)

22 CHAIRMAN: You get up here and say
23 something and we're going to start rowing
24 together here guys. We're going in a circle.
25 We're not going straight anymore.

1 MR. MAY: Well, okay. To me, you
2 know, we talked about the 80-20 trusting. And
3 one of the, I think, important observations
4 was that consumers, by and large, that's a
5 very popular item to discuss by legislators
6 and by consumers. 80-20, that's the whole big
7 problem here. That's not the big problem
8 here. The big problem in consumers' minds, to
9 me, should be this whole cancellation thing.
10 They're interested in 80-20 because they're
11 worried, well, if they only put 80 percent in
12 trust, what happens if I want to cancel? I'm
13 only going to get 80 percent back, because if
14 they die, they get the whole funeral provided,
15 so this whole cancellation thing is the whole
16 big hornet's nest, in my mind, behind
17 consumers. They're worried you only put 80
18 percent in trust. And if I want to cancel in
19 five, ten years, I'm not going to have my
20 money to get back or -- I mean, this
21 cancellation thing, to me, is the big issue.
22 This is what we should really be discussing;
23 okay? I mean, it doesn't matter how much you
24 put in if you're going to provide the funeral
25 because they're going to get the whole funeral

1 provided. Now, at some point, it's ridiculous
2 for consumers to think that they shouldn't get
3 dinked on their contract after a while. There
4 is no other industry that says that you can
5 give us all your money and then if you want
6 to come back in two to three, four, five
7 years, we're going to give it all back to you
8 plus interest. That's absurd; okay? I mean,
9 they ought to get dinked after a while.
10 Insurance is that way. I can't buy an
11 insurance contract and after 90 days, a year,
12 you're not going to give me all my money back
13 plus interest. That's absurd. But what I do
14 like about -- and consumers have expectations.
15 I paid for an insurance contract, I pay for
16 something today, it's a promise to get
17 something in the future -- just like a funeral
18 contract. After a while, what I do like about
19 the insurance contracts, we're seeing more of
20 those, is the fact that I can get maybe, like,
21 a 30-day free look. That's pretty
22 contemporary consumer oriented. So, maybe
23 it's you get all your money back in 15 days,
24 30 days, whatever. Maybe it's 90 percent
25 after 30 days or 60 days, and maybe it's only

1 80 percent, the amount in trust, after 90 or
2 120 days. But after that time period, the 120
3 days, you get 80 percent back. That's all we
4 got in trust. Or you can give them everything
5 back if you want, but it comes out of your
6 own pocket. That could be a business
7 decision, but I don't think you should be
8 obligated to do that. But at some point, they
9 got to jump in with both feet. This is a
10 transaction.

11 MS. GRINSTON: But the thing is -- I
12 don't know. I'm looking at this and being --
13 I'm on the consumer's side now. The 20
14 percent that you were allowed to keep was
15 supposed to sustain you for the life of the
16 contract. I have cut the life of the contract
17 short. You're not -- you don't have any
18 inflation factor or anything else. So, if you
19 give me 90 percent back, which would mean 10
20 percent of what you took out would have to be
21 returned back, you still have retained 10
22 percent, you know, to cover expenses. You get
23 to keep all the interest, and I now walk away
24 with 90 percent. Since you have a
25 shorter-term contract than what you originally

1 intended, and you don't have the inflation
2 risk or anything else anymore, from --

3 MR. MAY: How do you know they're not
4 going to -- I'm sorry. Just to be devil's
5 advocate, how do you know they're not going to
6 come in 25 years from now and want all their
7 money back?

8 MS. GRINSTON: You're very right.
9 You're very right. Again, you know, when we
10 talk about --

11 MR. MAY: That's not really shortening
12 their contract.

13 MS. GRINSTON: When we talk about the
14 life of the contract, because if you talk
15 about 10 percent -- we're really talking about
16 a difference of 10 percent. 80-20, 90-10,
17 this is, again, cancellation by the purchaser,
18 and I think this is the issue. It would be
19 -- we're talking about a percentage of the
20 amount that has been -- that is in that trust.
21 Oh, I'm sorry. Not that is in the trust, but
22 that has been paid, not the amount that is in
23 the trust, so you don't get 20 percent and
24 then you get to drop it down again when they
25 show up again because you get another 10

1 percent of that. You're talking about the
2 amount that has been paid. From that amount,
3 the consensus of the group as to what's
4 workable, 80-20, 90-10? What's workable?

5 CHAIRMAN: Okay. Hold up. All right.
6 Todd?

7 MR. MAHN: What Brian is talking
8 about, you would almost have to scale it, you
9 know, and you're not going to be able to do
10 that, you know. That's going to be too hard.
11 Did they have it a month, did they have it
12 two months, did they have it four years or
13 twenty-five years, like Brian said. And I
14 think that the numbers all have to -- the
15 numbers have to match here, you know. If they
16 deposit in on a \$10,000 account, and they've
17 put 80 percent in, that's eight grand, and
18 they come back in three months and they want
19 their money back, or two months -- and that's
20 when you see a lot of your cancellations.
21 People kind of get buyer's remorse and it
22 happens within a certain few months that, you
23 know, the 80 percent ought to match up with
24 the other 80 percent. I mean, it can't --
25 they're not going to be able to cough up that

1 extra \$1,000 because of it being paid out on
2 that one account. And if they were canceling
3 an insurance policy, they would -- I know this
4 from selling insurance policies -- they're
5 going to take a much more significant ding
6 than that -- huge; okay? So, by allowing them
7 to get 80 percent back -- and to be honest
8 with you, it's not in any consumer's interest,
9 you know, really, unless there's just dire
10 need, to cancel one of these policies because
11 when we get into transferability, you know,
12 you'll see why -- you know, my idea on
13 transferability when we can get the -- you
14 know.

15 CHAIRMAN: Barbara?

16 MS. NEUMANN: I just have a question.
17 You're losing me. I thought we were
18 discussing the interest, not the contract.
19 We're talking about how much percentage of the
20 interest they should get back.

21 MS. EULER: No.

22 MS. NEUMANN: And I'm hearing --

23 MS. EULER: The contract price.

24 MS. NEUMANN: Well, we were on
25 interest, and you said the seller would get

1 it, but what if you canceled, how much of the
2 interest should they get?

3 MS. GRINSTON: Yeah. No, I'm sorry.
4 Yeah. That was my original question on
5 interest, and I think that the vote was that
6 the seller gets the interest. And then we
7 come back to from what you've actually paid
8 out, how much of the payments should you be
9 getting back into your pocket. I'm sorry.

10 MS. NEUMANN: Okay. Okay. That's why
11 I couldn't understand the argument. It's the
12 interest. They shouldn't get the whole 20
13 percent of the interest because they only had
14 it for a couple years.

15 MS. EULER: Yeah.

16 MS. NEUMANN: Okay.

17 CHAIRMAN: Sharon?

18 MS. EULER: The consumers look at
19 prepaid funeral contracts like a bank. I have
20 seen this in consumer complaints for as long
21 as I've been working with the Board, and I've
22 been talking to a bunch of consumers about
23 NPS. They -- even though it may have been
24 disclosed to them, it's in the statute, they
25 do not understand why funeral homes got their

1 money for two years, ten years, twenty-five
2 years, and all they get back is \$8,000 of what
3 they paid in when the funeral home has had the
4 use of their money for ten years, twenty
5 years, however long it is. And so, they think
6 that they should be either entitled to all of
7 what they paid in and all of the interest
8 that's accumulated, or they think they ought
9 to be entitled to some of the interest so that
10 they can take that money and do whatever they
11 want with it. So, it seems to me that 90
12 percent is a compromise to those concerns.

13 MS. GRINSTON: May I throw something
14 out on the floor?

15 CHAIRMAN: Yes.

16 MS. GRINSTON: If -- and I'm pulling
17 off of Brian's idea -- Todd, please don't kill
18 me. But if you -- let's say if you cancel --
19 would there be a problem if you guys said if
20 you cancel within a year, a 90-10; after a
21 year, you're 80-20. So that for those where
22 your costs are really short, if the 90 day --
23 and I say that hearing the 90-day window. If
24 they're coming back in a month or two or three
25 where they really don't get it or they don't

1 understand -- or not that they don't get it,
2 but they just realize they wanted something
3 else, that this is not their best option.
4 Within a year, you're 90-10; after a year,
5 80-20.

6 CHAIRMAN: Sharon?

7 MS. EULER: I would add to that within
8 30 days, 100 percent.

9 MS. GRINSTON: Okay. Which is what
10 the law is now.

11 (Several people voice, "That's what it
12 is now.")

13 MS. EULER: But just because the law
14 is there now, we're redoing the law.

15 MR. MEIERHOFFER: Well, we're going to
16 keep it like it is.

17 MR. OTTO: Yeah. That should stay the
18 same.

19 CHAIRMAN: Linda?

20 MS. BOHRER: And this is sort of
21 separate and distinct from what you guys are
22 talking about right now. This is tying back
23 to the insurance, so I don't know if you want
24 to continue this train of thought and then
25 I'll say what I have to say about the

1 insurance piece of it.

2 CHAIRMAN: Bob?

3 MR. BAKER: I agree with Mr. Kutis.
4 It's a business decision and we give back 100
5 percent, as well. But I do -- I would rather
6 have that option as a business decision rather
7 than having it mandated what I'm going to do.

8 MS. GRINSTON: And we could sort of
9 preserve some of that interest, as well,
10 because we could also say that, you know,
11 unless varied by agreement -- and this could
12 be the minimum, but if you decide to do --

13 MR. BAKER: Have a disclosure
14 statement that's very clear, then, you know,
15 the consumer should not have a question on any
16 of it on when the money comes back.

17 MS. GRINSTON: And setting the
18 minimums.

19 CHAIRMAN: Mike?

20 MR. MEIERHOFFER: You know, I'd like
21 to do what you're saying, Sharon. But I think
22 we don't know what's going to happen five
23 years or fifteen years down the road. There
24 could be a run on the bank for whatever
25 reason. That's the thing that concerns me is

1 if we're required to come up with more money
2 en masse than is in the trust, that's a
3 problem. That's a huge problem. And we're
4 going to be in worse shape by promising
5 something we can't do. Outside chance, but it
6 can. The 80-20, at least you can promise
7 what's in the bank and can be given back.
8 Any of us can do that today. So, that's the
9 only concern I have from splitting this at
10 this point. It's just -- it's a number that
11 we don't necessarily actuarially have.

12 MS. EULER: Yeah. My suggestion,
13 regardless of what the number ends up being,
14 that we not use the current language of money
15 placed in trust because that gives a big
16 loophole for people who never put the money
17 into trust.

18 MR. MEIERHOFFER: Okay.

19 MS. GRINSTON: Sure.

20 CHAIRMAN: Tom?

21 MR. KUTIS: Just from the consumer's
22 point of view now, not as a funeral director
23 or a preneed seller, don't you have that
24 backwards? I mean, you're going to keep their
25 money for ten or fifteen years and then you're

1 only going to give them 80 percent. You have
2 their money for six months, and you're going
3 to give them 90 percent.

4 MS. GRINSTON: Do I? Because you mean
5 if the funeral home would have had a chance to
6 gain more interest on it?

7 MR. KUTIS: Well, certainly.

8 MS. GRINSTON: I don't know. That's
9 up for discussion. It's a good point. If we
10 did -- let's say we did 30 days, 100 percent;
11 one year -- and we may need to look at
12 whether we need to switch these. One year,
13 90-10; after a year, 80-20. It'll give your
14 people who may need, you know, that short-term
15 cancellation a chance to get more of their
16 money back and still preserve the 80-20 for
17 the majority of the contracts that probably
18 would be out there, and then maybe we do need
19 to discuss his point about whether that is
20 backwards.

21 CHAIRMAN: Bill?

22 MR. STALTER: You know, I go back to
23 the years of FSP and so forth, and we were
24 looking at how to structure this arrangement.
25 And part of what we looked at it was the

1 prepaid college-tuition plans because,
2 basically, they were taxed the same way and
3 they had the same security issues. And the
4 way those programs involved, now, you have,
5 what, a 529 plan, and then you also, which is
6 kind of like our nonguaranteed, you put the
7 money in, you get to spend it however you
8 want. On the other side, we've got plans
9 which aren't guaranteed tuition plans. And
10 when people put their money in there, you
11 know, there's a cost when it goes in, but if
12 they decide they're not going to go to those
13 universities, they usually get a portion of
14 the trust earning back. And, often, it's,
15 like, half or else they have periods of time
16 where they can't access it for, like, six
17 months or year. Basically, the SEC wants to
18 say it's not an investment fund, and there's a
19 cost of getting into the guaranteed
20 college-tuition plan. And since it kind of
21 goes back to this, if we have it for 15 years
22 and we've managed it well, we should give a
23 portion of it back, or it should be available
24 for the portability issue.

25 MS. GRINSTON: And we're going --

1 yeah. Let me separate portability.

2 MR. STALTER: I think they're the same
3 thing, basically.

4 MS. GRINSTON: See, I don't, because
5 when you talk about someone coming in and just
6 saying I want to change funeral homes, that's
7 different from someone saying I don't want to
8 use anybody. And I think the consumer's
9 expectations are different, for me, when I
10 come in and I just want to go from Todd to
11 Martin as opposed to when I say I don't want
12 anybody. My expectations are different. And
13 I don't really know if there should be a
14 change in the funding mechanism when all I'm
15 doing is going from Todd to Martin.

16 MR. MAHN: The problem I've seen with
17 cancellations is people normally want to
18 cancel and then go spend the money on
19 something that has nothing to do with the
20 funeral, and then their relatives come in
21 later on and they're burdened with the funeral
22 when this person has pulled it out. And I
23 really think that there needs -- they need to
24 have an eye-opening, you know, talk with Jesus
25 thing to really decide whether they want to

1 cancel this or not.

2 MS. EULER: Or whoever they --

3 MR. MAHN: Or whoever, yeah. Maybe
4 they're, you know, atheists.

5 CHAIRMAN: Okay. Martin, and then Bob.

6 MR. VERNON: Just a thought process
7 that Mike had used last week. Would there be
8 any advantage here -- we've got a lot of
9 nit-picking around. That's fine; that's good.
10 But would there be any advantage here of just
11 creating the entire saga that Todd created or
12 started to read off earlier and taking a straw
13 poll of who could not live with that, and then
14 fine-tune after that, because it is a general
15 consensus.

16 MS. EUHLER: I think that's a good
17 idea.

18 CHAIRMAN: All right. Bob, have you
19 got a comment, and then Don.

20 MR. BAKER: Yes. I think Sharon
21 really hit it on the head, and I agree with
22 her 100 percent. It's the money paid in that
23 the consumer gets back, you know. For the NPS
24 saga, they could pay on a ten-year contract,
25 pay on it for five years, and then a little

1 bit of money has finally started trickling
2 into the trust. So, I agree with Sharon
3 wholeheartedly. It's the amount of the money
4 that the consumer pays versus what's actually
5 in trust because they --

6 CHAIRMAN: Okay. Don is saying the
7 same thing?

8 MR. OTTO: Well, no, because my one
9 concern is -- goes off of what Mike said.
10 Let's -- I'm also mathematically challenged,
11 so let's do there's \$100 million. A preneed
12 company has sold \$100 million worth of
13 contracts and collected \$100 million. They've
14 put \$80 million into the trust. Then they're
15 liable to pay \$90 million back to consumers if
16 they all canceled that day? Would any bank do
17 that?

18 MS. EULER: Uh-huh.

19 MR. MEIERHOFFER: That's the problem.

20 MR. OTTO: Would any bank do that?

21 That's why, to me --

22 MS. EULER: But it is not the bank. A
23 bank gives you back what you have deposited.
24 The consumer has deposited \$100 million with
25 you. And if you took \$100 million and put it

1 in a bank account and went back ten years
2 later and say, "I'd like the \$100 million I
3 deposited back," the bank will say,
4 "Certainly."

5 MR. MEIERHOFFER: But they don't have
6 a risk because they don't sell --

7 CHAIRMAN: John?

8 MR. McCULLOCH: Then that's what they
9 should do, just put their money in the bank
10 and not do as preneed.

11 MS. GRINSTON: But, Don, if we do
12 80-20 and that number comes down from -- help
13 me, Don. If it's \$90 million you give back
14 or \$80 million you give back, is that really
15 -- because that's really what you're talking
16 about, whether I'm forced to give over \$80
17 million or whether I'm forced to give over \$90
18 million. Is that really that big of a
19 difference?

20 CHAIRMAN: Quiet.

21 MR. OTTO: Yeah. Again, my view is
22 that, both from consumer protection and from
23 an administrative standpoint in trying to do
24 this, that percentage on our first box and the
25 percentage on our second box ought to be the

1 same. If you deposit 80 percent, you get 80
2 percent back. If you deposit 90 percent in
3 box #1, you get 90 percent back in box #2,
4 because, otherwise, it is going to be an
5 administrative mess to have to go back. And,
6 like I said, you may have to go -- what -- if
7 the funeral home, if you're going to collect
8 your -- get your commission back from the
9 person that you paid the commission to, if the
10 person cancels after a year, going to go back
11 and say you've got to write me a check for
12 \$750 because that person canceled, because
13 unlike -- although some businesses are able to
14 pay 100 percent back and eat it, you know, it
15 comes out of them, not all can.

16 MS. GRINSTON: Again -- but can you --

17 MR. OTTO: And I just think that's a
18 problem.

19 MS. GRINSTON: But, Don, can you live
20 with 90-10, because, remember, you're not
21 going to do any services at the end. Can you
22 live -- and we're talking about compromise
23 because I think everybody has come off of dead
24 center here, and a lot of people have come a
25 little way. Can you live, if you had to do

1 90-10 -- and I don't know if we need to
2 introduce this before one year, after one year
3 issue again. Can you live with 90-10 in the
4 long run, just on cancellation alone?

5 MS. EULER: Or 85-10?

6 MS. GRINSTON: Yeah. 85-15.

7 MS. EULER: 85-15, yeah.

8 CHAIRMAN: Mike?

9 MR. MEIERHOFFER: Here's the dilemma.
10 Here's the dilemma. What you're asking, no
11 banker or no financial person would ever
12 recommend or sign off on it. You basically
13 have a liability that's greater than your
14 asset. And if you look at the accounting
15 practice, what you're suggesting, there's any
16 time somebody could come to the bank and ask
17 for more money that's in the bank than we
18 would have available. That's assuming
19 everybody came at the same time. Now, the
20 chances of that happening are slim, but that's
21 exactly what happened with NPS. That's
22 exactly what happened. They got out of
23 balance. It just -- it wouldn't work. So,
24 whatever the number, keep it the same.

25 CHAIRMAN: John?

1 MR. McCULLOCH: Well, I think the same
2 thing. You can't require -- like I say, it
3 may not be there. You were saying it's only
4 10 percent, what's the big deal. But it's
5 just, it won't be there.

6 MS. GERSTEIN: Where is it?

7 MR. McCULLOCH: And if you did have
8 that run on the bank, how are you going to --

9 MS. GRINSTON: Because it's already
10 taken out for the 20. Okay. Let me -- I'm
11 going to negotiate. If we say 80-20, can we
12 talk about giving the purchaser some of the
13 interest back? Give them 10 percent of the
14 interest. If you're going to keep 80-20,
15 that'll satisfy your concern, and then give
16 them 10 percent of the interest back.

17 CHAIRMAN: Sharon?

18 MS. EULER: I'm good with that. I
19 just think --

20 MS. GRINSTON: Uh-oh. I've got nods.
21 Hold on.

22 MR. OTTO: I think that's more doable.
23 That's easy.

24 MS. EULER: My concern is that the
25 consumer, the preneed seller got paid 20

1 percent to administer the trust over the life
2 of the trust. It's not a commission. It's
3 20 percent to cover the expenses over the life
4 of the trust. And if the life of the trust
5 is cut short, then there shouldn't be paid.
6 So, paying part of the interest, I think,
7 would make consumers happy.

8 MS. GRINSTON: 80-20, and then 10
9 percent of the interest back to the consumer.

10 CHAIRMAN: Joy?

11 MS. GERSTEIN: I have a question for
12 -- John, you said if they came back and they
13 wanted their -- I'm just going to use a
14 fictitious figure -- their several thousand
15 dollars back; they're going to cancel. And
16 you said, "That's not possible, it's not
17 there." Where is this money that went into
18 trust?

19 MR. McCULLOCH: Well, the example
20 we're using is a \$10,000 contract, you put
21 \$8,000 in trust, but then they come in and
22 want to cancel six months from now and they
23 want \$9,000. So, there's \$1,000 that we're
24 having to come up with.

25 MS. GERSTEIN: But the rest of it's

1 there?

2 MR. McCULLOCH: Yes. The concern is,
3 is if you have a run on the bank --

4 MS. GERSTEIN: Where is this money?

5 MR. McCULLOCH: Well, they're using big
6 numbers of \$100 million, which is huge. So,
7 if you've got, you know, 20 percent of that,
8 that's going to be -- or 10 percent of that,
9 that would give major problems if you had
10 someone just come right in. If all of us --
11 if all the people at Central Bank or State's
12 Bank went over there today and want all their
13 money, they don't have it. And the banker guy
14 here can tell you; right? The cash is not
15 there.

16 MR. WEAVER: It's been loaned out, so
17 --

18 MR. McCULLOCH: It's not there.

19 MS. GRINSTON: You're kidding. No, I'm
20 joking.

21 MR. McCULLOCH: If everybody shows up
22 and wants their money, they'll shut the doors
23 and that will be the end of that. A bank
24 could go out of business just to stop it.

25 MR. OTTO: I'd like to call for the --

1 call the question on this compromise.

2 CHAIRMAN: Hold it. We're going to
3 hear from the public, and then we're going to
4 -- okay. Brian and then Kalene.

5 MR. MAY: I just -- I think most sales
6 organizations -- or, I don't know -- some do,
7 we do, have early charge-backs -- or
8 charge-backs for early death, like in the
9 first year, and, you know, we do that right
10 now with the insurance product, anyway. I
11 can't see why they just wouldn't modify things
12 and have an early charge-back for early deaths
13 and, you know, you charge back your
14 commissions for a guy who dies -- or, I'm
15 sorry -- for cancellations, not early deaths
16 -- for a cancellation. A guy canceled seven
17 months into it, and you charge him his
18 commission back and, boom. I mean, these
19 things happen all the time. I don't think
20 it's an extraordinary -- and, to me, that
21 seems easier than, you know, having to worry
22 about this whole earnings and interest
23 percentage. That, to me, is very complicated,
24 you know. We're not great on the finance
25 side. That's just an idea, so, anyway --

1 CHAIRMAN: Yeah. Question: Define a
2 charge-back.

3 MS. ERICKSON: Brian, what is a
4 charge-back, please?

5 MR. MAY: I'm sorry?

6 MS. ERICKSON: Come back up to the
7 mike and tell us what a charge-back is, please.

8 MR. MAY: Oh. Well, you know, we fund
9 with an insurance product right now already
10 some of our funerals, and so, the insurance
11 company is famous, you know. We fund -- you
12 know, the insurance companies, we put a policy
13 in force to fund a funeral right now, and they
14 pay a commission from the insurance carrier,
15 but, certainly, you all charge back
16 commissions to us if they don't live long
17 enough. You guys aren't going to pay a
18 commission to policies that aren't in force,
19 so if they live 30 days, you all charge back
20 the commission that you paid us on the policy.
21 You hold onto their funds for 30 days, you
22 give us the funds back to do the funeral, but
23 you charge back the insurance policy to us as
24 a general agent, so I charge it back to our
25 individual counselors, and they know that.

1 So, it's quite common when you fund with an
2 insurance --

3 MS. BOHRER: It's a sort of a -- it's
4 a refund on commission is what you're saying?

5 MR. MAY: I'm sorry? A refund on
6 commission?

7 MS. BOHRER: It's like a refund on
8 commission?

9 MR. MAY: Yes.

10 MS. BOHRER: So that if we pay -- if
11 the insurance company paid you \$1,000 in
12 commission and the policy was canceled too
13 quickly --

14 MR. MAY: Yeah.

15 MS. BOHRER: -- then you might -- then
16 the insurance company might ask back for \$70,
17 \$100, \$300.

18 MR. MAY: Yeah. That's right. It
19 happens all the time. It happens all the
20 time. And I can't understand what -- that
21 would just happen on these trust concepts,
22 too. You tell your guy if he sells a trust
23 product, that -- oh, sorry about that. Sold a
24 \$10,000 trust product and you got a
25 commission, oh, you got to charge it back. He

1 died six months into it, you know. For a
2 cancellation -- we do it for cancellations,
3 too, if they cancel.

4 CHAIRMAN: John has got a comment for
5 you.

6 MR. McCULLOCH: I think the way
7 insurance companies work, there's insurance
8 people here that can speak to this better than
9 I, but they actually set up an escrow
10 account, I think, and they have to manage
11 those funds, and that's to guarantee that
12 there's money to be gotten back from that
13 counselor, because the way we do it, we're not
14 as sophisticated. Yeah, we do charge-backs,
15 but if that counselor decides not to pay me,
16 I've never sued anyone. I try to find them
17 if I can. Bottom line is I don't get money
18 back. It's just gone.

19 MR. MAY: We reserve a little bit.
20 It's not uncomplicated, but --

21 CHAIRMAN: Yeah. All right. State
22 your name so the court reporter can --

23 MS. SUMMERVILLE: Kalene Summerville.
24 I have entered many, many contracts, and every
25 contract I've had has been fees and things,

1 you know. When you buy a house, you know,
2 you're paying your agent. And all this is set
3 out in the contract you sign. We need to
4 put, you know, so the people are educated that
5 where their money is going. Yes, they are
6 giving us money, but there are fees and
7 expenses and they need to be broken down and
8 told to the people, and then if they want to
9 cancel, they'll need to understand that these
10 fees are gone because you've entered this
11 contract with me, because I know if I go to
12 my bank and want to set up a CD and three
13 days later I want to cancel that CD and get
14 my money back and go buy a car, I'm not going
15 to get all my money back. So, why should we
16 -- if we tell everybody what -- up front
17 what's going on, then there shouldn't -- we
18 shouldn't be arguing about this. It needs to
19 be made more simple and everybody needs to be
20 aware of what's going on.

21 CHAIRMAN: Good point. Okay.

22 MS. GRINSTON: I think the last point
23 we were -- the last suggestion was 80-20 plus
24 10-percent interest back to the consumer. Can
25 I put that on the floor for a vote, Mr.

1 Chairman, sir?

2 CHAIRMAN: Yes, you may.

3 MS. GRINSTON: Everyone in favor? All
4 in favor? Opposed?

5 CHAIRMAN: Let's do it -- okay. The
6 guys opposed, hold your hands up. Let's count
7 them up. One, two, three, four.

8 MS. GRINSTON: Opposed to 80-20, 80
9 percent back and plus the consumer gets 10
10 percent of the interest.

11 UNIDENTIFIED: You're opposed to that.

12 CHAIRMAN: I said if you're opposed to
13 that, raise your hand. And we've got four
14 nos. Okay.

15 MS. DUNN: And they were Norma, Bill,
16 and who?

17 CHAIRMAN: Tom.

18 MS. BOHRER: Mike had his hand up.

19 CHAIRMAN: And Mike had his hand up.

20 MS. DUNN: Tom and Mike?

21 (Several people talking simultaneously.)

22 CHAIRMAN: Okay. All in favor of
23 those?

24 MR. KUTIS: Can you tell us what we're
25 voting on?

1 MS. GRINSTON: This is it. I come in
2 to cancel. I come in to cancel. When I come
3 in to cancel, I get 80 percent of what I paid
4 back, plus I get 10 percent of the interest
5 that you've earned on my money.

6 MR. MAY: What does that mean? If you
7 sweep all the interest, there's no interest
8 earned.

9 MS. GRINSTON: Yeah. But we're going
10 to talk about interest accrual.

11 MR. OTTO: We've already voted on that
12 one last week. You're not sweeping the
13 interest.

14 MS. GRINSTON: Yeah. Yeah. We did on
15 interest accrual and everything else. If
16 we're at an 80-20 plus 10 percent of the
17 interest earned on my funds, that's what we're
18 voting on.

19 CHAIRMAN: Okay. Are you in favor of
20 that, hold your hand up?

21 MS. GRINSTON: Because we're still
22 preserving 80-20 for you all so you can still
23 live up to 80-20, and you're still getting 90
24 percent of your interest, so all you're losing
25 is 10 percent of the interest from what you're

1 doing right now. Again, can we live with that?

2 CHAIRMAN: All right. Those in favor
3 of that? Thirteen. Okay. Thirteen. Those
4 opposed to that, hold your hand up. Okay.
5 Well, we're just one, two, three.

6 (Several people talking simultaneously.)

7 CHAIRMAN: Thirteen to four.

8 MS. GRINSTON: Got it. Okay.

9 CHAIRMAN: Okay. Lunch.

10 (Off the record)

11 CHAIRMAN: We better get started.

12 Hope you had a good lunch. I would like to
13 take this minute to have David Broeker restate
14 the mission of this committee.

15 MR. BROKER: Thank you, Jim. For
16 those of you who attended the very first
17 meeting, I know you were so awed with my
18 remarks on that day that Jim has asked me to
19 repeat them. As I had mentioned at that time,
20 we have been given really quite an excellent
21 opportunity. Senator Delbert Scott and
22 Representative Jay Wasson had asked the
23 Division to put together some plans, some
24 thoughts on Chapter 436. As all of you know,
25 in the last session of the general assembly,

1 there was a bill that passed and was signed by
2 the governor putting into effect, as of August
3 28th, a joint legislative committee of senate
4 and house members, seven, I think, from each
5 -- from the senate, seven from the house. It
6 will be jointly chaired by a senator and a
7 member of the house. We're assuming Delbert
8 Scott and Jay Wasson will be the joint
9 chairmen. They asked the Division and the
10 Board of Embalmers and Funeral Directors to
11 put together some thoughts and hopefully some
12 very solid plans that the joint committee
13 would have an opportunity to take a good solid
14 look at, to hear testimony, and then,
15 ultimately, to have a bill to present when the
16 legislature is back in session in January.
17 Now, it's my understanding the joint committee
18 -- and, Kim, correct me if I'm wrong -- but I
19 think it expires as of January 30th; is that
20 correct?

21 MS. GRINSTON: That's correct, sir.
22 That's correct.

23 MR. BROEKER: So, they have until
24 January 30th to hear -- have their hearings,
25 and by that time, hopefully, or very quickly

1 thereafter, to present legislation in both of
2 the houses. It's our hope, of course, and we
3 were thrilled to be asked to do this. And,
4 of course, this is something, quite frankly,
5 the Division has done with the various pieces
6 of legislation that the Division and the
7 various boards have recommended over the
8 years. We haven't been quite this grandiose
9 in putting this type of thing together, but
10 this has been one of the most important issues
11 that we have had to face in some time. But
12 on the various pieces of legislation that we
13 look at, we have always tried to bring
14 together a consensus group that will help and
15 assist us in presenting the proposed
16 legislation to both houses and also, of
17 course, the various associations and what have
18 you that are involved have been most helpful,
19 as well as the boards and the executive
20 directors of those boards. This is no
21 exception except it's a much larger operation.
22 Like I say, we've never pulled together a
23 group like this. We're very pleased for
24 everybody's participation. It means a lot to
25 the Division, it means a lot to the Board, and

1 I guarantee you, once we have a package put
2 together that we're going to present to the
3 joint committee, it'll be greatly appreciated
4 by Senator Scott and Representative Wasson,
5 and we are assuming the two of them will be
6 the joint chairmen of the committee. So,
7 today, I notice we've made some pretty
8 monumental progress, and I think we're getting
9 pretty close to at least having an agreement
10 here that's going to help spur this along. As
11 you know, we only have, I think, one
12 additional day left for us to gather and to
13 discuss this particular situation. And,
14 again, my appreciation. If I may speak on
15 behalf of the Board of Embalmers and Funeral
16 Directors, I know they appreciate, as well,
17 everything that you have done to assist us in
18 this. Your participation here, many of you
19 have been driving in from long distances to
20 participate in this, and it is greatly
21 appreciated. We need to pull together and
22 come up with a consensus that we're all as
23 comfortable with as we can be because that's
24 what the senator and the representative have
25 asked for. Needless to say, there is no

1 guarantee once it gets to the floor of the
2 senate or the floor of the house. There is
3 going to be a lot of other involvement by that
4 time, a lot more give-and-take than what we've
5 seen here, and, you know, there are just no
6 guarantees. But if we give them a very solid
7 foundation to work from, we're about 20 steps
8 ahead of where we would normally be in this
9 type of situation. That's why an agreement
10 that is the best agreement we can come up with
11 from this group is going to be a monumental
12 step in the right direction in dealing with
13 the joint committee when it comes into effect,
14 and it comes into effect August 28th. Jim.

15 CHAIRMAN: Thank you. Kim, do you
16 want to go ahead and start where we left off?

17 MS. GRINSTON: Sure. In front of you
18 now, you have a work sheet that looks pretty
19 much what it looked like beforehand. It just
20 has some numbers punched in which I think may
21 summarize what we did right before lunch. And
22 if you have any questions on that, let me
23 know. If there aren't any questions, I would
24 like to move to default next, because I think
25 transfer may be one of -- I'm sorry.

1 MR. OTTO: I would suggest not.
2 Default is only going to happen if it's a
3 not-paid-in-full contract.

4 MS. GRINSTON: Right.

5 MR. OTTO: And so, that's a separate
6 -- you know, that's another kettle of fish we
7 haven't hit yet.

8 MS. GRINSTON: Okay.

9 MR. OTTO: Can we do transfer on a
10 paid-in-full contract?

11 MS. GRINSTON: Sure. Definitely.

12 MR. OTTO: Since that's most analogous
13 to what we just finished with.

14 MS. GRINSTON: We definitely could.
15 Let's do that. Let's do that and talk about
16 ideas on transfer on a -- say that again, Don
17 -- not-paid-in-full contract.

18 MR. OTTO: Transfer on a paid-in-full
19 contract.

20 MS. GRINSTON: -- paid-in-full
21 contract. Okay. Transfer. Looking at this
22 breakdown, let's talk about where we should
23 start.

24 MR. McCULLOCH: I would like to
25 suggest, Todd, could you continue on with your

1 analogy that you were going to give us from
2 earlier, because you never got to finish that.

3 MR. MAHN: Well, I suggested on the
4 transfer that keep everything uniform is
5 transferring -- if they're transferring to a
6 different funeral home, transferring 80
7 percent plus all the interest. And we talked
8 about a couple of ways; either 80 percent and
9 all the interest or 90 percent and a cap on
10 the interest at 1 and a half percent. I just
11 -- showing it both ways or talking about it
12 both ways, because what I found earlier from
13 talking about the other two areas is it seemed
14 liked everybody like to keep it uniform in the
15 percentage.

16 CHAIRMAN: Is that all, Todd? Or keep
17 going now.

18 MR. MAHN: No, that's it.

19 CHAIRMAN: That's it. Sharon?

20 MS. EULER: I just want to clarify
21 what Todd is talking about because I'm not --
22 there are two kinds. There's where the person
23 doesn't have a problem with the seller
24 necessarily, but just wants to change funeral
25 homes. And in that situation, I don't see why

1 there should be a problem. The person ought
2 to be able to change funeral homes, and the
3 seller and that funeral home ought to be able
4 to come to an agreement as to what is going
5 to be paid and, if not, we can provide for
6 some statutory remedies for that. The second
7 situation is where there wants to be a change
8 in the seller where you want to go from
9 preneed seller A to preneed seller B, which
10 may or may not involve a change of funeral
11 homes, and I think you've got two separate
12 situations there. And you also have a third
13 situation which would be the rollover
14 situation where the seller wants to move to a
15 different trust or the funeral-home provider
16 wants to move to a different seller. I don't
17 mean to complicate things there, but I just
18 wanted to clarify that.

19 MS. GRINSTON: I don't know. If I
20 can, the last one, rollover, I think, is a
21 little bit different because we're talking
22 about transferring trust funds. And I think
23 that we should probably handle rollovers just
24 separately outside of reimbursement and
25 everything else because we're really just

1 talking about a seller who is the only person
2 that can transfer, transferring money to a
3 different entity. But I think your -- because
4 the provider shouldn't be able to touch money
5 or have any say on where the money goes --

6 MS. EULER: Right. The funeral home;
7 right.

8 MS. GRINSTON: -- as just a provider.
9 Right. But on your second issue, that
10 probably is a very good point to bring up.
11 Let's talk about if -- let's start with
12 transferring the seller first and then we'll
13 get back to transferring the provider because
14 I think transferring the seller may be just a
15 little bit easier. If we talk about
16 transferring the seller, help me understand if
17 that should just be treated as cancel with
18 one, rewrite with the other, or -- and you go
19 through the reimbursement provisions for
20 cancellation if you are transferring seller.

21 MS. EULER: It needs to be treated as a
22 transfer to preserve Medicaid eligibility.

23 MS. GRINSTON: Okay. And we're going
24 to have to do something completely different
25 for Medicaid. But outside of Medicaid

1 situations, if we're outside of Medicaid, if
2 we go from seller to seller, should we treat
3 that as a cancellation of one contract and
4 just, you know, rewriting with someone else,
5 or should we treat it as a transfer? Does
6 anyone understand my question?

7 MS. EULER: Yes.

8 MS. GRINSTON: Would it cleaner just
9 to say if you're going to get out of the
10 contract with the seller, just get out of it
11 and then you go do whatever you would like to
12 on the back end.

13 MR. KUTIS: Are we talking about
14 revocable trusts as opposed to irrevocable
15 trusts?

16 MR. MEIERHOFFER: You haven't gotten
17 to that, yet.

18 MR. McCULLOCH: Yes, we are.
19 Revocable.

20 MR. KUTIS: Revocable.

21 MS. EULER: I think it's better to just
22 provide for the assignment of the contract
23 from one seller to another seller because then
24 you don't run into any Medicaid issues. You
25 only have one procedure to change sellers

1 regardless of whether it's Medicaid or not,
2 whether it's revocable or irrevocable, you've
3 got one procedure, which is easier for
4 everybody.

5 MR. STALTER: Okay. Let me -- I'm a
6 trustee, and I'm John's trustee. But now you
7 say that that contract is going to be assigned
8 to Todd. I don't have a contract with Todd,
9 I have a contract with John.

10 MS. EULER: No. The trust is the --
11 the trust -- it will be a trust-to-trust
12 transfer.

13 MR. STALTER: I mean -- okay. But if
14 he's got an all insurance, what do I do with
15 that fund -- the trust fund?

16 MS. EULER: We're not talking about
17 insurance.

18 MR. STALTER: I'm talking about a
19 trust fund.

20 MS. EULER: Yes.

21 MR. STALTER: And Todd sells
22 insurance. What do I do as a trustee? Where
23 do I put the money?

24 MS. EULER: Todd is not a registered
25 preneed seller with the trust.

1 MR. STALTER: Then what do I do with
2 it?

3 MS. EULER: Then you can only transfer
4 sellers if you're transferring from trust to
5 trust. If you're just changing providers,
6 that's something totally different, but if
7 you're changing sellers, then it's a
8 trust-to-trust transfer. It's not a trust to
9 insurance.

10 MR. STALTER: A trust to trust, but
11 where's the other trust at?

12 MS. GRINSTON: Well, it's not just
13 trust-to-trust, it's seller to seller, because
14 you are taking one seller off the hook and
15 you're going to go from John to Don.

16 MS. EULER: Right.

17 MS. GRINSTON: And so, not only does --

18 MR. MAHN: Who's going to go from John
19 to --

20 MS. GRINSTON: The consumer. And I
21 think that's what Sharon is saying.

22 MR. MAHN: The consumer can't make
23 that jump.

24 MS. GRINSTON: And that's what I'm
25 saying. Should we treat that as a

1 cancellation?

2 MR. STALTER: Yeah. I don't think
3 there's any other way to do it other than that.

4 MR. MAHN: They have to cancel it.

5 MR. STALTER: Yeah.

6 MS. GRINSTON: Or should we just have
7 provisions, which is what I think I hear Sharon
8 saying, to allow for the transfer from John to
9 Don through some other provision other than
10 canceling out?

11 MS. EULER: I have known of very few
12 situations where people have wanted to change
13 sellers. Virtually, all of the situations I
14 have encountered, people have wanted to change
15 funeral homes. Most people don't have a
16 problem with the seller.

17 MR. MEIERHOFFER: Right. Exactly.
18 That's why I don't think this is a problem.
19 It's a nonissue.

20 MR. MAHN: It's a matter, you know, of
21 discretion, where they're going to put their
22 money. If somebody cancels with John, if I
23 have a contract and I'm using John's preneed
24 company and they cancel that and they want to
25 put it in MFT, that's just a whole new

1 contract. Cancel one, start a new one.

2 MR. McCULLOCH: Yes.

3 CHAIRMAN: Everybody agree on that?

4 (Numerous people agree.)

5 CHAIRMAN: Okay.

6 MS. GRINSTON: Okay. Well, if we're
7 going to treat that as a straight cancellation
8 from seller to seller, then let's move on to
9 provider, which is probably really where the
10 crux of the discussion is going to be. Again
11 -- John, I hate to keep picking on you -- but
12 it's John's contract. I originally chose Todd
13 and now I want to go to Martin. What should
14 be the funding mechanism or what should we be
15 looking at? And I realize that the time frame
16 on my chart probably are misleading because it
17 says customer reimbursement and administrative
18 expenses. My understanding is that we
19 probably would have already accounted for
20 that. We're just talking about what's going
21 to be paid over when we got over to that
22 second provider, so --

23 MR. MAHN: Well, that's why I
24 suggested either 80 percent and all interest
25 or 90 percent and a cap on interest at 1 and

1 a half percent, and the only reason I used the
2 two is I think, just from listening to
3 everybody here this morning, keeping
4 everything uniform on the 80 seems to keep
5 things cleaner, 80, 80, 80, 80, instead of
6 jumping around 80, 90, back to 80, 90. John,
7 what do you think, or Mike? I mean, you guys
8 are working on this committee.

9 MR. MEIERHOFFER: I agree with you.

10 MR. McCULLOCH: I agree with you.

11 Yeah.

12 MR. MEIERHOFFER: I agree with you.

13 MR. McCULLOCH: It makes it simpler if
14 you just -- if you're going to stick with the
15 80, then just do 80.

16 MR. STALTER: And how about the income
17 -- an income part? The issue I've got
18 feedback on is, okay, accrue the income and
19 then assign or transfer 90 percent of the
20 income. The feedback I got was 10 percent to
21 cover some -- any kind of expense there might
22 be with that. But, basically, transfer 90
23 percent of the accrued income to the new
24 funeral home.

25 MR. MAHN: Well, I think the new

1 funeral home would -- that they would be
2 moving to, that's what the 20 percent is part
3 of. And what you're talking about,
4 expenditures, I think the 80 percent and
5 interest all has to go, or you do a 90 with a
6 cap on interest. John seems to think that 80
7 plus all the interest would work, and he's got
8 the company, he ought to know.

9 MR. STALTER: As long as -- I mean,
10 that's -- you understand that? I mean, that's
11 what they were talking about is we'll transfer
12 the income to the new provider.

13 MR. McCULLOCH: I didn't understand
14 that we were transferring the income, but
15 you're saying to actually pay it at time of
16 death, that would be different.

17 MR. STALTER: And I don't know if this
18 so much an issue. I think this is really an
19 MFT issue, I think.

20 MR. MAHN: Well, MFT shouldn't have an
21 issue. You guys are transferring 80 percent
22 plus all the interest; right?

23 MR. OTTO: Well, under the current
24 law, it depends whether the interest was left
25 in the trust or not. But, I mean --

1 MR. STALTER: I think what we're
2 talking about, there would be an accrual of
3 income, is one issue.

4 MR. OTTO: Yeah.

5 MR. STALTER: You've got accrual of
6 income, now you've got a pot of income
7 assigned to that particular contract. You
8 switch provider, your provider gets all of the
9 income assigned to that account.

10 MR. MAHN: At-need.

11 MR. OTTO: The only -- I mean, the only
12 concern I have with the whole -- the one
13 concern I have with the whole process of
14 switching providers is -- we talked about it,
15 I think, on the first day. MFT, I have a
16 contract with funeral home A, I don't have a
17 contract with funeral home B. I think that
18 the seller needs to have -- I don't like this
19 word -- but veto power. I don't want to do
20 business with that company. I don't have a
21 contract with them. They stole money from me
22 last year. I can't accept --

23 MR. MAHN: This is the family's
24 choice. If the family wants to use a
25 different funeral home, you can't veto power

1 all that and everything else.

2 MR. OTTO: But under the law, I can't
3 do business with a funeral home unless I have
4 a contract with them.

5 MR. MAHN: That's why we're writing a
6 new law. That's why we're writing a new law.
7 That's why we're sitting here today, you know.
8 That's why that one doesn't work and has all
9 kinds of bugs, you know. We've moved off the
10 100-percent thing. We're trying to make --
11 you know, what are we -- first of all, 80
12 percent only isn't going to work, so do we
13 want to go 80 with interest or 90 with a
14 portion of the interest? The only reason I
15 said 80 is it keeps everything --

16 MR. OTTO: Oh, yeah. That's better.
17 Keeping it at 80 is better.

18 MS. GRINSTON: Can I ask a question --

19 CHAIRMAN: Go ahead, Kim.

20 MS. GRINSTON: -- to help educate me?
21 If you're just going to just transfer
22 providers and, you know, we take care of the
23 selection issues with the seller, but if
24 you're going to transfer providers, why
25 wouldn't the second funeral home get whatever

1 the first funeral home was promised unless you
2 all -- that provider renegotiates the contract
3 and the seller agrees? Like, whatever you
4 wrote the contract to pay, you still pay to
5 whomever steps up a little bit later; you know
6 what I mean? Like, whatever you're going to --

7 MR. MAHN: The only problem you have
8 with that is a third party, like an MFT or
9 APS wouldn't have that problem, but Mr.
10 Meierhoffer probably would. It would be
11 difficult for him to pay that out because he's
12 got an internal trust that he's doing.

13 MS. GRINSTON: Okay.

14 MR. MAHN: Right, Mike?

15 MR. MEIERHOFFER: Yes.

16 MR. MAHN: Or Mr. Kutis.

17 MS. GRINSTON: I get it.

18 MR. MAHN: So, by keeping everybody on
19 the same playing field, it --

20 MR. MEIERHOFFER: Well, I guess --

21 CHAIRMAN: Go ahead.

22 MR. MEIERHOFFER: Well, along that
23 same line -- and, Tom, I don't know where you
24 come from in this -- we have presently a
25 restrictive area that we really penalize the

1 consumer if they don't use our firm after we
2 sell the policy or the trust in our area.
3 And I guess what we're seeing here is maybe we
4 need to rescind that or something. I guess
5 where I'm trying to go with this is there's so
6 many permutations and combinations to this
7 thing because everybody has got their own
8 little way of operating. In our -- I think
9 our area is 15 miles or 25 miles or maybe 50
10 miles, depending on what we're talking about.
11 I don't have a problem with competing. In
12 other words, I feel if I can't maintain my
13 facility and my people and be the top guy in
14 my area, then I've got a problem. So, I
15 don't have any problem with doing away with
16 that as we go forward. In other words, no
17 restrictive covenant in terms of if you want
18 to cancel your contract with me and go to
19 provider B, be my guest. Be my guest. So, I
20 wouldn't punish the consumer for that. Tom, I
21 don't know. What do you do in that respect?

22 MR. KUTIS: Well, we get transfers
23 and, again, most of ours are people that are
24 moving to retirement communities. We refund
25 100 percent of their money, whatever they --

1 MR. MEIERHOFFER: Even if they go next
2 door?

3 MR. KUTIS: Yeah. That makes no
4 difference.

5 MR. MEIERHOFFER: Okay. So, he's
6 doing the same thing, basically, with his
7 reasoning, and I agree with it. We don't --
8 we were talking about this at lunch. We don't
9 see many transfers. We really don't see --
10 I'm talking about one or two or five a year,
11 maybe, and cancellations are very few for any
12 other reason than they can't pay it as they
13 get going into the process.

14 MR. MAHN: Right.

15 MR. OTTO: I mean, I think your
16 suggestion is workable, what you said, you
17 know, just from an administrative standpoint.
18 Again, my one concern is under any current law
19 or what we've come up with so far, I, as a
20 seller, owe duties to the funeral home. That
21 funeral home owes duties to me. If you can
22 switch funeral homes without the seller saying
23 yes or no, I see problems. I would not have
24 wanted my preneed money, you know, as Don
25 Otto, third-party seller, I'd have concern if

1 a bunch of people came to me and said one
2 day, "I'm switching it all to Warren Funeral
3 Chapel." I'd say, "Hmm. I'm not sure I want
4 to do business with that company."

5 MR. MAHN: But you're not actually
6 doing the business, the family is. You're
7 just the porter.

8 MR. OTTO: No. Under the seller --
9 under the law, I, as a seller, owe certain
10 duties to the funeral -- the provider. It's
11 in there. I've got to do certain things to
12 that provider, and the provider owes certain
13 duties to the seller.

14 MR. MAHN: The one they're taking the
15 funeral to or the one they currently wrote the
16 preneed with?

17 MR. OTTO: Both of them. Either one.
18 If you're the provider under a preneed plan,
19 you owe certain duties to the seller and the
20 seller owes certain duties to you. And the
21 trustee, arguably, owes certain duties to the
22 provider, as well.

23 MR. MEIERHOFFER: Yeah. I understand.

24 MR. OTTO: And so, if you switch to a
25 different funeral home, all of a sudden you're

1 forcing the seller and the trustee to enter
2 into a business relationship with a new party
3 that they may or may not want to be in a
4 fiduciary and business relationship with.

5 MR. MEIERHOFFER: Exactly.

6 MR. OTTO: And that's even worse if
7 you're the competitor.

8 MR. MEIERHOFFER: Yeah. I can --

9 MS. COLLINS: I've become confused
10 again, Don. So, with these duties that you're
11 talking about, do they take place over a
12 period of time, or do these duties --

13 MR. OTTO: It's constant.

14 MR. MEIERHOFFER: Sure, if you've
15 still got the money.

16 MS. COLLINS: Okay. It's -- that's
17 what I'm trying to get at.

18 MR. OTTO: Yeah. But, like, I, as the
19 trust, am paying the taxes on behalf of this
20 funeral home. This funeral home, if it's an
21 installment payment where installments are
22 coming in, will have duties about sending the
23 money in to me. Do I trust that funeral home
24 to be sending the money in to me? If I don't
25 trust that funeral home to be sending the

1 money in to me as the family comes in, I
2 don't want to do business with them. So --
3 and by the law, I have to have a contract
4 with every provider. So, that's my only
5 concern. Your plan on how to do the money,
6 as long as everybody is -- you know, funeral
7 home -- I'm happy with funeral home B and
8 funeral home A, your plan is workable, for
9 sure.

10 CHAIRMAN: Sharon?

11 MS. EULER: From the seller's
12 perspective, once the contract is sold and
13 paid for, does it really make any difference
14 who you pay out to at the end? I'm looking
15 at the preneed folks across the way.

16 MR. OTTO: It's not at the end that's
17 the problem. It's between the sale and the
18 at-end.

19 CHAIRMAN: Bill?

20 MS. EULER: But what is there between
21 the sale and the at-end?

22 MR. OTTO: There's the report --

23 MR. MAHN: You might have a
24 cancellation.

25 MR. MEIERHOFFER: There's the payments

1 and all that stuff. It goes on for years.

2 MS. EULER: If they've already paid in
3 full. From my perspective -- and correct me
4 if I'm wrong because I might be -- the
5 seller's job is -- and the trustee's job --
6 the trustee -- it's mostly the trustee's job
7 at that point to protect the assets, to invest
8 them, to try to grow them. And then there's
9 nothing really more that happens until at the
10 end when you pay out on the funeral.

11 MR. OTTO: No. There's paying the
12 taxes, there's the annual reporting, which is
13 going to go up.

14 MS. EULER: Right.

15 MR. OTTO: I mean, the expense -- and
16 what if --

17 MS. EULER: But what different does it
18 make whether the funeral home -- the name of
19 the funeral home has changed for those things?

20 MR. OTTO: Because funeral home B, I
21 might not want to do business with because I'm
22 afraid they're going to sue me because they
23 don't like how I'm doing the business. I'm
24 afraid that they're going to not treat -- not
25 give the customer -- I'm not -- I'm concerned

1 if funeral home B is not going to provide the
2 goods and services called for in the contract.
3 And so, the consumer is then going to come
4 against me upset because funeral home B isn't
5 a good actor.

6 MR. KUTIS: How can they do that if
7 they're the ones who change it? They're the
8 ones that --

9 MR. OTTO: All I'm saying is you're
10 forcing both the trustee and the seller to be
11 in both a business and fiduciary relationship
12 with somebody that they don't have a contract
13 with.

14 CHAIRMAN: Bill?

15 MR. STALTER: May I? I mean, really,
16 the way I approach this is, I mean, I'm a
17 fiduciary. Now, it's true if I don't want to
18 be in the situation to determine whether the
19 preneed contract has been performed pursuant
20 to its terms. But the way we define this is
21 if there's a move, basically, all I have to
22 determine is now I'm going to pay Todd 80
23 percent plus the accrued income. And,
24 basically, notices to the consumers that, you
25 know, we understand -- I mean, you're going to

1 get a new contract with Todd. But as long as
2 the fiduciary is -- I know now, I don't have
3 to do anything other than I have to know how
4 much I'm going to pay Todd and when it has to
5 be paid.

6 MS. NEUMANN: I guess I have a
7 question. I'm a little confused, too. I'm
8 the consumer and I'm getting ready to bury my
9 mother. Okay. Right now, we have a contract
10 with John to bury her. Well, we have decided
11 since then that John has done something that
12 I'm unhappy about, and there is some
13 discrepancy about whether he's honest or not,
14 so I want to go over to Don. Are you saying
15 because Don doesn't like -- or John doesn't
16 like Don, I can't take my business where I
17 want to bury my mother?

18 MS. EULER: Yeah.

19 MR. MAHN: Yeah.

20 MS. NEUMANN: He's telling me who I
21 cannot use?

22 MR. OTTO: Not John, but the bank that
23 controls the money above John.

24 MS. NEUMANN: It's my family. It's my
25 money.

1 MR. OTTO: But am I, as a seller,
2 going to get sued?

3 MS. NEUMANN: By who? It's only the
4 family and if they want to transfer, how can
5 they sue you?

6 MR. OTTO: I have -- with -- if I'm
7 the upper level, I'm the seller, I have a
8 contract with the funeral home. That contract
9 is many pages long. It spells out what
10 everybody's rights, duties, and
11 responsibilities are. Here is what this
12 funeral home has to do. Here's what I have
13 to do. If either one of us doesn't do that,
14 here's the procedure. We file it under
15 Missouri law, for example. We don't wind up
16 in Florida law or something like -- there's a
17 multipage contract that spells out here are my
18 rights, here are your rights. Now, if you
19 change funeral homes and I don't have a --
20 now, if I've already got a provider contract
21 with funeral home B, it's not a problem. But
22 if I do not have a seller-provider contract
23 with funeral home B, I'm now in limbo. What
24 are my rights and duties in response to this
25 new person? Now, if the statute says somehow

1 in that situation, the seller is absolved of
2 all liability with the exception of paying out
3 80 percent plus the interest accrued, then
4 maybe that solves the problem.

5 MR. MAHN: John says it'll work, so
6 maybe you could get with John and learn how
7 it's done. I mean, I'm just saying. I mean,
8 he's got the company. I mean, he's been
9 around for awhile.

10 MS. NEUMANN: Or are you going to say
11 to the family coming in to sign this paper,
12 "Now, I only deal with this, this, and this.
13 Now, if you go here, I can't do a contract
14 with you." Do you do that? Do you tell
15 them, "I only work with these companies"?

16 MR. OTTO: That doesn't happen under
17 the current law because you can't change
18 funeral homes.

19 MS. EULER: But it does.

20 MS. GRINSTON: It does if they choose a
21 provider that you don't have a contract with,
22 then you say, "I don't do business" --

23 MR. OTTO: Well, there is no change of
24 provider right now, so it's not an issue.

25 MS. EULER: But people do it. People

1 do it all the time.

2 MS. GERSTEIN: Don, when people come
3 in to buy from you, do you explain this to
4 them, that, "Once you buy a contract with me,
5 under zero circumstances can you move that or
6 cancel it"?

7 MS. NEUMANN: Unless it's somebody I
8 deal with.

9 MR. OTTO: Well, our -- I mean, our
10 contract -- well, I would like to see us Board
11 approve disclosure on this myself, but our --
12 yeah.

13 MS. GERSTEIN: But do you, right now,
14 explain that to them?

15 MR. OTTO: Yeah. But they -- if they
16 can't -- yeah. If they have -- it depends on
17 what their rights of cancellation are.

18 MS. NEUMANN: But do you tell them you
19 can't go to funeral home C because I don't
20 have a contract.

21 MS. GRINSTON: That's the law now.

22 MR. OTTO: Well, that's not an issue
23 because that -- the law doesn't allow you to
24 go to funeral home C.

25 MS. GRINSTON: Yeah. The law now says

1 that if he doesn't have a contract with that
2 provider, he can't allow you to choose that
3 provider because he doesn't have a contract.

4 MR. OTTO: And right now it's not
5 really the issue.

6 MS. GRINSTON: And that's on the
7 transfer, that's just even on the initial
8 contract. If he chooses Todd, he has no
9 contract with Todd, he has to say, "I can't --
10 that's not a provider that I do business with."

11 MS. NEUMANN: Okay.

12 CHAIRMAN: Mark?

13 MS. GERSTEIN: And so, then the people
14 understand --

15 MR. WARREN: Wouldn't an exculpatory
16 clause solve the problem?

17 CHAIRMAN: What's a -- explain that.

18 MR. WARREN: Well, just a clause that
19 would say if you transfer this or assign it,
20 and the person that you're assigning it to,
21 for whatever reason, doesn't provide or do
22 what they're supposed to do on the original
23 agreement, that the transferring home or
24 whoever is not liable for that.

25 CHAIRMAN: Well -- Sharon?

1 MS. EULER: I have another potential
2 compromise situation because I think we're in a
3 situation here where no portability is really a
4 problem for a lot of people, and complete
5 portability is a problem for Don.

6 MR. OTTO: Well, and I just -- yeah.

7 MS. EULER: And maybe some other
8 people; I don't know. But is there some
9 middle ground; can we compromise on this?

10 MR. MAHN: Well, we are compromising
11 because we're only -- (inaudible) -- 80
12 percent.

13 MS. GRINSTON: And this is -- because
14 I'm going to do worst-case scenario and
15 best-case scenario, and I'm probably going to
16 get in trouble for this later on. Let's say
17 your purchaser comes in and chooses a
18 provider, and the provider is owned by
19 somebody named Cassidy. Are we going to say
20 that the seller is obligated to do business
21 with that funeral home, you have no right to
22 screen them out? And I think that's what Don
23 is asking. And what I hear Sharon saying is
24 that she doesn't think the seller should have
25 a choice to say whether they do business with

1 the Cassidy Funeral Home, that if the family
2 chooses them, seller, you should have to do
3 business with them.

4 MS. EULER: So, why don't we propose
5 as an alternative that if the seller and the
6 consumer can't come to an agreement on that,
7 that then the seller has an option to transfer
8 100 percent to another seller and let somebody
9 -- and --

10 MS. GRINSTON: That's an idea. If the
11 seller doesn't agree with the designation,
12 then we change the transfer amount; 80 percent
13 if you agree, if you don't agree, we go a
14 little bit higher because now you're putting
15 them in the position where you will not accept
16 a provider.

17 MS. EULER: And you're taking them out
18 -- you're removing their account. You're no
19 longer the seller for that account. They have
20 to find a new trust -- a new seller.

21 MS. GRINSTON: Well, no. That's a
22 cancellation.

23 MS. EULER: No, it doesn't have to be.

24 MR. OTTO: That's a loophole with a
25 cancellation then.

1 CHAIRMAN: Well, let's hear an idea
2 from the public. Step on up there.

3 MR. STROUD: You're making it too
4 complicated again. You're talking about the
5 same thing. Larry Stroud. Transfer and
6 portability. Look, if Tom's customer wants to
7 go to Mike's customer, they're going to call
8 Mike. Let's just say the guy died. They
9 want to use him. They go to him. Mike is
10 going to file a claim with whoever trustee is
11 taking care of that money. If A, American
12 Prearranged Service sold that plan, that
13 family is going to go to file a death
14 certificate to get a death certificate,
15 they're going to -- and that funeral home is
16 going to file a claim against him. It just
17 goes -- it's real quick. Nobody is going to
18 fight. No one fights over transferring a body
19 from A point to B point. This is not an
20 issue. We want to be talking about
21 percentages. If you're going to have 80
22 percent transfer, make it 80 percent. You
23 keep 80 percent, they get 20 percent plus the
24 -- I mean, you get 20 percent and they get 80
25 percent plus the interest. Same way with

1 portability. If John Doe dies 200 miles from
2 home and they decide to keep him in that town,
3 the same thing, 80-20, plus that funeral home
4 is going to get the interest. What's the
5 difference? What is the difference? He's
6 going to show a death certificate, that guy
7 died, he's going to have a statement of goods
8 and services that he did the services. He
9 doesn't care. He may have sold him a bronze,
10 they may have just bought an 18-gauge from
11 him. He didn't care. That's not his
12 business. He's got X number of dollars to
13 work with. Am I wrong or right?

14 MS. GRINSTON: Well, what if it's not
15 at-need. What if there is no death
16 certificate?

17 MR. STROUD: I'm talking -- what's the
18 difference? You're only going to get so much
19 back anyway if you transfer it and you're
20 still alive, you're going to give him the same
21 darn money, 80 percent.

22 MS. GRINSTON: Okay.

23 MR. STROUD: Keep 20. If you want him
24 to have the interest, no, because maybe
25 there's where he's making a difference. I did

1 this in good faith, I get to keep the
2 interest; okay? Let's make this simple.
3 80-20, and then the interest would be
4 depending on who did the contract. If he does
5 his own contract, he gets the interest. If
6 the contract is transferred over to Mike, Mike
7 gets the interest, but he still gets the
8 original 20 percent.

9 MS. GRINSTON: And, Larry, am I
10 hearing you say that the seller -- the option
11 of accepting the new provider should not be
12 the seller's? The consumer --

13 MR. STROUD: John McCulloch could care
14 less who serviced the funeral. He could care
15 less. Am I wrong or right? Because your --
16 it doesn't make any difference. Sure, he had
17 a contract with Todd. It don't make -- I
18 mean, Tom. It don't make any difference. The
19 family has got a right to change their mind.
20 You cannot walk in and dictate to a family
21 what -- they can't use the other funeral home.
22 Baloney. That's the silliest thing in the
23 world. You talk about making a bad
24 reputation, you'll have one in about 15
25 seconds. You cannot do that. You transfer

1 that darn contract to anyone they want to, but
2 you've got a little penalty. 80-20, whatever.
3 And if it's before they die, that's what they
4 get. But John, as a seller, can't tell Larry,
5 even though I've got a contract with him and
6 it would behoove me to say to John, "Well, I
7 don't want you to take that over to Todd,"
8 John could care less, and I don't expect John
9 to care about my -- in that particular
10 situation because everyone is an individual.
11 I figure I'm going to get 99 percent of them;
12 wrong or right? You're going to get 99
13 percent of them. So, just keep things in
14 mind. 80-20, 80-20, and then however you want
15 the interest to go. If he's going to do the
16 service, he gets the interest. If he's going
17 to do the service, give him the interest.
18 Let's keep this darn thing simple and quit
19 worrying about defaults. If you cancel the
20 darn contract, you cancel the contract. You
21 haven't paid enough money into it, too bad.
22 You ain't going to get a dime back. If you
23 want to go out and gamble, you want to come
24 in and cash that contract, you get 80 percent.
25 You're done. You're done.

1 CHAIRMAN: Todd?

2 MR. MAHN: Larry, I really like most
3 of the points you're making. I guess I'm just
4 trying to figure out, you being the president
5 of MFDA, I'm getting a little bit of a
6 different signal from you, and no -- total
7 respect --

8 MR. STROUD: I disagree with what he
9 said a while ago. We're not going to get
10 along with that.

11 MR. MAHN: Okay. But, I mean, it's a
12 pretty big issue. I'm trying to figure out
13 what the stance of the MFDA. Is it your
14 stance, or is it --

15 MR. STROUD: We've had so many stances
16 that I can't even stance up anymore. You
17 remember what I first said, it didn't make any
18 difference to me whether it was 100 percent,
19 90 percent, or 80 percent. Do you all
20 remember me saying that?

21 MR. MAHN: Yeah.

22 MR. STROUD: In one of my rants
23 earlier. Percentages don't mean squat to me.
24 Let's just do it, let's make it fair, and
25 transportability -- cancellations, transfers,

1 and let's get off all this legal mumbo jumbo
2 and let's just get to the race; okay?

3 MR. MAHN: I make a motion on that.

4 CHAIRMAN: Bob has got the next -- do
5 you want to question Larry?

6 MR. STROUD: Go Bob. Do you want to
7 ask me a question?

8 MR. BAKER: Yeah. Raise your hand
9 first. Whenever we're talking about sellers,
10 we're actually talking about three different
11 types of sellers. Tom and Mike take care of
12 their own trusts. John McCulloch has a
13 different situation. I have a contract with
14 John. He has funeral homes; he has contracts
15 with his own funeral homes. Then we have
16 Missouri Funeral Trust who has never sold a
17 contract. It's a funding vehicle for the
18 funeral homes that want to participate in it.
19 So, John McCulloch with his company could care
20 less who services the funeral. You have Mike
21 and Tom that have their own trust, that is a
22 totally different situation, and then you have
23 the Missouri Funeral Trust just kind of
24 sitting over here on the side because they do
25 business a little bit different. The only

1 reason Missouri Funeral Trust is in existence
2 is for the smaller funeral homes to be able to
3 take advantage of the income, professional
4 management, and every else, so we can't just
5 talk about one seller when we've actually got
6 -- as far as I can tell, we've got three
7 different types of sellers, at least.

8 CHAIRMAN: Good point, Bob.

9 MR. KUTIS: Why would any funeral home,
10 regardless of what their size, want to argue
11 with a family who is the customer, who is the
12 consumer, when they want to, for any reason,
13 go somewhere else?

14 MR. MAHN: Amen.

15 CHAIRMAN: Well, folks, I've sat on
16 this Board for about nine years now, and I
17 have seen cases where families are trying to
18 move their loved one to another funeral home,
19 and that funeral home will not release them,
20 so that happens, believe you me.

21 MS. GRINSTON: Often. All the time.

22 MR. KUTIS: Well, we're talking about
23 before the funeral; right? I mean, we're not
24 talking leaving one funeral home in the middle
25 of a funeral to go finish it somewhere else.

1 CHAIRMAN: Yeah. We're talking about,
2 like, when a family -- you know, the death
3 occurs, they've got a contract here, and
4 they're trying to go there, and the families
5 are upset, so it does --

6 MR. KUTIS: I still don't see why
7 anybody would --

8 CHAIRMAN: But that's what -- you've
9 got the reputable people sitting here. You
10 don't have the ones that aren't going to --
11 you know. You don't see those guys sitting
12 here, or at least I don't, so --

13 MR. MAHN: Everybody seems to be in
14 agreement that portability is the thing to do
15 with the interest. I'm just having a hard
16 time, too, trying to understand why MFT has a
17 problem with it, considering I'm a MFDEA board
18 member. I may not be an MFT client, but if a
19 person has a MFT contract with one of his
20 funeral homes, I -- you know, John, as an
21 example, and they want to transfer to me, why
22 does MFT care to pay me out what they're going
23 to pay him?

24 MS. GRINSTON: Right.

25 MR. MAHN: I mean, Mike don't have a

1 problem with it; Mr. Kutis don't have a
2 problem with it; John don't have a problem
3 with it. But the nonprofit organization that
4 I belong to has an issue with it.

5 MR. OTTO: Well, let's say that you're
6 not you. Let's say, like you said, you're
7 Doug Cassidy.

8 MR. MAHN: So what? If someone wants
9 to use Doug Cassidy, that's none of your
10 business.

11 MR. OTTO: Well, that's fine. That's
12 fine. What are my -- I had a ten-page
13 contract with funeral home A that said here
14 are my duties and responsibilities to you.

15 MR. MAHN: Yeah, I just read those.

16 MR. OTTO: And here is your duties and
17 responsibilities to me. If you move and I
18 don't have a contract with you, my question --
19 my concern is --

20 MR. MAHN: What I'm trying to figure
21 out is why you're the only one that has an
22 issue with this. Your president don't have an
23 issue with it.

24 MR. OTTO: My concern is what are my
25 duties -- I've got to put my lawyer hat on

1 and protect my client. And my concern is,
2 what are my duties to funeral home B when I
3 don't have a contract with funeral home B?

4 MR. MAHN: Other than cutting the
5 check, what other duty are you going to have?
6 You're not going to go down there and direct
7 the funeral.

8 MR. OTTO: If that's what the law
9 says, if the law says -- cuts me off and
10 gives me protection, then that probably solves
11 the problem. If the law says I've got no
12 responsibility and no liability on a transfer
13 situation other than providing funeral home B
14 at the time of death 80 percent plus the
15 interest, maybe I'm protected then.

16 MR. STALTER: Well, let's go back.
17 Mark, what was the term, exculpate? I mean,
18 really, as a fiduciary, I have a contract --
19 I'm a fiduciary and I have a contract with
20 Tom. When Tom makes a service, he makes
21 promises by giving me a request for payment.
22 Now, I don't have a contract with Tom or with
23 Todd, but if the law says that, you know, when
24 somebody transfers over and says this is what
25 the trustee is going to pay, you know, and I'm

1 exculpated by just paying whatever that
2 account balance is, that's fine with me. Just
3 as long as I'm taken off the hook.

4 CHAIRMAN: Okay. Sharon. Thank you,
5 Bill.

6 MS. EULER: I'd just like to comment,
7 you know. We've got with the transfer, like
8 so much of this stuff, we've got two different
9 scenarios, the at-need transfer and the
10 preneed transfer. But for the at-need
11 transfer, from the seller's perspective, if
12 you've got an MFT contract for Mabel Smith and
13 Mabel Smith has died, and you've got a written
14 statement from Todd's funeral home, whom you
15 don't have a contract with, saying I performed
16 the services, here's her death certificate,
17 here was what I paid for the funeral, what
18 difference does it make whether you've got a
19 contract with Todd or not if, you know, you're
20 just paying out of the trust and that the
21 statute tells you what you pay out? You don't
22 have any other objections that I see that
23 makes Todd's funeral home any different from
24 Bob's funeral home who you've got a contract
25 with at the at-need situation.

1 MR. OTTO: Well, after the person
2 died; okay? And I don't know that we've
3 changed the funeral home, you know. I've got
4 -- I'm dealing with funeral home --

5 MS. EULER: The family decided to go
6 to Todd's funeral home because he's their
7 next-door neighbor.

8 MR. OTTO: After death, there are far
9 fewer problems. My problem is -- my only
10 concern -- I'm not saying we can't solve this
11 problem because I think we already talked
12 about some ways to solve the problem.

13 MS. EULER: So, are you saying you
14 don't have a problem with the transfer when it
15 becomes an at-need and it's just payment out?

16 MR. OTTO: Once -- if my contract was
17 funeral home A and my duties are with funeral
18 home A, after death is one issue. The other
19 issue is 20 years before death, they've
20 changed to funeral home B, and that's my only
21 concern.

22 MS. EULER: But -- so, what you're
23 saying is you don't have a problem with the
24 after-death transfer? That's what I hear you
25 saying.

1 MR. OTTO: I don't have near as many,
2 yeah. I don't have near as many problems,
3 yeah, if any.

4 CHAIRMAN: Joy?

5 MS. GERSTEIN: Okay. Mine is real
6 simple and it's also for Don. But first I
7 want to say thank you, Larry. Don, you talked
8 earlier that if somebody came to you and said
9 I want to transfer to Mike's, who doesn't deal
10 with you, that you have all these problems
11 with pages and pages of contracts that you
12 could be sued. Who would sue you?

13 MR. OTTO: Funeral home B.

14 MS. GERSTEIN: Would sue you for --

15 MR. OTTO: They don't like how I'm
16 investing the money. They don't like how I'm
17 investing the money. They want to change the
18 investments under --

19 MS. EULER: That's not their right.

20 MS. GERSTEIN: What I'm saying is --
21 no. No. I come to you, I have a contract
22 with you, and I go. Okay. I'm moving from
23 Washington, Missouri, to St. Joe, and I want
24 to move to Mike's funeral home. He doesn't
25 deal with you, but I want -- (inaudible) --

1 from you to give to him. And you're telling
2 me that whomever you have me with could sue
3 you?

4 MR. OTTO: Well, when I have a
5 contract with a funeral home, it says at the
6 time of -- it specifically spells out at the
7 time of need, here's funeral home A; here's
8 how much money you're going to get; here's how
9 we calculate it; this is what I owe you; and
10 that contract, they've signed and we've
11 signed. I don't have a contract with funeral
12 home B. And I'm just saying I am concerned
13 about what our rights and responsibilities are
14 vis-a-vis funeral home B when the provider has
15 changed and I don't have a contract with them.

16 MS. GERSTEIN: Well, what are your
17 rights to the person that you sold this
18 contract to? I mean, you're talking about the
19 rights between you and a funeral home, and how
20 does that ever happen then? It becomes that
21 it's more important -- like you said, more
22 important than the person because your
23 business is, you know, no matter what, if you
24 come with me, I will guarantee you this money,
25 and you, evidently, have it in writing, so I

1 can sue you if you try to move that person.

2 MR. OTTO: No. I'm just saying -- all
3 I'm saying, and I'm not saying it can't be
4 solved. I'm just saying is --

5 MS. EULER: So, what's the solution?

6 MR. OTTO: The solution is, I think we
7 mentioned earlier, to spell out that if the
8 customer changes provider -- okay -- spell out
9 in the law this is what the seller owes the
10 provider, and this is the extent of their
11 responsibility.

12 MS. EUHLER: We can do that.

13 MR. OTTO: That's --

14 MR. MEIERHOFFER: I think we need to
15 get through that because we're --

16 CHAIRMAN: Yeah. Mark?

17 MR. WARREN: I was going to say,
18 there's a great exculpatory clause on the back
19 of the standard funeral-purchase contract
20 which, you know, might solve this problem. I
21 mean, you could use that language. I haven't
22 read it lately, but I don't see why any issue
23 like that -- I mean, looking at the -- I
24 don't see why any issue like that couldn't be
25 taken care of languagewise.

1 CHAIRMAN: John?

2 MR. McCULLOCH: Well, of course, I
3 think most of you know I'm not an attorney, so
4 my mind doesn't think -- I'm not thinking
5 someone is going to sue me all the time. So,
6 but now Don has made it very clear that I may
7 have some exposure here. But, anyway, here's
8 kind of what happens with us. We have a
9 person, they call us and they do want to
10 transfer to Todd. The first thing I do,
11 assuming I don't have a contract with Todd.
12 Say, it's Mr. Kutis over here; I don't have a
13 contract with him. I'm going to call --

14 MR. KUTIS: Can I be Tom to everybody?
15 Everybody else gets called by their first
16 name. Can I be Tom?

17 MR. McCULLOCH: Oh, okay. See, that
18 goes back to my upbringing.

19 MR. KUTIS: I thought it was my age.

20 MR. McCULLOCH: The first thing I'm
21 going to do is I'm going to call Tom and ask
22 him if he will accept the transfer and we'll
23 do a change of provider. So, we're going to
24 enter into an agreement; okay? And, of
25 course, given we know that they know as much

1 as everybody or anyone about preneed, they're
2 going to ask a few key questions, is: What
3 do I have to provide, and how much money am I
4 going to get? So, we're going to have to
5 negotiate and get to there. But that's going
6 to be the way we go about it, and we're going
7 to enter into an agreement with him. If they
8 would say no, then that's fine, then I have to
9 go back to the consumer and say, well, we've
10 got a problem here, and then they'll have to
11 pick another provider. Does that make sense,
12 that that's kind of what really happens? And
13 then I don't think there is any legal problems.

14 MS. GERSTEIN: What if they don't want
15 another provider?

16 MR. McCULLOCH: Huh?

17 MS. GERSTEIN: What if they don't want
18 -- this is --

19 MR. McCULLOCH: I thought this
20 question was about getting a new provider.

21 MS. EULER: That's what they're asking.

22 (Several people talking simultaneously.)

23 MR. STALTER: It's John's situation
24 where they pick up -- the consumers picked out
25 one funeral home and they won't do the deal.

1 Then what happens? Basically, how do you
2 force it?

3 MS. GRINSTON: Well, my question is:
4 Are we having a moot discussion? Should we
5 just say that, you know, the new provider
6 either agrees to accept what the original
7 provider was going to get -- and this goes
8 back to my point. And I understand that you
9 guys may have already paid out interest.
10 Well, you get, you know, whatever is left over
11 and whatever is owed under the contract.
12 You're just going to step right into his
13 shoes. And so, the check that I would have
14 cut to Mike, I'm just going to cut it to Todd
15 next month. And so, we don't worry about
16 interest, don't worry about anything else, but
17 you're just going to step into his shoes. We
18 weren't worried about what's already been paid
19 over. You're going to step into his shoes.
20 Now, if you're not willing to accept that,
21 then we just tell the purchaser that the
22 provider is not willing to accept, you know,
23 the payment arrangement. Is there something
24 else you would like to do, and put it back on
25 the purchaser. So, we don't worry about

1 interest or anything else. We just say you
2 step into their shoes, you get whatever they
3 would have gotten.

4 MR. MAHN: Well, that's even more
5 consumer friendly because then they get
6 everything.

7 MS. EULER: And why not?

8 MS. GRINSTON: Yeah. If John was
9 going to pay Todd one amount and the consumer
10 comes in and says we're going to Martin. He
11 says, "Okay. I'm going to pay Martin the same
12 amount I was going to pay Todd." But let's say
13 he's already given some interest to Todd, and
14 we'll just throw that in the game. He's still
15 going to pay Martin whatever he was going to
16 pay Todd, whatever is left over, as if Martin
17 just steps into his shoes. So, there won't be
18 a change in the arrangements or anything else
19 and, you know, the seller cannot, you know,
20 play this game of I'm not giving over anything
21 if the provider -- you know, ever -- if you
22 ever transfer. If a new provider accepts it,
23 he steps into the shoes.

24 MS. EULER: Yes. That's exactly what
25 I was going to say.

1 MR. MAHN: That's a good scenario, but
2 I have a question for Mike and Tom. How
3 would you guys pay that out?

4 CHAIRMAN: Yeah. We haven't heard
5 from you today, and I was getting worried.

6 MS. GRINSTON: Are you feeling okay?

7 MR. KRAUS: Gerry Kraus, Homesteaders.
8 I have mentioned this before and I'm all in
9 favor of the reverend's arguments on keeping
10 it simple. And I think some very valid points
11 are being made over here for a situation where
12 you've got a seller that has to subcontract
13 with providers for the performance of the
14 funeral. And, on the other hand, you've got a
15 situation where you've got providers that
16 subcontract with marketers to sell their plan.
17 And we talked about Missouri being one of the
18 few states where we will let someone contract
19 with the consumer that can't provide. Because
20 of that, we bifurcate all of these discussions
21 and the arguments and we really complicate it.
22 It may be worth going back to revisit let's do
23 something else with the third-party marketers.
24 And I don't want them all shooting me because
25 I work with a lot of third-party marketers.

1 But let's say that Mark is a third-party
2 marketer and he has contracts with 50
3 providers right now. And we'd kind of put him
4 out of business and say, "Mark, you can't go
5 out and sell those funerals anymore on your
6 own and subcontract for their performance with
7 the providers. What we're going to require
8 you to do is work under their contracts.
9 We're going to have you become authorized to
10 sell for them." So, the line of authority
11 goes through the funeral home to the
12 third-party seller, and if they want to change
13 providers, they just change providers and it
14 doesn't matter who sold it. Now, Mark is
15 probably going to, the next day, instead of
16 having 50 contracts with providers, he's going
17 to be hanging under 50 contracts. It's not
18 going to change his life that much, it's just
19 a change in contract, and it really simplifies
20 the discussions, I think, in terms of who
21 keeps what because now if it's sold by a
22 third-party marketer and they wanted to
23 retain, they have the money, the provider
24 can't get it. If they start on the provider
25 side, there's retainage there, the third-party

1 marketer can't get it. It just complicates it
2 a lot.

3 CHAIRMAN: Thank you. Well, do you
4 want to --

5 MS. GRINSTON: No. Objections to you
6 step into the shoes of the original provider.
7 Don, we're going to have to preserve your
8 question about seller choice, but you step
9 into the shoes of the original provider and
10 you get under the contract whatever I would
11 have owed him had he still, you know,
12 performed the contract. Is that something
13 everybody can live with, without worrying
14 about interest and everything else?

15 MR. KUTIS: When we sell, whether it's
16 third party or the funeral home as the
17 provider, all of these things are covered on
18 the contract. I mean, I --

19 MS. EULER: Basically, what's
20 happening is that the contract is being
21 assigned for that person.

22 MR. KUTIS: This only affects the
23 third-party sellers, is what you're telling me.

24 MS. EULER: No.

25 MS. GRINSTON: No. It would affect

1 every seller.

2 MS. EULER: No, it would affect every
3 seller.

4 MS. GRINSTON: So, if someone came to
5 your funeral home and said, "I know you wrote
6 this with your plan, but now I'd like to go
7 to Todd's funeral home," you then would have
8 to pay Todd whatever you originally had
9 arranged to pay yourself as a provider. That
10 amount has been owed to Todd and he just steps
11 into your shoes.

12 MR. KUTIS: That's the way we do it
13 now.

14 MR. MAY: The total amount or what we
15 have in trust?

16 MS. EULER: But whatever he was going
17 to pay.

18 MS. GRINSTON: Whatever you were going
19 to pay the provider in the contract the first
20 time, you pay it to the provider the second
21 time.

22 (Several people talking simultaneously.)

23 MS. GRINSTON: Yeah. And I see
24 everyone saying -- people keep saying we're
25 doing it now. Not everybody is doing it now.

1 MS. EULER: Right.

2 MS. GRINSTON: We've got people -- and
3 there are consumers who are being incredibly
4 ripped off at times of transfer. And when we
5 talk about the law, if you just say, well,
6 that's the way everyone is doing it and don't
7 do a law, if I decide not to do it, then I
8 can do it any way I want to because the law
9 doesn't restrict me from doing so. So, if
10 that's what we're doing now, let's put it in
11 the law to say that if someone else steps into
12 the provider's shoes, then you pay them
13 whatever you were going to pay the original
14 provider.

15 CHAIRMAN: Mike?

16 MR. MEIERHOFFER: Okay. We're making
17 the assumption then that this new provider
18 will do it for the contract price?

19 MS. EULER: Yes.

20 MS. GRINSTON: He's going to have to
21 or --

22 MR. MEIERHOFFER: That's what you're
23 saying?

24 MS. GRINSTON: Yeah.

25 MS. EULER: Yes.

1 MR. MEIERHOFFER: He can't ask for any
2 more?

3 MS. GRINSTON: He can, but then the
4 seller would have the right to say no, the law
5 says you got the contract. If you don't want
6 it --

7 MR. MEIERHOFFER: Okay. But we're
8 assuming -- yeah.

9 MS. EUHLER: Yes.

10 MR. MAY: I thought we were on a
11 totally different discussion there for a
12 minute. Well, to me -- okay. If I have an
13 opportunity to receive a prearrangement from
14 Todd, I get a family, I get potential heritage
15 from that family. So, if I talk to Todd, I
16 mean, I think I would be comfortable with Todd
17 transferring whatever is in his trust. I
18 wouldn't expect him to lose that family and to
19 come up with the additional 20 percent out of
20 his pocket and give it to me as the funeral
21 home. Is that what you're talking about?

22 MS. EULER: No, it's not 20 percent.

23 MS. GRINSTON: No, it's not 20 percent.

24 MS. EULER: It's whatever -- so, John
25 has got an agreement with Todd to pay him face

1 value plus 3 percent, we'll say.

2 MR. MAY: John has only put 80 percent
3 in his trust.

4 MS. EULER: Well, whatever John would
5 have paid to Todd at-need.

6 MR. MAY: Right.

7 MS. EULER: John is now going to pay
8 to Bob instead of Todd at-need.

9 MS. GRINSTON: It's just going to be an
10 eraser. We're going to erase one name, put in
11 another name.

12 MS. EULER: Just for the at-need, not
13 for anything that's gone before that. It
14 doesn't have anything to do with the 20
15 percent, it doesn't have anything to do with
16 interest. He's going to pay it along the way.

17 MR. MAY: I'm just pretty sure there's
18 only 80 percent, isn't there?

19 (Several people talking simultaneously.)

20 MR. MAY: Aren't you? I don't think
21 there's enough money to come up with. If you
22 asked me on an old -- one of my old
23 prearrangements, I'm my own seller. And if
24 you told me that my family is leaving and
25 going to Todd's funeral home, I would not have

1 100 percent of the original contract value to
2 give to Todd.

3 MS. GRINSTON: No, but you don't have
4 to.

5 MS. EULER: No. No. You would pay --

6 MR. MAY: I don't have to? That's not
7 what you're saying?

8 MS. EULER: Correct. You would pay out
9 whatever you had in trust plus whatever
10 interest had accumulated or what your
11 agreement had been with the previous seller as
12 to what you would pay -- or the previous
13 funeral home what you would pay at the time of
14 death. If he has his own trust, he's still
15 in the same situation.

16 (Several people talking simultaneously.)

17 MR. STROUD: Sharon, I want to make one
18 comment here. Todd has a completely different
19 price list than I do at Adams Funeral Home,
20 Ozark, Missouri. I'll guarantee you Mike
21 does, too. And I'll guarantee you both guys
22 are probably higher than we are in southwest
23 Missouri. It's none of my business. I don't
24 care what they charge. That's their business.
25 That's their business. If I've got a customer

1 that's got a preneed in Ozark, Missouri, and
2 he's got an 18-gauge Wolpert Monticello vault,
3 full service, embalming, limousine, the whole
4 gamut, they've got him in St. Louis and they
5 want that funeral there with Todd, and they
6 took out a \$6,000 preneed.

7 MS. EULER: Uh-huh.

8 MR. STROUD: I'm going to give Tom 80
9 percent of my month and that's it. If he
10 wants to charge that family more money, that's
11 his business.

12 MS. EULER: Uh-huh.

13 MR. STROUD: But he's only getting 80
14 percent from me. The same way with Mike.
15 That's it; he gets 80 percent.

16 MS. EULER: Or 80 percent plus whatever
17 interest had accumulated.

18 MR. STROUD: You can't expect him or
19 him to eat maybe \$4,000 that they're higher
20 than I am. I'm just giving you an example
21 because I'm stupid and I've got a low price;
22 you know what I'm saying? Okay. Now, reverse
23 the opposite way. If I've got -- mine is
24 \$10,000 and theirs is \$8,000, and somebody
25 comes to me, had his is \$8,000, I'm going to

1 charge them \$2,000 difference because I'm only
2 going to -- or whatever it's going to be,
3 because I'm only going to get 80 percent of
4 his \$8,000.

5 MS. EULER: Uh-huh.

6 MR. STROUD: So, I'm going to charge
7 them the difference from \$6,400 to \$10,000
8 because that's what my service charge is.

9 MS. EULER: Uh-huh.

10 MR. STROUD: So, number one is, you've
11 got to get the family to agree that they want
12 to walk into my firm -- into my firm, say,
13 "Larry, I've got \$8,000. I've got an \$8,000
14 preneed with Todd. Would you accept this?"
15 I'm going to say, "Well, let me look at the
16 contract. You've got an 18-gauge this, you've
17 got a Monticello, you've got this, this, this,
18 this"; right? That doesn't mean if I --
19 (inaudible) -- sure, I'm going to give you the
20 difference in the money back, because I don't
21 charge that much. That's my business.

22 MS. GERSTEIN: But you know what? You
23 know what?

24 MR. STROUD: What?

25 MS. GERSTEIN: Myself as a consumer --

1 MR. STROUD: Yeah.

2 MS. GERSTEIN: -- if I am going to
3 change funeral homes, I'm going to talk to the
4 funeral home that I want to go to --

5 MR. STROUD: Absolutely.

6 MS. GERSTEIN: -- and say this is what
7 I have and what kind of funeral can I get for
8 it. I want to transfer the money, but it
9 isn't between the two funeral homes to deal
10 with that, it is me.

11 MS. EUHLER: Right.

12 MS. GRINSTON: Yeah.

13 MR. STROUD: Not at all. It's not at
14 all between anybody else except to the
15 consumer, and that family is going to say,
16 "Well, Dad died. I'm going to send" --
17 however it takes for me to get money out of
18 his trust, and I'll call Tom and I'll say,
19 "Tom, what does it take?" You need a death
20 certificate and a statement of goods, I send
21 it to him. He sends it to his trust, bam, I
22 get a check. Pretty simple, isn't it Tom?
23 Pretty simple.

24 MS. GRINSTON: So, again, because
25 we've got a lot of ground to cover here.

1 MR. STALTER: Well, now, wait a
2 minute. I've got a question for reverend.
3 Now, I'm the trustee on that contract. I've
4 got \$1,000 of income. Who does it go to?

5 MR. STROUD: You're going to decide
6 this whether he gets the interest or whether I
7 get the interest.

8 MR. STALTER: I want the law to tell
9 me that, I mean, basically.

10 MS. EULER: Yeah. The law will tell
11 you, Bill.

12 MR. STROUD: The law will tell us.
13 That's what you've got to decide.

14 MR. STALTER: (Inaudible.)

15 (Several people talk simultaneously.)

16 MS. GRINSTON: Okay. So, let's just
17 bring this down to the bare bones. For the
18 people, if I transfer providers, that provider
19 gets whatever the original provider was
20 authorized to have under the contract. Just
21 step into his shoes, treat it like an
22 assignment. Is that problematic for anyone in
23 the room?

24 MR. OTTO: If funeral home B accepts
25 -- yeah, I know. If funeral home B accepts

1 the contract with the consumer and the terms
2 of the provider/seller contract, then that's
3 not a problem.

4 MS. GRINSTON: Okay. Right. If
5 funeral home B, if he accepts the contract --

6 MR. OTTO: Both of them.

7 MS. GRINSTON: -- then all we do is --
8 we don't worry about interest or anything
9 else. All we're going to do is say whatever
10 you agreed, whatever funeral home A was
11 supposed to get, funeral home B agrees to
12 accept, and we're done. We do the deal and
13 it's nice and clean.

14 CHAIRMAN: Everybody happy with it?
15 Well, you're not?

16 MR. MOODY: Question: That's preneed
17 and at-need are treated the same?

18 MS. GRINSTON: At-need, do you guys do
19 a transfer at-need, or do you just pay out as
20 the provider who did the final service?

21 MR. MOODY: I'm the lobbyist. I'm not
22 -- incapable of answering that question.

23 MS. GRINSTON: Oh, I'm sorry. I'm
24 sorry.

25 MS. EULER: You don't pay anybody.

1 MS. GRINSTON: Well, I'm asking the
2 question because I really don't know.

3 MR. OTTO: At-need, you pay after
4 death -- if the person died outside the area
5 serviced by the original funeral home, which
6 isn't, of course, defined in the law, the
7 seller has the option to either pay the new
8 funeral home of the consumer's choice the
9 amount that's in the trust, or to return the
10 purchaser their funds back, but no interest.

11 MS. GRINSTON: Got it. Okay. Okay.
12 So, transfer, again. New funeral home B, if
13 they accept the contract -- all the terms of
14 the contract, they step into the shoes. If
15 they don't, you just tell the purchaser they
16 won't accept the contract, you know, what else
17 would you like me to do. Anybody have an
18 objection to that? Is that livable and doable?

19 MS. EULER: Yes.

20 MS. GRINSTON: Can we take a vote on
21 that?

22 CHAIRMAN: All right. All in favor?
23 (Unanimous voice vote for approval.)

24 MS. GRINSTON: Making progress. Okay.
25 Let's move on to default.

1 CHAIRMAN: Do you all want to take a
2 break for a minute?

3 (Off the record)

4 CHAIRMAN: Todd, would you like to
5 make a -- okay. We've got to wait a minute
6 here. Charles Bentley is going to be here at
7 3:30 and he's going to address what Sharon?

8 MS. EULER: Medicaid eligibility and
9 how -- what kind of restrictions need to be on
10 accounts for somebody to maintain their
11 exemption for Medicaid for preneed contracts.

12 CHAIRMAN: So, that ought to be worth
13 sticking around for.

14 MR. KUTIS: Do we have any
15 jurisdiction over that?

16 MS. EULER: Yes. Because we've been
17 talking about joint accounts and what
18 restrictions need to be on them to make them
19 eligible for spend-down, and when preneed
20 contracts are canceled, how to keep --
21 maintain people's eligibility for Medicaid.

22 MR. KUTIS: Well, the ones that -- and
23 I may be mistaken, but the ones that are
24 eligible, they sign the waiver, and once it's
25 in an irrevocable trust, it's not --

1 MS. EULER: Right. For a trust, but
2 for joint accounts, there are some other
3 issues.

4 MR. KUTIS: Well, can I say one more
5 thing while -- you know, I speak only for
6 myself and as a body infirm, and what's good
7 for us is not good for everybody else. And
8 there's other people and third-party sellers
9 and banking interests and that. You people
10 have, I'm sure, done a lot of work, and
11 there's going to be no thanks for this. I'm
12 sure you're all aware of that.

13 MS. GRINSTON: We've got cookies.

14 MR. KUTIS: I would say personally, I
15 don't know everything, and what's good for me
16 isn't necessarily good for you, and I hope you
17 don't think I'm too opinionated because a lot
18 of people think I'm opinionated and that I'm
19 around most of the time, and I'm married to
20 her.

21 CHAIRMAN: All right. Todd, do you
22 want to --

23 MR. MAHN: Yeah. I just -- it seems
24 like for days, we've really argued about the
25 trust and had differences on it. And there

1 was a lot of comments I've heard made where
2 the trust being compared to insurance and
3 things like that. And I guess the question,
4 you know, I want to ask and pose here a
5 little bit, and this is just a question. But
6 are we serving the public correctly by
7 allowing them to put money in trust -- I'm
8 just asking a question -- as opposed to
9 insurance, and I'll say it for this reason, is
10 an insurance policy on -- wherever they go
11 pays out 100 percent plus the interest
12 accrued, not 80. And that 20 percent is a
13 big lump sum of money. There's no portable
14 issues with the insurance; they can go
15 anywhere they want with it. And, you know, if
16 a family walks into funeral home A and their
17 investment tool is insurance, investment B is
18 trust, you know, but they're paying out
19 \$10,000 to whichever one they use, aren't they
20 -- you know, are they getting more bang for
21 their dollar -- and I was talking to Norma
22 about it. And then, also, the second part is,
23 I talked to Rick. On a trust -- you know,
24 with insurance, you've got the guarantee
25 association guaranteeing insurance. There's

1 regulators over insurance, you can look up the
2 grade of an insurance company anytime you
3 want. And with trust, that's not really the
4 case. There is nowhere for families to look
5 up the grade. There is no backup to it if
6 there is a default on it. And even with
7 Rick, I said is there issues to where there
8 may be a \$2- or \$3-million trust, and it's
9 only covered by FDIC for \$100,000.

10 MS. EULER: Yes.

11 MR. MAHN: So, I'm just asking these
12 questions. I mean, I know we're really, you
13 know, talking about this and debating these
14 issues right now, and even to some degree --
15 (inaudible) -- over it, but I think it's
16 disbarring it just comes from the standpoint
17 of some folks are more sensitive to public and
18 their issues and some folks are sensitive to
19 their clients, and I respect that because they
20 have contracts with those clients. So,
21 anyway, I know we all want to get out of
22 here. I'd like to get Norma's -- you know,
23 she would like to say -- I'd get her opinion
24 and see what everybody thinks about that.

25 CHAIRMAN: Norma?

1 MS. COLLINS: Thanks so much. This
2 discussion, as I was telling some people in the
3 hallway, each week that I've come, this has
4 been some of the most interesting discussions
5 or dialogue that I've ever heard. But while
6 we were talking this afternoon about this
7 issue about trust, you all know the position
8 that AARP had. In fact, we expressed that
9 last week that we wanted to see 100 percent of
10 trust. I realize -- I'm not stupid -- so I
11 realize that that's probably not going to fly
12 here in Missouri. Therefore, I'm going to
13 talk with our policy analysts about us maybe
14 putting support behind the insurance-policy
15 issue because we're here on behalf of
16 consumers and all 809,000 AARP members here in
17 the state of Missouri, and I just think that
18 this might be a more reasonable way to go in
19 terms of the insurance versus trust because I
20 just don't know if we're even going to reach a
21 happy medium here or a consensus or whatever
22 you want to call it, or whether this is
23 Kumbaya moment or touchy-feely, I'm not really
24 sure that we're going to get there, but I am
25 definitely going to talk with our policy

1 people when I get back about whether or not we
2 could just put our support behind the issue
3 with the insurance in terms of the preneed.
4 So, that's where AARP is, and I'm speaking on
5 behalf of AARP and not Norma Collins.

6 MR. KUTIS: Didn't NPS have a lot of
7 their money in insurance?

8 MS. COLLINS: Well, they would --

9 MS. EULER: That was a different --
10 that was different.

11 MS. BOHRER: Right. Because they were
12 selling for the cash and --

13 MS. EULER: They were purportedly
14 trusting the money and then they used the
15 trust assets to buy insurance unbeknownst to
16 the consumer.

17 MR. KUTIS: So, insurance companies
18 were broke, too; right?

19 MS. EULER: Well, the insurance
20 company was owned by the same people, by the
21 Cassidys. And the guarantee associations, we
22 think, will be providing some relief from
23 that. If they had not had insurance, they
24 would have just gone belly-up --

25 MR. MAHN: Zero.

1 MS. EULER: -- and everybody would be
2 on the hook with the funerals with zero return.

3 MR. MAHN: And that's a very good point
4 because if they hadn't had insurance, every
5 one of these \$100 million that is in the state
6 would be zero to every funeral home. Zero.
7 I hope everybody understands what that impact
8 means, you know. If you had a couple million
9 with them or \$5 million, zero.

10 CHAIRMAN: Mike?

11 MR. MEIERHOFFER: My only comment to
12 that is is it may sound like the best way,
13 but it's not the only way. And the thing of
14 it is, there are still certain people who are
15 not insurable or they aren't covered because
16 of age. There's another real problem and that
17 is I don't know how many people have or can
18 get insurance licenses. This is not nothing
19 something that everybody -- again, Tom or I
20 could probably do that because we have enough
21 staff that we could push people -- matter of
22 fact, all of our counselors do actually have
23 licensures -- life-insurance license. I don't
24 know how many others could get them. So,
25 again, it gets back to how many can you --

1 people would really get prearrangements if it
2 has to be totally insurance.

3 MS. COLLINS: Yeah.

4 MR. MEIERHOFFER: That's the dilemma.

5 MS. COLLINS: Yeah. I understand.
6 It's just that, I guess, just this discussion
7 today that we've had, though, about the
8 trusting, and it's clear to me that AARP is
9 not going to get what it wants in terms of
10 100-percent trusting. I mean, this is what
11 we're kind of stuck on here, so I just wanted
12 to make that comment. But we are very, very
13 willing to compromise, but I'm going to talk
14 with our policy people and just see what we
15 can compromise on.

16 CHAIRMAN: Thank you, Norma. Bob?

17 MR. BAKER: This may not be the time
18 for this discussion, but it seems like that
19 insurance is favorable to some. We have both.
20 But we have not brought up the issue of what
21 happens if you cancel an insurance policy, how
22 much you get back, and then how much does that
23 consumer actually pay for that \$5,000
24 contract. Now, I have my whole-life
25 nonparticipating contracts, and, you know,

1 they may pay you twice as much for that \$5,000
2 contract over the life of it. We see that
3 all the time. So, I don't know whether that's
4 a separate issue we're going to get into or
5 whether insurance -- I just wanted to bring
6 that up, though, because it may not be a fact
7 that a lot of people are aware of as far as
8 one of the funding vehicles for
9 prearrangements.

10 CHAIRMAN: Okay. Thank you.

11 MS. GRINSTON: Okay. Let's talk about
12 default, and when I say default, we're talking
13 about someone who is in default for nonpayment.

14 CHAIRMAN: Mike?

15 MR. MEIERHOFFER: I can start here.
16 What I see typically done on default is,
17 basically, the funds remain in trust, those
18 that are placed in trust at this point. The
19 contract is voided at that point. And at the
20 time that the person dies, if they come back
21 to you, then the policy has to be -- or the
22 funeral is rewritten in terms of what the
23 price is today. Or, in fact, the monies can
24 be refunded to the person from trust. So,
25 you've really got a couple of options. The

1 monies can -- and a lot of times, the monies
2 just stay there because they don't ask for
3 them back and they'll stay there until the
4 family comes in and tries to reconstruct the
5 funeral at the time of death.

6 MR. STALTER: And the only thing I
7 would add to that is that, basically, when it
8 goes into default, the right is just to the
9 principal amount paid to trust. If there's an
10 accumulation of income, basically, you know,
11 that goes to the funeral home. I mean, we'll
12 let those funds sit there, but, generally, in
13 default, you just say that the consumer has a
14 right to those funds deposited to trust.

15 CHAIRMAN: Do you all agree on that?

16 MS. GRINSTON: Is that a consensus?
17 Sharon?

18 MS. EULER: Question, Mike. You say
19 the contract is void, but you keep the money
20 and you hold it trust?

21 MR. MEIERHOFFER: Unless they ask for
22 it. If they ask for the money back, they get
23 their money back. But in a lot of these
24 instances, they won't do that. They just --
25 they fall off the face of the earth, so the

1 money -- we didn't even know where to refund
2 it. But the fact of it is, the monies are
3 there for them at any time. The contract is
4 voided after 30, 60, 90 days, however the
5 contract is written.

6 MS. EULER: But if you provide the
7 money towards their funeral at the time of
8 death, if the family comes -- I'm just having
9 -- I'm trying to figure out conceptually how
10 this works because --

11 MR. MEIERHOFFER: They have a credit
12 towards their funeral service of X dollars on
13 the contract. That's what they have.

14 MS. EULER: And if they never show up?

15 MR. MEIERHOFFER: Then that's an
16 escheat back to the State.

17 MR. STALTER: It escheats to the State.

18 MS. EULER: Escheat. Okay. Because
19 that was -- because, ordinarily, when you've
20 got money that belongs to somebody else and
21 they're not around, it goes to the State.

22 MR. MEIERHOFFER: Well, the dilemma,
23 though, and I've had this happen to me, is
24 that after -- what is it -- seven years of no
25 activity --

1 MS. EULER: Uh-huh.

2 MR. MEIERHOFFER: -- and we have had
3 banks that have taken funds when, in fact,
4 we're on an account with them, and just taken
5 them to the State, even though the person is
6 alive and no activity. So, that's another
7 thing you've got to be aware of.

8 MS. EULER: Yeah.

9 MR. MEIERHOFFER: And how do you
10 escheat it to the State if, in fact, the
11 person is really alive and well and going to
12 use it, so it's a problem.

13 MS. EULER: Well, because it's almost
14 as if you're not voiding the preneed contract
15 because you're still holding the money, you
16 are just changing the terms of the contract in
17 that it becomes a credit.

18 MR. MEIERHOFFER: No. The contract is
19 written that way. The contract is actually
20 written that way.

21 MS. EULER: Okay.

22 MR. MEIERHOFFER: This isn't changing
23 the terms of anything.

24 MS. EULER: Okay. That's what I'm
25 trying to understand.

1 MR. MEIERHOFFER: The contract states
2 that. Yeah. The contract states this. And,
3 in fact, if they want their money back, they
4 can have it. If they don't, the money stays
5 there and waits for them until they die.

6 MS. EULER: Okay. Thank you for
7 explaining that.

8 CHAIRMAN: So, we all agree on that?
9 Okay.

10 MS. GRINSTON: Mr. Meierhoffer, could
11 you do that again?

12 MR. MEIERHOFFER: Do it again?

13 MS. GRINSTON: Yeah. Tell me --

14 MR. MEIERHOFFER: Okay. Well,
15 essentially, in a default, the contract is
16 null and void after a period of time, whatever
17 time you want to put on it, 60 days, 90 days,
18 a year, however you want to do, so it's null
19 and void. The monies would be available to
20 the customer who, in fact, defaults in trust.
21 Those monies in trust would go back in total,
22 less interest. If the person doesn't ask for
23 the monies back, they stay in the account
24 until they are -- a funeral service is
25 provided, but they are listed as a credit

1 toward the new service selected at today's
2 price.

3 Tom, is that sounding like what you do?

4 MR. KUTIS: We would notify them, and
5 ask them if they would like their money to be
6 refunded. Some people would say yes and
7 others, just as you stated, would leave the
8 money in there and say just let that apply.

9 MR. MEIERHOFFER: Yeah. Our job is to
10 try to keep it in effect, so we continue to
11 try to get them to comply with the contract,
12 and we give them additional time if they wish.
13 And in our contract, if somebody is out of
14 work or something like this, we hold it for a
15 year or two. I mean, there are things in
16 there that provide for circumstances beyond
17 their control.

18 CHAIRMAN: Bill?

19 MR. STALTER: It kind of flips from a
20 guarantee to a not guaranteed, basically.

21 CHAIRMAN: Right. Norma?

22 MS. COLLINS: My question was sort of
23 similar to what Tom just said, and that
24 question was for you, Mike, whether or not the
25 consumer is aware that he or she could request

1 that money back. You said that if they don't
2 ask for it back. I mean, do they know that
3 they can request it, or do you ask them if
4 they want it?

5 MR. MEIERHOFFER: They're in default
6 at that point. They've got a choice to make.
7 And in some cases, they make none, it stays.

8 MS. COLLINS: Okay. Okay. I was just
9 -- yeah. I just wanted to be clear on that.

10 MS. GRINSTON: And that's in the law
11 now, the notification requirement.

12 MR. MEIERHOFFER: I'm sorry?

13 MS. GRINSTON: That's in the law now,
14 the notification requirement, so --

15 MR. MEIERHOFFER: Yeah.

16 MR. McCULLOCH: Currently, you notify
17 the purchaser and the funeral home, is what it
18 says.

19 MS. GRINSTON: Okay. So, do we have a
20 consensus on that -- on default?

21 CHAIRMAN: Say aye. Those opposed?

22 (Unanimous voice vote for approval.)

23 CHAIRMAN: Thank God something passed
24 through.

25 MS. GRINSTON: Let's -- I hate to do

1 this. Nonguaranteed. Should the funding
2 mechanisms be different for nonguaranteed
3 plans? What we've just done, should it be any
4 different for nonguaranteed plans or should
5 everything be under the same reimbursement
6 provisions we just talked about? Someone told
7 me to take that as a yes and go.

8 MS. EULER: I'm good with that.

9 MR. STALTER: So, we're saying a
10 nonguaranteed would be 100 percent in the
11 trust, and, basically, you're holding the
12 account for the future use at the time of
13 death.

14 MR. MEIERHOFFER: A hundred percent
15 plus interest? Yeah, I agree.

16 MS. GRINSTON: Any objections to that?
17 Okay. Anyone opposed? All right. I think
18 we've gotten --

19 CHAIRMAN: It's a miracle.

20 MS. GRINSTON: And I think -- you guys
21 are going to look at this language once we put
22 it on paper, and we're going to move to the
23 Medicaid things because I think our person is
24 going to be joining us shortly. For those
25 contracts that are not paid in full -- we've

1 been doing this on the paid-in-full contract.
2 For those contracts that are not paid in full,
3 someone mentioned the suggestion that the
4 percentages come off of the amount that has
5 been paid. Is that problematic? Like, let's
6 say we did the 100, 20-percent -- you know,
7 20-percent administrative expense, that those
8 same fees and structures would be assessed
9 against the amount that has been paid in for
10 something that's not paid in full.

11 MS. EULER: So, if somebody is making
12 \$100-a-month payments, \$80 goes into trust,
13 \$20 goes to the seller every month; is that
14 what you're saying?

15 MR. MEIERHOFFER: Actually, the way it
16 has been is the first 20 percent goes to the
17 seller.

18 MS. EULER: Right. Right.

19 MR. MEIERHOFFER: But you're saying
20 now --

21 MS. EULER: I understand how it has
22 been, but I think what -- I was just trying
23 to clarify what Kim was saying. Is that what
24 you were saying?

25 MS. GRINSTON: I think so.

1 MS. EULER: That instead of as it is
2 now with the first 20 percent going to the
3 seller, 20 percent comes on each payment; is
4 that what you're saying?

5 MS. GRINSTON: No. No. Actually, I
6 wasn't asking that question. If --

7 MS. EULER: I'm just trying to clarify
8 what you were saying.

9 MS. GRINSTON: Yeah.

10 MS. EULER: I'm not trying to --

11 MS. GRINSTON: And I think I just
12 answered my own question. I think I just
13 answered my own question.

14 MR. MEIERHOFFER: Excuse me. This is
15 a big deal for cash flow for running a
16 business, and that is if you're paying your
17 expenses up front and you don't get paid for
18 six years or something, or you get paid pieces
19 of it, John and other people running an active
20 program are not going to be able to do it.
21 You've got to do it on the basis of the money
22 up front, then the trust gets the rest of it
23 following that.

24 MS. GRINSTON: Respectfully, Mr.
25 Meierhoffer, is that the way we're doing it

1 now, though? If I'm on installment payments,
2 aren't you guys getting payments? You're not
3 getting everything up front now, you're doing
4 it as it comes in; am I right?

5 MR. McCULLOCH: But we get all of it.

6 MR. MEIERHOFFER: But it all goes into
7 the -- it doesn't go to the trust until you
8 get 20 percent.

9 MS. GRINSTON: Okay.

10 MR. MEIERHOFFER: Then it goes to the
11 trust.

12 MS. GRINSTON: Okay. And, again, and
13 I know we've talked about this. To me, I
14 just see it -- people said there may be an
15 administrative expense. What we're really
16 talking about is just, you know, the trustee,
17 you know transfer-over period. Who gives you
18 the money, yourself or your trustee? Am I
19 understanding that that's just the --

20 (Several people talking simultaneously.)

21 MR. MEIERHOFFER: You were doing it
22 good. I think what's happening here is that
23 we're talking about the trustee getting the
24 money first. We've talked about that; right?

25 MS. GRINSTON: Right.

1 MR. MEIERHOFFER: Okay. Then the
2 question becomes at that point, do we
3 distribute to the seller 20 percent of each
4 \$100 that comes in, or do we distribute the
5 first \$100 up to 20 percent of the monies that
6 get into this -- that are -- of this contract.

7 MS. GRINSTON: Oh, yeah. Okay.

8 MR. MEIERHOFFER: That's the key.
9 That's the key.

10 MS. GRINSTON: I understand. That was
11 a different question than what I was asking.

12 MR. MEIERHOFFER: I'm sorry.

13 MS. GRINSTON: But on that question,
14 we could go ahead and address that question
15 now, though, because that was what Don raised
16 originally. Per, you know, do we do it as
17 the payments come in or do we do -- keep the
18 current system and you get the first 20
19 percent?

20 MR. MEIERHOFFER: It's a cash-flow
21 issue in terms of how we administrate. It's
22 just, if you feel that the money is going to
23 be taken care of properly by the trust by 100
24 percent of it going to the trustee and then it
25 doesn't really -- it shouldn't matter to you

1 all how the monies come out. It's a matter
2 of safekeeping. And 20 -- and 80 percent is
3 going to trust. The question is, is it going
4 first or does it come in after the seller
5 takes his administrative fees? That's the
6 question.

7 CHAIRMAN: So, what's the answer?

8 MR. MEIERHOFFER: I propose that the 20
9 percent go to the seller first and then the
10 remaining 80 percent go to the trust through
11 the trustee -- all of it going through -- I
12 think that's what we said, all going through
13 the trustee.

14 MS. GRINSTON: Everything go through
15 the trustee. So, your 20 percent is assessed
16 against -- from the initial payments?

17 MR. MEIERHOFFER: Yes. Or payments.

18 MS. GRINSTON: Yeah. I understand
19 that. Thoughts on that?

20 CHAIRMAN: Everybody agree with that?

21 MS. GRINSTON: Okay. Is that a
22 consensus?

23 CHAIRMAN: Everybody agree with that?
24 All in favor, say aye. All those opposed?

25 (Unanimous voice vote for approval.)

1 CHAIRMAN: Thank you.

2 MS. GRINSTON: Okay. I think I have
3 what I need on the funding mechanisms to begin
4 working on the language for the trust issues.
5 But I want to go back to something, and,
6 again, you guys are going to look at this
7 again and again and again, because what we're
8 planning to do is giving you several drafts
9 between now and the next meeting so that you
10 guys can comment and make sure that what I'm
11 writing is matching what you voted on. But I
12 want to talk about the insurance issues
13 because it has been raised about what happens
14 when you have an insurance-funded preneed
15 contract. My understanding from the first
16 meeting, I believe I was told, that when there
17 is insurance-funded preneed contract, the
18 seller isn't holding on to any fees. All of
19 those fees go straight to the insurance
20 company and the seller just gets whatever the
21 insurance company pays out. So, am I correct
22 in understanding, from what you all told me in
23 the first meeting, that if I sell an
24 insurance-funded preneed contract, there isn't
25 -- we don't worry about the 80-20 or anything

1 else because all of the funds are going
2 straight through insurance? Am I correct
3 about that?

4 MR. McCULLOCH: I think so.

5 CHAIRMAN: Sharon?

6 MS. EULER: Can we move back to the
7 trust issue when we get through with this
8 topic --

9 MS. GRINSTON: Okay.

10 MS. EULER: -- to talk about putting
11 in the statute the provision that people can
12 make their payments directly to the trust?

13 MS. GRINSTON: Sure.

14 MS. EULER: Okay.

15 MS. GRINSTON: But am I correct on
16 that with the insurance-funded option, that
17 there isn't a chance we have preneed sellers
18 actually holding money then? If they are
19 assessing it, that money is going straight to
20 the insurance company? The position, from
21 what I herd in the first meeting, and the way
22 436 is established now, is that the
23 cancellation of that insurance policy, the
24 cancellation of everything else goes through
25 the Department of Insurance and how they

1 regulate insurance. Am I hearing something
2 different on how we address insurance-funded
3 preneed contracts or am I hearing that we
4 maintain status quo? The preneed contract is
5 under us, the insurance contract is under
6 insurance. Since the preneed seller won't be
7 retaining monies or anything else, that the
8 refunding, the cancellation provisions, all
9 should really be handled through insurance on
10 the insurance policy?

11 (Numerous people answer yes.)

12 CHAIRMAN: Don?

13 MR. OTTO: The only thing I'd like to
14 see is disclosures on the insurance side that
15 mirror the disclosures that are required on
16 the trust side, so I think the consumer should
17 -- it be made very clear to the consumer what
18 will happen if they cancel this insurance
19 policy, how much they will get back. What --
20 how much they will be -- you know, how much
21 they will be -- and, particularly, what's the
22 phrase, a nonparticipatory --

23 MR. BAKER: Whole-life
24 nonparticipatory.

25 MR. OTTO: Whole life, if it's

1 something -- how much will the consumer be
2 paying in, you know? You get that when you
3 pay a car loan, you know, when you buy a car,
4 it says on your little thing here's how much
5 your total payments are going to be.

6 MR. MEIERHOFFER: I think that's on
7 there now.

8 MR. OTTO: Well, I mean, it's not
9 required under the law in the pre --

10 MR. MEIERHOFFER: In the insurance
11 portion.

12 MR. OTTO: Yeah. But it's not
13 required. I mean, I'm just saying that this
14 Board, I think, should require that those
15 disclosures be made to the consumer.

16 MR. MEIERHOFFER: Okay.

17 MS. GRINSTON: Well, are you talking
18 about doing that by statute at 333 or doing
19 that through something the Division has -- the
20 Department of Insurance may have at 333 -- I
21 don't know if they have rule-making authority
22 to address disclosure.

23 MR. OTTO: No. I think that should be
24 the State Board saying funeral home -- you
25 know, funeral seller, that we are now -- we're

1 licensing these sellers. If you choose to
2 sell insurance, we want to make sure that
3 you're making the following disclosures. Now,
4 if they're already making those following
5 disclosures under what the current insurance
6 law is, great.

7 MS. GRINSTON: Do you want those
8 disclosures to come from the seller or from
9 the insurance company?

10 MR. OTTO: Well, I think it should
11 come from the seller.

12 MR. STALTER: I think it has to come
13 from your seller. That's where your license
14 authority will be.

15 (Several people talking simultaneously.)

16 MS. GRINSTON: Yeah. But what I'm
17 saying is, I don't know because the
18 cancellation and refund provisions, would that
19 be in the hands of the insurer? Are they the
20 best ones to tell you what happens when you
21 cancel my policy, or is the seller the best
22 one to say let me tell you what happens when
23 you cancel Homesteaders policy?

24 MR. OTTO: I think the seller should
25 -- if the seller is selling this to the

1 consumer, I think the seller should tell them
2 what happens.

3 CHAIRMAN: Sharon?

4 MS. EULER: I think we should leave the
5 selling of insurance to be regulated by the
6 Department of Insurance and not impose any
7 additional requirements on our licensees with
8 regard to insurance because we don't regulate
9 insurance.

10 MR. MEIERHOFFER: I agree.

11 CHAIRMAN: Okay. All in favor --

12 MR. McCULLOCH: But you can see Don's
13 point, though. It's a very unfair playing
14 field. We have to do truth in lending,
15 insurance does not. They just call the
16 premium --

17 MS. EULER: I don't know if they do or
18 not. Do they?

19 MR. McCULLOCH: No, they do not.

20 MR. McCORD: Mark Steller, who is not
21 here today, it would be his area in the
22 financial regulation. I believe, Don, that
23 they do disclose how much is owed over the
24 term of a policy. There are insurance agents
25 who -- and it may be based on company. Mark,

1 do you have a comment?

2 MR. WARREN: Yeah. There are
3 illustration requirements. I mean, wasn't
4 that covered, and then also --

5 UNIDENTIFIED: (Inaudible.)

6 MR. WARREN: yeah. And then there are
7 advertising requirements which are imposed on
8 the companies which the department regulates
9 what you can say in the illustrations.

10 MR. McCORD: So, I think my comment is
11 I believe that's taking place now.

12 MS. GRINSTON: Yeah.

13 MR. McCORD: That that disclosure is
14 being made from the insurance companies when
15 you buy a policy.

16 MS. GRINSTON: And, legally, my
17 thought is what -- if the seller says one
18 thing and the insurance company says this is
19 our contract, that's not what we meant, you
20 know, who do we hold -- what if the seller is
21 wrong about reading this contract and
22 Homesteaders is saying that's not what my
23 contract says, you know?

24 MS. ERICKSON: Pardon me, Kim. Are you
25 talking about a dispute of terms between the

1 seller and the insurance company?

2 MS. GRINSTON: Right. If the seller is
3 required to do the disclosure in cancellation
4 and they say this is what happens when you
5 cancel, is the seller the best person to do
6 that disclosure when this is another company's
7 -- it's the insurance company's policy and
8 they have -- you know, their construction is
9 what's going to control the policy and not the
10 seller.

11 MS. ERICKSON: If I could comment on
12 that. As it is now, if an agent, whatever
13 product they're selling, misrepresents what
14 their insurance company is offering, we can
15 seek regulatory authority -- we have
16 regulatory authority, rather, over that
17 licensee. If it was done with the insurance
18 company's knowledge and/or the insurance
19 company had a duty for training and
20 supervision, which they do, then we can go
21 after the insurance company, as well. So, I'm
22 with Larry believing that there are already
23 sufficient protections within insurance laws
24 for those who are selling, are licensees to
25 sell insurance in Missouri, let the insurance

1 company use its own disclosures rather than
2 require it through this Board's regulatory
3 scheme.

4 MS. GRINSTON: And not through the
5 preneed seller?

6 MS. ERICKSON: That's correct.

7 MR. MEIERHOFFER: I agree.

8 MS. GRINSTON: Okay. Let's take --
9 I'm sorry.

10 CHAIRMAN: No, go ahead.

11 MS. GRINSTON: Discussion. Sorry.

12 CHAIRMAN: Everybody agree? All in
13 favor say aye. All those opposed?

14 (Numerous people answer aye, one
15 answers nay.)

16 CHAIRMAN: Okay. We've got a new --
17 Sharon would you like to introduce --

18 MS. EULER: Charles Bentley is here to
19 talk with us. Charles Bentley is here to talk
20 with us some about what accounts need to have
21 on them to insure that people remain qualified
22 for public assistance, and also to talk about
23 the question we were talking about earlier
24 today, if somebody cancels a contract and
25 they're on public assistance, does the

1 cancellation of that contract, which means
2 they receive the funds, affect their
3 eligibility for public assistance.

4 CHAIRMAN: Charles, thank you for
5 coming.

6 MS. EULER: On very short notice, I
7 might add.

8 CHAIRMAN: Yes, on very short notice.
9 Thank you.

10 MR. BENTLEY: Okay. I don't -- I'm
11 not sure exactly what all you want to know
12 other than what I was told on the phone a few
13 minutes ago. But, basically, what we're doing
14 when we're determining eligibility for
15 Medicaid for persons -- or MO HealthNet now --
16 who have -- we're looking at what available
17 assets do they have. And since about 1982,
18 preneed burial contracts that are irrevocable
19 are an excluded asset because the person
20 cannot get the money back -- you know, it can
21 only be used for their burial. There was a
22 further change in the law where if, for some
23 reason, they over fund that burial contract
24 and the person then dies and the family wants
25 to -- they can't just get the money back, the

1 money has go to pay towards their -- whatever
2 they used in Medicaid services if they
3 overfunded the contract. I mean, basically,
4 we're looking for just -- if these are
5 standard agreements, a lot of them are funded
6 by assignment of life insurance, but what
7 we're looking for now in order to exclude them
8 as an asset is that it is an irrevocable
9 contract that cannot be dissolved. And if
10 they're not irrevocable, there's only -- if
11 there's a \$1,500 cash value that's excluded
12 from any life-insurance policy or preneed
13 contract. So, if you're wanting to do
14 something else, there's other things you could
15 possibly do, but it would be a change. It
16 probably would take a change in Chapter 208 to
17 affect -- if you want to exclude them, because
18 I think that was one thing that was -- Sharon
19 brought up was wanted somehow the burial
20 policy to be able to be canceled and still not
21 affect the person's MO HealthNet or Medicaid
22 eligibility. So, I don't know what --

23 MR. MEIERHOFFER: I think the question
24 that we talked about and kicked around the
25 other day, sir, was the fact that not so much

1 canceling it, but transferring a irrevocable
2 contract to another funeral home. And the way
3 we've been doing it is not canceling anything
4 at all.

5 MR. BENTLEY: Right.

6 MR. MEIERHOFFER: It just moves to the
7 other funeral home without the consumer ever
8 touching the money, which shouldn't change
9 their eligibility. That was the question I
10 think we were concerned about.

11 MR. BENTLEY: That should not -- that
12 would not affect our eligibility at all.

13 MR. MEIERHOFFER: And that that's the
14 way we've been doing it. Is that okay?

15 MR. BENTLEY: And that's perfectly fine
16 because the contract itself, you're just
17 transferring the ownership of who is going to
18 provide the services, I take it.

19 MR. MEIERHOFFER: Okay. The next
20 question was and would be: If, in fact, a
21 person wanted their money back, that, in fact,
22 the money couldn't go to the consumer, it
23 would have to go back to the State, would it
24 not? If they came in and said we want to --

25 MR. BENTLEY: Well, I mean, I'm

1 assuming that they can't get their money back
2 right now because they've signed this election
3 of irrevocability, so they can't get it back
4 at all. If you changed it in such a way that
5 they could get it back, which -- and anybody
6 could get it back now because they don't --
7 this is an option. They don't have to elect
8 to make it irrevocable.

9 MR. MEIERHOFFER: That's correct.
10 Unless, the way the law reads, as I understand
11 it, you have to be applying for or be accepted
12 into Medicaid.

13 MR. OTTO: No. Unfortunately, no.

14 MR. MEIERHOFFER: That's the way it's
15 supposed to be.

16 MR. BENTLEY: It's worded something
17 like what you said, but I don't know that it's
18 strictly interpreted that way.

19 MR. MEIERHOFFER: Okay.

20 MR. BENTLEY: If anyone who is on
21 Medicaid or would like to be on Medicaid or
22 might someday -- they think about Medicaid. I
23 don't know. It's, I think, broadly
24 interpreted.

25 MR. OTTO: One complicating thing that

1 I know we have run into with the current law
2 is 436 says a person who -- and I'll get the
3 exact wording is there. A person --
4 basically, if you're intending at some time in
5 the future to become eligible for public
6 assistance, you can make it irrevocable.

7 MR. BAKER: Eligible or desire to
8 become eligible.

9 MR. OTTO: Yeah. So, you may have made
10 something irrevocable. You've never received
11 a dime in public assistance, and then you want
12 to cancel the contract.

13 MR. BENTLEY: Right.

14 MR. OTTO: So, you would owe no money
15 because you never received any public
16 assistance.

17 MR. BENTLEY: Correct.

18 CHAIRMAN: Well, I don't think that's
19 his department. I think that's just --

20 MR. OTTO: No. That's something that
21 I think -- I would like that clarified in the
22 law whether or not can we cancel -- can we
23 cancel an irrevocable contract?

24 MS. EULER: But if you do have -- if
25 you have signed a waiver so that your contract

1 is irrevocable, you are receiving Medicaid
2 benefits, and your child decides to cancel
3 your preneed contract, you know, if that
4 contract is canceled and if the funds are then
5 refunded to the purchaser who is on Medicaid,
6 that would render them ineligible to continue
7 to receive assistance, would it not? It would
8 affect their eligibility?

9 MR. BENTLEY: If you change the law in
10 such a way that irrevocable no longer means
11 irrevocable, then they're not going to be --
12 they're not going to have been eligible for
13 Medicaid at all.

14 MS. EULER: Okay.

15 MR. BENTLEY: I mean, that's what we
16 would have to look -- under the way our
17 current statutes are written, because we're
18 not specifically excluding them because
19 they're a preneed contract. We're excluding
20 them because they can't -- they have no cash
21 value. You can't get any money back. There
22 are other types of assets that we just exclude
23 because either federal law says to exclude it
24 or the State has taken a federal option to
25 exclude something. So, we could, under State

1 law and Medicaid, exclude preneed contracts
2 whether they're irrevocable or not, but that
3 would take a change in State Medicaid law.
4 Because right now, we exclude \$1,500 cash
5 value of an insurance policy or a preneed
6 contract even if it's not irrevocable. So,
7 there's already an exclusion of some value of
8 these contracts even if they don't make them
9 irrevocable, but -- and, I don't know, 40
10 years ago, whenever they came up with that
11 \$1,500 number, you might have been able to
12 bury someone for that. That is probably a
13 slightly outdated amount at this point.

14 CHAIRMAN: Well, according to Stroud
15 down there, Larry --

16 MR. KUTIS: And your child cannot come
17 in and cancel your irrevocable contract,
18 because we've had the kids said we'd like to
19 go the racetrack and, you know, go somewhere
20 else with the money and they cannot do that.

21 CHAIRMAN: Mike?

22 MR. MEIERHOFFER: I'd like to ask you a
23 question that's always concerned me and that
24 is: Let's go back to insurance as far as
25 insurance policies are concerned because it's

1 a regular occurrence when somebody comes in
2 with an insurance policy and wants to give
3 that to the funeral home for some type of
4 credit toward a funeral service, and these are
5 typically where the nonguaranteed contracts
6 come in. I've had people tell me you can't
7 accept them unless you are the beneficiary,
8 meaning the funeral home, or that an
9 assignment has to be irrevocable, and you're
10 saying here that \$1,500 of the cash value is
11 all that can be considered. So, help me
12 understand what the real truth is.

13 MR. BENTLEY: No. Well, with a
14 life-insurance policy, in general, it has a
15 cash value. The first \$1,500 is not -- is an
16 excluded asset from Medicaid in Missouri. So,
17 someone who has a life-insurance policy, no
18 matter what they intend to do with it, it has
19 a cash value, the first \$1,500 has no effect
20 on their Medicaid eligibility. Anything above
21 that \$1,500 is counted just like money that's
22 in a checking account, a savings account.
23 There's a \$1,000 limit for a single person, a
24 \$2,000 limit for a married couple. So -- and
25 then the only -- the special exception is for

1 the preneed contracts that they can be made
2 irrevocable. So, no matter -- so, there's no
3 money coming back. And then the other change
4 that they made -- and I don't know how long
5 ago it's been. It was a long time ago -- was
6 allowing people, rather than have to cash in a
7 life insurance to purchase a preneed burial
8 contract, which could be irrevocable, you
9 could make an irrevocable assignment of the
10 life insurance to fund the burial policy. So
11 -- and that usually involves changing --
12 making an irrevocable change in the
13 beneficiary to make the funeral home the
14 beneficiary of the policy. And then we're
15 going to exclude that and not consider any
16 kind of transfer of resources that could make
17 them ineligible if that life insurance that's
18 been assigned to the funeral home is also tied
19 to an irrevocable preneed contract. That's
20 kind of where those things work together. So,
21 the point you were making about that ambiguity
22 in the law, I suppose you could do something
23 in the statute that clarifies that this
24 election of irrevocability -- is much easier
25 to say. It's the attorneys that don't like

1 that, I think.

2 MR. MEIERHOFFER: Well, we're not
3 attorneys, so we can talk that way.

4 MR. BENTLEY: Yes. So, if it were you
5 could possibly change that statute that that
6 election should only be made at the time
7 person is either a Medicaid recipient or is
8 applying for Medicaid. And that way, they
9 could do it earlier. You could make an
10 exception that they could get out of it if
11 they've never drawn any Medicaid benefits.
12 That would be an easy enough, probably, change
13 in the law.

14 MR. OTTO: I'd just like it to be
15 clear from our standpoint. If somebody wants
16 to cancel it and they claim they've never
17 gotten any -- you know.

18 MR. MEIERHOFFER: That would be easy
19 -- that would be the way to do it.

20 MR. OTTO: One way or the other.

21 MR. BENTLEY: But how would you know
22 they've never gotten any Medicaid would be the
23 hard part, I think.

24 CHAIRMAN: Bob?

25 MR. BAKER: I have two or three

1 questions for you and one will lead to another
2 one. Are you saying that all that has to be
3 done is that the funeral home be made the
4 irrevocable beneficiary?

5 MR. BENTLEY: Of the life insurance?

6 MR. BAKER: Yes.

7 MR. BENTLEY: Yes.

8 MR. BAKER: How about ownership? The
9 owner still has the right to do whatever they
10 want to with that policy?

11 MR. BENTLEY: No, because they have
12 irrevocably named the funeral company as the
13 beneficiary.

14 MR. BAKER: Okay.

15 MR. BENTLEY: So, once they make that
16 -- so what we're looking for is they've made
17 an election, even though they still may own
18 the policy, that they cannot change that
19 beneficiary.

20 MR. BAKER: Okay. We deal with several
21 different companies.

22 MR. BENTLEY: Yeah.

23 MR. BAKER: So, we get a different
24 answer from each one. One wants us to have
25 both the ownership and beneficiary to be made

1 irrevocable to the funeral home because the
2 owner still has the right to do whatever they
3 want to with that policy. They just have to
4 do it with the signature of the irrevocable
5 beneficiary.

6 CHAIRMAN: Bob, just one second.
7 Gerry, do you have a comment to make about it?
8 You don't have to come up.

9 MR. KRAUS: This goes back a few
10 years, but we worked with the Health Care
11 Financing Administration in Washington on this
12 issue, and they recommended a couple of
13 different routes, one being you can have your
14 final-expense policy qualified as burial
15 insurance, and it being exempt that way, and
16 you see some programs marketed that way,
17 sheltering final-expense policies. The other
18 one we use and most of the national companies
19 use, and it is in a preneed transaction, you
20 must sign ownership to a funeral home, and
21 it's a two-step process. That funeral home
22 immediately reassigns into a trust the rights
23 of the policy owner. So, there is really no
24 money that leaves the policy, it stays with
25 the company. The rights of the person stay

1 with the trust until death, and it's an
2 irrevocable mechanism which satisfies most
3 State Medicaid requirements, as I'm hearing it
4 would here. Now, just a clarification in
5 terms, we have found that most helpful in
6 these discussions differentiate between making
7 the contract irrevocable, which we don't feel
8 it should be in any circumstance, and the
9 funding irrevocable, which would be sensible
10 in Medicaid situations only. So, all of the
11 premium contracts should be revocable, but
12 funding should be made irrevocable. That
13 satisfies what they want.

14 CHAIRMAN: Thank you.

15 MS. EULER: Charles, could you tell
16 everybody what your official title is? I'm
17 sorry; I didn't introduce you very well.

18 MR. BENTLEY: Yeah. I'm the deputy
19 director for income maintenance policy for
20 Family Support Division and --

21 CHAIRMAN: Charles, I think Bob had
22 another question for you.

23 MR. BAKER: Yes. My second part of the
24 question is that we get different opinions
25 from each of the counties that we deal with.

1 Can we get something that is sent out to all
2 funeral homes that says this is the way that
3 it is supposed to work that we can take to
4 those people that say you're not doing it
5 right?

6 MR. BENTLEY: We could refer you to
7 our policy and --

8 MR. BAKER: It's in your policy
9 manual, I know. I've seen it.

10 MR. BENTLEY: And I think you could
11 refer them to that. And I -- and since I
12 wasn't really planning on talking about this
13 today, I did get it printed out so I can read
14 it to you, because I don't --

15 MR. BAKER: I think I've seen it, but
16 we get difference of opinion.

17 MR. BENTLEY: Yeah. What our policy
18 -- and what it actually says about the funding
19 of it from the life insurance is it has to be
20 a valid preneed contract and either the
21 funeral home -- the verification with the
22 funeral home, the documents, the funding of
23 the contract was made by the irrevocable
24 assignment of the life insurance or you have
25 an agreement with the insurance company that

1 transfers the ownership of the policy or names
2 the funeral home as the irrevocable
3 beneficiary. So, there's about three
4 different ways you can fund it, but what,
5 basically, they have done is, they have made
6 it so that life insurance themselves, they
7 cannot get the benefits either because they no
8 longer own the policy which may have been, I
9 think, what we may have originally said back
10 when this first changed years ago, but I think
11 we ran into problems. Some insurance
12 companies would not let you do that, but they
13 would let you make the change in the
14 beneficiary. So, I think this was -- there
15 were some changes over the years to
16 accommodate because there's one thing for the
17 State to have a policy and the law to say one
18 thing, but the insurance laws are telling them
19 something else and their companies' bylaws
20 were telling them something else. So, I think
21 when you run into problems with different
22 counties saying different things, what you
23 should do is refer them to where our policy
24 is. We could send something out to everybody
25 that says where it is. Then the other thing

1 to do, I think, is, well, when you say, well,
2 I think your policy is this and I heard from
3 Jefferson County they do it this way and here
4 in Warren County, you're doing something else,
5 I think what you should do is say, well, ask
6 to maybe talk to a supervisor about that and
7 ask them, well, could you suggest that maybe
8 they clarify the issue, you know.

9 MR. BAKER: Yeah. We've tried that.

10 MR. BENTLEY: Yeah. I'm a little
11 hesitant for us to be sending out something to
12 you that we don't send to them.

13 MR. McCULLOCH: Just say why wouldn't
14 you just tell your Division how it is instead
15 of us trying to --

16 MR. BENTLEY: We have told them how it
17 is. They know how it is. I don't -- they're
18 all supposed to follow the policy as it's
19 written and, you know, we have thousands of
20 pages. We don't send out a weekly memo saying
21 follow all those pages. I mean, there's a
22 certain amount -- I mean, it's -- there's not
23 a lot --

24 MR. McCULLOCH: That's why government
25 gets a bad name.

1 MR. BENTLEY: What?

2 MR. McCULLOCH: That's why government
3 gets a bad name.

4 CHAIRMAN: Yeah. Charles, I think --

5 MR. BENTLEY: And so do insurance
6 companies and funeral homes on certain issues
7 like this, too.

8 MR. BAKER: My other question I'm
9 going to have is, whenever we're dealing with
10 the insurance companies, the ones that are
11 here are fine, but we have some who shall
12 remain nameless, but they start with
13 Prudential is one. They won't even talk to
14 us. Don has had the issue come up, you know,
15 and they just totally blow it off. The
16 people, all of a sudden, are not eligible and
17 they say, "How do I pay for mama's nursing
18 home this month?" We can't get them to move
19 off center, or they delay it so long. Is
20 there anything that you can do to speed up
21 that process and to require that they follow
22 the regulations that you have?

23 MR. BENTLEY: Well, we can't require
24 them to do anything. I believe what our
25 policy directs people to do, and maybe -- we

1 can go back and I can have people look at
2 this again because maybe the people
3 responsible for -- that work for me for
4 writing this down could do it better than we
5 did when we wrote this years ago.

6 CHAIRMAN: Gerry, you've got a comment?

7 MR. BENTLEY: But I think what we've
8 said on that issue is if we have documentation
9 that the person has made the request to the
10 insurance company to make the change, that we
11 will assume that it's going to be made and we
12 will set a priority to check in again in three
13 months because we -- you can run into that.
14 They'll have a small cash value that puts them
15 over the Medicaid limit, but -- and if they
16 could just get it assigned to the funeral
17 home, it would not cause ineligibility, but it
18 drags on for months. So, I think we have
19 answered questions and given people direction
20 to do that, and I don't know whether it says
21 that specifically in here or not, but we can
22 look at that again because I think that is a
23 serious problem.

24 CHAIRMAN: Gerry?

25 MR. KRAUS: This is to Bob's question

1 about why do all the insurance companies tell
2 him different stories. There are a lot of
3 regional influences in Medicaid. There are a
4 lot of regional influences in the
5 life-insurance industry as far as naming
6 beneficiary, naming funeral-home owner. And
7 the insurance companies have to go with the
8 flow and match the trade practices in their
9 trade area. So, if you're dealing with a
10 company that's more southeastern, you'll find
11 it's pretty practical or pretty unusual for
12 them to name funeral homes as beneficiaries.
13 Somebody that's western wouldn't do that.
14 Somebody that's dealing from a national scene
15 wouldn't do that. So, that's part of the
16 reason that you get different signals from
17 different companies. And each of the states,
18 keep in mind, have little twists that they put
19 on their public-assistance programs, too.

20 MR. BENTLEY: My suggestion would be
21 follow the law, not trade practices.

22 MR. KRAUS: And these do. These
23 follow both.

24 CHAIRMAN: Mary?

25 MS. ERICKSON: Charles, thank you for

1 coming today. I have kind of a basic question
2 and maybe it was covered and maybe it wasn't.
3 In the insurance arena, it's very clear that
4 the asset will be excluded if the beneficiary
5 is the funeral home and that's irrevocable, so
6 that's very clear. Can you tell me, please,
7 if a preneed contract is entered in with a
8 consumer and this is going to a trust fund --
9 it's not going to insurance, it's backed by a
10 trust fund -- does the contract itself, must
11 that be irrevocable, or let me ask this --
12 hang on. Can the contract be revocable, but
13 there be a separate trust assignment that is
14 irrevocable, a separate document, or how do
15 you see this mechanism working?

16 MR. BENTLEY: It's complicated.

17 MS. ERICKSON: I'm sorry.

18 MR. BENTLEY: We would be -- what we
19 would be doing in there, what the person has
20 done, they've transferred ownership of their
21 burial contract or their insurance policy to
22 the trust. So, then the -- so, we're no
23 longer necessarily concerned about the value
24 of the insurance policy or the burial
25 contract, or their bank accounts that they've

1 put in that trust, or the land they put in
2 that trust. But what becomes an asset to them
3 is the trust itself, so then what we're
4 looking at is what is the value of all the
5 assets that the trust owns and then under what
6 circumstances can the person access the trust.
7 And you see with a lot estate planning, people
8 -- elderly people, especially, set up trusts,
9 but usually they will make the trust is
10 revocable. And so, they make --

11 MS. ERICKSON: Can I clarify my
12 question? I'm sorry. I'm not talking about a
13 trust set up by an individual. I'm talking
14 about our trusts that our preneed sellers have.

15 MR. BENTLEY: Okay.

16 MS. ERICKSON: And that is the vehicle
17 backing the funding for those preneed
18 contracts.

19 MR. BENTLEY: So, you're taking --

20 MS. ERICKSON: It is not an insurance
21 product; right, gentlemen? And my question
22 is: In order to protect those consumers who
23 need Medicaid eligibility, the contract -- the
24 preneed contract, must that state specifically
25 it's irrevocable or the contract funds will be

1 placed with the preneed seller's trust funds
2 to manage and to make sure they're paid out at
3 death? Or can there be a contract -- a
4 preneed contract, and then there is a separate
5 document that makes the funding irrevocable to
6 the trust? Do you understand my question,
7 Sharon?

8 MS. EULER: And the answer is either
9 way. So long -- and Charles, you --

10 MR. BENTLEY: Yeah. It's --

11 MS. EULER: Because the key is that the
12 consumer can't have access to the funds.

13 MR. BENTLEY: They can't have access
14 to the money, so depending on how you're doing
15 -- it seems like, to me, when you put the
16 money in the trust, the burial trust, that is
17 to protect that money is secured, then it will
18 pay -- be there when it's time to pay out for
19 the funeral. But if the person can still cash
20 in that life insurance, even though it's
21 assigned -- something has to prevent the
22 purchaser of the burial contract from being
23 able to get the money back, and I'm not sure
24 just putting it in the trust does that by
25 itself. I don't know.

1 MS. EULER: It does, because the
2 seller places the money into the trust.

3 MR. BENTLEY: But then how does the
4 seller have the money?

5 MS. EULER: The consumer pays it to the
6 seller.

7 MR. BENTLEY: But they pay it. If
8 they pay it to them.

9 MS. EULER: Yes.

10 MR. BENTLEY: But -- so then -- but
11 they haven't paid it to them if they just give
12 you a life insurance policy --

13 MS. EULER: They don't. They're
14 giving them cash.

15 MR. MEIERHOFFER: This is cash. This
16 is a cash, yeah.

17 MR. BENTLEY: Cash. Right. So, if
18 you're giving them cash, you have some
19 agreement with them, so that may be the
20 difference between a trust and a contract.
21 These may be -- the effect needs to be that
22 there is some kind of an agreement that says
23 in exchange for the money they gave you,
24 you're promising to deliver certain services.
25 So, you don't need an insurance company

1 involved at all. Your agreement between you
2 and the customer is what gives you the right
3 to have the money and put the money aside in
4 this trust for them, but that agreement has
5 something in there that says that they cannot
6 get a refund on their money, is what we're
7 looking for.

8 MS. ERICKSON: Thank you, Charles.
9 Thank you, Sharon.

10 CHAIRMAN: George, did you have a
11 comment?

12 MR. CLINE: I was just going to help
13 clarify that. When you make your contract
14 originally, it's generally irrevocable. But
15 if you choose to make it irrevocable, there's
16 a separate addendum to the contract which goes
17 now to the funeral home, but it also goes to
18 the bank at the trust fund. Now, people
19 should realize that the funds in the trust,
20 they can't be released until either there's a
21 death certificate produced or a notarized
22 burial certificate of performance. So, once
23 the funds are in there, they stay with the
24 trustee. So, that's, basically, how it's done.

25 MS. ERICKSON: Thank you, George.

1 That was very helpful to understand that there
2 can be an addendum.

3 MR. CLINE: So, a copy goes to the
4 funeral home and a copy goes to the social
5 worker, it shows it's irrevocable, that she
6 has either one of them or intends to be, and
7 that also protects any heirs that want to get
8 the money out from having that possibility of
9 taking any money out of that trust; it's not
10 going to happen.

11 MS. ERICKSON: Thank you, George.

12 MR. STALTER: Have you relinquished
13 your witness?

14 MS. EULER: He's here out of the
15 kindness of his heart to help educate the
16 funeral industry on the Medicaid eligibility
17 rules.

18 MR. STALTER: Where I thought we were
19 going with this was the fact that some of your
20 options -- when we talk about some of the --
21 some preneed contracts can be funded with a
22 joint bank account. So, I mean, how would you
23 effect exclusion of that account for asset
24 determination?

25 MR. BENTLEY: What -- if you were

1 wanting to make a change, you could. I mean,
2 you could write a section or get some
3 legislator to make a proposal in Section --
4 Chapter 208 to exclude assets that are used to
5 fund a preneed burial contract. There's
6 already a provision in the law for designated
7 burial funds or money -- and up to, I think,
8 it, again, is \$1,500 in any bank account can
9 be designated as a burial fund as long as
10 there's not another existing either preneed
11 contract or life-insurance policy. So, in
12 theory, you could pass a law that says \$5,000
13 in a -- that's given over to fund a preneed
14 burial contract, revocable or irrevocable, is
15 an excluded asset for Medicaid.

16 MS. ERICKSON: And that change would
17 have to be effectuated in Chapter 208, which
18 is Missouri HealthNet.

19 MR. BENTLEY: I think so, because
20 you're trying to effect Medicaid Law.

21 MS. ERICKSON: And that would be --
22 Missouri's Medicaid law must be consistent,
23 obviously, with federal law. Is there a
24 federal law that corresponds with that
25 exception you're describing?

1 MR. BENTLEY: Under federal law, you
2 have -- you cannot be -- your basic Medicaid
3 rules for the elderly, blind, and disabled are
4 tied to -- cannot be more restrictive than
5 they were in 1973, at least the way the State
6 of Missouri does it. Other states, it's more
7 restrictive than the SSI program, but you
8 cannot be more restrictive than that. You use
9 the basic rules you used to use for these old
10 cash-assistance programs that went away a long
11 time ago. You can, though, be less
12 restrictive. It's a State option. So, we
13 could choose a State option like that resource
14 limit of \$1,000. That's -- we can't be more
15 restrictive than that. We could be less. The
16 State could raise that limit. They could also
17 choose to exclude more than \$1,500 of life
18 insurance. But -- so, the federal government
19 would allow those kinds of less restrictive
20 requirements, but in order for us to do it
21 within Family Support Division, we would need
22 an authorization from the legislature in order
23 to do that, or possibly from the governor's
24 office.

25 MR. OTTO: Run with that, Mike.

1 MR. MEIERHOFFER: Question: Of the
2 \$1,500 exclusion, is that a State-mandated
3 number or is that a federal or in combination
4 therefore?

5 MR. BENTLEY: It's a combination, I
6 would --

7 MR. MEIERHOFFER: I guess the question
8 is, would this be --

9 MR. BENTLEY: SSI?

10 MR. MEIERHOFFER: Yeah. Would this --

11 MR. BENTLEY: SSI has --

12 MR. MEIERHOFFER: It's federal, so
13 there's no way we can change it at this level?

14 MR. BENTLEY: We can go up, we cannot
15 go down?

16 MR. OTTO: Yeah. That's a minimum.
17 So, we could change it to \$8,000, I think.

18 MR. MEIERHOFFER: Well, that's my
19 question.

20 MR. BENTLEY: Fifteen hundred dollars,
21 I believe, is what SSI uses. I'd have to go
22 back and look and see what we used, and the
23 State may have used at one time, \$1,000, and
24 we might have the right to go back to \$1,000,
25 not that I think there would be much sentiment

1 to do that.

2 MR. MEIERHOFFER: No. I was thinking
3 the other way.

4 MR. BENTLEY: Right. So -- right. So,
5 basically, \$1,500 -- we're at the minimum.

6 MR. MEIERHOFFER: The max.

7 MR. BENTLEY: The minimum.

8 MR. MEIERHOFFER: The minimum.

9 MR. BENTLEY: No, it's a minimum.

10 MR. MEIERHOFFER: All right.

11 MR. BENTLEY: You can go above.

12 MR. MEIERHOFFER: Well, is this not a
13 time to address that for funeral services?

14 MR. BENTLEY: Now, we -- our division
15 and our department, I would assume, would take
16 it, would be neutral on that.

17 MR. MEIERHOFFER: Well, that very well
18 could be. I'm just talking to this group.
19 Is this not a time during while we're doing
20 this -- of course, this comes through your --
21 this has to be legislated through your
22 department; right?

23 MR. BENTLEY: Yeah. Someone would
24 propose a change in statute to raise that
25 exclusion. You could do it, you could raise

1 the exclusion generally for life insurance --
2 cash-surrender value of life insurance. You
3 could do a separate inclusion to do it only
4 for preneed contracts. I mean, those would be
5 options that would be allowed under federal
6 law, and if someone were to propose that in
7 the legislature, we would estimate a cost of
8 what that would be.

9 MR. MEIERHOFFER: Okay.

10 CHAIRMAN: Mike, we'll put you in
11 charge of that committee. Go ahead and tackle
12 that law while we're trying to put this one
13 together. Go ahead.

14 MR. TRIMM: What would happen if the
15 life-insurance policy was, say, \$2,000, and
16 that was given over to the funeral home?
17 Under the present law, what happens to that
18 other \$500 at the time of a funeral?

19 MR. BENTLEY: The other \$500?

20 MR. TRIMM: Out of \$1,500. \$1,500 was
21 excluded.

22 MR. BENTLEY: Oh, no. Well, see, when
23 they use the life insurance to fund the
24 preneed contract, it doesn't matter how -- the
25 \$1,500 no longer applies. They just -- they

1 can use one that has a higher cash value fund
2 their preneed contract.

3 MR. TRIMM: And there would be no
4 problem as far as the Medicaid benefit?

5 MR. BENTLEY: There would be no
6 problem. There would be no problem with that.
7 What they can't do when they're using
8 insurance policy to fund a burial policy, it
9 uses up that \$1,500 exclusion, so they can't
10 have that against a different life-insurance
11 policy. But they could fund their burial plan
12 with something with a \$5,000 cash value or
13 whatever, you know, as long as, you know,
14 you're selling them something of equal value
15 and return, and we usually assume that you are.

16 CHAIRMAN: Charles, I think we've got
17 some limited time here, and I appreciate you
18 running over and taking time out of your
19 schedule today, and you've answered a lot of
20 the questions, and I think that helps, and
21 appreciate it. Sharon, thank you for having
22 him come over.

23 MS. EULER: Certainly. Thank you,
24 Charles.

25 MR. MEIERHOFFER: Thank you, Charles.

1 CHAIRMAN: Rich, did you have an
2 assignment?

3 MR. WEAVER: Homework assignment, too.

4 CHAIRMAN: Yeah.

5 MR. WEAVER: Yeah. I had a brief one.

6 CHAIRMAN: Okay.

7 MR. WEAVER: And, actually, my
8 spokesperson left already, but I contacted the
9 Missouri Bankers Association. I actually have
10 a call in to Missouri Independent Bankers
11 Association on the issue on the independent
12 investment advisor. And I know when I
13 mentioned that last week, I know that some
14 people disagreed with striking that, and I
15 guess our position, what we have the most
16 concern with is the part in 436.031 that
17 allows the seller, basically, to pick the
18 investment advisor. And so, our
19 recommendation, and then Mr. Ratliff is going
20 to survey the trust companies in the state,
21 but their initial recommendation is if you
22 basically took that part out of the statute,
23 then keep it consistent with the -- with
24 Chapter 469.909 on the Prudent Investor Act,
25 it basically puts the responsibility on the

1 trustee can delegate that authority to an
2 investment advisor. But the issue we have
3 with it is if the seller is able to pick that
4 investment advisor, right out of the gate, you
5 have an inherent conflict with that. And so,
6 that would be our recommendation on that
7 issue. And like I said, Mr. Ratliff could
8 maybe come back next week, but he said,
9 initially, in talking with their attorney,
10 they're looking at it from the standpoint that
11 if the trustee is going to be held accountable
12 for the monies, and so, we're saying if we're
13 getting 100 percent in the account, the
14 trustee is accountable because there's also a
15 section of the law that basically kind of
16 absolves the trustee of any problems with the
17 investment advisor. They want to be -- say,
18 if we're accountable, we're responsible for
19 it, we want 100 percent of that
20 responsibility, and then that eliminates a
21 little bit of the finger-pointing that's going
22 on with the problems is who is actually
23 responsible for managing those investments.
24 So, that's what our recommendation would be
25 and, like I said, I'm assuming Bill will

1 attend the meeting next week to give an
2 official response on behalf of the bankers
3 then if you want to hear from him.

4 CHAIRMAN: Anybody have any questions
5 of Rich? All right. Joy, you have a comment?

6 MS. GERSTEIN: Yeah. I will not be at
7 next week's meeting --

8 MS. DUNN: We don't have a meeting
9 next week.

10 MS. GERSTEIN: What's the date?

11 MS. DUNN: August 12th.

12 MS. GERSTEIN: Right. I will not be
13 able to attend the August 12th meeting.

14 (Inaudible.) But I did want to tell you I've
15 enjoyed meeting each and every one of you.
16 I've actually enjoyed working with you. I've
17 learned a lot, and you have been wonderfully
18 patient with me and some of my questions. But
19 I will be still on the Board, so I will be
20 voting on this in the end. They're going to
21 telephone me in, I think. So, I probably
22 won't see anybody until after September 5th.
23 I'll see you in September. Thank you, and
24 thank you again for taking part in this. I
25 look forward to seeing you in September.

1 CHAIRMAN: Thank you, Joy.

2 MR. OTTO: I'm going to -- the door is
3 open, so I can say this and maybe get out.
4 Is one more meeting enough?

5 MS. EULER: That's all we've got.

6 MS. GRINSTON: That's a good point,
7 but I'd like to add something in. We're
8 getting ready to give out handouts of what --
9 of the draft incorporating a lot of your
10 comments that I've gotten so far. What we
11 really need to do now is put the language on
12 paper and work out the language on paper. I
13 think we've gotten the concepts hammered out.
14 We need to make sure the language is workable
15 and iron out the kinks. What I'd like to do
16 is today is Tuesday. We'd like to get you a
17 draft out of today's discussion by Friday.
18 But I need people to start doing edits on or
19 comments on the draft that you guys are going
20 to have today, which we can send an electronic
21 copy to you, as well. The draft we have
22 today is a colored -- is a draft that's in
23 color just to help your process. If we do
24 that, we have, basically, a week and a half,
25 almost two weeks to really take in comments

1 and to continue to send drafts out to the
2 committee and everything else. I think by
3 next week, we probably will know if we need to
4 meet to do more than that, but I think that
5 our next meeting should probably be, you know,
6 really a hard-working session on the language,
7 and let's see where we get with comments
8 because if the comments are coming in and we
9 can fix some of those things before the
10 meeting and just turn those back out to you as
11 a draft, we may not need another meeting if
12 all we need to do is look at the language to
13 make sure it matches up.

14 MR. MEIERHOFFER: Two comments. One
15 is I asked for an address -- and e-mail
16 address of everybody here, and I think the
17 response --

18 MS. DUNN: I know, Mike, and I have to
19 get permission since we have licensees --

20 MR. MEIERHOFFER: Well, actually, we
21 checked off on that, believe it or not, on all
22 that --

23 MS. DUNN: Yeah. Some folks haven't,
24 so I wanted to wait till this meeting because
25 I'm under -- when it's licensees, I have to be

1 very careful.

2 MR. MEIERHOFFER: Oh, I understand. I
3 was trying to clear this for you so that if --

4 MS. DUNN: Okay. That's great.

5 MR. MEIERHOFFER: -- we can get that,
6 that would help us communicate. And then,
7 secondly, I did communicate some comments, and
8 I don't know --

9 MS. EULER: They're in here.

10 MR. MEIERHOFFER: Has that been --
11 okay. Okay.

12 MS. GRINSTON: They're in the draft.
13 For most of the comments, you're going to see
14 the name of the person who made the comments.
15 Some stuff is just cleanup from the office or
16 from the Division. One of the things that did
17 come up, and I'll just say this very quickly,
18 is, you know, with the fee language that you
19 looked at, there was language that said, you
20 know, shall pay a fee of blank dollars or an
21 amount established by the Board by rule. Just
22 to let you know why it's in there, because we
23 had a couple of people suggest that that be
24 amended. If the legislation passes and takes
25 effect August 2009, the Board won't be able to

1 do a rule and get a rule in place to set a
2 fee until probably mid, late, or somewhere in
3 2010. And so, what will happen is for the
4 2009 renewal period, since there is nothing in
5 statute, we wouldn't be able to renew anybody
6 on the preneed side because we can't assess a
7 fee, and so, we'd really have almost possibly
8 a year of us not having any fee in statute.
9 And so, that's the reason why the
10 recommendation is that we have something just
11 to give the Board time enough to make a rule
12 and hold it in there. The numbers that are
13 there are not solid. They're really
14 placeholders right now. I think there's a
15 blank there. I don't think there is any
16 number there. And so, that's just an FYI.
17 For those people who made those comments, that
18 was screened out. That's the reason why we
19 left that in there because we needed to make
20 sure something was in place so we could renew
21 everybody in '09.

22 CHAIRMAN: Sharon?

23 MS. EULER: I would like to make note
24 that the comments that have my name next to
25 them, I made for the help of the Board

1 drafting, and they are not the position of the
2 office of the attorney general, they are
3 simply my editing comments to assist with the
4 Board so I would just like to clarify that.

5 MS. GRINSTON: And all of the comments
6 are open to you all for review and everything
7 else. But if you all could please -- you all
8 have Connie's e-mail address. As your
9 comments come in, when we send out a draft,
10 we'll set a deadline for comments. If you
11 guys could please do that, and we'll just keep
12 incorporating those through. If you see a
13 deletion that you don't like, let me know you
14 don't like the deletion, and we'll work
15 through it so that the next time you look at
16 it, we'll get a draft that is a little closer
17 to what you suggested.

18 MS. EULER: And there's no meeting
19 next week.

20 MS. GRINSTON: I believe that's so.

21 CHAIRMAN: That's right.

22 MS. GRINSTON: Unless you want to come
23 and meet with the real estate appraisers, and
24 I don't think you want to do that.

25 CHAIRMAN: Folks, is there anybody on

1 the panel or in the room that doesn't want to
2 share their e-mail address with Mike?

3 MR. MEIERHOFFER: Not necessarily with
4 me. Anybody. Anybody.

5 CHAIRMAN: I mean, does everybody
6 understand? I mean, it's all right to share
7 your addresses with everybody? Okay. The
8 next meeting is August 12th, here, at 9:30,
9 and casual dress.

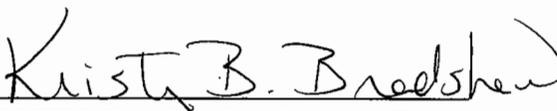
10 MS. COLLINS: More casual than what we
11 have on?

12 CHAIRMAN: Yeah. Bathing suits,
13 whatever you want to wear. It's going to be
14 hot. It's going to be 100 degrees on August
15 12th. Anyway, guys, thank you all. You're
16 just -- you're a tremendous group of people.
17 It's been a really good day. I mean, it
18 seems like we're working a slow pace, but
19 we've had some great conversations and I
20 appreciate each and every one of you. So,
21 thank you. Have a safe trip home. Meeting
22 adjourned.

23 (Off the record)

I, Kristy B. Bradshaw, a Certified Court Reporter in the State of Missouri, do hereby certify that the foregoing transcript constitutes a full, true and correct record of said proceedings that were held on July 29, 2008; that said proceedings were recorded by me and afterwards transcribed under my direct supervision.

Given at my office this 5th day of September 2008.


KRISTY B. BRADSHAW, CCR

**Funeral Consumer Alliance - FCA
Presentation Missouri Preneed 2008**



**Funeral
Consumers**
ALLIANCE

33 Patchen Road
South Burlington, VT 05403
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800-765-0107

A federation of nonprofit funeral information societies dedicated to protecting a consumer's right to choose meaningful, dignified, and affordable funerals

Proposed Amendments to Missouri Statutes, Chapter 436, Regarding Prepaid Funerals and Burials

Submitted by Funeral Consumers Alliance, Inc., and Funeral Consumers Alliance of Greater Kansas City

July 24, 2008

To the members of the preneed review committee:

It's clear from the financial crises affecting prepaid funeral trust funds that Missouri laws need to change. Both funeral consumers and funeral homes are at great financial risk, largely because of Missouri's inadequate laws that permit and encourage financial chicanery.

Funeral Consumers Alliance is not alone in believing that the only acceptable standard is 100 percent deposit of consumers' prepaid money, interest accrual, and complete portability/refundability without penalty. **The National Funeral Directors' Association** - the largest funeral home association of its kind - recognizes nothing less is acceptable. Writing in the March, 2008 issue of NFDA's *The Director*, NFDA Board member Robert T. Rosson, Jr., wrote:

One fundamental principle in preneed operations is the recognition that preneed funds are not under *any* circumstances *our* money. We simply cannot fund any of our business opportunities with preneed money. It is the consumers' money, and it remains theirs until we fulfill our obligation of service. In all cases, 100 percent of preneed funds should be deposited into legal trusts, and no principal or interest should be withdrawn until after the contracted funeral services have been performed.

We offer the following minimum suggestions for improving state laws, and we'd be happy to make available detailed suggestions for rewriting the statutes if requested.

- Require 100 percent deposit of a customer's prepaid funeral money in a regulated financial institution.
- Require funeral providers to refund 100 percent, with interest, if the consumer wishes to cancel the contract before death.
- Require funeral providers to transfer the consumer's investment - principal and interest - to a new provider of the consumer's choice on request.
- Cap any administrative fees, or fees of any sort, at $\frac{3}{4}$ of 1 percent, as New York state does. Missouri's current law allows providers to skim an unconscionable 20 percent from the customer's account, in addition to **all the interest annually**. This is not only grossly unfair to the consumer, it encourages providers to indulge in short term greed that puts the financial security of the business and the consumer at great future risk.
- Prohibit funeral providers from converting a customer's trust-funded funeral to an insurance policy under any circumstances.
- Require funeral providers to send customers an annual 1-page statement showing how much money is in the customer's trust account and how much interest has accrued.
- Require funeral providers to submit to the state annually a copy of each preneed contract sold.
- Require the state to audit a reasonable sample of funeral providers annually to determine compliance with trusting laws.
- Lift unjustifiable restrictions on public access to information on government regulation and licensing of prepaid funeral sellers. Both current and proposed laws almost totally deny the public access to complaint records, the legal standing of preneed sellers, and other information vital to consumers and public interest groups.

Missouri Preneed Law: A Financial House of Cards

This example shows why Missouri's laws allowing funeral homes to skim 20 percent from a consumer's prepayment, plus all the interest annually, is bad for business and consumers.

Mrs. Smith decides to prepay Johnson Funeral Home \$6,000 (today's retail price) toward her eventual funeral. Johnson funeral home deducts its 20-percent commission, leaving \$4,800 to be placed in trust. Assume Mrs. Smith's trust fund earns 4 percent interest every year (a generous assumption by today's standards), and that Johnson Funeral Home deducts the interest every year as allowed by law. Also assume Johnson Funeral Home's prices increase by an average of 4.72 percent each year (calculated from Bureau of Labor Statistics reports from 2000 - 2007). Assume Mrs. Smith lives for 7 seven years, the average length of a preneed contract.

Year	Amount in Trust	Interest Skimmed	Johnson's Prices
2008	\$4,800	0	\$6,000
2009	\$4,800	\$192	\$6,283
2010	\$4,800	\$192	\$6,580
2011	\$4,800	\$192	\$6,891
2012	\$4,800	\$192	\$7,216
2013	\$4,800	\$192	\$7,557
2014	\$4,800	\$192	\$7,914

TOTAL Interest skimmed over seven years: **\$1,152**

TOTAL in trust at Mrs. Smith's death: **\$4,800**

RETAIL price at Johnson Funeral Home at Mrs. Smith's death: **\$7,914**

DEFICIT: \$3,114

Even if all the interest had accrued over the life of the contract, there would still have been a \$1,992 shortfall — Missouri's 20 percent initial commission makes it impossible for the trust account to ever fully fund the eventual funeral. The problems Missouri is facing with the NPS meltdown are no surprise — what's shocking is that it's taken this long for the inevitable to occur.

No business can take tomorrow's profit today and expect to service its obligations in the future. As more preneed contracts come due, more funeral homes are either going to be giving away funerals at cost or less, and the unscrupulous providers will resort to illegal tactics to make up for their poor business choices.

- Survivors will likely be pressured to buy more goods and services to make up for the shortfall - so much for "taking care of everything" in advance.
- We'll hear more reports of from families that cheaper caskets will be substituted than what were paid for.
- Financially desperate and unscrupulous funeral homes will consider refusing to abide by the contracts altogether and demanding out of pocket payment from survivors.

These are the obvious and inevitable consequences of the shortsighted business practices Missouri law permits. This must change now, unless the state wants to spend its time and taxpayer dollars in perpetuity cleaning up the fallout from defrauded families and bankrupt funeral homes. Most importantly — claims that "we won't be able to stay in business if we can't take a cut up-front" are **red herrings**. The chart on the following page shows that's not true - **29 states require 100 percent trusting, and their funeral homes aren't going out of business**. Missouri funeral homes don't have "special circumstances." They're merely used to doing business in an irresponsible way because of the state's permissive laws — the **sixth worst preneed laws in the country**.

Where Does Missouri Rate Among State Trusting Laws? 6th From the BOTTOM

State	Required Deposit	Who gets the interest?
Alaska	100%	accrues
Arkansas	100%	seller
California	100%	accrues
Connecticut	100%	accrues
Delaware	100%	accrues
Georgia	100%	accrues
Kansas	100%	accrues
Kentucky	100%	accrues
Louisiana	100%	accrues
Maine	100%	accrues
Maryland	100%	accrues
Massachusetts	100%	seller if fixed price funeral
Michigan	100%	accrues
Minnesota	100%	accrues
Montana	100%	accrues
New Hampshire	100%	accrues
New Jersey	100%	accrues
New York	100%	accrues
Pennsylvania	100%	accrues
Rhode Island	100%	accrues
South Carolina	100%	accrues
Tennessee	100%	accrues
Utah	100%	accrues
Vermont	100%	accrues
Wisconsin	100%	accrues
Wyoming	100%	seller
Indiana	100%	accrues
North Dakota	100%	accrues
Ohio	100%	accrues
Illinois	95%	accrues
North Carolina	90%	accrues
Oklahoma	90%	accrues
Texas	90%	seller
Washington	90%	accrues
West Virginia	90%	accrues
Virginia	90% if guaranteed 100% if not	accrues
Oregon	90% if guaranteed 100% if not*	accrues
New Mexico	Insurance only	
DC	No laws	
Arizona	85%	seller if fixed price funeral
Idaho	85%	accrues
Mississippi	85%	accrues

South Dakota	85% if guaranteed, 100% if not	accrues
Nebraska	85%	seller, if more than inflation
Iowa	80%	seller half
Missouri	80%	seller
Colorado	75%	seller
Nevada	75%	seller, 75% of income
Alabama	75% svcs.	accrues
Hawaii	70%	seller
Florida	70% svcs	seller

END

MFDEA Preneed Concept

MFDEA PRENEED CONCEPT

The consumer is given an option at start of process. Does the consumer wish to be able to change funeral homes at will with no penalty? Does the consumer wish to be able to cancel at any time with no penalty? Does the consumer want an arrangement where it is truly *their* money being put away *for them* and all of the principle and income belongs to them?

If so then the consumer can chose Option "A"

OPTION A

An account would be set up at a bank in the consumer's name Payable On Death to the Funeral Home. The consumer would be able to change the POD at any time. The consumer would be able to withdraw the funds at any time and would receive all of the funds plus all of the income. The consumer would also be responsible for paying any taxes on the income. A provision would have to be included (as it is now for joint accounts) that allows the fund to be made irrevocable. Upon death the funds would be paid to the funeral home

HOWEVER THERE WOULD BE NO "GURANTEED" CONTRACT UNDER THIS OPTION. The consumer may wish to pick out the funeral they would wish to have and fill out a goods and services statement, but just as with current non-guaranteed trusts or joint accounts, at-need prices would be charged at the time of death. If the funeral home works with and helps set up such an account for the consumer, it should be allowed to charge a small fee for this service that would be capped via rulemaking by the State Board.

If the consumer wishes to have a guaranteed contract where the prices are locked-in, does not want to have to pay taxes on the income or otherwise does not wish to own or control the funds, then Option "B" would be available.

OPTION B

This would be a Trust similar to what is currently in Chapter 436. The Seller would have the right to retain 20% (or perhaps 10% if that is the consensus) and would have the right to all income from the Trust. If the consumer cancels or wishes to change funeral homes, the consumer would get back 80 or 90% and would not be entitled to the interest/income. However, in this case, the contract could be "guaranteed" with locked-in prices.

The key is that it is made very clear to the consumer that, with Option B, what the consumer is doing is BUYING AND PREPAYING FOR A FUNERAL AT THIS FUNERAL HOME and that the money is *not* being placed into trust for the consumer but being invested to cover the seller's and provider's expenses and the risk of the guarantee. Very clear disclosures drafted by the State Board would make it clear to the consumer what the arrangement consists of and what happens if there is a cancellation or change in funeral home. The consumer would have to sign the disclosure statement.

It would not seem necessary with this arrangement that the current "Joint Account" provisions of 436 be retained, but that may be an item for discussion.

**Department of Insurance, Financial
Institutions and Professional
Registration - Preneed Trust Legislation**

Preneed Trust Legislation

1. “Random” or comprehensive audits are often ineffective. Just expanding the frequency of examinations without better standards will not prevent the problems. The law should allow random examinations and require “cause” for audits with “cause” based upon reasonable suspicion of either a violation of 436 or imprudent or unsound investment of trust assets. It should not require a complaint and may be based upon activity in the Trust that appears to be detrimental to the preneed contract holders or contrary to their interests.
2. Require Trustee to file annual report with a listing of assets (a Trust balance sheet.) If the preneed contract deposits (currently 80% of preneed contract sale receipts – which should be raised to 85- 90%) exceed \$3,000,000, the Trustee should be required to file a certified annual report.
3. Require Trustee (or trust officer) to attest to “market value” in the annual report.
4. Define “market value” – a valuation principle that includes transferability of ownership – “market” means you can sell it.
5. Require Trustee to attest that it controls the assets in annual report – It is not problematic for the Trustee to engage the services of an investment advisor, but Trustee must maintain control of assets and the statute should not contain language that might be interpreted to absolve the Trustee of his fiduciary duties or responsibility to attest to market value of trust assets. **This will require deleting the last sentence in §436.031.2 -- “The trustee shall be relieved of all liability regarding investment decisions made by such qualified investment advisor.”**

Amended Section § 436.005 Definitions

- (4) “Market value”, a fair market value,
- (a) As to cash and credit, the amounts thereof;
 - (b) As to a security as of any date, the price for the security in that date obtained from a generally recognized source or the most recent quotation from a source, or to the extent no generally recognized source exists, the price to sell an asset in an orderly transaction between unrelated market participants at the measurement date; and
 - (c) As to any other asset, the price to sell an asset in an orderly transaction between unrelated market participants at the measurement date consistent with Statements of Financial Accounting Standards.

Amended Section

§ 436.027

Designate the current language as 1. and add a second paragraph:

1. 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 fifteen 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.

2. All amounts paid by purchasers to the seller under the terms of a preneed contract, with the exception of those funds permitted to be retained as set forth in subsection 1, shall, within thirty days after collection, be:

(1) deposited in a trust account maintained at a financial institution designated by the seller in section 436.021.2(e) and as subject to the provisions of sections 436.031 and 436.032;

(2) deposited in an account in the joint names of the provider and purchaser pursuant to section 436.053; or

(3) used to purchase from an insurance company with no affiliation to the seller a whole life insurance contract for the face amount of the preneed contract, which names the purchaser as the owner of the insurance contract, and with a cash surrender value of no less than eighty-five percent of the amounts paid by the purchaser.

3. It is unlawful for the seller to use, dispose or transfer the amounts paid by purchasers for any purpose other than as authorized in this section.

New Section

§ 436.032

1. Every trustee of a preneed trust that has accepted deposits made to it by the seller of preneed contracts shall before March 31st of each calendar year file with the board the following:

(1) A signed and notarized statement by the trustee, or its officer, attesting to the market value of assets in the preneed trust as of December 31st of the preceding calendar year;

(2) A statement of income and changes in financial position of the preneed trust for the preceding calendar year; and

(3) A signed and notarized statement by the trustee, or its officer, attesting that the trustee during the preceding calendar year has:

(a) administered the trust solely in the interests of the purchasers and beneficiaries;

(b) taken all reasonable steps to control all assets derived from deposits made to it by the seller;

(c) prudently invested and protected all property in the preneed trust in compliance with the duties and obligations of a trustee and

in furtherance of the purposes of sections 436.005 to 436.072, RSMo;

(d) distributed interest, dividends and capital gains, net of losses, from the preneed trust only when prudent under the limitations of section 436.031.3, RSMo; and

(e) not, in connection with the investment of property in the trust, received any advice or been influenced, directly or indirectly, by the seller, any agent of the seller, or any other person with whom the seller has a prior business relationship or has paid or promised to pay any money or other benefit for any purpose.

2. Every trustee that has accepted more than three million dollars in deposits from the seller shall file a certified balance sheet of the trust as of December 31st of the preceding calendar year.

3. Whenever it shall appear to the director of finance that any trustee under this chapter has engaged in any violation of this section, or any director, officer, employee, agent, or other person participating in the conduct of the affairs of the trustee has participated in any violation of this section, the director of finance may initiate an action and issue orders to cease and desist and all other relief pursuant to the provisions of sections 361.260 through 361.290, RSMo.

4. It is unlawful for any seller to continue to sell preneed contracts in this state, if a financial institution designated as trustee by the seller under section 436.021.2(e) has failed to file the annual statements with the board as required by this section.

**New Section
§ 436.057**

1. The board may conduct an examination of any seller or any preneed trust in this state as often as the board in its discretion deems appropriate.

2. Whenever it shall appear to the board that a seller or trustee has failed to comply with any provision of sections 436.027, 436.031 or 436.032, or the market value of assets in trust is less than equal to ninety percent of the total amounts paid by the purchasers of the preneed contracts, the board in its discretion may order an audit of the preneed trust, and such decision by the board does not require a complaint and may be based upon detected activity in a preneed trust that appears to be detrimental to the purchasers or beneficiaries or contrary to their interests.

3. When making an examination or audit under this section, the board may appoint and retain appraisers, independent certified public accountants or other professionals and specialists as examiners, the cost of which shall be borne directly by the seller.

4. The examiner appointed by the board may during normal business hours examine, audit and inspect any and all books and records maintained by a seller or any preneed trust transacting business in this state.

5. It is unlawful during an examination ordered by the board for any person to deny an examiner appointed by the board reasonable access to any and all books and records maintained by the seller or any preneed trust transacting business in this state.

Schnieders, Pam

From: Josh [josh@funerals.org]
Sent: Sunday, July 27, 2008 11:32 PM
To: Josh; Meadows, Tim
Cc: Nancy Petersen; Steve Nicely; Bev McGill; ncollins@aarp.org; Clarkston, Connie; PR.Embalm; wastal@swbell.net
Subject: Funeral Consumers Alliance Comments on 436 Draft
Attachments: 7-23 436 Draft - Comments from Funeral Consumers Alliance.doc

To all on the 436 Review Committee:

I appreciate the time and effort all of you have put into this project, and especially the gracious welcome Rep. Meadows and the State Board extended to me.

I'm attaching my comments on the draft of 436 which Becky Dunn emailed me after the July 24, 2008 meeting. I hope they're clear, but if there's any confusion, please let me know.

Thank you for your hard work - I can see what a bear it is to compile so many suggestions and so much statutory language.

Sincerely,

Joshua Slocum
Executive Director
Funeral Consumers Alliance
802-865-8300
www.funerals.org

Deleted:

1 ~~Comments in blue and strikethroughs from Josh Slocum, exec. director, Funeral~~

2 Consumers Alliance, Inc. 800-765-0107, www.funerals.org, josh@funerals.org. Submitted

3 July 28, 2008

4 Notes from Slocum:

5 * Chapter 436, as originally drafted, is verbose and full of excessive legalese that only confuses
6 everyone. The statute really should be rewritten from scratch, with an eye to combining the main
7 consumer protections desired with economical language and construction. My notes below
8 highlight the changes I'd make to 436, but I'd vastly prefer to see it rewritten entirely. Please
9 refer to my 4-page handout on MO preneed law, distributed July 24, 2008, for a bulleted list of
10 provisions FCA believes MO preneed law should contain.

11
12 * I see no clear language in this draft requiring the seller to deposit 100 percent of a consumer's
13 prepayments with regard to a trust-funded account. If I've missed this, I apologize - this
14 electronic document is significantly different from the paper copy I received on July 24. If I
15 have not, it should be added. I also see no clear language describing the consumer's right to
16 transfer a preneed contract (especially an irrevocable one) to another seller without penalty. This
17 should also be added.

Deleted:

18 **PROPOSED DRAFT**

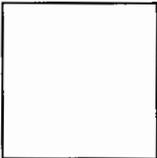
19
20 333.700. The provisions of sections 333.700 to 333.900 shall be referenced as the
21 "Missouri Preneed Funeral Contract Act."

22 333.705. As used in sections 333.700 to 333.900, unless the context otherwise requires,
23 the following terms shall mean:

24 (1) "Beneficiary", the individual who is to be the subject of the disposition or who will
25 receive funeral services, facilities or merchandise described in a preneed contract;

26 (2) "Board," the Missouri State Board of Embalmers and Funeral Directors;

27 (3) "Division", the division of professional registration of the department of insurance,
28 financial institutions and professional registration;



1 (4) "Funeral merchandise", caskets, grave vaults, or receptacles, and other personal
2 property incidental to a funeral or burial service, and such term shall also include grave lots,
3 grave space, grave markers, monuments, tombstones, crypts, niches or mausoleums;

4 (5) "Insurance-Funded" Preneed Contract- A preneed contract which is designated to be
5 funded by payments or proceeds from an insurance policy;

6 (6) "Joint-Account Funded" Preneed Contract- A preneed contract which designates that
7 payments for the preneed contract made by or on behalf of the purchaser will be deposited and
8 maintained in a joint account;

9 (7) "Person", any individual, partnership, corporation, cooperative, association, or other
10 entity;

11 (8) "Preneed contract", any contract or other arrangement which provides for the final
12 disposition of a dead human body, or for funeral or burial services or facilities, or for funeral
13 merchandise, where such disposition, services, facilities or merchandise are not immediately
14 required, including, but not limited to, an agreement providing for a membership fee or any other
15 fee having as its purpose the furnishing of burial or funeral services or merchandise at a discount;

16 (9) "Preneed ~~Counselor~~," any person authorized to sell a preneed contract on behalf of a
17 preneed seller; The term counselor is an inappropriate euphemism the state should not codify.
18 "Sales agent" would be a more honest term.

19 (10) "Preneed trust", a trust established by a seller, as grantor, to receive deposits of,
20 administer, and disburse payments received under preneed contracts by such seller, together with
21 income thereon;

22 (11) "Provider", the person designated to provide the disposition or funeral services,
23 facilities, or merchandise described in a preneed contract;

1 (12) "Purchaser", the person who is obligated to pay under a preneed contract;

2 (13) "Seller", the person who sells a preneed contract to a purchaser and who is obligated
3 to collect and administer all payments made under such preneed contract;

4 (14) "Trustee", the trustee of a preneed trust, including successor trustees.

5 (15) "Trust-Funded" Preneed Contract- A preneed contract which provides that payments
6 for the preneed contract shall be deposited and maintained in trust.

7 **APPLICABILITY**

8 333.710.1 The provisions of sections 333.700 to 333.900 shall not apply to:

9 (1) Any contract or other arrangement sold by a cemetery operator for which payments
10 received by or on behalf of the purchaser are required to be placed in an endowed care fund or
11 for which a deposit into a segregated account is required under Chapter 214, RSMo, provided
12 that a cemetery operator shall comply with sections 333.700 to 333.900 if the contract or
13 arrangement sold by the operator includes services that may only be provided by a licensed
14 funeral director or embalmer;

15 (2) A contract of insurance, provided that sections 333.700 to 333.900 shall apply to any
16 preneed contract sold with a preneed contract.

17 **PRENEED PROVIDER LICENSING**

18 333.720. 1. Except as provided herein, the provider designated in a preneed contract shall
19 be obligated to provide the funeral or burial services, facilities, or merchandise as described in
20 the preneed contract.

21 2. No person shall be designated as a provider, or agree to perform the obligations of
22 a provider under a preneed contract unless, at the time of such agreement or designation, such
23 person is licensed as a preneed provider by the Board. A preneed provider shall be authorized

1 and registered with the Missouri Secretary of State to conduct business in Missouri and shall be
2 licensed as a funeral establishment by the Board. A funeral establishment license shall not be
3 required if the person is the owner of real estate situated in Missouri which has been formally
4 dedicated for the burial of dead human bodies and the contract only provides for the delivery of
5 one or more grave vaults and is in compliance with the provisions of chapter 214, RSMo;

6 3. An applicant for a preneed provider license shall:

7 (1) File an application on a form promulgated by the Board and pay a licensing fee of
8 _____ dollars or in an amount promulgated by the Board by rule;

9 (2) Identify the name and address of a custodian of records responsible for maintaining
10 the books and records of the provider relating to preneed contracts;

11 (3) Identify the name and address of each seller authorized by the provider to sell
12 preneed contracts in which the provider is designated or obligated as the provider;

13 (4) File with the state board a written consent authorizing the state board to inspect or
14 order an investigation, examination or audit of the provider's books and records which contain
15 information concerning preneed contracts sold for or on behalf of a preneed seller or in which the
16 applicant is named as a preneed provider;

17 4. Each preneed provider shall apply to renew his or her license on or before October
18 thirty-first of each year or a date established by the Board by rule. A license which has not been
19 renewed prior to the renewal date shall expire. Applicants for renewal shall:

20 (1) File an application for renewal on a form promulgated by the Board by rule:

21 (2) Pay a renewal fee of _____ dollars or in an amount established by the Board by
22 rule;

23 (3) File an annual report with the state board which shall contain:

1 (a) The name and address of a custodian of records responsible for maintaining
2 the books and records of the provider relating to preneed contracts;

3 (b) The business name or names of the provider and all addresses from which it
4 engages in the practice of its business;

5 (c) The name and address of each seller with whom it has entered into a written
6 agreement since last filing an annual report with the Board authorizing the seller to designate or
7 obligate the licensee as the provider in a preneed contract, and;

8 (d) Any information required by the Board by rule.

9 5. Any license not renewed as provided by this section shall become void. A
10 licensee who fails to apply for renewal may apply for reinstatement by satisfying the
11 requirements of section 4 of this section and paying a delinquent fee as promulgated by the
12 Board by rule.

13 **PRENEED SELLER LICENSING**

14 333.725. 1. The preneed seller designated in a preneed contract shall be obligated to
15 administer all payments made by or on behalf of a purchaser of a preneed contract and ensure the
16 preneed contract is managed and fulfilled in compliance with sections 333.700 to sections
17 333.900 and as provided by the contract.

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

22 3. An applicant for a preneed seller license shall:

- 1 (1) File an application on a form promulgated by the Board and pay a licensing fee of
2 _____ dollars or in an amount promulgated by the Board by rule;
- 3 (2) Be an individual resident of Missouri of eighteen years of age or a business entity
4 duly registered with the Missouri Secretary of State to transact business in Missouri;
- 5 (3) Identify the name and address of a custodian of records responsible for maintaining
6 the books and records of the seller relating to preneed contracts;
- 7 (4) Identify the name and address of each licensed provider that has authorized the seller
8 to designate the licensee as a provider under a preneed contract;
- 9 (5) Has established, as grantor, a preneed trust or an agreement to utilize a preneed trust
10 with terms consistent with sections 333.000 to 333.071. A trust shall not be required if the
11 applicant certifies to the Board that the preneed seller will only sell insurance-funded or joint-
12 account funded preneed contracts, and;
- 13 (6) Identify the name and address of a trustee or, or if applicable, the financial institution
14 where any preneed trust or joint accounts will be maintained, and;
- 15 (7) File with the state board a written consent authorizing the state board to inspect or
16 order an investigation, examination or audit of the seller's books and records which contain
17 information concerning preneed contracts sold by or on behalf of the seller.
- 18 (8) Pass a written examination administered by the state board which tests the seller's
19 knowledge of Missouri statutes relating to preneed sales, Missouri funeral law and regulations,
20 and the Federal Trade Commission's Funeral Rule. Such test shall be written with an emphasis
21 on determining the applicant's knowledge of consumers' rights to determine the manner and cost
22 of a disposition under state law and the Funeral Rule, and consumers rights' to transfer or cancel
23 prepaid agreements.

1 4. Each preneed seller shall apply to renew his or her license on or before October thirty-
2 first of each year or a date established by the Board by rule. A license which has not been
3 renewed prior to the renewal date shall expire. Applicants for renewal shall:

4 (1) File an application for renewal on a form promulgated by the Board by rule :

5 (2) Pay a renewal fee of _____ dollars or in an amount established by the Board by
6 rule, and;

7 (3) File annually with the state board a signed and notarized annual report as provided by
8 sections 333.700 to 333.900 on forms provided by the state board.

9 5. Any license not renewed as provided by this section shall become void. A
10 licensee who fails to apply for renewal may apply for reinstatement by satisfying the
11 requirements of section 4 of this section and paying a delinquent fee as promulgated by the
12 Board by rule.

13 **PRENEED COUNSELORS SALES AGENTS (replace "counselor" throughout)**

14 333.730.1 Any person employed or otherwise authorized to sell, negotiate or solicit the
15 sale of preneed contracts for or on behalf of a preneed seller shall be registered with the Board as
16 a preneed counselor. The Board shall maintain a registry of all preneed counselors registered
17 with the Board. The registry shall be deemed an open record and made available on the Board
18 website.

19 2. An applicant for a preneed counselor registration shall:

20 (1) File an application on a form promulgated by the Board and pay a registration fee of
21 _____ dollars or in an amount promulgated by the Board by rule which shall not exceed
22 _____ percent of the application fee established by the Board pursuant to Chapter 333 for a
23 funeral director license;

1 (2) Be eighteen years of age, and;

2 (3) Provide the name and address of each seller for whom the applicant is authorized to
3 sell, negotiate or solicit the sale of preneed contracts for or on behalf of the seller.

4 (4) Pass a written examination administered by the state board which tests the applicant's
5 knowledge of Missouri statutes relating to preneed sales, Missouri funeral law and regulations,
6 and the Federal Trade Commission's Funeral Rule. Such test shall be written with an emphasis
7 on determining the applicant's knowledge of consumers' rights to determine the manner and cost
8 of a disposition under state law and the Funeral Rule, and consumers rights' to transfer or cancel
9 prepaid agreements.

10 4. Each preneed counselor shall apply to renew his or her registration on or before
11 October thirty-first of each year or a date established by rule of the Board. A registration which
12 has not been renewed prior to the renewal date shall expire. Applicants for renewal shall:

13 (1) File an application for renewal on a form promulgated by the Board by rule;

14 (2) Pay a renewal fee of _____ dollars or in an amount promulgated by the Board by
15 rule which shall not exceed _____ percent of the application fee established by the Board
16 pursuant to Chapter 333 for a funeral director license, and;

17 (3) Provide the name and address of each seller for whom the counselor is authorized to
18 sell, negotiate or solicit the sale of preneed contracts for or on behalf of the seller.

19 5. Any registration not renewed as provided by this section shall become void and
20 the registrant shall be immediately removed from the preneed counselor registry by the Board. A
21 registrant who fails to apply for renewal may apply for reinstatement by satisfying the
22 requirements of section 4 of this section and paying a delinquent fee as promulgated by the
23 Board.

1 6. Notwithstanding any other provision of law, the Board may remove a preneed
2 counselor from the registry if the counselor has been adjudicated and found guilty, or entered a
3 plea of guilty or nolo contendere, in a criminal prosecution under the laws of any state or of the
4 United States, for any offense reasonably related to the qualifications, functions or duties of any
5 profession licensed or regulated under sections 333.700 to 333.900, for any offense involving the
6 misappropriation or theft of, for any offense an essential element of which is fraud, dishonesty or
7 an act of violence, or for any offense involving moral turpitude, whether or not sentence is
8 imposed.

9 7. A preneed counselor who has been removed from the registry by the Board may
10 appeal the removal to the administrative hearing commission. Notice of such appeal must be
11 received by the administrative hearing commission within thirty days of mailing, by certified
12 mail, the notice of removal. Failure of a preneed counselor registrant to notify the administrative
13 hearing commission of his or her intent to appeal waives all rights to appeal the removal. Upon
14 notice of such person's intent to appeal, a hearing shall be held before the administrative hearing
15 commission in accordance with Chapter 621, RSMo.

16 8. No person shall sell, negotiate or solicit the sale of any preneed on behalf of a
17 preneed seller unless registered as a preneed counselor as required by this section.

18 **SELLERS & PROVIDERS**

19 333.738. 1. No seller or preneed counselor shall designate a person as a provider in a
20 preneed contract unless the provider has a written contractual agreement with the preneed seller.
21 Any seller who designates a person as a provider in a preneed contract without a contractual
22 relationship with such person is in violation of the provisions of sections 333.700 to 333.900.

23 2. The written agreement required by this section shall include:

1 (1) Consent from the provider authorizing the seller to designate or obligate the
2 provider under a preneed contract;

3 (2) Procedures for tracking preneed contract funds or payments received by the
4 provider and for remitting such funds or payments to the seller, including, the time period
5 authorized by the seller for the remittance of funds and payments, and;

6 (3) The signatures of the seller and the provider or their authorized representatives
7 and the date such signature was obtained.

8 3. A provider shall notify the Board within fifteen days of authorizing or otherwise
9 agreeing to allow a seller to designate him or her as the provider under any preneed contract.

10 4. Any person who knowingly permits a seller to sell a preneed contract designating
11 him or her as the provider shall be obligated to provide the disposition or the funeral or burial
12 facilities, merchandise and services described in the preneed contract for the beneficiary. If a
13 provider has knowledge that a seller is designating him or her as the provider under any preneed
14 contract and fails within thirty days after first obtaining such knowledge to take action to prevent
15 the seller from so designating him or her as the provider and to inform the Board, the provider
16 shall be deemed to have consented to such designation and shall be obligated under the contract
17 as provided herein. Notice to the Board as required by this subsection shall be provided within
18 thirty days of the provider having knowledge that a seller is designating him or her as the
19 provider under a preneed contract without authorization.

20 5. The provisions of subsection 4 and 5 of this section shall not be construed to
21 exempt any seller or provider from having a written agreement as required by this section.
22 Failure to comply with the provisions of this section shall be cause for discipline of a preneed
23 license or of any license issued by the Board under sections 333.000 to 333.700, RSMo.

1 (10) Include the name, address and phone number of any insurance company issuing an
2 insurance policy used to fund the preneed contract;

3 (11) Identify the type of insurance that will be used to fund the insurance policy,
4 including, the number of such policy, if available;

5 (12) Explain how interest will be distributed and designate the amount of administrative
6 expenses that will be retained by the seller as authorized by this section;

7 (13) Identify any other type of expenses or taxes that may be deducted from preneed
8 funds, and the amount of any such expense if known by the seller at the time of the sale;

9 (14) Include the name and signature of the purchaser, the preneed counselor responsible
10 for the sale of, if any, and of the seller, or its duly authorized representative;

11 (15) Include the signature of the preneed provider if the preneed contract is sold to the
12 purchaser by the provider.

13 (16) Include a disclosure statement immediately under the signature of the purchaser
14 which states that the preneed seller and provider identified in the contract are licensed by the
15 Missouri State Board of Embalmers and Funeral Directors and that complaints against a preneed
16 provider, seller or counselor may be filed with the Missouri State Board of Embalmers and
17 Funeral Directors. The statement required by this section shall also include the current address
18 and phone number for the Board, and;

19 (14) Comply with the provisions of section 333.700 to 333.900 or any rule promulgated
20 pursuant thereto.

21 2. A preneed contract shall be voidable and unenforceable at the option of the purchaser,
22 or the purchaser's legal representative, if the contract is not in compliance with this section, not

1 issued by a preneed seller duly licensed by the Board or if the purchaser has not received a copy
2 of the preneed contract signed by the seller.

3 3. If a preneed contract does not comply with the provisions of sections 333.700 to
4 333.900, all payments made under such contract shall be recoverable by the purchaser, or the
5 purchaser's legal representative, from the contract seller or other payee thereof, together with
6 interest at the rate of ten percent per annum and all reasonable costs of collection, including
7 attorneys' fees.

8 4. ~~After the seller retains any amount authorized by sections 333.700 to 333.900,~~ all
9 funds paid by or on behalf of the purchaser as payment for a preneed contract shall be placed in
10 trust, in a joint account or shall be used to purchase insurance, as authorized by sections 333.700
11 to 333.900.

12 5. A preneed contract may not be redesignated as a trust-funded, insurance-funded or
13 joint-account funded preneed contract without the consent of the purchaser. A seller, provider, or
14 sales agent may not secure the purchaser's consent without providing the purchaser a written
15 statement explaining in plain language any financial consequences the redesignation may have.
16 These shall include, at a minimum, any reduction in cash surrender value, interest accrual, and
17 fees as provided in this section. The seller, provider, or sales agent must secure the purchaser's
18 signature on such a disclosure statement or the purchaser will not be deemed to have consented
19 to the redesignation.

20 **TRUST FUNDED PRENEED CONTRACTS**

21 333.745.1. A trust-funded preneed contract shall comply with sections 333.700 to
22 333.900 and the specific requirements of sections 333.745 to 333.750.

1 2. The trustee of a preneed trust shall be a state or federally chartered financial
2 institution authorized to exercise trust powers in Missouri. The trustee shall accept all deposits
3 made to it for a preneed contract and shall hold, administer, and distribute such deposits, in trust,
4 as trust principal, pursuant to sections 333.700 to 333.900.

5 3. The financial institution referenced herein may neither control nor be controlled
6 by or under common control with the seller. The term "control" including terms, "controlled by"
7 and "under common control" with, means the possession, direct or indirect, of the power to
8 direct or cause the direction of the management and policies of a person, whether through the
9 ownership of voting securities, by contact other than the power is the result of an official position
10 with or corporate office held otherwise, unless the power is the result of an official position with
11 or corporate office held by the person. Control shall be presumed to exist if any person, directly
12 or indirectly, owns, controls, holds with the power to vote, or holds proxies representing, ten
13 percent or more of the voting securities of any other person. This presumption may be rebutted
14 by a showing to the board and within its sole discretion that control does not in fact exist.

15 4. Payments regarding two or more preneed contracts may be deposited into and
16 commingled in the same preneed trust, so long as the trust's grantor is the seller of all such
17 preneed contracts and the trustee maintains adequate records that individually and separately
18 identify the payments, earnings and distributions for each preneed contract.

19 5. Within a reasonable time after accepting a trusteeship or receiving trust assets, a
20 trustee shall review the trust assets and make and implement decisions concerning the retention
21 and disposition of assets in order to bring the trust portfolio into compliance with the purposes,
22 terms, distribution requirements, and other circumstances of the trust, and with the requirements
23 of sections 333.700 to 333.900.

1 6. All expenses of establishing and administering a preneed trust, including, without
2 limitation, trustee's fees, legal and accounting fees, investment expenses, and taxes, shall be paid
3 or reimbursed directly by the seller of the preneed contracts administered through such trust and
4 shall not be paid from the principal of a preneed trust. (Other states allow the trustee to deduct a
5 small, reasonable fee directly from the trust. Missouri may want to consider allowing this,
6 perhaps $\frac{3}{4}$ of 1 percent.) In investing and managing trust assets, a trustee may only incur costs
7 that are appropriate and reasonable in relation to the assets, the purposes of the trust, and the
8 skills of the trustee.

9 ~~7. The seller of a preneed contract shall be entitled to all income, including, without~~
10 ~~limitation, interest, dividends, and capital gains, and losses generated by the investment of~~
11 ~~preneed trust property regarding such contract, and the trustee of the trust may distribute all~~
12 ~~income, net of losses, to the seller upon the final disposition of the beneficiary or provision of the~~
13 ~~funeral or burial services of facilities or funeral merchandise to or for the benefit of the~~
14 ~~beneficiary.~~—If I read this correctly, this means the seller is entitled to all interest and income
15 under any circumstances, regardless of whether the contract is price-guaranteed. This is highly
16 irregular and unacceptable. It's unfair to the consumer as well as to the actual provider (the
17 funeral home).—Missouri needs to get out of the business of enriching third-party sellers.

18 8. The trustee of a preneed trust shall maintain adequate books and records of all
19 transactions administered through the trust and pertaining to the trust generally. The trustee shall
20 assist the seller who established the trust or its successor in interest in the preparation of the
21 annual report described in section 333.000. The seller shall furnish to each contract purchaser,
22 within fifteen days after receipt of the purchaser's written request, a written statement of all
23 deposits made to such trust regarding such purchaser's contract. The seller (or the provider, if the

1 provider is also the seller) shall submit annually to the purchaser a statement describing the
2 amount of principal in the trust, the interest accrued during the prior year, and the total of
3 principal plus all interest earned over the life of the trust.

4 9. A preneed trust shall terminate when trust principal no longer includes any
5 payments made under any preneed contract, and upon such termination the trustee shall
6 distribute all trust property, including principal and undistributed income, to the seller which
7 established the trust.

8 333.747.1 All property held in a preneed trust, including principal and undistributed
9 income, shall be invested and reinvested by the trustee thereof and shall only be invested and
10 reinvested in investments which have reasonable potential for growth or producing income.

11 2. A trustee shall invest and manage trust assets as a prudent investor would, by
12 considering the purposes, terms, distribution requirements, and other circumstances of the trust.
13 In satisfying this standard, the trustee shall exercise reasonable care, skill, and caution. In no
14 instance shall funds in or belonging to a preneed trust be invested in any term life insurance
15 product. A trustee who has special skills or expertise, or is named trustee in reliance upon the
16 trustee's representation that the trustee has special skills or expertise, has a duty to use those
17 special skills or expertise when investing and managing trust assets, and;

18 3. A trustee shall diversify the investments of the trust unless the trustee reasonably
19 determines that, because of special circumstances, the purposes of the trust are better served
20 without diversifying.

21 4. In investing and managing trust assets, a trustee shall consider the following as are
22 relevant to the trust:

23 (1) General economic conditions;

- 1 (2) The possible effect of inflation or deflation;
- 2 (3) The expected tax consequences of investment decisions or strategies;
- 3 (4) The role that each investment or course of action plays within the overall trust
- 4 portfolio;
- 5 (5) The expected total return from income and the appreciation of capital;
- 6 (6) Other resources of the beneficiaries known to the trustee;
- 7 (7) Needs for liquidity, regularity of income, and preservation or appreciation of capital;
- 8 (8) An asset's special relationship or special value, if any, to the purposes of the trust or to
- 9 one or more of the beneficiaries; and
- 10 (9) The size of the portfolio, nature and estimated duration of the fiduciary relationship
- 11 and distribution requirements under the governing instrument.

12 9. It is unlawful for any trustee, preneed seller, preneed provider or preneed counselor to
13 procure or accept a loan against any investment or asset of or belonging to a preneed trust.

14 333.749.1. A preneed trustee may delegate to an agent duties and powers that a prudent
15 trustee of comparable skills could properly delegate under the circumstances. The trustee shall
16 exercise reasonable care, skill, and caution in:

- 17 (1) Selecting an agent;
- 18 (2) Establishing the scope and terms of the delegation, consistent with the purposes and
- 19 terms of the trust; and
- 20 (3) Periodically reviewing the agent's actions in order to monitor the agent's performance
- 21 and compliance with the terms of the delegation.

22 2. In performing a delegated function, an agent owes a duty to the trust to exercise
23 reasonable care to comply with the terms of the delegation.

1 3. By accepting a delegation of powers or duties from the trustee of a preneed trust, an
2 agent submits to the jurisdiction of the courts of this state.

3 4. Delegation of an agent as provided herein shall not relieve the trustee of any duty or
4 responsibility imposed on the trustee by sections 333.700 to 333.900 or the trust agreement.

5 333.750.1 A trustee shall not sale, invest or authorize any transaction involving the
6 investment or management of trust property with:

7 (1) The spouse of the trustee;

8 (2) The descendants, siblings, parents, or spouses of a preneed seller or an officer,
9 manager, director or employee of a preneed seller, provider or counselor;

10 (3) An agent or attorney of the trustee, preneed seller or provider; or

11 (4) A corporation or other person or enterprise in which the trustee, preneed seller,
12 preneed provider, or a preneed provider owns a significant interest or has an interest that might
13 affect the trustee's best judgment.

14 **INSURANCE-FUNDED PRENEED CONTRACTS**

15 333.750.1. An insurance-funded preneed contract shall comply with sections 333.700 to
16 333.900 and the specific requirements of this section.

17 2. In no event shall the seller or provider, or any agent, receive or collect from the
18 purchaser of an insurance-funded preneed contract any amount in excess of what is required to
19 pay the premiums on the insurance policy as assessed or required by the insurer as premium
20 payments for the insurance policy. In no instance shall a preneed seller receive or collect any
21 administrative or other fee to the purchaser for or in connection with an insurance funded
22 preneed contract, other than those fees or amounts assessed by the insurer.

1 3. Payments collected by or on behalf of a preneed seller for an insurance funded
2 preneed contract shall be promptly remitted to the insurer or the insurer's designee as required by
3 the insurer, provided that in no event shall payments be retained or held by the preneed seller or
4 counselor for more than thirty days from the date of receipt.

5 4. A preneed seller or any preneed counselor authorized to sell an insurance funded
6 preneed contract on behalf of a seller shall disclose to the purchaser at the time of sale if the
7 seller or counselor is a licensed insurance agent and if the seller or counselor will receive any
8 commission, payment or other valuable consideration, and the amount or percentage of any such
9 payments or commissions, for the sale of the insurance product used to fund the contract.

10 5. In no instance shall any term life insurance policy be used to fund a preneed
11 contract nor shall a preneed seller or provider be listed or otherwise designated as the owner of
12 an insurance policy used to fund a preneed contract.

13 6. It is unlawful for a preneed seller, provider or counselor to procure or accept a
14 loan against any insurance contract used to fund a preneed contract.

15 7. No preneed seller or provider shall accept an assignment of insurance proceeds or
16 knowingly allow the preneed seller or provider to be designated as the beneficiary in an
17 insurance policy unless a preneed contract has also been issued by a licensed seller. A preneed
18 contract shall only be required by this section if the insurance proceeds are to be used for the
19 final disposition of a dead human body, or for funeral or burial services or facilities, or for
20 funeral merchandise, where such disposition, services, facilities or merchandise are not
21 immediately required *and the price of such services, facilities or merchandise are guaranteed by*
22 *the provider or seller.* A preneed contract written pursuant to this subsection shall be deemed an

1 insurance-funded preneed contract and shall comply with this section and all applicable
2 provisions of sections 333.700 to 333.900.

3 9. Laws regulating insurance shall not apply to preneed contracts, but shall apply to
4 any insurance sold with a preneed contract.

5 **JOINT ACCOUNT-FUNDED PRENEED CONTRACTS**

6 *****NOTE: THIS SECTION IS STILL IN THE DRAFTING PROCESS*****

7 333.755.1. A joint account funded preneed contract shall comply with sections 333.700 to
8 333.900 and the specific requirements of this section.

9 2. In lieu of a trust-funded or insurance-funded preneed contract, a preneed seller
10 and the purchaser may agree in writing that all funds paid by the purchaser for the preneed
11 contract shall be deposited with a financial institution chartered and regulated by the federal or
12 state government authorized to do business in Missouri in an account in the joint names and
13 under the joint control of the provider and purchaser. There shall be a separate joint account
14 established for each preneed contract sold or arranged under this section.

15 3. All consideration paid—100 percent of the money paid by the purchaser under a
16 joint-account funded contract shall be deposited into a joint account authorized as authorized by
17 this section within five days of receipt of payment by the seller.

18 4. The financial institution shall hold, invest, and reinvest funds deposited pursuant
19 to this section in savings accounts, certificates of deposit or other accounts offered to depositors
20 by the financial institutions as provided in the written agreement of the purchaser and the seller,
21 provided the financial institution shall not invest or reinvest any funds deposited pursuant to this
22 section in term life insurance or any investment that does not reasonably have the potential to
23 gain income or increase in value.

1 333.760. 1. Each preneed seller shall file an annual report with the Board which shall
2 contain, at least the following information:

3 (1) The name, addresses and contract number of all purchasers as reflected in any
4 preneed contract sold since the filing of the last report;

5 (2) The total number and total face value of preneed contracts sold since the filing of the
6 last report;

7 (3) The contract amount of each preneed contract sold since the filing of the last report,
8 identified by contract;

9 (4) The amount of funds received by the seller for payment on each preneed contract
10 since the filing of the last report, identified by contract, and the date such funds were received;

11 (5) The total amount of funds retained by the seller for administrative expenses from
12 payments received on behalf of a purchaser since the filing of the last report, identified by
13 contract;

14 (6) The name, address and license number of all preneed counselors employed or
15 authorized to sell preneed contracts on behalf of the seller;

16 (7) The date the report is submitted and the date of the last report;

17 (8) The number of all Missouri preneed contracts fulfilled by the preneed seller during
18 the preceding calendar year;

19 (9) The name and address of each provider with whom it is under contract;

20 (10) The name and address of the person designated by the seller as custodian of the
21 seller's books and records relating to the sale of preneed contracts.

1 (11) Written consent authorizing the state board to order an examination and if necessary
2 an audit of any joint or trust account established pursuant to sections 333.700 to 333.900,
3 designated by depository or account number.

4 (12) Written consent authorizing the state board to order an investigation, examination
5 and if necessary an audit of its books and records relating to the sale of preneed contracts;

6 (13) The annual status report shall be certified under oath as complete and correct by an
7 officer of the preneed seller. The preneed seller or officer shall be subject to the penalty of
8 making a false affidavit or declaration, and;

9 (14) Any information deemed necessary by the Board to ensure compliance with
10 sections 333.700 to 333.900.

11 (15) A copy of each preneed contract sold, which may be provided by scanned electronic
12 copy.

13 2. A preneed seller that sells or has sold trust-funded preneed contracts shall also include
14 in the annual report required by section 1 of this section:

15 (1) The name and address of the financial institution in Missouri in which it maintains a
16 preneed trust account and the account numbers of such trust accounts, and;

17 (2) The trust fund balance as reported in the previous year's report;

18 (3) The current trust fund balance;

19 (4) Principal contributions received by the trustee since the previous report;

20 (5) Total *trust* earnings and total distributions to the preneed seller since the previous
21 report;

1 (6) A statement of all assets *and investments* of the trust listing cash, real or personal
2 property, stocks, bonds, and other assets, showing cost, acquisition date and current market value
3 of each asset and *investment*, and;

4 (8) Total expenses, excluding distributions to the preneed seller, since the previous
5 report.

6 (9) The information required by subsections (1) to (8) of this section shall be certified to
7 under oath as complete and correct by a corporate officer of the trustee. The trustee shall be
8 subject to the penalty of making a false affidavit or declaration.

9 3. A preneed seller that sells or who has sold joint-account funded preneed contracts
10 shall also include in the annual report required by section 1 of this section:

11 (1) The name and address of the financial institution in Missouri in which it maintains the
12 joint account and the account numbers for each joint account, and;

13 (2) The amount on deposit in each joint account;

14 (3) The joint account balance as reported in the previous year's report;

15 (4) Principal contributions placed into each joint account since the filing of the previous
16 report;

17 (5) Total earnings since the previous report;

18 (6) Total distributions to the preneed seller from each joint account since the previous
19 report;

20 (7) Total expenses deducted from the joint account, excluding distributions to the preneed
21 seller, since the previous report, and;

1 (8) The information required by subsections (1) to (7) of this section shall be certified to
2 under oath as complete and correct by an authorized representative of the financial institution.
3 The affiant shall be subject to the penalty of making a false affidavit or declaration.

4 4. A preneed seller that sells or who has sold any insurance-funded preneed contracts
5 shall also include in the annual report required by section 1 of this section:

6 (1) The name and address of each insurance company issuing insurance to fund a preneed
7 contract sold by the seller during the preceding year;

8 (2) The type of insurance purchased to fund each preneed contract, identified by
9 contract;

10 (3) The total amount of funds collected by the seller for each preneed contract, including,
11 any funds used to pay insurance premiums and the date such funds were received;

12 (4) The total amount of premiums received by the insurance company for each insurance
13 policy used to fund a preneed contract sold by the preneed seller;

14 (5) *The status, total face value and total cash surrender value of each policy, and;*

15 (6) The information required by subsections (1) to (5) of this section shall be certified to
16 under oath as complete and correct by an authorized representative of the insurer. The affiant
17 shall be subject to the penalty of making a false affidavit or declaration.

18 5. All reports required by this section shall be filed by the thirty-first day of October
19 of each year or by the date established by the Board by rule. Annual reports filed after the date
20 provided herein shall be subject to a late fee of _____ dollars for every month past the
21 renewal deadline or in an amount established by rule of the Board.

1 (3) Conduct a financial examination of the books and records of a licensee, and if
2 necessary an audit of a licensee or any trust or joint account, to determine *if preneed funds are*
3 *being maintained or handled by the licensee as required by sections 333.700 to 333.900.* The
4 Board shall conduct a financial examination of the books and records of each preneed seller as
5 authorized by this section at least once every **[three/five]** years, as financially permissible
6 pursuant to the funding of the board; Consider another option - conducting a financial
7 examination or audit of a reasonable sample of sellers annually. A CPA could advise the board
8 on what percentage of sellers should be audited in order to maximize the likelihood of detecting
9 fraud.

10 2. Upon determining that an inspection, investigation, examination or audit shall be
11 conducted, the board shall issue a notice authorizing an employee or other person appointed by
12 the board to perform such inspection, investigation, examination or audit. The notice shall
13 instruct the person appointed by the board as to the scope of the inspection, investigation,
14 examination or audit.

15 (a) The board shall not appoint or authorize any person to conduct an inspection,
16 investigation, examination or audit pursuant to this section if the individual has a conflict of
17 interest or is affiliated with the management of, or owns a pecuniary interest in, any person
18 subject to inspection, investigation, examination or audit under section 333.000 to section
19 333.999.

20 (b) The board may request that the director of the division of professional registration,
21 the director of the department of insurance, financial institutions and professional registration, or
22 the office of the attorney general designate one or more investigators or financial examiners to
23 assist in any investigation, examination or audit.

1 3. Upon request by the board, a licensee or registrant shall make the books and
2 records of the licensee or registrant available to the board for inspection and copying at any
3 reasonable time, including, any insurance, trust, joint account or financial institution records
4 deemed necessary by the board to determine compliance with sections 333.700 to 333.900.

5 4. The board or a designated member thereof or any agent authorized by the board
6 may enter the office, premises, establishment, or place of business of any preneed seller or
7 provider of funeral service contracts licensed in this state, or any office, premises, establishment,
8 or place where the practice of selling and/or providing preneed funerals is carried on, or where
9 such practice is advertised as being carried on for the purpose of inspecting such office,
10 premises, establishment, or place to determine compliance with sections 333.700 to 333.900, or
11 for the purpose of inspecting, examining, investigating or auditing the licensee or the sale of
12 preneed contracts.

13 5. The board shall have the power to issue a subpoena to compel the production of
14 records and papers by any licensee or registrant of the board. Subpoenas issued pursuant to this
15 section shall be served in the same manner as subpoenas in a criminal case.

16 6. All preneed sellers, providers and counselors shall cooperate with the state board
17 or its designee, the division of finance, the department of insurance, financial institutions and
18 professional registration and the office of the attorney general of Missouri, in any inspection,
19 investigation, examination or audit brought under the provisions of sections 333.700 to 333.900.

20 7. This section shall not be construed to limit the board's authority to file a
21 complaint with the administrative hearing commission charging a licensee of the board with any
22 actionable conduct or violation, regardless of whether such complaint exceeds the scope of acts

1 charged in a preliminary public complaint filed with the board and whether any public complaint
2 has been filed with the board.

3 8. If an investigation, audit or examination finds a violation of sections 333.700 to
4 333.900, the office of the attorney general may initiate a judicial proceeding to:

5 (1) Declare rights;

6 (2) Approve a nonjudicial settlement;

7 (3) Interpret or construe the terms of the trust;

8 (4) Determine the validity of a trust or of any of its terms;

9 (5) Compel a trustee to report or account;

10 (6) Enjoin a trustee from performing a particular act or grant to a trustee any necessary or
11 desirable power;

12 (7) Review the actions of a trustee, including the exercise of a discretionary power;

13 (8) Appoint or remove a trustee;

14 (10) Determine the liability of a trustee for an action relating to the trust and compel
15 redress of a breach of trust by any available remedy;

16 (12) Approve employment and compensation of agents;

17 (13) Determine the propriety of investments or of principal and income allocations, or;

18 (17) Determine the timing and quantity of distributions and dispositions of assets.

19 (18) This section does not preclude any other authority vested in the attorney general by
20 law.

21 **DISCIPLINARY ACTION**

22 333.770. 1. The board may refuse to issue any registration or license required by sections
23 333.700 to 333.900 for one or any combination of causes stated in subsection 2 of this section.

1 The board shall notify the applicant in writing of the reasons for the refusal and shall advise the
2 applicant of his right to file a complaint with the administrative hearing commission as provided
3 by chapter 621, RSMo.

4 The Board should also be given the authority to levy fines against violators. Sometimes
5 revocation or suspension of a license is too harsh, and can do more harm than good. Fines should
6 be calculated so as to "hurt" enough to effectively deter future violations, but not so as to cripple
7 the business. Consider calculating fines based on a percentage of revenue, rather than as an
8 absolute number, to equalize penalties against large and small businesses.

9 2. The board may cause a complaint to be filed with the administrative hearing
10 commission as provided by chapter 621, RSMo, against any preneed seller or provider licensed
11 with the board [or preneed counselor registered with the board] or any person who has failed to
12 renew or has surrendered his license [or registration] for any one or any combination of the
13 following causes:

14 (1) Use of any controlled substance, as defined in chapter 195, RSMo, or alcoholic
15 beverage to an extent that such use impairs a person's ability to perform the work of any
16 profession registered under sections 333.700 to 333.900;

17 (2) The person has been finally adjudicated and found guilty, or entered a plea of guilty
18 or nolo contendere, in a criminal prosecution under the laws of any state or of the United States,
19 for any offense involving the misappropriation or theft of funds, for any offense an essential
20 element of which is fraud, dishonesty or an act of violence, or for any offense involving moral
21 turpitude, whether or not sentence is imposed;

22 (3) Use of fraud, deception, misrepresentation or bribery in securing any license or
23 registration pursuant to sections 333.700 to 333.900;

- 1 (4) Obtaining or attempting to obtain any fee, charge, tuition or other compensation by
2 fraud, deception or misrepresentation;
- 3 (5) Incompetency, misconduct, gross negligence, fraud, misrepresentation or dishonesty
4 in the performance of the functions or duties of the profession for which the individual is
5 licensed or registered;
- 6 (6) Violation of, or assisting or enabling any person to violate, any provision of sections
7 333.700 to 333.900 or sections 333.700 to 333.900, or of any lawful rule or regulation adopted
8 pursuant to Chapter 333 or sections 333.700 to 333.900;
- 9 (7) Impersonation of any person holding a preneed licensee or registration with the board
10 or allowing any person to use his or her license or registration;
- 11 (8) Disciplinary action against the holder of any license or registration or other right to
12 practice any profession regulated pursuant to this chapter or by any state, territory, federal
13 agency or country upon grounds for which revocation or suspension is authorized in this state;
- 14 (9) A person is finally adjudged insane or incompetent by a court of competent
15 jurisdiction;
- 16 (10) Misappropriation or theft of preneed funds;
- 17 (11) Assisting or enabling any person to practice or offer to practice as a preneed seller,
18 preneed provider or preneed counselor as defined or regulated by sections 333.700 to 333.900
19 who is not licensed or registered and currently eligible to practice under sections 333.700 to
20 333.900;
- 21 (12) Issuance of a registration or license based upon a material mistake of fact;
- 22 (13) Failure to display or present a valid certificate or license if so required by sections
23 333.700 to 333.900 or any rule promulgated thereunder;

1 (14) Violation of any professional trust or confidence;

2 (15) Make or file any report required by sections 333.000 to 333.999 which the licensee
3 or registrant knows to be false or knowingly fail to make or file a report required by sections
4 333.000 to 333.999;

5 (16) Use of any advertisement, solicitation or preneed contract which is false, misleading
6 or deceptive to the general public or persons to whom the advertisement or solicitation is
7 primarily directed, and;

8 (16) Willfully and through undue influence selling a preneed contract, or;

9 3. After the filing of such complaint, the proceedings shall be conducted in accordance
10 with the provisions of chapter 621, RSMo. Upon a finding by the administrative hearing
11 commission that the grounds, provided in subsection 2, for disciplinary action are met, the board
12 may, singly or in combination, censure or place the person named in the complaint on probation
13 on such terms and conditions as the board deems appropriate for a period not to exceed five
14 years, or may suspend, for a period not to exceed three years, or revoke the license.

15 (17) Violating any provision of the Federal Trade Commission's Funeral Rule.

16 4. Notwithstanding any other provision of this section, the board may automatically
17 suspend a license if the board finds, after an inspection, examination, investigation or audit and
18 after providing the licensee an opportunity to respond, a shortage in the trust fund or joint
19 account which exceeds [*twenty percent of the amount required to be held in the trust or joint*
20 *account or fifty thousand dollars, whichever is lesser*] or upon being adjudicated and found
21 guilty, or entering a plea of guilty or nolo contendere, in a criminal prosecution under the laws of
22 any state or of the United States, for any offense involving the stealing, misappropriation or theft
23 of funds.

1 5. A person whose license was suspended under subsection 4 of this section may appeal
2 such suspension to the administrative hearing commission. Notice of such appeal must be
3 received by the administrative hearing commission within ninety days of mailing, by certified
4 mail, the notice of suspension. Failure of a person whose license was suspended to notify the
5 administrative hearing commission of his or her intent to appeal waives all rights to appeal the
6 suspension. Upon notice of such person's intent to appeal, a hearing shall be held before the
7 administrative hearing commission.

8 6. Use of the procedures set out in this section shall not preclude the application of
9 the provisions of subsection 2 of section 333.061.

10 333.775. If a seller shall fail to make timely payment of an amount due a purchaser, or a
11 provider pursuant to the provisions of sections 333.700 to 333.900, the purchaser or provider, as
12 appropriate, shall have the right, in addition to other rights and remedies against such seller, to
13 make demand upon the trustee of the preneed trust for the contract to distribute to the purchaser
14 or provider from the trust, as damages for its breach, an amount equal to all deposits made into
15 the trust for the contract.

16 333.780. Upon the death or legal incapacity of a purchaser, all rights and remedies
17 granted to the purchaser pursuant to the provisions of sections 333.700 to 333.900 shall be
18 enforceable by and accrue to the benefit of the purchaser's legal representative or his successor
19 designated in such contract, and all payments otherwise payable to the purchaser shall be paid to
20 that person.

21 333.785. 1. Any person, including the officers, directors, partners, agents, or employees
22 of such person, who shall knowingly and willfully violate or assist or enable any person to
23 violate any provision of sections 333.700 to 333.900 by incompetence, misconduct, gross

1 negligence, fraud, misrepresentation, or dishonesty is guilty of a class D felony. Each violation
2 of any provision of sections 333.700 to 333.900 constitutes a separate offense and may be
3 prosecuted individually. The attorney general shall have concurrent jurisdiction with any local
4 prosecutor to prosecute under this section.

5 2. Any violation of the provisions of sections 333.700 to 333.900 shall constitute a
6 violation of the provisions of section 407.020, RSMo. In any proceeding brought by the attorney
7 general for a violation of the provisions of sections 333.700 to 333.900, the court may order all
8 relief and penalties authorized under chapter 407 and, in addition to imposing the penalties
9 provided for in sections 333.700 to 333.900, order the revocation or suspension of the
10 [registration] license of a defendant seller or provider.

11 INJUNCTIONS

12 333.790. 1. Upon application by the board, and the necessary burden having been met, a
13 court of general jurisdiction may grant an injunction, restraining order or other order as may be
14 appropriate to enjoin a person from:

15 (1) Offering to engage or engaging in the performance of any acts or practices for which
16 a registration or authority, permit or license is required by sections 333.700 to 333.900 upon a
17 showing that such acts or practices were performed or offered to be performed without the
18 required registration or authority, permit or license; or

19 (2) Engaging in any practice or business authorized by a registration or authority, permit
20 or license issued pursuant to sections 333.700 to 333.900 that is in violation of sections 333.700
21 to 333.900 or upon a showing that the holder presents a substantial probability of serious danger
22 to the health, safety or welfare of any resident of this state or client or customer of the licensee,
23 or;

1 (3) Engaging in any practice or business that presents a substantial probability of serious
2 danger to the solvency of any preneed seller.

3 2. Any such action shall be commenced either in the county in which such conduct
4 occurred or in the county in which the defendant resides or, in the case of a firm or corporation,
5 where the firm or corporation maintains its principal office.

6 3. Any action brought under this section shall be in addition to and not in lieu of any
7 penalty provided by sections 333.700 to 333.900 and may be brought concurrently with other
8 actions to enforce sections 333.700 to 333.900.

9 **TERMINATION OF BUSINESS- PROVIDER**

10 333.800.1 A preneed provider that intends to sell or otherwise dispose of *all or a*
11 *majority* of its business assets, or its stock if a corporation, shall notify the Board at least sixty
12 days prior to selling or otherwise disposing of its business assets or stock, or ceasing to do
13 business as a preneed provider, and shall file a notification report on a form established by the
14 board.

15 2. The report required by this section shall include:

16 (a) The name, phone number and address of the purchasers of any outstanding preneed
17 contract for which the licensee is the designated provider;

18 (b) The name and license numbers of all sellers authorized to designate the licensee as a
19 provider in a preneed contract;

20 (c) The name, address and license number of the provider assuming or agreeing to
21 assume the licensee's obligations as a provider under a preneed contract, if any;

1 (d) The name, address and phone number of a custodian who will maintain the books
2 and records of the provider containing information about preneed contracts in which the licensee
3 is or was formerly designated as provider,

4 (e) A final annual report containing the information required by section 333.000;

5 (e) The date the provider intends to sell or otherwise dispose of its business assets, or its
6 stock if a corporation, or to cease to doing business, and;

7 (f) Any other information required by the Board by rule.

8 3. Within three days after the provider sells or transfers its assets or stock or ceases doing
9 business, the former provider shall notify each seller in writing that the former provider has sold
10 or transferred its assets or stock or has ceased doing business.

11 (a) Within thirty days after the seller receives notification from the provider under this
12 subsection, the seller shall provide written notification to all purchasers with outstanding preneed
13 contracts in which the former provider was designated as provider indicating that the provider
14 has transferred ownership or has ceased doing business. Such notice shall give the purchaser the
15 option to select another provider that has a written agreement with the seller pursuant to the
16 provisions of sections 333.000 or to cancel the contract if an alternate provider is not accepted by
17 the purchaser.

18 (b) If an alternate provider is selected by the purchaser, the seller shall amend the
19 preneed contract to reflect the change in provider and shall notify the new provider of the
20 designation;

21 (c) If the purchaser elects to cancel the contract, the seller shall refund all amounts paid
22 by or on behalf of the purchaser *and any related interest*. Nothing in this section shall be

1 construed to prohibit a seller from seeking reimbursement from the former provider of any funds
2 paid to the purchaser after a cancellation authorized by this subsection.

3 4. A preneed provider not subject to subdivision 1 of this section may only transfer its
4 obligations as a provider to an alternate provider upon the consent of the seller, purchaser and the
5 provider assuming the provider obligations under the contract. If an alternate provider is
6 selected by the purchaser, the seller shall amend the preneed contract to reflect the change in
7 provider and shall provide the purchaser with a copy of the amended contract.

8 5. The office of the attorney general shall have authority to initiate legal action to
9 compel or otherwise ensure compliance with this section by a former preneed provider licensee.

10 **TERMINATION OF BUSINESS- SELLER**

11 333.805.1 A preneed seller that intends to sell or otherwise dispose of *all or a majority* of
12 its business assets, or its stock if a corporation, shall notify the Board at least sixty days prior to
13 selling or otherwise disposing of its assets or stock, or ceasing to do business as a preneed seller,
14 and shall file a notification report on a form established by the board.

15 2. The report required by this section shall include:

16 (a) A final annual report containing the information required by section 333.000;

17 (b) The name, address and phone number of a custodian for the books and records of the
18 seller that contain information about preneed contracts in which the licensee is or was formerly
19 designated as seller;

20 (c) The date the seller intends to sell or otherwise dispose of its business assets, or its
21 stock if a corporation, or to cease to doing business;

22 (d) A notarized and signed statement from the person assuming or agreeing to assume
23 the obligations of the seller indicating that the assuming seller has been provided with a copy of

1 the seller's final annual report and has consented to assuming the outstanding obligations of the
2 seller;

3 (e) In lieu of the notarized statement required by subdivision (8), the seller may file a
4 plan detailing how the assets of the seller will be set aside and used to service all outstanding
5 preneed contracts sold by the seller, and;

6 (f) Any other information required by the Board by rule.

7 3. Within thirty days after assuming the obligations of a seller pursuant to this section,
8 the assuming preneed seller shall:

9 (1) Notify each provider in writing that the former seller has sold or transferred its assets
10 or stock or has ceased doing business, and;

11 (2) Provide written notification to the purchasers of each preneed contract assumed by
12 the seller indicating that the former seller has transferred ownership or has ceased doing
13 business. Such notice shall give the purchaser the option to maintain or to cancel the contract. If
14 the purchaser elects to cancel the contract, the seller shall refund all amounts paid by or on behalf
15 of the purchaser *and any related interest*. This section shall not be construed to limit or
16 otherwise restrict any civil or other legal right a purchaser or provider may have against the seller
17 for damages, breach of a contractual relationship or for unpaid fees.

18 4. Upon receipt of the written notification, the state board or the office of the
19 attorney general may take reasonable and necessary action to determine that the seller has made
20 proper plans to assure that the trust assets of the seller will be set aside and used to service
21 outstanding preneed contracts sold by the seller. Such action may include, but is not limited to,
22 an examination of books and records or audit of the trust account. The attorney general shall be

1 authorized to bring legal action to ensure compliance with this section including an action for
2 injunctive or declaratory relief.

3 5. A preneed seller not subject to subdivision 1 of this section may only transfer its
4 obligations as a seller under a preneed contract to an alternate seller upon consent of the
5 purchaser and the person assuming the obligations of the seller under the contract. If the
6 purchaser fails to consent, the seller shall refund all amounts paid by or on behalf of the
7 purchaser with any related interest or earnings. If the purchaser and seller consent to the transfer,
8 the seller shall amend the preneed contract to reflect the change and shall provide the purchaser
9 with a copy of the amended contract.

10 6. Nothing in this section shall be construed to require the state board to audit,
11 investigate or examine the books and records of a seller subject to the provisions of this section
12 nor shall this section be construed to amend, rescind or supersede any duty imposed on, or due
13 diligence required of, an entity assuming the obligations of the seller.

14 7. The office of the attorney general shall have authority to initiate legal action to
15 compel or otherwise ensure compliance with this section by a former preneed provider licensee.

16 333.810. A preneed contract may offer the purchaser the option to acquire and maintain
17 credit life insurance on the life of the purchaser. Such insurance shall provide for the payment of
18 death benefits to the seller in an amount equal to the total of all contract payments unpaid as of
19 the date of such purchaser's death, and shall be used solely to make those unpaid payments.

20 333.820. If a seller shall fail to make timely payment of an amount due a purchaser or a
21 provider pursuant to the provisions of sections 333.700 to 333.900, the purchaser or provider, as
22 appropriate, shall have the right, in addition to other rights and remedies against such seller, to
23 make demand upon the trustee of the preneed trust for the contract to distribute to the purchaser

1 or provider from the trust, as damages for its breach, an amount equal to all deposits made into
2 the trust for the contract.

3 333.830. Upon the death or legal incapacity of a purchaser, all rights and remedies
4 granted to the purchaser pursuant to the provisions of sections 333.700 to 333.900 shall be
5 enforceable by and accrue to the benefit of the purchaser's legal representative or the purchaser's
6 successor designated in such contract, and all payments otherwise payable to the purchaser shall
7 be paid to that person.

8 333.840. Each seller shall remit an annual reporting fee in an amount of ____ dollars for
9 each preneed contract sold in the year since the date the seller filed its last annual report with the
10 state board. This reporting fee shall be paid annually and may be collected from the purchaser of
11 the preneed contract as an additional charge or remitted to the state board from the funds of the
12 seller. The reporting fee shall be in addition to the fees authorized by section 333.000.

13 **RULEMAKING**

14
15 333.850. 1. The board shall establish the amount of the fees authorized in this chapter and
16 required by rules promulgated thereunder. Such fees shall be set at a level to produce revenue
17 which does not substantially exceed the cost and expense of administering this chapter.

18 3. The board shall promulgate and enforce rules for the transaction of its business and for
19 standards of service and practice to be followed for the licensing and registration of providers,
20 sellers and counselors deemed necessary for the public good and consistent with the laws of this
21 state.

22 4. Any rule or portion of a rule, as that term is defined in section 536.010, RSMo, that is
23 created under the authority delegated in this section shall become effective only if it complies
24 with and is subject to all of the provisions of chapter 536, RSMo, and, if applicable, section

1 536.028, RSMo. This section and chapter 536, RSMo, are nonseverable and if any of the powers
2 vested with the general assembly pursuant to chapter 536, RSMo, to review, to delay the
3 effective date, or to disapprove and annul a rule are subsequently held unconstitutional, then the
4 grant of rulemaking authority and any rule proposed or adopted after August 28, 2008, shall be
5 invalid and void.

6
7 This draft doesn't appear to include the language in 436.067. Confidentiality of Information
8 Given to Board, Division, or AG. . . .

9 That's good, if the drafters intend to leave that out. The current provisions lock down any and all
10 data on complaints and investigations, even after they're adjudicated, and shield that information
11 from public and consumer view. That is unacceptable, and it appears to directly contradict
12 current Open Government laws in the state of Missouri. The public, consumers, and the press
13 have a right to know what actions their government offices have taken to regulate funeral
14 service and to adjudicate consumer complaints.

Schnieders, Pam

From: Dunn, Becky
Sent: Monday, July 28, 2008 10:21 PM
To: Schnieders, Pam; Hayes, Lori
Subject: FW: revised list
Attachments: Chapter 436 Revisions.xls

for the minutes July 29. 2008

From: Michael Meierhoffer [mailto:michael.meierhoffer@meierhoffer.com]
Sent: Monday, July 28, 2008 11:40 AM
To: Clarkston, Connie; Dunn, Becky
Cc: 'david power'; Dennis Rosonke; 'Eric Montegna'; 'Scott Meierhoffer'; 'Todd Meierhoffer'
Subject: FW: revised list

Connie:

Please find attached the suggested changes to Chapter 436. Most importantly the highlighted items should be removed. These items are so restrictive as to make normal contract (Tort Law) unenforceable or the burden of reporting extremely burdensome and costly.

Please call if I can further explain.

Thank you,

Michael Meierhoffer
President/CEO
Meierhoffer Funeral Home & Crematory
St. Joseph Memorial Park
5005 Frederick Blvd.
St. Joseph, MO 64506
816.271.0383

From: Eric Montegna [mailto:Eric.Montegna@meierhoffer.com]
Sent: Monday, July 28, 2008 11:07 AM
To: michael.meierhoffer@meierhoffer.com
Subject: revised list

<<...>>

Eric W. Montegna

General Manager

Meierhoffer Family Funeral Service & St. Joseph Memorial Park Cemetery

eric.montegna@meierhoffer.com

816-232-3366

10/1/2008

Page	Line	Suggested Change
1	13-14	Funeral Merchandise Definition: strike text "and such term shall also include grave lots, grave space, grave markers, monumnets, tombstones, crypts, niches or mausoleums"
1	Insert	Definition of Funeral Service. This term is used throughout the text, but is not defined.
1	16	typo on "funded"
1	22	Strike the phrase "or other arrangement"
2	3	Item (2) is unclear. The term "pre-need contract" is used twice in this section. Please clarify
2	18-19	Strike "of _____ dollars or" (leave it to the Board to establish fee.)
4	5	Strike "October thirty-first of each year" (leave it to the Board to establish date.)
4	9	Strike "of _____ dollars or" (leave it to the Board to establish fee.)
5	12	Strike "of _____ dollars or" (leave it to the Board to establish fee.)
5	19	Change word "Has" to "Have"
6	2	Add the term "insurance funded" after preneed trust.
6	6 & 7	Strike "October thirty-first of each year" (leave it to the Board to establish date.)
6	10	Strike "of _____ dollars or" (leave it to the Board to establish fee.)
6	20	Replace the word "registered" with "licensed"
6	21 - 23	Strike the sentences about registry.
7	2	Replace the word "register" with "license"
7	3	Strike "of _____ dollars or" (leave it to the Board to establish fee.)
7	3,4,5	Strike the phrase beginning with "which shall not exceed _____ percent"
7	9	Renumbr item 4 to item 3; replace the "registration" with "license"
7	10	Strike "October thirty-first of each year" (leave it to the Board to establish date.)
7	13	Strike "of _____ dollars or" (leave it to the Board to establish fee.)
7	14 & 15	Strike the phrase beginning with "which shall not exceed _____ percent"
7	18	Renumbr item 5 to item 4
7	18-19	Strike the phrase "and the registrant shall be immediately removed from the preneed counselor registry by the Board.
7	20	Replace the word "registrant" with "licensee"
8	1	Renumbr item 6 to item 5. Replace the phrase "remove a preneed counselor from the registry" with text such as "discipline a licensee".
8	9	Renumbr item 7 to item 6. Replace the text "been removed from the registry" to "had their license disciplined"
8	10	Remove the phrase "the removal"
8	16	Renumbr item 8 to item 7
8	17	Replace "registered" with "licensed"
9	13-19	Strike all language beginning with "if a provider has knowledge"
11	5	Remove item (12) entirely

11	11	Add the phrase "or their designee" after "the signature of the preneed provider"
11	13-18	Strike section (16) entirely
12	2	Add the phrase "or their designee" after "signed by the seller"
12	5, 6, 7	Strike the phrase beginning with "together with interest. . ."
16	15	Replace the word "sale" with "sell"
17	14-18	Strike #4 entirely
20	15-19	Strike items (4) and (5) entirely
23	18	Strike "October thirty-first of each year" (leave it to the Board to establish date.)
23	20-21	Remove phrase "of _____ dollars for every month past the renewal deadline or"
24	1 & 2	Strike "October thirty-first of each year" (leave it to the Board to establish date.)
25	5	Use five years for audit period.
30	4	Remove the phrase "or,"
30	19	Replace "was" with "has been"
32	6	Remove the word "[registration].
34-35	7 to 23 and 1 & 2	Remove items (a), (b), (c) and 4.
36	6 thru 12	Remove text beginning with "Such notice shall give the purchaser. . . To end of section 2.
38	3	Replace the phrase "in the amount of _____ dollars" with "as determined by the Board.

Grinston, Kimberly

From: Sharon Euler [Sharon.Euler@ago.mo.gov]
Sent: Friday, July 25, 2008 4:21 PM
To: Grinston, Kimberly
Subject: Portability suggestion

To remedy the portability issue, here is a draft proposed solution:

Any pre-need purchaser or beneficiary of a pre-need contract may, at any time, amend his or her pre-need contract to designate a provider or providers. Such amendment must be done by providing written notice, signed and dated by either the purchaser or the beneficiary, and must indicate the name and address and telephone number of the new provider. Upon such amendment, the pre-need seller and the new provider shall enter into a written agreement as to the amount to be paid to the provider at time of need. If the provider and seller cannot come to agreement as to the amount to be paid to the provider at the time of death of the beneficiary, the seller, or the trustee of the seller's pre-need trust, shall pay to the provider the face value of the contract plus interest accruing at the rate of ten per cent per annum, compounded.

A pre-need contract may be amended at any time to designate a new pre-need seller, but only with the written consent of both the pre-need seller and either the purchaser or beneficiary. The sellers may, by written agreement, agree upon the amount to be transferred from the seller's trust to another trust, with the consent of the pre-need purchaser or beneficiary. If the purchaser or beneficiary desire the funds to be transferred to another pre-need trust, the seller whose trust holds the pre-need funds shall transfer to the new trust by agreement with the new seller's trust. If no agreement can be reached between the old seller and the new seller as to the amount of funds to be transferred, than the old seller shall transfer to the new seller, the total amount of funds the purchaser has paid on the pre-need contract together with interest at the rate of ten percent per annum, compounded. In all events, both the seller and either the purchaser or beneficiary shall provide written consent for funds to be transferred between pre-need sellers or pre-need trusts.

Kutis Funeral Home Inc.



2906 Gravois Avenue
St. Louis, Mo. 63118
(314) 772-3000

10151 Gravois
St. Louis, Mo. 63123
(314) 842-4458

5255 Lemay Ferry Road
St. Louis, Mo. 63129
(314) 894-4500

TO: Connie Clarkston

7-28-08

FROM: GEORGE CLINE

SEC 333.730.1

LICENSED FUNERAL DIRECTORS ^{OR Apprentices} NEED NOT BE DESIGNATED AS PRE-NEEDS COUNSELORS. THEY SHOULD NOT HAVE TO PAY EXTRA FEES, NOR NEED TO FILE EXTRA PAPERWORK. THEY ARE ALREADY QUALIFIED.

333.740

(1) contracts should be numbered, but only after all conditions met and contract completed.

333.765.1 five years

WE WILL HAVE ANOTHER CHANCE TO REVIEW THE FINAL DRAFT. PLEASE ADVISE COMMITTEE WHEN THAT DEADLINE WOULD BE.

Thank you
George Cline

Schnieders, Pam

From: Dunn, Becky
Sent: Tuesday, July 29, 2008 7:20 AM
To: Hayes, Lori; Schnieders, Pam
Subject: 7/29/08
Attachments: 7-28 436 Draft.doc

for the agenda minutes today

PROPOSED DRAFT

333.700. The provisions of sections 333.700 to 333.900 shall be referenced as the "Missouri Preneed Funeral Contract Act."

333.705. As used in sections 333.700 to 333.900, unless the context otherwise requires, the following terms shall mean:

(1) "Audit"

(2) "Beneficiary", the individual who is to be the subject of the disposition or who will receive funeral services, facilities or merchandise described in a preneed contract;

(3) "Board," the Missouri State Board of Embalmers and Funeral Directors;

(4) "Division", the division of professional registration of the department of insurance, financial institutions and professional registration;

(5) "Examination of books and records"

(6) "Guaranteed contact"

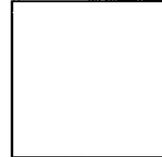
(7) "(Meierhoffer)

"Funeral merchandise" caskets, grave vaults, grave lots, grave space, grave markers, monuments, tombstones, crypts, niches, mausoleums, or receptacles and other personal property incidental to the final disposition of human remains. (Euler)

(8) "Funeral service" (Meierhoffer)

(9) "Insurance-Funded" Preneed Contract- A preneed contract which is designated to be funded by payments or proceeds from an insurance policy;

(10) "Investigation"



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Deleted: Funeral merchandise", caskets, grave vaults, or receptacles, and other personal property incidental to a funeral or burial service, and such term shall also include grave lots, grave space, grave markers, monuments, tombstones, crypts, niches or mausoleums;

Deleted: 5

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1 (11) "Joint-Account Funded" Preneed Contract- A preneed contract which designates
2 that payments for the preneed contract made by or on behalf of the purchaser will be deposited
3 and maintained in a joint account;

4 (12) "Market value" – See DIFP Comment
5 (13) "Non-guaranteed contract"
6 (14) "Person", any individual, partnership, corporation, cooperative, association, or other
7 entity;

8 (15) "Preneed contract", any contract that provides for the final disposition of a dead
9 human body, or for funeral or burial services or facilities, or for funeral merchandise, where such
10 disposition, services, facilities or merchandise are not immediately required, including, but not
11 limited to, an agreement providing for a membership fee or any other fee having as its purpose
12 the furnishing of burial or funeral services or merchandise at a discount; (Meierhoffer)

13 (16) "Preneed sales agent," any person authorized to sell a preneed contract on behalf of
14 a preneed seller; (Solocum)

15 (17) "Preneed trust", a trust established by a seller, as grantor, to receive deposits of,
16 administer, and disburse payments received under preneed contracts by such seller, together with
17 income thereon;

18 (18) "Provider", the person designated to provide the disposition, merchandise, facilities
19 or services, described in a preneed contract; (Euler)

20 (19) "Purchaser", the person who is obligated to pay under a preneed contract;
21 (20) "Seller", the person who sells a preneed contract to a purchaser and who is obligated
22 to collect and administer all payments made under such preneed contract;

23 (21) "Trustee", the trustee of a preneed trust, including successor trustees.

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1 (22) "Trust-Funded" Preneed Contract- A preneed contract which provides that payments
2 for the preneed contract shall be deposited and maintained in trust.

3 **APPLICABILITY**

4 333.710.1 The provisions of sections 333.700 to 333.900 shall not apply to:

5 (1) Any contract or other arrangement sold by a cemetery operator for which payments
6 received by or on behalf of the purchaser are required to be placed in an endowed care fund or
7 for which a deposit into a segregated account is required under Chapter 214, RSMo, provided
8 that a cemetery operator shall comply with sections 333.700 to 333.900 if the contract or
9 arrangement sold by the operator includes services that may only be provided by a licensed
10 funeral director or embalmer;

11 (2) A contract of insurance, provided that sections 333.700 to 333.900 shall apply to any
12 preneed contract sold with a contract of insurance. (Meierhoffer)

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13 **PRENEED PROVIDER LICENSING**

14 333.720. 1. Except as provided herein, the provider designated in a preneed contract shall
15 be obligated to provide the funeral or burial services, facilities, or merchandise as described in
16 the preneed contract.

17 2. No person shall be designated as a provider, or agree to perform the obligations of
18 a provider under a preneed contract unless, at the time of such agreement or designation, such
19 person is licensed as a preneed provider by the Board. Nothing in this section shall exempt any
20 person from meeting the licensure requirements for a funeral establishment as provided in this
21 chapter. (Grinston), (Euler)

Deleted: A preneed provider shall be authorized and registered with the Missouri Secretary of State to conduct business in Missouri

Deleted: and shall be licensed as a funeral establishment by the Board. A funeral establishment license shall not be required if the person is the owner of real estate situated in Missouri which has been formally dedicated for the burial of dead human bodies and the contract only provides for the delivery of one or more grave vaults and is in compliance with the provisions of chapter 214, RSMo;

22 3. An applicant for a preneed provider license shall:

1 (1) File an application on a form promulgated by the Board and pay a licensing fee of
2 _____ dollars or in an amount promulgated by the Board by rule;

3 (2) Be authorized and registered with the Missouri Secretary of State to conduct business
4 in Missouri; (Euler)

5 (3) Identify the name and address of a custodian of records responsible for maintaining
6 the books and records of the provider relating to preneed contracts;

7 (4) Identify the name and address of each seller authorized by the provider to sell
8 preneed contracts in which the provider is designated or obligated as the provider;

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9 (5) File with the state board a written consent authorizing the state board to inspect or
10 order an investigation, examination or audit of the provider's books and records which contain
11 information concerning preneed contracts sold for or on behalf of a preneed seller or in which the
12 applicant is named as a preneed provider;

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13 (6) Each applicant, or if a corporation, each officer, director, manager, or controlling
14 shareholder, shall be of good morale character; (Euler)

15 (7) Have obtained a high school diploma or equivalent thereof; and (Euler)

16 (8) Meet all requirement for licensure. (Euler)

17 4. Each preneed provider shall apply to renew his or her license on or before October
18 thirty-first of each year or a date established by the Board by rule. A license which has not been
19 renewed prior to the renewal date shall expire. Applicants for renewal shall:

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20 (1) File an application for renewal on a form promulgated by the Board by rule:

21 (2) Pay a renewal fee of _____ dollars or in an amount established by the Board by
22 rule;

(3) Be authorized and registered with the Missouri Secretary of State to conduct business in Missouri; (Euler)

(4) File an annual report with the state board which shall contain:

(a) The name and address of a custodian of records responsible for maintaining the books and records of the provider relating to preneed contracts;

(b) The business name or names of the provider and all addresses from which it engages in the practice of its business;

(c) The name and address of each seller with whom it has entered into a written agreement since last filing an annual report with the Board authorizing the seller to designate or obligate the licensee as the provider in a preneed contract, and;

(d) Any information required by the Board by rule.

5. Any license not renewed as provided by this section shall become void. A licensee who fails to apply for renewal may apply for reinstatement by satisfying the requirements of section 4 of this section and paying a delinquent fee as promulgated by the Board by rule.

PRENEED SELLER LICENSING

333.725. 1. The preneed seller designated in a preneed contract shall be obligated to ~~administer~~ all payments made by or on behalf of a purchaser of a preneed contract and ensure the preneed contract is managed and fulfilled, ~~and payments remitted~~, in compliance with sections 333.700 to sections 333.900 and as provided by the contract. (Euler)

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2. 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 preneed seller and

1 authorized and registered with the Missouri Secretary of State to conduct business in Missouri.

2 3. An applicant for a preneed seller license shall:

3 (1) File an application on a form promulgated by the Board and pay a licensing fee of
4 _____ dollars or in an amount promulgated by the Board by rule;

5 (2) Be an individual resident of Missouri of eighteen years of age or a business entity
6 duly registered with the Missouri Secretary of State to transact business in Missouri;

7 ~~(3) Each applicant, or if a corporation, each officer, director, manager, or controlling~~
8 ~~shareholder, shall be of good morale character; (Euler)~~

9 ~~(4) Have obtained a high school diploma or equivalent thereof; and (Euler)~~

10 ~~(5) Meet all requirement for licensure. (Euler)~~

11 ~~(6) Identify the name and address of a custodian of records responsible for maintaining~~
12 ~~the books and records of the seller relating to preneed contracts;~~

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13 ~~(7) Identify the name and address of each licensed provider that has authorized the seller~~
14 ~~to designate the licensee as a provider under a preneed contract;~~

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15 ~~(8) Have established, as grantor, a preneed trust or an agreement to utilize a preneed trust~~
16 ~~with terms consistent with sections 333.000 to 333.071. A trust shall not be required if the~~
17 ~~applicant certifies to the Board that the preneed seller will only sell insurance-funded or joint-~~
18 ~~account funded preneed contracts, and; (Meierhoffer)~~

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19 ~~(9) Identify the name and address of a trustee or, or if applicable, the financial institution~~
20 ~~where any preneed trust or joint accounts will be maintained, and;~~

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21 ~~(10) File with the state board a written consent authorizing the state board to inspect or~~
22 ~~order an investigation, examination or audit of the seller's books and records which contain~~
23 ~~information concerning preneed contracts sold by or on behalf of the seller.~~

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4. Each preneed seller shall apply to renew his or her license on or before October thirty-first of each year or a date established by the Board by rule. A license which has not been renewed prior to the renewal date shall expire. Applicants for renewal shall:

(1) File an application for renewal on a form promulgated by the Board by rule :

(2) Pay a renewal fee of _____ dollars or in an amount established by the Board by rule, and;

(3) File annually with the state board a signed and notarized annual report as provided by sections 333.700 to 333.900 on forms provided by the state board.

5. Any license not renewed as provided by this section shall become void. A licensee who fails to apply for renewal may apply for reinstatement by satisfying the requirements of section 4 of this section and paying a delinquent fee as promulgated by the Board by rule.

PRENEED SALES AGENTS

COMMENT: Licensed funeral directors or apprentices need not be designated as preneed sales agents. They should not have to pay extra fees nor need to file extra paperwork. They are already qualified. (Kutis)

333.730.1 Any person employed or otherwise authorized to sell, negotiate or solicit the sale of preneed contracts for or on behalf of a preneed seller shall be registered with the Board as a preneed sales agent. The Board shall maintain a registry of all preneed sales agents registered with the Board. The registry shall be deemed an open record and made available on the Board website.

2. An applicant for a preneed sales agent registration shall:

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1 (1) File an application on a form promulgated by the Board and pay a registration fee of
2 _____ dollars or in an amount promulgated by the Board by rule which shall not exceed
3 _____ percent of the application fee established by the Board pursuant to Chapter 333 for a
4 funeral director license;

5 (2) Be eighteen years of age;

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6 (3) Each applicant, or if a corporation, each officer, director, manager, or controlling
7 shareholder, shall be of good morale character: (Euler)

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8 (4) Have obtained a high school diploma or equivalent thereof; and (Euler)

9 (5) Meet all requirement for licensure; and (Euler)

10 (6) Provide the name and address of each seller for whom the applicant is authorized to
11 sell, negotiate or solicit the sale of preneed contracts for or on behalf of the seller.

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12 4. Each preneed sales agent shall apply to renew his or her registration on or before
13 October thirty-first of each year or a date established by rule of the Board. A registration which
14 has not been renewed prior to the renewal date shall expire. Applicants for renewal shall:

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15 (1) File an application for renewal on a form promulgated by the Board by rule;

16 (2) Pay a renewal fee of _____ dollars or in an amount promulgated by the Board by
17 rule which shall not exceed _____ percent of the application fee established by the Board
18 pursuant to Chapter 333 for a funeral director license, and;

19 (3) Provide the name and address of each seller for whom the preneed sales agent is
20 authorized to sell, negotiate or solicit the sale of preneed contracts for or on behalf of the seller;

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21 and

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22 (4) Meet all requirements for licensure.

1 5. Any registration not renewed as provided by this section shall become void and
2 the registrant shall be immediately removed from the preneed sales agent registry by the Board.

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3 A registrant who fails to apply for renewal may apply for reinstatement by satisfying the
4 requirements of section 4 of this section and paying a delinquent fee as promulgated by the
5 Board.

6 6. Notwithstanding any other provision of law, the Board may remove a preneed
7 sales agent from the registry if the agent has been adjudicated and found guilty, or entered a plea
8 of guilty or nolo contendere, in a criminal prosecution under the laws of any state or of the
9 United States, for any offense reasonably related to the qualifications, functions or duties of any
10 profession licensed or regulated under sections 333.700 to 333.900, for any offense involving the
11 misappropriation or theft of, for any offense an essential element of which is fraud, dishonesty or
12 an act of violence, or for any offense involving moral turpitude, whether or not sentence is
13 imposed.

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14 7. A preneed sales agent who has been removed from the registry by the Board may
15 appeal the removal to the administrative hearing commission. Notice of such appeal must be
16 received by the administrative hearing commission within thirty days of mailing, by certified
17 mail, the notice of removal. Failure of a preneed sales agent registrant to notify the
18 administrative hearing commission of his or her intent to appeal waives all rights to appeal the
19 removal. Upon notice of such person's intent to appeal, a hearing shall be held before the
20 administrative hearing commission in accordance with Chapter 621, RSMo.

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21 8. No person shall sell, negotiate or solicit the sale of any preneed on behalf of a
22 preneed seller unless registered as a preneed sales agent as required by this section.

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23 **SELLERS & PROVIDERS**

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1 | 333.738. 1. No ~~person shall be designated as~~ a provider in a preneed contract unless the
2 | provider has a written contractual agreement with the preneed seller. Any seller who designates
3 | a person as a provider in a preneed contract without a contractual relationship with such person is
4 | in violation of the provisions of sections 333.700 to 333.900. (Euler)

5 | 2. The written agreement required by this section shall include:

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6 | (1) ~~Written consent from the provider authorizing the seller to designate or obligate the~~
7 | provider under a preneed contract; (Meierhoffer)

8 | (2) Procedures for tracking preneed contract funds or payments received by the
9 | provider and for remitting such funds or payments to the seller, including, the time period
10 | authorized by the seller for the remittance of funds and payments, and;

11 | (3) The signatures of the seller and the provider or their authorized representatives
12 | and the date such signature was obtained.

13 | 3. A provider shall notify the Board within fifteen days of authorizing or otherwise
14 | agreeing to allow a seller to designate him or her as the provider under any preneed contract.

15 | 4. Any person who knowingly permits a seller to sell a preneed contract designating
16 | him or her as the provider shall be obligated to provide the disposition or ~~facilities, merchandise~~
17 | and services described in the preneed contract for the beneficiary. ~~Notice to the Board as~~
18 | required by this subsection shall be provided in writing, within thirty days of the provider
19 | having knowledge that a seller is designating him or her as the provider under a preneed contract
20 | without authorization. (Meierhoffer)

Deleted: the funeral or burial

Deleted: If a provider has knowledge that a seller is designating him or her as the provider under any preneed contract and fails within thirty days after first obtaining such knowledge to take action to prevent the seller from so designating him or her as the provider and to inform the Board, the provider shall be deemed to have consented to such designation and shall be obligated under the contract as provided herein.

21 | 5. The provisions of subsection 4 and 5 of this section shall not be construed to
22 | exempt any seller or provider from having a written agreement as required by this section.

1 Failure to comply with the provisions of this section shall be cause for discipline of a preneed
2 license or of any license issued by the Board under sections 333.000 to 333.700, RSMo.

3 6. Upon request of the board, a licensed seller or provider shall provide a copy of
4 any preneed contract or any contract or agreement with a seller or provider to the Board.

5 **PRENEED CONTRACT REQUIREMENTS**

6
7 333.740. 1. A preneed contract made after August 28, 2009, shall be in writing and shall
8 clearly and conspicuously:

9 (1) Include the contract number on the face of the contract and the name, address
10 and phone number of the purchaser and beneficiary; Shall be numbered, but only after all
11 conditions are met and the contract completed. (Kutis)

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12 (2) Identify the name, address, phone and license number of the preneed provider and the
13 preneed seller;

14 (3) Set out in detail the final disposition arrangements for the beneficiary or the funeral or
15 burial services, facilities and merchandise to be provided;

16 (4) Identify on its face whether the contract is trust-funded, insurance-funded or joint-
17 account funded;

18 (5) Designate whether the costs for the final disposition or the funeral or burial services,
19 facilities or merchandise are guaranteed or nonguaranteed. If only a portion of the costs are
20 guaranteed, the contract shall clearly and separately identify the costs that are guaranteed and the
21 costs that are non-guaranteed;

22 (6) Prominently identify if the contract is revocable or irrevocable;

23 (7) Set forth the terms for cancellation by the purchaser or by the seller on default of
24 payment and transfer of the contract; (Meierhoffer).

(8) Identify the preneed trust or joint account into which contract payments shall be deposited, including the name and address of the trustee or the financial institution thereof;

(10) Include the name, address and phone number of any insurance company issuing an insurance policy used to fund the preneed contract;

(11) Identify the type of insurance that will be used to fund the insurance policy, including, the number of such policy, if available;

(Meierhoffer).

Deleted: (12) Explain how interest will be distributed and designate the amount of administrative expenses that will be retained by the seller as authorized by this section;

(12) Identify any other type of expenses or taxes that may be deducted from preneed funds, and the amount of any such expense if known by the seller at the time of the sale;

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(13) Include the name and signature of the purchaser, the preneed sales agent responsible for the sale of, if any, and of the seller, or its duly authorized representative;

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(14) Include the signature of the preneed provider, or their designee, if the preneed contract is sold to the purchaser by the provider; and (Meierhoffer).

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(Meierhoffer).

(15) Comply with the provisions of section 333.700 to 333.900 or any rule promulgated pursuant thereto.

Deleted: (16) Include a disclosure statement immediately under the signature of the purchaser which states that the preneed seller and provider identified in the contract are licensed by the Missouri State Board of Embalmers and Funeral Directors and that complaints against a preneed provider, seller or counselor may be filed with the Missouri State Board of Embalmers and Funeral Directors. The statement required by this section shall also include the current address and phone number for the Board, and;

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2. A preneed contract shall be voidable and unenforceable at the option of the purchaser, or the purchaser's legal representative, if the contract is not in compliance with this section, not issued by a preneed seller duly licensed by the Board or if the purchaser has not received a copy of the preneed contract signed by the seller or their designee. (Meierhoffer).

3. If a preneed contract does not comply with the provisions of sections 333.700 to 333.900, all payments made under such contract shall be recoverable by the purchaser, or the purchaser's legal representative, from the contract seller or other payee thereof. (Meierhoffer).

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1 4. After the seller retains any amount authorized by sections 333.700 to 333.900, all
2 funds paid by or on behalf of the purchaser as payment for a preneed contract shall be placed in
3 trust, in a joint account or shall be used to purchase insurance, as authorized by sections 333.700
4 to 333.900.

5 5. A preneed contract may not be redesignated as a trust-funded, insurance-funded or
6 joint-account funded preneed contract without the consent of the purchaser. A seller, provider,
7 or sales agent may not secure the purchaser's consent without providing the purchaser a written
8 statement explaining in plain language any financial consequences the redesignation may have.
9 These shall include, at a minimum, any reduction in cash surrender value, interest accrual, and
10 fees as provided in this section. The seller, provider, or sales agent must secure the purchaser's
11 signature on such a disclosure statement or purchaser will not be deemed to have consented to
12 the redesignation. (Solocum)

13
14 **TRUST FUNDED PRENEED CONTRACTS**

15 333.745.1. A trust-funded preneed contract shall comply with sections 333.700 to
16 333.900 and the specific requirements of sections 333.745 to 333.750. A seller shall deposit
17 payments received on a trust funded preneed contact into a trust designated by this section within
18 forty five days of receipt of such funds by the seller or its designee. (Grinston), 2. The
19 trustee of a preneed trust shall be a state or federally chartered financial institution authorized to
20 exercise trust powers in Missouri. The trustee shall accept all deposits made to it for a preneed
21 contract and shall hold, administer, and distribute such deposits, in trust, as trust principal,
22 pursuant to sections 333.700 to 333.900.

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1 3. The financial institution referenced herein may neither control nor be controlled
2 by or under common control with the seller. The term “control” including terms, “controlled by”
3 and “under common control” with, means the possession, direct or indirect, of the power to
4 direct or cause the direction of the management and polices of a person, whether through the
5 ownership of voting securities, by contact other than the power is the result of an official position
6 with or corporate office held otherwise, unless the power is the result of an official position with
7 or corporate office held by the person. Control shall be presumed to exist if any person, directly
8 or indirectly, owns, controls, holds with the power to vote, or holds proxies representing, ten
9 percent or more of the voting securities of any other person. This presumption may be rebutted
10 by a showing to the board and within its sole discretion that control does not in fact exist.

11 4. Payments regarding two or more preneed contracts may be deposited into and
12 commingled in the same preneed trust, so long as the trust’s grantor is the seller of all such
13 preneed contracts and the trustee maintains adequate records that individually and separately
14 identify the payments, earnings and distributions for each preneed contract.

15 5. Within a reasonable time after accepting a trusteeship or receiving trust assets, a
16 trustee shall review the trust assets and make and implement decisions concerning the retention
17 and disposition of assets in order to bring the trust portfolio into compliance with the purposes,
18 terms, distribution requirements, and other circumstances of the trust, and with the requirements
19 of sections 333.700 to 333.900.

20 6. All expenses of establishing and administering a preneed trust, including, without
21 limitation, trustee's fees, legal and accounting fees, investment expenses, and taxes, shall be paid
22 or reimbursed directly by the seller of the preneed contracts administered through such trust and
23 shall not be paid from the principal of a preneed trust. In investing and managing trust assets, a

1 trustee may only incur costs that are appropriate and reasonable in relation to the assets, the
2 purposes of the trust, and the skills of the trustee. COMMENT: Other states allow the trustee to
3 deduct a small, reasonable fee directly from the trust. Missouri may want to consider allowing
4 this, perhaps $\frac{3}{4}$ of 1%. (Solocum)

5 ~~7. The seller of a preneed contract shall be entitled to all income, including, without~~
6 ~~limitation, interest, dividends, and capital gains, and losses generated by the investment of~~
7 ~~preneed trust property regarding such contract, and the trustee of the trust may distribute all~~
8 ~~income, net of losses, to the seller upon the final disposition of the beneficiary or provision of the~~
9 ~~funeral or burial services of facilities or funeral merchandise to or for the benefit of the~~
10 ~~beneficiary.~~

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11 8. The trustee of a preneed trust shall maintain adequate books and records of all
12 transactions administered through the trust and pertaining to the trust generally. The trustee shall
13 assist the seller who established the trust or its successor in interest in the preparation of the
14 annual report described in section 333.000. The seller shall furnish to each contract purchaser,
15 within fifteen days after receipt of the purchaser's written request, a written statement of all
16 deposits made to such trust regarding such purchaser's contract ~~(Plus principal, plus interest from~~
17 ~~the year and principal plus interest over the life of the trust).~~ (Solocum) 9. A preneed

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18 trust shall terminate when trust principal no longer includes any payments made under any
19 preneed contract, and upon such termination the trustee shall distribute all trust property,
20 including principal and undistributed income, to the seller which established the trust.

21 333.747.1 All property held in a preneed trust, including principal and undistributed
22 income, shall be invested and reinvested by the trustee thereof and shall only be invested and
23 reinvested in investments which have reasonable potential for growth or producing income.

1 2. A trustee shall invest and manage trust assets as a prudent investor would, by
2 considering the purposes, terms, distribution requirements, and other circumstances of the trust.
3 In satisfying this standard, the trustee shall exercise reasonable care, skill, and caution. In no
4 instance shall funds in or belonging to a preneed trust be invested in any term life insurance
5 product. A trustee who has special skills or expertise, or is named trustee in reliance upon the
6 trustee's representation that the trustee has special skills or expertise, has a duty to use those
7 special skills or expertise when investing and managing trust assets, and;

8 3. A trustee shall diversify the investments of the trust unless the trustee reasonably
9 determines that, because of special circumstances, the purposes of the trust are better served
10 without diversifying.

11 4. In investing and managing trust assets, a trustee shall consider the following as are
12 relevant to the trust:

- 13 (1) General economic conditions;
- 14 (2) The possible effect of inflation or deflation;
- 15 (3) The expected tax consequences of investment decisions or strategies;
- 16 (4) The role that each investment or course of action plays within the overall trust
17 portfolio;
- 18 (5) The expected total return from income and the appreciation of capital;
- 19 (6) Other resources of the beneficiaries known to the trustee;
- 20 (7) Needs for liquidity, regularity of income, and preservation or appreciation of capital;
- 21 (8) An asset's special relationship or special value, if any, to the purposes of the trust or to
22 one or more of the beneficiaries; and

1 (9) The size of the portfolio, nature and estimated duration of the fiduciary relationship
2 and distribution requirements under the governing instrument.

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3 9. It is unlawful for any trustee, preneed seller, preneed provider or preneed sales agent to
4 procure or accept a loan against any investment or asset of or belonging to a preneed trust.

5 333.749.1. A preneed trustee may delegate to an agent duties and powers that a prudent
6 trustee of comparable skills could properly delegate under the circumstances. The trustee shall
7 exercise reasonable care, skill, and caution in:

- 8 (1) Selecting an agent;
- 9 (2) Establishing the scope and terms of the delegation, consistent with the purposes and
10 terms of the trust; and
- 11 (3) Periodically reviewing the agent's actions in order to monitor the agent's performance
12 and compliance with the terms of the delegation.

13 2. In performing a delegated function, an agent owes a duty to the trust to exercise
14 reasonable care to comply with the terms of the delegation.

15 3. By accepting a delegation of powers or duties from the trustee of a preneed trust, an
16 agent submits to the jurisdiction of the courts of this state.

17 4. Delegation of an agent as provided herein shall not relieve the trustee of any duty or
18 responsibility imposed on the trustee by sections 333.700 to 333.900 or the trust agreement.

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19 333.750.1 A trustee shall not sell, invest or authorize any transaction involving the
20 investment or management of trust property with:

- 21 (1) The spouse of the trustee;
- 22 (2) The descendants, siblings, parents, or spouses of a preneed seller or an officer,
23 manager, director or employee of a preneed seller, provider or preneed sales agent;

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(3) An agent, ~~preneed sales agent~~ or attorney of the trustee, preneed seller or provider; or

(4) A corporation or other person or enterprise in which the trustee, preneed seller,

preneed provider, or a preneed provider owns a significant interest or has an interest that might

affect the trustee's best judgment.

INSURANCE-FUNDED PRENEED CONTRACTS

SEE DIFP document.

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333.751.1. An insurance-funded preneed contract shall comply with sections 333.700 to

333.900 and the specific requirements of this section.

2. In no event shall the seller or provider, or any agent, receive or collect from the

purchaser of an insurance-funded preneed contract any amount in excess of what is required to

pay the premiums on the insurance policy as assessed or required by the insurer as premium

payments for the insurance policy. In no instance shall a preneed seller receive or collect any

administrative or other fee to the purchaser for or in connection with an insurance funded

preneed contract, other than those fees or amounts assessed by the insurer.

3. Payments collected by or on behalf of a preneed seller for an insurance funded

preneed contract shall be promptly remitted to the insurer or the insurer's designee as required by

the insurer, provided that in no event shall payments be retained or held by the preneed seller or

~~preneed sales agent for more than thirty days from the date of receipt.~~

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4. ~~(Meierhoffer)~~

A preneed seller or any preneed sales agent authorized to sell an insurance funded

preneed contract on behalf of a seller shall disclose to the purchaser at the time of sale if the

seller or preneed sales agent is a licensed insurance agent and if the seller or preneed sales agent

Deleted: A preneed seller or any preneed counselor authorized to sell an insurance funded preneed contract on behalf of a seller shall disclose to the purchaser at the time of sale if the seller or counselor is a licensed insurance agent and if the seller or counselor will receive any commission, payment or other valuable consideration for the sale of the insurance product used to fund the contract.

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1 | will receive any commission, payment or other valuable consideration, for the sale of the
2 | insurance product used to fund the contract and the amount or percentage of any such payments
3 | or commissions. (Solocum).

4 | 5. In no instance shall any term life insurance policy be used to fund a preneed
5 | contract nor shall a preneed seller or provider be listed or otherwise designated as the owner of
6 | an insurance policy used to fund a preneed contract.

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7 | 6. It is unlawful for a preneed seller, provider or preneed sales agent to procure or
8 | accept a loan against any insurance contract used to fund a preneed contract.

9 | 7. No preneed seller or provider shall accept an assignment of insurance proceeds or
10 | knowingly allow the preneed seller or provider to be designated as the beneficiary in an
11 | insurance policy unless a preneed contract has also been issued by a licensed seller. A preneed
12 | contract shall only be required by this section if the insurance proceeds are to be used for the
13 | final disposition of a dead human body, or for funeral or burial services or facilities, or for
14 | funeral merchandise, where such disposition, services, facilities or merchandise are not
15 | immediately required *and the price of such services, facilities or merchandise are guaranteed by*
16 | *the provider or seller.* A preneed contract written pursuant to this subsection shall be deemed an
17 | insurance-funded preneed contract and shall comply with this section and all applicable
18 | provisions of sections 333.700 to 333.900.

19 | 9. Laws regulating insurance shall not apply to preneed contracts, but shall apply to
20 | any insurance sold with a preneed contract.

21 | **JOINT ACCOUNT-FUNDED PRENEED CONTRACTS**

22 | *****NOTE: THIS SECTION IS STILL IN THE DRAFTING PROCESS*****

1 333.755.1. A joint account funded preneed contract shall comply with sections 333.700 to
2 333.900 and the specific requirements of this section.

3 2. In lieu of a trust-funded or insurance-funded preneed contract, a preneed seller
4 and the purchaser may agree in writing that all funds paid by the purchaser for the preneed
5 contract shall be deposited with a financial institution chartered and regulated by the federal or
6 state government authorized to do business in Missouri in an account in the joint names and
7 under the joint control of the provider and purchaser. There shall be a separate joint account
8 established for each preneed contract sold or arranged under this section.

9 3. All consideration paid by the purchaser under a joint-account funded contract
10 shall be deposited into a joint account authorized as authorized by this section within five days of
11 receipt of payment by the seller.

12 4. The financial institution shall hold, invest, and reinvest funds deposited pursuant
13 to this section in savings accounts, certificates of deposit or other accounts offered to depositors
14 by the financial institutions as provided in the written agreement of the purchaser and the seller,
15 provided the financial institution shall not invest or reinvest any funds deposited pursuant to this
16 section in term life insurance or any investment that does not reasonably have the potential to
17 gain income or increase in value.

18 5. Income generated by preneed funds deposited pursuant to this section shall be
19 used to pay the reasonable expenses of administering the account, and the balance of the income
20 shall be distributed or reinvested as provided in the written agreement of the purchaser and seller.

21 6. A joint-funded preneed contract shall clearly designate the following:

22 (1). The name of the financial institution in which the account will be held and the
23 account number;

(2) STILL WORKING ON THIS;

7. At any time before final disposition, or before the funeral or burial services, facilities, or merchandise described in a preneed contract are furnished, the purchaser may cancel the contract without cause by delivering written notice thereof to the seller and the financial institution. Within fifteen days of receipt of notice of cancellation, the financial institution shall distribute all deposited funds to the purchaser. Interest shall be distributed as provided in the agreement with the seller and purchaser;

8. Within fifteen days after a provider and a witness certifies to the financial institution in writing that he has furnished the final disposition, or funeral services, facilities, and merchandise described in a contract, or has provided alternative funeral benefits for the beneficiary pursuant to special arrangements made with the purchaser, the financial institution shall distribute the deposited funds, if the certification has been approved by the purchaser.

ANNUAL REPORTS

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333.760. 1. Each preneed seller shall file an annual report with the Board which shall contain, at least the following information:

(1) The name, addresses and contract number of all purchasers as reflected in any preneed contract sold since the filing of the last report;

(2) The total number and total face value of preneed contracts sold since the filing of the last report;

(3) The contract amount of each preneed contract sold since the filing of the last report, identified by contract;

(Meierhoffer)

Deleted: (4) The amount of funds received by the seller for payment on each preneed contract since the filing of the last report, identified by contract, and the date such funds were received; (5) The total amount of funds retained by the seller for administrative expenses from payments received on behalf of a purchaser since the filing of the last report, identified by contract;

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1 (6) The name, address and license number of all preneed sales agents employed or
2 authorized to sell preneed contracts on behalf of the seller;

3 (7) The date the report is submitted and the date of the last report;

4 (8) The number of all Missouri preneed contracts fulfilled by the preneed seller during
5 the preceding calendar year;

6 (9) The name and address of each provider with whom it is under contract;

7 (10) The name and address of the person designated by the seller as custodian of the
8 seller's books and records relating to the sale of preneed contracts.

9 (11) Written consent authorizing the state board to order an examination and if necessary
10 an audit of any joint or trust account established pursuant to sections 333.700 to 333.900,
11 designated by depository or account number.

12 (12) Written consent authorizing the state board to order an investigation, examination
13 and if necessary an audit of its books and records relating to the sale of preneed contracts;

14 (13) The annual status report shall be certified under oath as complete and correct by an
15 officer of the preneed seller. The preneed seller or officer shall be subject to the penalty of
16 making a false affidavit or declaration.;

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17 (14) A copy of each preneed contract sold, which may be provided by a scanned
18 electronic copy; and (Solocum)

19 (15) Any information deemed necessary by the Board to ensure compliance with
20 sections 333.700 to 333.900.

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21 2. A preneed seller that sells or has sold trust-funded preneed contracts shall also include
22 in the annual report required by section 1 of this section:

1 (1) The name and address of the financial institution in Missouri in which it maintains a
2 preneed trust account and the account numbers of such trust accounts, and;

3 (2) The trust fund balance as reported in the previous year's report;

4 (3) The current trust fund balance;

5 (4) Principal contributions received by the trustee since the previous report;

6 (5) Total *trust* earnings and total distributions to the preneed seller since the previous
7 report;

8 (6) A statement of all assets *and investments* of the trust listing cash, real or personal
9 property, stocks, bonds, and other assets, showing cost, acquisition date and current market value
10 of each asset and *investment*, and;

11 (8) Total expenses, excluding distributions to the preneed seller, since the previous
12 report.

13 (9) The information required by subsections (1) to (8) of this section shall be certified to
14 under oath as complete and correct by a corporate officer of the trustee. The trustee shall be
15 subject to the penalty of making a false affidavit or declaration.

16 3. A preneed seller that sells or who has sold joint-account funded preneed contracts
17 shall also include in the annual report required by section 1 of this section:

18 (1) The name and address of the financial institution in Missouri in which it maintains the
19 joint account and the account numbers for each joint account, and;

20 (2) The amount on deposit in each joint account;

21 (3) The joint account balance as reported in the previous year's report;

22 (4) Principal contributions placed into each joint account since the filing of the previous
23 report;

1 (5) Total earnings since the previous report;

2 (6) Total distributions to the preneed seller from each joint account since the previous
3 report;

4 (7) Total expenses deducted from the joint account, excluding distributions to the preneed
5 seller, since the previous report, and;

6 (8) The information required by subsections (1) to (7) of this section shall be certified to
7 under oath as complete and correct by an authorized representative of the financial institution.
8 The affiant shall be subject to the penalty of making a false affidavit or declaration.

9 4. A preneed seller that sells or who has sold any insurance-funded preneed contracts
10 shall also include in the annual report required by section 1 of this section:

11 (1) The name and address of each insurance company issuing insurance to fund a preneed
12 contract sold by the seller during the preceding year;

13 (2) The type of insurance purchased to fund each preneed contract, identified by
14 contract;

15 (3) The total amount of funds collected by the seller for each preneed contract, including,
16 any funds used to pay insurance premiums and the date such funds were received;

17 (4) The total amount of premiums received by the insurance company for each insurance
18 policy used to fund a preneed contract sold by the preneed seller;

19 (5) *The status, total face value and total cash surrender value of each policy, and;*

20 (6) The information required by subsections (1) to (5) of this section shall be certified to
21 under oath as complete and correct by an authorized representative of the insurer. The affiant
22 shall be subject to the penalty of making a false affidavit or declaration.

1 grounds exist for disciplining any person licensed or regulated under sections 333.700 to
2 333.900. The Board shall have authority to conduct an investigation if an inspection authorized
3 by this section identifies a violation of sections 333.700 to 333.900 or upon receipt of a
4 complaint filed with the Board or by the Board staff; (Euler)

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5 (3) Conduct a financial examination of the books and records of a licensee, and if
6 necessary an audit of a licensee or any trust or joint account, to determine *if preneed funds are*
7 *being maintained or handled by the licensee as required by* sections 333.700 to 333.900. The
8 Board shall conduct a financial examination of the books and records of each preneed seller as
9 authorized by this section at least once every [five] years, as financially permissible pursuant to
10 the funding of the board; (Kutis and Meierhoffer) COMMENT: Conducting a random sampling
11 annually (Solocum). SEE DIFP document.

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12 2. Upon determining that an inspection, investigation, examination or audit shall be
13 conducted, the board shall issue a notice authorizing an employee or other person appointed by
14 the board to perform such inspection, investigation, examination or audit. The notice shall
15 instruct the person appointed by the board as to the scope of the inspection, investigation,
16 examination or audit.

17 (a) The board shall not appoint or authorize any person to conduct an inspection,
18 investigation, examination or audit pursuant to this section if the individual has a conflict of
19 interest or is affiliated with the management of, or owns a pecuniary interest in, any person
20 subject to inspection, investigation, examination or audit under section 333.000 to section
21 333.999.

22 (b) The board may request that the director of the division of professional registration,
23 the director of the department of insurance, financial institutions and professional registration, or

1 the office of the attorney general designate one or more investigators or financial examiners to
2 assist in any investigation, examination or audit, and such assistance shall not be unreasonably
3 withheld. (Euler)

4 3. Upon request by the board, a licensee or registrant shall make the books and
5 records of the licensee or registrant available to the board for inspection and copying at any
6 reasonable time, including, any insurance, trust, joint account or financial institution records
7 deemed necessary by the board to determine compliance with sections 333.700 to 333.900.

8 4. The board or a designated member thereof or any agent authorized by the board
9 may enter the office, premises, establishment, or place of business of any preneed seller or
10 provider of funeral service contracts licensed in this state, or any office, premises, establishment,
11 or place where the practice of selling and/or providing preneed funerals is carried on, or where
12 such practice is advertised as being carried on for the purpose of inspecting such office,
13 premises, establishment, or place to determine compliance with sections 333.700 to 333.900, or
14 for the purpose of inspecting, examining, investigating or auditing the licensee or the sale of
15 preneed contracts.

16 5. The board shall have the power to issue a subpoena to compel the production of
17 records and papers by any licensee, trustee or registrant of the board. Subpoenas issued pursuant
18 to this section shall be served in the same manner as subpoenas in a criminal case.

19 6. All preneed sellers, providers, ~~sales agent,~~ or trustee shall cooperate with the state
20 board or its designee, the division of finance, the department of insurance, financial institutions
21 and professional registration and the office of the attorney general of Missouri, in any inspection,
22 investigation, examination or audit brought under the provisions of sections 333.700 to 333.900.

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1 7. This section shall not be construed to limit the board's authority to file a
2 complaint with the administrative hearing commission charging a licensee of the board with any
3 actionable conduct or violation, regardless of whether such complaint exceeds the scope of acts
4 charged in a preliminary public complaint filed with the board and whether any public complaint
5 has been filed with the board.

6 8. The state board, the division of finance, the department of insurance, financial
7 institutions and professional registration and the office of the attorney general of Missouri may
8 share information relating to any preceed investigation, examination or audit. (Euler)

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9 ~~9. If an investigation, audit or examination finds a violation of sections 333.700 to~~
10 333.900, the office of the attorney general may initiate a judicial proceeding to:

- 11 (1) Declare rights;
- 12 (2) Approve a nonjudicial settlement;
- 13 (3) Interpret or construe the terms of the trust;
- 14 (4) Determine the validity of a trust or of any of its terms;
- 15 (5) Compel a trustee to report or account;
- 16 (6) Enjoin a trustee from performing a particular act or grant to a trustee any necessary or
17 desirable power;
- 18 (7) Review the actions of a trustee, including the exercise of a discretionary power;
- 19 (8) Appoint or remove a trustee;
- 20 (10) Determine the liability of a trustee for an action relating to the trust and compel
21 redress of a breach of trust by any available remedy;
- 22 (12) Approve employment and compensation of agents;
- 23 (13) Determine the propriety of investments or of principal and income allocations, or;

(17) Determine the timing and quantity of distributions and dispositions of assets.

(18) This section does not preclude any other authority vested in the attorney general by law.

DISCIPLINARY ACTION

333.770. 1. The board may refuse to issue any registration or license required by sections 333.700 to 333.900 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 right to file a complaint with the administrative hearing commission as provided by chapter 621, RSMo.

2. The board may cause a complaint to be filed with the administrative hearing commission as provided by chapter 621, RSMo, against any preneed seller or provider licensed with the board [or preneed counselor registered with the board] or any person who has failed to renew or has surrendered his license [or registration] for any one or any combination of the following causes:

(1) Use of any controlled substance, as defined in chapter 195, RSMo, or alcoholic beverage to an extent that such use impairs a person's ability to perform the work of any profession registered under sections 333.700 to 333.900;

(2) The person has been finally adjudicated and found guilty, or entered a plea of guilty or nolo contendere, in a criminal prosecution under the laws of any state or of the United States, for any offense involving the misappropriation or theft of funds, elder abuse, or for any offense an essential element of which is fraud, dishonesty or an act of violence, or for any offense involving moral turpitude, whether or not sentence is imposed; (Euler)

- 1 (3) Use of fraud, deception, misrepresentation or bribery in securing any license or
2 registration pursuant to sections 333.700 to 333.900;
- 3 (4) Obtaining or attempting to obtain any fee, charge, tuition or other compensation by
4 fraud, deception or misrepresentation;
- 5 (5) Incompetency, misconduct, gross negligence, fraud, misrepresentation or dishonesty
6 in the performance of the functions or duties of the profession for which the individual is
7 licensed or registered;
- 8 (6) Violation of, or assisting or enabling any person to violate, any provision of sections
9 333.700 to 333.900 or sections 333.700 to 333.900, or of any lawful rule or regulation adopted
10 pursuant to Chapters 333.194 or sections 333.700 to 333.900; (Euler)
- 11 (7) Impersonation of any person holding a preneed licensee or registration with the board
12 or allowing any person to use his or her license or registration;
- 13 (8) Disciplinary action against the holder of any license or registration or other right to
14 practice any profession regulated pursuant to this chapter or by any state, territory, federal
15 agency or country upon grounds for which revocation or suspension is authorized in this state;
- 16 (9) A person is finally adjudged insane or incompetent by a court of competent
17 jurisdiction;
- 18 (10) Misappropriation or theft of preneed funds; COMMENT: Is this needed? (Euler)
- 19 (11) Assisting or enabling any person to practice or offer to practice as a preneed seller,
20 preneed provider or preneed counselor as defined or regulated by sections 333.700 to 333.900
21 who is not licensed or registered and currently eligible to practice under sections 333.700 to
22 333.900;
- 23 (12) Issuance of a registration or license based upon a material mistake of fact;

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1 (13) Failure to display or present a valid certificate or license required by sections
2 333.700 to 333.900 or any rule promulgated thereunder; (Euler)
3 (14) Violation of any professional trust or confidence;
4 (15) Make or file any report required by sections 333.000 to 333.999 which the licensee
5 or registrant knows to be false or knowingly fail to make or file a report required by sections
6 333.000 to 333.999;

7 (16) Use of any advertisement, solicitation or preneed contract which is false, misleading
8 or deceptive to the general public or persons to whom the advertisement or solicitation is
9 primarily directed, and;

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10 (17) Willfully and through undue influence selling a preneed contract, or;
11 (18) Violating any provision of the Federal Trade Commission's funeral rule. (Solocum)

12 3. After the filing of such complaint, the proceedings shall be conducted in accordance
13 with the provisions of chapter 621, RSMo. Upon a finding by the administrative hearing
14 commission that the grounds, provided in subsection 2, for disciplinary action are met, the board
15 may, singly or in combination, censure or place the person named in the complaint on probation
16 on such terms and conditions as the board deems appropriate for a period not to exceed five
17 years, or may suspend, for a period not to exceed three years, or revoke the license. COMMENT:
18 Civil penalty/fines. (Solocum)

19 4. Notwithstanding any other provision of this section, the board may automatically
20 suspend any license issued pursuant to Chapter 333/sections 333.700-333.900 if the board finds,
21 after an inspection, examination, investigation or audit a shortage in the trust fund or joint
22 account which exceeds [twenty percent of the amount required to be held in the trust or joint
23 account or fifty thousand dollars, whichever is lesser] or upon being adjudicated and found

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1 guilty, or entering a plea of guilty or nolo contendere, in a criminal prosecution under the laws of
2 any state or of the United States, for any offense involving elder abuse, violence, sexual
3 misconduct or involving the stealing, misappropriation or theft of funds. (Grinston/Euler)

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4 5. A person whose license has been suspended under subsection 4 of this section may
5 appeal such suspension to the administrative hearing commission. Notice of such appeal must be
6 received by the administrative hearing commission within ninety days of mailing, by certified
7 mail, the notice of suspension. Failure of a person whose license was suspended to notify the
8 administrative hearing commission of his or her intent to appeal waives all rights to appeal the
9 suspension. Upon notice of such person's intent to appeal, a hearing shall be held before the
10 administrative hearing commission. (Meierhoffer)

11 6. Use of the procedures set out in this section shall not preclude the application of
12 the provisions of subsection 2 of section 333.061.

13 333.775. If a seller shall fail to make timely payment of an amount due a purchaser, or a
14 provider pursuant to the provisions of sections 333.700 to 333.900, the purchaser or provider, as
15 appropriate, shall have the right, in addition to other rights and remedies against such seller, to
16 make demand upon the trustee of the preneed trust for the contract to distribute to the purchaser
17 or provider from the trust, as damages for its breach, an amount equal to all deposits made into
18 the trust for the contract.

19 333.780. Upon the death or legal incapacity of a purchaser, all rights and remedies
20 granted to the purchaser pursuant to the provisions of sections 333.700 to 333.900 shall be
21 enforceable by and accrue to the benefit of the purchaser's legal representative or his successor
22 designated in such contract, and all payments otherwise payable to the purchaser shall be paid to
23 that person.

1 333.785. 1. Any person, including the officers, directors, partners, agents, or employees
2 of such person, who shall knowingly and willfully violate or assist or enable any person to
3 violate any provision of sections 333.700 to 333.900 by incompetence, misconduct, gross
4 negligence, fraud, misrepresentation, or dishonesty is guilty of a class C felony. Each violation of
5 any provision of sections 333.700 to 333.900 constitutes a separate offense and may be
6 prosecuted individually. The attorney general shall have concurrent jurisdiction with any local
7 prosecutor to prosecute under this section.

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8 2. Any violation of the provisions of sections 333.700 to 333.900 shall constitute a
9 violation of the provisions of section 407.020, RSMo. In any proceeding brought by the attorney
10 general for a violation of the provisions of sections 333.700 to 333.900, the court may order all
11 relief and penalties authorized under chapter 407 and, in addition to imposing the penalties
12 provided for in sections 333.700 to 333.900, order the revocation or suspension of the
13 [registration] license of a defendant seller or provider.

14 **INJUNCTIONS**

15 333.790. 1. Upon application by the board, and the necessary burden having been met, a
16 court of general jurisdiction may grant an injunction, restraining order or other order as may be
17 appropriate to enjoin a person from:

18 (1) Offering to engage or engaging in the performance of any acts or practices for which
19 a registration or authority, permit or license is required by sections 333.700 to 333.900 upon a
20 showing that such acts or practices were performed or offered to be performed without the
21 required registration or authority, permit or license; or

22 (2) Engaging in any practice or business authorized by a registration or authority, permit
23 or license issued pursuant to sections 333.700 to 333.900 that is in violation of sections 333.700

1 to 333.900 or upon a showing that the holder presents a substantial probability of serious danger
2 to the health, safety or welfare of any resident of this state or client or customer of the licensee,
3 or;

4 (3) Engaging in any practice or business that presents a substantial probability of serious
5 danger to the solvency of any preneed seller.

6 2. Any such action shall be commenced either in the county in which such conduct
7 occurred or in the county in which the defendant resides or, in the case of a firm or corporation,
8 where the firm or corporation maintains its principal office or in Cole county. (Euler

9 3. Any action brought under this section shall be in addition to and not in lieu of any
10 penalty provided by sections 333.700 to 333.900 and may be brought concurrently with other
11 actions to enforce sections 333.700 to 333.900.

12 **TERMINATION OF BUSINESS- PROVIDER**

13 333.800.1 A preneed provider that intends to sell or otherwise dispose of *all or a*
14 *majority* of its business assets, or its stock if a corporation, shall notify the Board at least sixty
15 days prior to selling or otherwise disposing of its business assets or stock, or ceasing to do
16 business as a preneed provider, and shall file a notification report on a form established by the
17 board.

18 2. The report required by this section shall include:

19 (a) The name, phone number and address of the purchasers of any outstanding preneed
20 contract for which the licensee is the designated provider;

21 (b) The name and license numbers of all sellers authorized to designate the licensee as a
22 provider in a preneed contract;

1 (c) The name, address and license number of the provider assuming or agreeing to
2 assume the licensee's obligations as a provider under a preneed contract, if any;

3 (d) The name, address and phone number of a custodian who will maintain the books
4 and records of the provider containing information about preneed contracts in which the licensee
5 is or was formerly designated as provider,

6 (e) A final annual report containing the information required by section 333.000;

7 (e) The date the provider intends to sell or otherwise dispose of its business assets, or its
8 stock if a corporation, or to cease to doing business, and;

9 (f) Any other information required by the Board by rule.

10 3. Within three days after the provider sells or transfers its assets or stock or ceases doing
11 business, the former provider shall notify each seller in writing that the former provider has sold
12 or transferred its assets or stock or has ceased doing business.

13 (a) Within thirty days after the seller receives notification from the provider under this
14 subsection, the seller shall provide written notification to all purchasers with outstanding preneed
15 contracts in which the former provider was designated as provider indicating that the provider
16 has transferred ownership or has ceased doing business. Such notice shall give the purchaser the
17 option to select another provider that has a written agreement with the seller pursuant to the
18 provisions of sections 333.000 or to cancel the contract if an alternate provider is not accepted by
19 the purchaser.

20 (b) If an alternate provider is selected by the purchaser, the seller shall amend the
21 preneed contract to reflect the change in provider and shall notify the new provider of the
22 designation;

1 (c) If the purchaser elects to cancel the contract, the seller shall refund all amounts paid
2 by or on behalf of the purchaser *and any related interest*. Nothing in this section shall be
3 construed to prohibit a seller from seeking reimbursement from the former provider of any funds
4 paid to the purchaser after a cancellation authorized by this subsection.

5 4. A preneed provider not subject to subdivision 1 of this section may only transfer its
6 obligations as a provider to an alternate provider upon the consent of the seller, purchaser and the
7 provider assuming the provider obligations under the contract. If an alternate provider is
8 selected by the purchaser, the seller shall amend the preneed contract to reflect the change in
9 provider and shall provide the purchaser with a copy of the amended contract.

10 5. The office of the attorney general shall have authority to initiate legal action to
11 compel or otherwise ensure compliance with this section by a former preneed provider licensee.

12 **TERMINATION OF BUSINESS- SELLER**

13 333.805.1 A preneed seller that intends to sell or otherwise dispose of *all or a majority* of
14 its business assets, or its stock if a corporation, shall notify the Board at least sixty days prior to
15 selling or otherwise disposing of its assets or stock, or ceasing to do business as a preneed seller,
16 and shall file a notification report on a form established by the board.

17 2. The report required by this section shall include:

18 ~~((Meierhoffer))~~.....

19 (d) A notarized and signed statement from the person assuming or agreeing to assume
20 the obligations of the seller indicating that the assuming seller has been provided with a copy of
21 the seller's final annual report and has consented to assuming the outstanding obligations of the
22 seller;

Deleted: a) A final annual report containing the information required by section 333.000;¶
(b) The name, address and phone number of a custodian for the books and records of the seller that contain information about preneed contracts in which the licensee is or was formerly designated as seller;¶
(c) The date the seller intends to sell or otherwise dispose of its business assets, or its stock if a corporation, or to cease to doing business;

1 (e) In lieu of the notarized statement required by subdivision (8), the seller may file a
2 plan detailing how the assets of the seller will be set aside and used to service all outstanding
3 preneed contracts sold by the seller, and;

4 (f) Any other information required by the Board by rule.

5 3. Within thirty days after assuming the obligations of a seller pursuant to this section,
6 the assuming preneed seller shall:

7 (1) Notify each provider in writing that the former seller has sold or transferred its assets
8 or stock or has ceased doing business, and;

9 (2) Provide written notification to the purchasers of each preneed contract assumed by
10 the seller indicating that the former seller has transferred ownership or has ceased doing
11 business. ~~(Meierhoff)~~

12 ~~(Meierhoffer)~~5. A preneed seller not subject to subdivision 1 of this section may only
13 transfer its obligations as a seller under a preneed contract to an alternate seller upon consent of
14 the purchaser and the person assuming the obligations of the seller under the contract. If the
15 purchaser fails to consent, the seller shall refund all amounts paid by or on behalf of the
16 purchaser with any related interest or earnings. If the purchaser and seller consent to the transfer,
17 the seller shall amend the preneed contract to reflect the change and shall provide the purchaser
18 with a copy of the amended contract.

19 6. Nothing in this section shall be construed to require the state board to audit,
20 investigate or examine the books and records of a seller subject to the provisions of this section
21 nor shall this section be construed to amend, rescind or supersede any duty imposed on, or due
22 diligence required of, an entity assuming the obligations of the seller.

Deleted: Such notice shall give the purchaser the option to maintain or to cancel the contract. If the purchaser elects to cancel the contract, the seller shall refund all amounts paid by or on behalf of the purchaser *and any related interest*. This section shall not be construed to limit or otherwise restrict any civil or other legal right a purchaser or provider may have against the seller for damages, breach of a contractual relationship or for unpaid fees.

Deleted: 4.U pon receipt of the written notification, the state board or the office of the attorney general may take reasonable and necessary action to determine that the seller has made proper plans to assure that the trust assets of the seller will be set aside and used to service outstanding preneed contracts sold by the seller. Such action may include, but is not limited to, an examination of books and records or audit of the trust account. The attorney general shall be authorized to bring legal action to ensure compliance with this section including an action for injunctive or declaratory relief.

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1 333.850. 1. The board shall establish the amount of the fees authorized in this chapter and
2 required by rules promulgated thereunder. Such fees shall be set at a level to produce revenue
3 which does not substantially exceed the cost and expense of administering this chapter.

4 3. The board shall promulgate and enforce rules for the transaction of its business and for
5 standards of service and practice to be followed for the licensing and registration of providers,
6 sellers and counselors deemed necessary for the public good and consistent with the laws of this
7 state.

8 4. Any rule or portion of a rule, as that term is defined in section 536.010, RSMo, that is
9 created under the authority delegated in this section shall become effective only if it complies
10 with and is subject to all of the provisions of chapter 536, RSMo, and, if applicable, section
11 536.028, RSMo. This section and chapter 536, RSMo, are nonseverable and if any of the powers
12 vested with the general assembly pursuant to chapter 536, RSMo, to review, to delay the
13 effective date, or to disapprove and annul a rule are subsequently held unconstitutional, then the
14 grant of rulemaking authority and any rule proposed or adopted after August 28, 2008, shall be
15 invalid and void.