

STALTER LEGAL SERVICES, LLC

WILLIAM R. STALTER
wastal@swbell.net

9300 METCALF AVENUE, SUITE 202
OVERLAND PARK, KANSAS 66212

TELEPHONE (913) 378-9920
FAX (913) 378-9924

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Connie Clarkston
Director of Budget and Legislation
Missouri Department of Insurance,
Financial Institutions & Professional Registration
301 West High St, Room 530
PO Box 690
Jefferson City, MO 65102

Re: Chapter 436 Review Committee Recommendations

Dear Connie:

Can you confirm whether the Division staff is substituting the "Proposed Draft" for the Chapter 436 Review Committee position statements described at the original meeting?

The State Board was asked to take the lead in the review process, and appropriately, asked for the industry's input through the form of a survey. From the survey results, someone, presumably the State Board staff, established a priority among the issues for scheduled meetings. Some of those issues were conducive to a straight up or down vote. For example, the Committee quickly agreed that the State Board should be given rulemaking authority. With regard to other issues, the Committee agreed in principal, but there were differences of opinion.

It was my recollection that the Division would attempt to articulate the Committee's vote on each such issue, and provide an opportunity for comment by Committee Members and the industry. I thought the procedure was an excellent proposal. It would provide the Review Committee assurance that the Division staff understood each issue and the Committee position(s), and the opportunity to circulate the issue and Committee vote to industry members who could not attend the meetings.

However, it now seems the procedure has been abandoned. I agree that the Committee would benefit from a document that reflects all comments and suggestions. However, the industry would be better served if the Division staff adhered to the original plan. We are running out of time, and the Division and the Attorney General will share in the failure of this Committee if we leave the legislature confused on crucial issues.

We have had substantial dissent on several key issues because there has been an insistence upon an up or down vote on a single proposal. I would suggest that the Committee be allowed to present two, perhaps three positions, with the advocates of each position providing a short statement of support. To facilitate this, I would recommend that discussion of the "Proposed Draft" be deferred until the Committee has addressed the five or so issues that the Division and the Attorney General

identify as our priorities for which no clear consensus exists. Clearly, the trusting requirements, portability, seller licensing and cancellation rights should be on the list.

As time permits, the industry would expect the Division's record of other Committee votes so that we can determine if your understanding reflects a true consensus. For purposes of Tuesday's meeting, I would offer the following comments with regard to the trusting issues:

Trusting/Income Accrual - Cancellation/Portability

The 100% trusting requirement is not viable. Most, if not all, states having the 100% requirement passed their laws several years ago, prior to preneed becoming an element of most funeral homes' business. Efforts to impose such a standard today would invoke restraint of trade complaints.

While the 80/20 requirement has its supporters, the July 29th vote did not reflect a consensus. I question whether the legislature will tolerate the status quo. Preneed sellers who differ with this position could abstain from the vote, and provide a position statement in opposition.

I would offer the following two options for discussion:

Option A: 90/10, with the seller being allowed to retain the first 10% of the purchaser's payments. Income is accrued. The consumer's termination rights could be set at the lesser of the account value or the trust deposits plus accrued income (less a 10% penalty*).

Option B: 85/15, with the seller being required to trust 85% of each payment. Income is accrued. The consumer's termination rights could be set at the lesser of the account value or the trust deposits plus accrued income (less a 5% penalty*).

*The penalty would be based on the sales price, but limited to funding from the account's income.

The costs associated with the sale of a preneed contract will differ from operation to operation. Generally, sales expense will exceed 10%. In some firms, the expense will exceed 15%. If a contract is held to maturity, the seller will have a better opportunity to recoup the sales expense. If a contract is terminated (whether by transfer or by cancellation), the seller should be allowed to recover the 'unfunded' sales expense. For purposes of a consensus, the law would cap the sales expense at 20%.

Considerations:

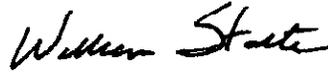
- Basing the consumer's cancellation/transfer rights on deposits plus accrued income exposes the funeral home to market variances. If consumers are to be afforded greater rights in the trust account, they need to share in the market risk.
- If the consumer's cancellation rights are less than the transfer rights, sellers will be encouraged to favor cancellation over a transfer.
- The trusting standard established for funeral homes may well be applied to cemeteries.

August 7, 2008

Page 3

In closing, I would offer that the consumer and the death care industry would be better served if oversight of the trust were transferred to the Division of Finance. Regulation of the preneed sale should remain under the State Board unless an omnibus preneed agency is established. However, it would be more efficient and effective if funding and rulemaking authority was provided to the Division of Finance. Please refer to my August 7, 2008 letter to Linda Bohrer.

Sincerely,



William Stalter