

ORIGINAL

MISSOURI STATE BOARD OF EMBALMERS  
AND FUNERAL DIRECTORS

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CHAPTER 436 LEGISLATION MEETING

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

AUGUST 12, 2008  
9:45 A.M. - 4:30 P.M.

1           CHAIRMAN: I think what we'll do is  
2 we'll go around the table again, introduce  
3 ourselves real quick, and we'll start with  
4 you, Mike, and then -- yes. And then we'll  
5 introduce the public and start the meeting.

6           (The members of the Committee and  
7 public introduce themselves.)

8           CHAIRMAN: Well, once again, thank you  
9 for, you know, your time and attendance to  
10 these meetings, and I know it's taken up a lot  
11 of everybody's time, and we really do  
12 appreciate that. Just to go over briefly for  
13 those like Larry who hadn't been here very  
14 often, what we do is the panel has a  
15 discussion. Then we have comments from the  
16 public, and when you come forward, Larry, and  
17 do your preaching, come to the mike and  
18 introduce yourself so the court reporter can  
19 record your name and where you live. Anyway,  
20 we had a few comments and e-mails and letters  
21 addressed to the committee or to the Board.  
22 Does anybody want to make any comment before  
23 we start today about how we're doing business  
24 or --

25           MR. STALTER: I mean, I'll speak up

1 about my part of this. I think part of it is  
2 that this group has come in and put in a lot  
3 of time and I think kind of demonstrated that  
4 we're willing to talk about our issues, you  
5 know. There are a lot of agreements that have  
6 been made. There are some disagreements about  
7 issues, but, generally, we -- you know, they  
8 -- those oppositions that could be defended or  
9 set out. And what I would prefer to do is  
10 somehow document the various issues that we do  
11 agree upon, and to the extent that we have  
12 disagreements, allow those who have a position  
13 that differs, be able to set that out in a  
14 document, in essence, to kind of demonstrate  
15 to the legislature. I mean, we do have the  
16 capability to reach an agreement and, in  
17 essence, you know, if there are issues that  
18 the legislature needs to take a look at, then  
19 let's kind of identify those issues so that we  
20 can kind of, I guess, cut the chaff from the  
21 wheat and know the issues that the legislature  
22 has to address. I mean, that's my proposal.  
23 I mean, in our initial meeting, we talked  
24 about that these issues that were priorities  
25 would be documented, and then they're brought

1 back to the committee, but we could circulate  
2 those discussions, whatever the votes were.  
3 Well, some of those votes we went up or down  
4 on, but I know some of the people had  
5 disagreements about them. And I perceived the  
6 ability to have what the staff documented to  
7 us, be able to respond to. Now, this running  
8 draft is hard to respond to in that manner.  
9 It's really kind of a document everybody gives  
10 input to, but it's hard to see what they're  
11 doing this way, and I think that will be  
12 confusing to the legislature when we turn that  
13 document back over, that that's our work  
14 product. At some point, I mean, if we can  
15 get through the main issues, and then we can  
16 address disagreements in correspondence of  
17 e-mails back to the Board. I mean, some way  
18 that is more manageable than these meetings, I  
19 mean, every week. People are just getting  
20 worn slick by the process.

21 CHAIRMAN: All right. Anybody else?

22 All right. Kim?

23 MS. GRINSTON: I just wanted to  
24 respond to what Bill said about the process.  
25 Your suggestion is exactly what the process is

1 and was, that we were going to pull together  
2 those things that were common, put those  
3 things that we disagreed upon, we were going  
4 to submit a document with the areas that we  
5 disagreed on indicated in the text of the  
6 document with notes. Now, the reason why the  
7 draft you have now does not reflect all of  
8 those comments is because we haven't finished  
9 the process yet. But our process is and has  
10 always has been to do that and to provide that  
11 kind of a document. I understand and the  
12 concerns about getting this document presented  
13 and finalized, and I share some of those  
14 concerns. But I did want to make sure that  
15 everyone understood that exactly what you  
16 suggested is what we represented we would do  
17 at the beginning of the meeting, that what --  
18 at the beginning of all of our meetings, what  
19 we represented we would do with the  
20 congressional representatives that we did meet  
21 with, and that has been our intention all  
22 along. To the extent that -- and this is my  
23 understanding of your concerns -- is that you  
24 are concerned with the way comments are being  
25 presented back to the group and with what the

1 draft did. I've tried to clarify and I hope  
2 we can clarify for everyone again that what  
3 you're looking at is just the beginning draft  
4 because what Connie and I envisioned and what  
5 we talked about is that once we get more of  
6 the consensus language together, that we would  
7 have a place and a time, and by e-mail or  
8 message, we were going to do it in writing for  
9 anyone to submit any objections that they  
10 wanted to that we would incorporate into the  
11 text of the document, and that you all would  
12 see the finalized product once it was done.  
13 What you have in your hands now is not what  
14 will be submitted to the general assembly  
15 unless you tell us to. What you have, really,  
16 is a piece of scrap paper. You have a  
17 working copy to help me identify the language  
18 that is consensus for you all and the  
19 language, right now, that is not and where  
20 objections need to be noted. So, I wanted to  
21 say that. I do want to say that I think  
22 we've made a lot of progress. I was looking  
23 at a list of some of the things that we  
24 needed to look at. I believe that we have  
25 reached a consensus on a lot of issues. There

1 are some big issues, as everybody knows, that  
2 we still haven't gotten a consensus on. And,  
3 Bill, I don't know, possibly now if there is a  
4 recommendation on how you would like comments  
5 presented to the group or continuing, you  
6 know, even the meeting today or the weekly  
7 meetings, I don't know whichever way to pull  
8 in all the comments from everyone without  
9 getting them all in, sending them out for  
10 response, getting them back again, sending  
11 them out for response, and getting through  
12 that process over and over again.

13 MR. STALTER: Well, let's go back to  
14 the survey. And, you know, you asked the  
15 industry to identify what it perceived to be  
16 the key issues, and people did that. And from  
17 that survey then, the staff decided which  
18 issues to take up first, and that's perfectly  
19 acceptable. You picked out the right issues.  
20 But as we went through that survey and the  
21 agenda items, they were marked off as  
22 completed. A lot of people ask, "How did we  
23 complete those issues," and that's basically  
24 -- we all have been here. We've put a lot of  
25 time into it, but there are a lot of folks in

1 the industry who haven't been here, and  
2 they're asking how we decided those issues.  
3 And that's really what I'm trying to get back  
4 to is, you know, those key issues, I'd like to  
5 see how you perceive we took the vote or how  
6 we decided the issues. Part of it is for me  
7 to understand how well you understand our  
8 issues.

9 MS. GRINSTON: And I think that's  
10 fair, Bill. My thought was that the draft --  
11 and we probably could have given -- as you  
12 know, some things came up in the interim -- a  
13 list of everything that we agreed on per  
14 meeting. My thought is that the draft  
15 contained -- and when we talk about the draft  
16 -- the consensus as we perceived it to be on  
17 a lot of those issues. And so, as we walk  
18 through this draft today, my thought is that  
19 that was what we were going to be asking  
20 today, to make sure that we are in line with  
21 what you talked about. Now, to the extent  
22 that you would like us to do something else to  
23 formalize that by topic area as opposed to  
24 putting it in the legislative language, we  
25 could try to work on that for you if you

1 would like us to, or for other people if  
2 anybody else wants it. If that will help the  
3 process move a little bit faster or clearer  
4 for you, we could try to pull that together.  
5 I think that's something we could do. One of  
6 the issues that we have is, you know, the  
7 transcripts have taken time to come in. And  
8 so, for some of us, we are working off of  
9 notes and everything else. But if you would  
10 like us to pull a by-topic area and develop  
11 something that shows what we agreed on per  
12 topic area, we could definitely try to get  
13 that done for you.

14 MR. STALTER: Are you saying for me or  
15 for the group? When you say "you" --

16 MS. GRINSTON: For everybody --  
17 everybody -- anybody who may want it if that's  
18 what you need.

19 MR. OTTO: I guess my only point is  
20 what is a consensus or what did we agree on?  
21 We had one thing, I think, that was a 9-to-8  
22 vote; okay? Does that mean that the nine --  
23 I mean, I -- is that a consensus? I don't  
24 think so, but it was a majority opinion. So,  
25 is that -- that's my question is: What is a

1 consensus? If we're not -- if somebody -- if  
2 one person disagrees with it or 40 percent of  
3 us disagree with it or what?

4 MS. CLARKSTON: Obviously, Kim and I  
5 haven't had time to sit down to really put  
6 things on paper to see what this is going to  
7 look like, but, in my mind, if we did a  
8 consensus meaning the majority voted for  
9 something -- not an 8-to-9 vote, by any means,  
10 but the majority voted noting where the  
11 concerns were, then went to the next level  
12 where it was a majority vote, a problem area  
13 they needed to talk about and identify, it's  
14 not really been settled. I firmly believe we  
15 can identify them in that document, or things  
16 that were unanimous, so we would have three  
17 different levels of recommendations for them.  
18 And what I was seeing in my mind was a  
19 two-column document. We would have the  
20 language on one side, comments to that on the  
21 other side or recommendations, and identifying  
22 that in that manner. But, again, Kim and I  
23 haven't had time to mesh our brains together  
24 to get a handle on how we're going to put  
25 this document out. I do agree with Kim, the

1 document you have in front of you is basically  
2 your scratch paper, to mark out this is the  
3 best way we knew with the time frames that we  
4 had to get those comments in a fashion to get  
5 those out to you. So, we're really open to  
6 suggestions on how you see in your mind this  
7 document going forward.

8 MS. GRINSTON: Again, to echo what  
9 Connie said, I think what we intended to do  
10 was to present a draft where -- and allow  
11 anybody to post any objections they had to  
12 anything. Like, if there was something here  
13 -- and let's say it was a 10-1 vote or  
14 whatever the numbers are, 16-1 vote, if  
15 someone wanted to say, you know, on behalf of,  
16 you know, AARP, I'll say that, we object  
17 because. I think the intent was to  
18 incorporate that into the document, but I  
19 think we started and attempted to try to pull  
20 together a document that we can incorporate  
21 something into. And so, what I'd like to do  
22 today, if this is okay with everyone, is I'd  
23 like to start looking at the language that is  
24 on paper and tell you what we believe reflects  
25 the -- what our notes show where the

1 consensus. And if that is not correct or if  
2 there is a disagreement with that for you all,  
3 to please let us know so that we can go back  
4 and note that this is not an area of  
5 consensus. But I think everyone can  
6 appreciate that this is, of course, a novel  
7 process. We are attempting to do this with a  
8 lot of divergent interests and comments coming  
9 in. There may be a better process and there  
10 may be a better way, and please let me know  
11 if there is. But if we could try to sort of  
12 hone those ideas in. Our idea was always to  
13 give everyone who objects a place and an  
14 opportunity to object and to submit that over.  
15 Our suggestion and our ideal was always to  
16 allow you all to look at what comes out of  
17 this group as a final product, if anything.  
18 And, again, if there are any, you know,  
19 suggestions or changes or concerns you have  
20 with that. And, Bill, we can try to work on  
21 pulling together the document that you  
22 discussed, the by-topic area. When I said --  
23 sometimes when we marked completed, it meant  
24 that we thought that we had a good enough  
25 feeling of where you guys wanted to go to put

1 it on paper. But as we walk through this  
2 draft today, if we see something on there that  
3 is not a consensus or that you guys disagree  
4 that that was the decision of the group, then  
5 I'd really -- I think we could probably mark  
6 that today.

7 MR. STALTER: And just a comment. I  
8 mean, there have been some votes where it was  
9 fairly unanimous. And, I mean, I've had -- I  
10 would have a small issue with something, but I  
11 didn't think it was worth disrupting the flow,  
12 but it was this -- okay -- these issues were  
13 at some point within the context of that  
14 agreement, I would have an opportunity to  
15 respond to it or the clients respond to it  
16 rather than get to the end process where we  
17 have a long document and then, you know,  
18 basically, everybody comes back and forth on  
19 little issues.

20 MS. GRINSTON: And I -- Bill, I  
21 understand that. I guess what we tried to do  
22 is tried to get -- to figure out what the  
23 consensus was first before we gave you  
24 something to give out to your clients to make  
25 sure we were right. I guess my thought of

1     what we're doing today is we're checking to  
2     make sure that what we have is what you want  
3     and what you, you know, probably need to  
4     submit to your clients.  But, again, Bill, to  
5     the extent that you do have a concern with  
6     something or if there's anything else we can  
7     do even today to make this process probably  
8     less confusing or something of the sort, I  
9     understand that people are worn slick by this  
10    process.  Again, and I'll echo what the  
11    chairman said, what our division director  
12    said, we appreciate everybody who has come out  
13    and helped with this.  Our intention is not to  
14    make this process harder than what it needs to  
15    be.  We are doing really a novel attempt on a  
16    very complex issue, and we've tackled a lot of  
17    very hard and complex issues.  We're going to  
18    have to start with one this morning.  But,  
19    again, our intent is not to abuse your time or  
20    anything of the sort, and we do appreciate  
21    everybody who has taken the time to help us  
22    with this project on the drawing-board basis.  
23    Having said that, and as we talk about a  
24    consensus, one of the things that I am  
25    increasingly concerned about -- and I've

1 shared this concern with the chairman, I've  
2 shared this concern with the Board -- is that  
3 after the meetings, you guys know we've spent  
4 a lot of time talking about, for lack of a  
5 better term, this 80-20 split and the current  
6 80-20 process. We've spent a good and fair  
7 amount of time dealing with that issue. After  
8 the votes, we have received comments formally  
9 and informally from several people that they  
10 are not comfortable with what the vote was,  
11 unclear about what the vote was, or not sure  
12 that the vote truly reflected what everyone  
13 intended to do. And so, as we look at this  
14 idea of the 80-20 process, and we know what we  
15 talked about last week, the suggestion has  
16 come because, again, I don't want to  
17 misrepresent anything anyone has said in this  
18 room to anyone, not only to you all, but to  
19 the general assembly or to anybody who may  
20 come in contact with the final product of what  
21 this group has done. To that extent, I don't  
22 know if we may need to go back to a  
23 suggestion I originally made at our very first  
24 meeting when we began to tackle the 80-20  
25 issue. We took a vote on several issues last

1 week. I don't know if we are at the point  
2 because, again, a lot of you who voted have  
3 expressed concerns about the vote and, again,  
4 what the vote actually was. I don't know if  
5 we are in the position where we, once again,  
6 need to say that we have -- we understand that  
7 the percentage of administrative expense is  
8 still an outstanding issue. We have a lot of  
9 divergent views and feelings on that, and  
10 allow everyone an opportunity to just reflect  
11 what they believe the proper split, if you  
12 will, in Missouri should be, and embody that  
13 in a document based on your language and your  
14 words. Again, my concern is that even with  
15 what we've done last week, we've come back and  
16 a lot of people have expressed concern about  
17 that vote. And so, I would like to submit  
18 this back out to the Committee. I don't know  
19 if what we need to do or if it would be more  
20 advisable to simply say that -- you know, that  
21 this is the amount that we are suggesting be  
22 trusted, this is the amount we are suggesting  
23 be authorized for administrative expense, this  
24 is the amount for interest, and allow you all  
25 to just present your comments on where you

1 need to be instead of going through and trying  
2 to reach, you know, or more formalize  
3 agreement with everyone else. I'd like to  
4 submit that back out to the Committee, again  
5 and again, that's based on my understanding  
6 from several of you that you are uncomfortable  
7 now with what the vote right now may be.  
8 Open the floor on that one.

9 CHAIRMAN: Comments? No comments.  
10 Move on to the next one.

11 MS. GRINSTON: Becky.

12 MS. EULER: I would be Sharon.

13 CHAIRMAN: Yes, Sharon. Thank you. I  
14 couldn't see that far.

15 MS. EULER: Becky is over there. My  
16 suggestion would be that we move on. I -- my  
17 sense is that we will never be able to come  
18 to an agreement around this table as to what  
19 the proper percentages should be, and I think  
20 we could spend an all day today discussing  
21 that. It seems to me to be more productive  
22 that we've got notations from the last  
23 meeting, the meeting before about where people  
24 are on that issue, and that we let that be.  
25 We've compiled the document with what

1 different people's positions are, and move on  
2 instead of spending all day again today  
3 discussing what we are not going to be able to  
4 come to a consensus on.

5 CHAIRMAN: Mary?

6 MS. ERICKSON: Jim, if that's a  
7 motion, I would second it.

8 MS. NEUMANN: Can I just ask one  
9 question? Regarding 80-20, can it be worded  
10 in such a way that you can do up to 20 for  
11 those people who are not comfortable with 20,  
12 if they only want to do 10 or 5 percent, they  
13 would be able to do so? That mandatory 80-20,  
14 we could say up to 20. Would that solve some  
15 of the problems?

16 (Several people talking simultaneously.)

17 MR. CLINE: That's like that is now.  
18 In other words, you have the option to do less  
19 or more. I know we do less, but some folks  
20 don't even do that.

21 MS. GRINSTON: Again, I think when we  
22 talk, we just asked -- at the first meeting,  
23 we asked everybody to register their position  
24 and where you are, allow us just to place them  
25 in the document. There will be a suggestion

1 from the Board. Again, you all know that the  
2 Board will be looking at that specifically  
3 next week during their Board meeting, but  
4 allow -- I mean, anyone else who has a  
5 suggestion, and allow the general assembly to  
6 do what they do, which is sort of gut out  
7 these issues and figure out what should be  
8 best because, again, I am concerned that even  
9 with the vote that has been taken previously,  
10 that it really does not reflect, from the  
11 comments that we are receiving, on what  
12 everyone thought they were voting on.

13 CHAIRMAN: Bill?

14 MR. STALTER: And I agree. I mean, I  
15 don't feel comfortable with leaving it the way  
16 it is and saying, you know, we'll let somebody  
17 else figure that out. The way this got  
18 debated was, we started at 100 percent and  
19 then we went to 80 percent and just basically  
20 accepted the 80 percent. I guess I'd like --  
21 I mean, we can spend just three minutes, but,  
22 you know, what are the feelings of the  
23 Committee towards some medium ground, whether  
24 it's 85 percent or 90 percent? And,  
25 basically, if they want to stay at 80 percent,

1 that's fine. So --

2 CHAIRMAN: So, are you asking, like,  
3 everybody just -- like, go around the room?

4 MR. STALTER: Just, basically, go  
5 around the room and see whether there's a  
6 position. You can abstain if you want. I'll  
7 start. I mean, I'm really kind of more in  
8 favor of the 85 percent with full accrual of  
9 income.

10 MS. GRINSTON: Now, and I'd like to  
11 clarify as we talk about that, and this is  
12 what we did last week. When you talk about  
13 85 percent, are you saying just trust 85  
14 percent, or trusting more than that with an  
15 administrative expense taken out of it?

16 MR. STALTER: Well, see, this is one  
17 of those issues that I will plan to clarify  
18 with you all. When you said the 15 percent,  
19 that's a sales expense, basically. When we  
20 talk about the administrative expense, you're  
21 talking about the trustee's administrative  
22 expense, and that's a different issue.

23 MS. GRINSTON: Sure. And I --

24 MR. STALTER: That -- when you go up  
25 to 90 percent, what you'll see with a lot of

1 companies is they'll start shifting things  
2 that they cover on the 15 or 20 percent over  
3 to the trust. Now, the benefit of that is,  
4 that has to be done by contract and be  
5 disclosed through the fiduciary relationship.  
6 To me, I mean, that's fine, you know.

7 MS. GRINSTON: So, then if we talk  
8 about -- you say use the term "sales expense"?

9 MR. STALTER: You're talking about the  
10 expenses of putting the contract together, the  
11 commission.

12 MS. GRINSTON: Okay.

13 MR. STALTER: If there's educational  
14 -- you know, as far as marketing materials.  
15 If, indeed, that's what we're talking about  
16 the front-end sales expense.

17 MS. GRINSTON: Well, then using that  
18 term "sales expense" or "administrative  
19 expense" as we poll the table and just for our  
20 comfort, I would also suggest that we submit  
21 something in writing. The suggestion was that  
22 if you guys want to submit the chart that we  
23 used last week, we have extra copies, if you  
24 want to do your calculations in there. But as  
25 we poll the table, that you clarify for us

1 what amount you're recommending to be trusting  
2 and what amount are you going to recommend as  
3 a sales expense/expense item, if you will.

4 CHAIRMAN: Todd?

5 MR. MAHN: Yeah. Kim, I suggest that,  
6 you know, we pass everyone, you know, on the  
7 panel, that chart again and submit it into the  
8 day today and then -- you know, give an  
9 example: If 50 percent of the room is for  
10 80-20, and 10 percent of the room is for  
11 90-10, and 5 percent of the room is for 95-5,  
12 whatever, you know, then we'll compile them  
13 numbers and we will submit it that way in  
14 percentages to the capitol and this is what,  
15 you know, the feeling was from the panel, and  
16 then we move on to these other topics. And,  
17 you know, I think we should go down the topics  
18 and maybe bring them up, and if they seem to  
19 be a topic that's going to create a lot of  
20 debating, maybe mark it, go on to the next  
21 topic, and get through the easy ones, and then  
22 go back and reflect on the ones that seem to  
23 be harder. But let's knock out some of these  
24 that, you know -- let's get them knocked out  
25 and try to get it all knocked out today.

1           CHAIRMAN: Thank you, Todd. All  
2 right. Let's try to knock this one out first  
3 and then we'll go to what you're saying. Do  
4 you want to use the chart, Bill, and submit  
5 that, or do you want to go around and get --

6           MR. STALTER: Now, when you're talking  
7 about the chart, is that that where you had  
8 the four situations?

9           MS. GRINSTON: Yeah. If you want to  
10 use that, or would you rather go around the  
11 table?

12          MR. STALTER: But, you know, it's the  
13 same for any of the situations. I mean,  
14 basically, it's just up -- you know, on a  
15 trust-funded sale, you trust 85 percent. Now,  
16 the income accrual, I mean, we're off into  
17 another issue about portability and  
18 cancellation rights.

19          CHAIRMAN: Right. Sharon?

20          MS. EULER: I think Todd's suggestion  
21 is an excellent one because, again, we can  
22 talk all day about this and we're not -- I  
23 think we're at a position where there are  
24 people who we're not going to -- there is no  
25 common ground, unfortunately.

1 MS. BOHRER: Discussion isn't going to  
2 change people's minds.

3 CHAIRMAN: Right. Let's knock this  
4 one out. We're going to start with Bill and  
5 you're going to -- now, this is up-front  
6 costs; right?

7 MR. STALTER: Say what, again?

8 CHAIRMAN: Up-front costs.

9 MR. STALTER: Yes.

10 CHAIRMAN: Right. Not to administrate  
11 the trust.

12 MR. STALTER: Yeah. Not the trust.

13 CHAIRMAN: Okay. Go ahead.

14 MR. STALTER: So, 85-15.

15 MR. MAHN: Are we going to do this or  
16 are we just going to do the chart and submit  
17 it back?

18 CHAIRMAN: No, we're going to --

19 MS. DUNN: Let's go slow so we can get  
20 this recorded.

21 CHAIRMAN: All right. So, we'll go to  
22 Bill. Bill?

23 MR. TRIMM: 90-10.

24 MS. RUSSELL: I think we could  
25 compromise with the 90-10.

1 MS. NEUMANN: Ten -- it would be 90-10.

2 MS. DUNN: Let's try to go a little  
3 bit slower so we can get it for the record.

4 MS. RUSSELL: Go ahead and say your  
5 name again, Bill.

6 MR. TRIMM: Oh, Bill Trimm,  
7 Silver-Haired Legislature, 90-10.

8 MS. RUSSELL: Darlene Russell, CFL  
9 Preneed. I would want 100 percent, but I  
10 think I'd compromise that 90-10 would be good.

11 MS. NEUMANN: Barb Neumann,  
12 Representative Meadows' office, the same, 100  
13 percent, but settle for 90-10.

14 CHAIRMAN: John McCulloch?

15 MR. McCULLOCH: 80-20.

16 MS. EULER: Sharon Euler, 100 percent  
17 go into trust, and I would prefer that to stay  
18 there, but I could compromise with allowing an  
19 administrative fee of 10 percent.

20 CHAIRMAN: Gary?

21 MR. FRAKER: Gary Fraker, 100 percent  
22 and no compromise.

23 MS. BOHRER: We're going to abstain.  
24 I don't think this is a Department of  
25 Insurance issue.

1 CHAIRMAN: Okay. Norma?

2 MS. COLLINS: It's my turn?

3 CHAIRMAN: Yes.

4 MS. COLLINS: While the AARP would  
5 like to see 100 percent, we're also willing to  
6 compromise 90-10.

7 CHAIRMAN: Mike?

8 MR. MEIERHOFFER: 80-20, 100 percent  
9 through trust, and then 20 percent out from  
10 the trust.

11 CHAIRMAN: Don?

12 MR. OTTO: NFDEA is on record that we  
13 think it should be greater than 80 percent  
14 that is trusted. We are hoping to compromise  
15 as to what that number would be. 90 would be  
16 acceptable to us; 85 would be. We have a  
17 split as to what -- to be honest with you, we  
18 have a split as to what that actual number  
19 should be, but the majority of our membership  
20 that has responded would like more than 80  
21 percent trusted.

22 MR. BAKER: Bob Baker, 90-10.

23 CHAIRMAN: Mark?

24 MR. WARREN: I think my clients would  
25 support whatever the industry decides from an

1 insurance-company standpoint.

2 CHAIRMAN: Are you running for office?

3 MR. WARREN: No.

4 CHAIRMAN: Mike?

5 MR. WINTER: Mike Winter, 80-20.

6 CHAIRMAN: George?

7 MR. CLINE: George Cline, Kutis

8 Funeral Home, 80-20, and the funeral-home  
9 provider is able to keep the interest and with  
10 no restriction on waiting until the time of  
11 passing to be able to use that. And I think,  
12 you know, we're not -- we weren't called here  
13 because there were problems with funeral homes  
14 and with trusts in the state of Missouri. We  
15 were called here because of other issues. The  
16 80-20 rule, and we do 17 percent, of course,  
17 I've mentioned, but we think the old law with  
18 the trusts -- as far as the trust is concerned  
19 is just fine. When you start to put the  
20 restrictions onto the banking community to  
21 take care of the accountability for the  
22 funeral-home provider or the preneed seller,  
23 that's just going to be very messy. Make it  
24 so they have to get 100 percent money of their  
25 money back if they cancel, make it easy to

1 make it portable.

2 CHAIRMAN: Todd?

3 MR. MAHN: 100 percent.

4 CHAIRMAN: All right. So, take that  
5 back to the --

6 MS. GRINSTON: We'll take that back and  
7 reflect it.

8 CHAIRMAN: Okay.

9 MS. GRINSTON: If that's the case,  
10 this is what I'd like to do. Do you all have  
11 the draft of 7/28/08? It's marked -- it's  
12 printed at 10:10 p.m. It would be the draft, I  
13 think there -- you have a draft that has  
14 Homesteaders' comments on the front. I don't  
15 know if you have that in front of you. Oh,  
16 you may not have that.

17 MS. DUNN: Kim, I sent everything out  
18 and I didn't provide copies of everything, but  
19 I think everyone may have the draft sheets  
20 referring to it. It has audit with no  
21 definition. Does everyone have that one?

22 MR. MEIERHOFFER: Did you not get the  
23 reply to that?

24 MS. DUNN: I got yours. I think Kim  
25 is going to discuss this right now, but Kim

1 and Connie both have your reply.

2 MS. GRINSTON: If we can, again, and  
3 we'll -- let's just look at what's on paper  
4 for me. And I will identify as we walk  
5 through the areas that I believe that we heard  
6 you reach a consensus on. Please correct me  
7 if there's a problem, question, or concern.

8 UNIDENTIFIED: Homesteader's, or we  
9 have several versions of this.

10 MS. GRINSTON: No. I'm sorry.

11 UNIDENTIFIED: We're using this one.

12 MS. GRINSTON: Yeah. If there's a  
13 comment with Homesteaders' up top with a  
14 highlighted section, that's not the correct  
15 draft. Let us know if you don't have that  
16 draft. And, again, it says revised 7/28/08 at  
17 10:10 p.m. Okay.

18 (Several people talking simultaneously.)

19 UNIDENTIFIED: Kim, are we going  
20 through the one that doesn't have comments on  
21 the side?

22 MS. GRINSTON: Yes. We are going  
23 through the one that would be the draft from  
24 the division. It should not have anything  
25 from Homesteaders on it. It shouldn't have

1 any comments from Homesteaders. If you'll  
2 just give me a second. Your draft should not  
3 have any comments from Homesteaders and it  
4 should not have a definition of the word  
5 "audit."

6 MR. MEIERHOFFER: Well, I have two, so  
7 that's the problem.

8 MS. DUNN: We had distributed one  
9 before they sat down today, and that's the  
10 one, but now I think --

11 (Several people talking simultaneously.)

12 MS. GRINSTON: Okay. Let me know if  
13 we're not on the same page. Okay. Looking  
14 at page 1, and if you guys could just bear  
15 with me for a little while, let's see how this  
16 process works. 333, I'm going to talk about  
17 some of the things that we talked about.  
18 Originally, I remember -- I think you may  
19 remember the suggestion that we move this over  
20 to 333 for purposes of avoiding confusion.  
21 Several people have submitted comments about  
22 opening 333 via a bill with preneed in it, and  
23 so, there were several suggestions made that  
24 we keep this in 436 as it is right now as  
25 opposed to doing this as a vehicle through

1 333. We talked to Connie about that, Connie  
2 said she doesn't have a problem with keeping  
3 it in 436 if you guys think that that may be  
4 a little bit of a cleaner process.

5 MS. ERICKSON: Did you speak with  
6 anyone over at the senate research or  
7 somewhere that, obviously, we're going to need  
8 the old 436 to remain on the books, as well  
9 as the new 436. How could that functionally  
10 work?

11 MS. GRINSTON: Well, what I'm thinking  
12 is, and this is what's happened in the past  
13 when we've gotten over to the senate. Senate  
14 research has helped us compile, then pull the  
15 bill together, because it's going to need new  
16 numbers and everything else once we do that.  
17 So, I think that once we -- if the joint  
18 committee decides to do anything with it and  
19 it hits senate research, we worked with senate  
20 research in the last 436 version on how to get  
21 it together, so I think that that probably is  
22 the plan, that when we get over there, if we  
23 keep it in 436, to work with them to see how,  
24 you know, they suggest it. We sent over  
25 suggestions and they change it anyway, so --

1       sorry. I'm joking. I'm sorry -- very sorry.  
2       That was the first thought. Are there any  
3       objections to that, this staying in 436 as  
4       opposed to opening up 333 as a vehicle? Don?

5               MR. OTTO: When we completely redid  
6       transportation and utilities, it was much  
7       easier -- whether you would call it 436 or  
8       something else, it was much easier to have a  
9       separate section.

10              MR. MEIERHOFFER: I agree.

11              MR. OTTO: But -- okay. This is the  
12       law that takes -- that kicks in August 28th,  
13       2010, or whatever it is, and then this is the  
14       section, and then they put a little heading at  
15       the front of it that says -- that was much  
16       easier when we redid all that other stuff.  
17       Now, it doesn't have to be in 333 if that's a  
18       problem, but having it in a different section  
19       so you know this law is intact until -- for  
20       everything before this date and this is the  
21       section you look to for after this date made  
22       life a lot easier with those.

23              MS. GRINSTON: And so, probably with  
24       that comment, what we may want to do is, as  
25       it goes over, let them know that we think this

1 should not be interspersed in between the  
2 current 436, but used as a separate deal.  
3 Okay. Hearing no objections to that, let's  
4 look at 333.705. One of the suggestions that  
5 was made was that we define the term "audit."  
6 And I actually went through and tried to pull  
7 different definitions of audit, and depending  
8 on where you are and what you're doing, that  
9 definition is so incredibly broad and so  
10 incredibly hard to pin down. I actually  
11 consulted with someone I know who does  
12 international banking and banking compliance  
13 and is a SOX person and everything else, and  
14 she indicated to me that the defining audit is  
15 a very difficult term and that probably should  
16 be left to the person calling the audit as to  
17 what the scope of the audit is because there  
18 is a time when an audit may include or the  
19 definition may include what some people think  
20 is an examination. She just said it just may  
21 be very difficult. Mr. Meierhoffer, if you  
22 have Mr. Meierhoffer's comments, he suggested  
23 a term of "audit," and I don't know if you  
24 want to talk about that. But I would like to  
25 submit this to the committee as to whether you

1 really want to adopt a definition of the term  
2 "audit."

3 MR. MEIERHOFFER: Okay. I --

4 CHAIRMAN: Mike?

5 MR. MEIERHOFFER: I think it's  
6 important that we do, and I think the thing  
7 that develops from that is what's an audit and  
8 what's an examination and what's an  
9 investigation. I think that's important that  
10 we break that down so that we're just not  
11 jumping into an audit automatically. That's  
12 the whole purpose is to give the Board an  
13 opportunity to again ratchet what they want in  
14 terms of a full-blown audit, which is what we  
15 define here, versus an examination or versus  
16 an investigation. And I think those all  
17 follow into one another.

18 MS. BOHRER: Where did you get your  
19 definition, Mike?

20 MR. MEIERHOFFER: From a CPA.

21 MS. BOHRER: You got it -- okay.

22 CHAIRMAN: Bill?

23 MR. STALTER: I mean, we kind of  
24 approached this issue years ago. And, really,  
25 the main quibble back then was that the Board

1 did not have the rule-making authority to  
2 address whether or not it was. And what I  
3 was driving for this is that, first,  
4 distinguish between an examination and an  
5 audit, and then allow the Board the regulatory  
6 rule-making authority to define what an audit  
7 should be. And, really, what we were looking  
8 for years ago was that an agreed-upon  
9 procedure so that the Board adopted some kind  
10 of -- you know, set out procedures for what an  
11 audit or an examination would be, and then  
12 that -- it would be public, but we all knew  
13 what was going to come. So, basically, what  
14 an audit would be was something with a good  
15 cause; in other words, set up the criteria for  
16 what would trigger an audit, and then the  
17 frequency of examinations or what would  
18 trigger an examination.

19 MS. GRINSTON: That's one of the  
20 recommendations from the Department of  
21 Insurance that audits be limited to a  
22 with-cause finding. But -- and so, I do agree  
23 with that. But Mr. Meierhoffer -- and I'm  
24 just looking at this with a legal eye, we  
25 define audit as a systematic examination. And

1 then it says -- the end of that sentence says,  
2 you know, to determine things including State  
3 requirements as required by statute. Well,  
4 that is an examination of books and records  
5 because an examination of books and records  
6 looks to see if you're complying with the  
7 State requirements as determined by statute.  
8 I don't know how this definition would be  
9 drafted to not include an examination of books  
10 and records because, right now, this  
11 definition also includes an examination of  
12 books and records. And I don't know if what  
13 we need to do is address the back issue of  
14 when you call an audit with cause, without  
15 cause. Again, that's the recommendation of  
16 the department as opposed to trying to define  
17 it, because sometimes the definition or the  
18 scope of the audit is going to be determined  
19 by what it is that you're trying to do, what  
20 you're needing to audit.

21 CHAIRMAN: Sharon?

22 MS. EULER: The Board has its own kind  
23 of working definition of audit and examination  
24 of books and records and investigation, at  
25 least based on my experience, and some of that

1 is defined by who does it. The division's  
2 investigators do not do audits. The audits  
3 are done by a CPA. Investigation is done by  
4 the Board staff. Examination of books and  
5 records is done by division staff. And so, if  
6 you're going to define it, I would define it  
7 in the way that the Board uses the term  
8 because that's what we're talking about as  
9 opposed to some abstract definition. Or look  
10 at whether you really need to define it at all.

11 MS. GRINSTON: And I would submit the  
12 latter question because the auditor does do  
13 our examination of books and records, as well,  
14 so --

15 CHAIRMAN: Mary?

16 MS. ERICKSON: I just wanted to  
17 clarify. You said the investigation is  
18 conducted by --

19 MS. EULER: Sometimes, it's conducted  
20 by division staff and not by a CPA -- not by  
21 an outside, independent CPA.

22 MS. DUNN: And the investigation is  
23 done by an investigator of the division, and  
24 the examination of books and records or audit  
25 is done by an outside contractor.

1 MS. ERICKSON: Thank you. That -- I  
2 appreciate that.

3 MS. GRINSTON: And, Mr. Meierhoffer, I  
4 don't know if maybe that distinction or  
5 including something in that distinction might  
6 be a little bit more helpful.

7 MR. MEIERHOFFER: Yeah. I have no  
8 problem with the verbiage, it's just a matter  
9 of trying to help the Board in the steps to  
10 be taken to logically get to a conclusion.  
11 You may not need an audit after an  
12 investigation. That's what I'm trying to --

13 MS. GRINSTON: And I think insurance  
14 has addressed some language or proposed some  
15 language that probably will address that  
16 situation of going from investigation to  
17 examination.

18 MR. MEIERHOFFER: I'll let you folks  
19 address that all day. I just was trying to  
20 step it --

21 MS. GRINSTON: Can we hold that  
22 thought right now and maybe move to the  
23 definition of beneficiary on the audit and to  
24 see if we actually need to define that any  
25 more. Beneficiary, I don't believe we

1 received any comments on that except that  
2 Homesteaders suggested that we add the term  
3 "funeral beneficiary." Sharon?

4 MS. EULER: I would second that  
5 because even amongst us, it's the -- having  
6 the word "beneficiary" meaning the person  
7 whose body is going to be the subject of the  
8 preneed contract, we tend to think of that  
9 interchangeably as the purchaser, and  
10 beneficiary has insurance connotations, so I  
11 think it's a good idea to make some  
12 distinction there.

13 MS. GRINSTON: Regulatory concern,  
14 what if it's not for funeral? Let's say it's  
15 for burial or something like that. Would  
16 someone see "funeral beneficiary", and think  
17 that we have limited that term as opposed to  
18 keeping it as beneficiary, or do we just need  
19 preneed-contract beneficiary if that would  
20 help better?

21 MS. EULER: Yeah. We could --

22 MR. STALTER: Because you're going to  
23 raise the issue -- we're going to get to it  
24 in the description or definition of funeral  
25 merchandise anyway.

1 MS. GRINSTON: Okay.

2 MS. EULER: And that's what it is,  
3 it's a preneed-contract beneficiary.

4 MS. GRINSTON: Would everyone be okay  
5 with preneed-contract beneficiary? Okay.  
6 Hearing no comments. The Board and the  
7 division, I don't think there were any  
8 changes. Of course, that needs to go to the  
9 Department of Insurance, financial  
10 institutions, and all the other tongue-twister  
11 stuff. Examination of books and records. I  
12 think that same concern with examination is  
13 the same concern for audit. And so, I would  
14 like to reserve looking at that until we look  
15 at some of the other issues. It was suggested  
16 in one of the comments that we add a  
17 definition of what a guaranteed contract is.  
18 And I don't know. We could tinker with a  
19 definition. Does the group want to add a  
20 definition of a guaranteed contract for  
21 purposes of clarification?

22 CHAIRMAN: Any comments on that?

23 MR. STALTER: Well, I think, you know,  
24 we've added someplace later in here a  
25 nonguaranteed contract, so you have to make a

1 distinction. And a guaranteed contract where  
2 a portion of all of the services or  
3 merchandise is there and then what price  
4 they're guaranteed. I mean, that's kind of a  
5 --

6 MS. GRINSTON: Okay.

7 MR. OTTO: Do any other states have  
8 one of those?

9 MS. GRINSTON: I think so.

10 MR. STALTER: Yeah, a few of them do.  
11 A few of them do.

12 MR. OTTO: Yeah, I thought so.

13 MS. GRINSTON: Does anyone have a --  
14 just generally, and you'll see it on paper,  
15 does anybody have a problem with what Bill  
16 just suggested, a preneed contract with all or  
17 a portion of the services are guaranteed?  
18 Okay. Funeral merchandise, we've got some  
19 changes to the definition of funeral  
20 merchandise. There was a recommendation that  
21 we delete it all together.

22 MS. EULER: No.

23 MS. GRINSTON: And I'll open that one  
24 for comments.

25 MS. EULER: No. That we change it. I

1 don't think anybody suggested we delete it.

2 CHAIRMAN: Bill?

3 MR. STALTER: I was paying attention  
4 to Jim instead of Kim. What did Kim say?

5 MS. RUSSELL: We agreed to a guaranteed  
6 contract -- your suggestion.

7 MS. GRINSTON: I'm sorry. I think I  
8 may be wrong about that. I don't think  
9 anybody suggested that we delete it. I think  
10 that may just be my editing. I think the  
11 suggestion was that we redefine.

12 MS. EULER: Reclarify it.

13 MR. MEIERHOFFER: Yeah. And we made  
14 the distinction that we don't want to get into  
15 the cemetery area with grave lots, grave  
16 space, grave markers, monuments, tombstones,  
17 crypts or niches, covered by Chapter 214.

18 MS. GRINSTON: Right.

19 MR. MEIERHOFFER: That's the part we  
20 don't want to intermingle here.

21 MS. GRINSTON: Anybody have any  
22 questions or concerns with that  
23 funeral-merchandise definition?

24 CHAIRMAN: Bob?

25 MR. BAKER: The only thing I'd like to

1 add is I think it was within the last year  
2 that -- and I don't know where monument  
3 companies fall into everything. But I know we  
4 periodically run into a situation where  
5 someone has prepaid for a -- like, a final  
6 date or a grave opening, and there was nothing  
7 as far as any record is concerned. Now, where  
8 would that fall? Are we talking about under  
9 our definition here or is that staying with  
10 the cemetery -- what is it, 214, Mike? Is  
11 that --

12 MR. MEIERHOFFER: 214 is the cemetery.  
13 I'm going to ask my -- Eric, tell me about  
14 that. How does that fall in?

15 UNIDENTIFIED: 214?

16 MR. MEIERHOFFER: Well, no. As far as  
17 the question Bob asked about inscription of a  
18 date on a marker or a monument or a marker  
19 company.

20 UNIDENTIFIED: Bill may have the  
21 explanation.

22 MR. STALTER: There's kind of -- I  
23 mean, grave markers, openings and closings,  
24 and so forth, should fall under 214. I mean,  
25 that's going to be a topic of discussion on

1 Thursday about how that's going to be  
2 addressed. I mean, it's a valid issue. I  
3 mean, what do you do, trust it? I mean, how  
4 is it taken care of?

5 MR. BAKER: But what if someone wants  
6 to make -- we commonly refer to it as a cash  
7 fund. They want to set up something to take  
8 care of all third-party expenses which may  
9 include grave opening, flowers, minister,  
10 music, final date, and everything like that,  
11 but it's done very commonly through a funeral  
12 contract.

13 MS. EULER: I think that that falls  
14 outside of what's merchandise and falls into  
15 what's more services because it's not tangible  
16 personal property.

17 MS. NEUMANN: May I make a personal  
18 note? I'm from Maryland. My grave will be  
19 in Maryland. I've already got my tombstone,  
20 my plot with the family plot. It's already  
21 paid for. I paid for it when my mother died.  
22 We had to make a reservation to use that  
23 cemetery. So, everything is there. All  
24 they've got to do -- and it's done through the  
25 cemetery. All they have to do is the day I

1 die, everything else is already on there.  
2 It's just waiting for my body, and I think  
3 that's where it should be, the cemetery.

4 CHAIRMAN: Do you need to buy a  
5 preneed or anything?

6 MS. EULER: I'm sure there are some  
7 people in this room who could set you up.

8 MR. OTTO: Well, I think -- you know,  
9 I don't think we want the implication that if  
10 a consumer comes into a funeral home and that  
11 funeral home has the capability of doing  
12 everything for that consumer, that you can't  
13 put it into a preneed contract.

14 MR. MEIERHOFFER: Exactly. So, let's  
15 not put ourselves in that corner.

16 MS. EULER: But that's the definition  
17 of a preneed contract, not the definition of  
18 funeral merchandise.

19 MS. OTTO: Well, but if you leave that  
20 out, because the funeral director is going to  
21 say, well, a funeral contract includes funeral  
22 merchandise, and this isn't -- is this one of  
23 the things --

24 MS. EULER: But the definition of  
25 contract includes merchandise -- goods and

1 services.

2 MR. MEIERHOFFER: That's not where the  
3 question came from. The question came about  
4 monument companies. That's the question, not  
5 about what we can do and not do. You're  
6 asking about monument companies.

7 MR. BAKER: Or flowers or --

8 MS. GRINSTON: See, I consider those  
9 to be outside of the preneed.

10 MR. MEIERHOFFER: Right. People go to  
11 the florist and prearrange with the florist  
12 for flowers, that's fine. That's not our  
13 purview. Let's not worry about it.

14 MS. EULER: And that's in the  
15 definition of a preneed contract, not in the  
16 definition of funeral merchandise.

17 MS. GRINSTON: And I think under the  
18 definition of preneed contract, it probably  
19 does fall outside of that definition of what a  
20 preneed contract is, so I don't think it  
21 probably will be there.

22 CHAIRMAN: Bob?

23 MR. BAKER: One more comment on a  
24 funeral contract. We have people on a routine  
25 basis that are doing a spend down. They've

1 got X number of dollars to spend. They want  
2 to make sure all expenses are covered that has  
3 anything to do with their mother's death, be  
4 it a grave opening, be it a funeral, final  
5 date on the marker, they want to make a  
6 provision for flowers, clothing; you know,  
7 anything that we would normally consider a  
8 cash advance, they want to be able to tie  
9 everything into that and not have to worry  
10 what's going to happen down the road because  
11 they're spending all of Mom's money right now  
12 and they don't have anything left to take care  
13 of any additional expenses later.

14 MR. OTTO: And you want to do that in  
15 one contract and not two or three.

16 MR. BAKER: Right.

17 MS. GRINSTON: And I think what I --

18 CHAIRMAN: George?

19 MR. CLINE: I was going to say, you  
20 know, just what Mr. Meierhoffer just said,  
21 it's all in one contract, and it is a service  
22 section, but it's still in the preneed  
23 contract, and that guarantees that the  
24 services and the casket, generally, and the  
25 other contingencies. Like you said, you need

1 those things because some folks want to put  
2 those things aside for the family later, and  
3 it spells out very clearly these things are  
4 guaranteed, these things may change, you know,  
5 and it's --

6 MS. GRINSTON: Am I hearing that you're  
7 looking for something that says that this  
8 doesn't, you know, prohibit anyone from  
9 including any other additional merchandise in  
10 the preneed contract; is that what I'm hearing?

11 CHAIRMAN: Sharon?

12 MS. EULER: All of that is in the  
13 definition of preneed contract. The  
14 definition of a preneed contract is for  
15 funeral or burial services or facilities for  
16 funeral merchandise, which is the definition  
17 we're talking about here. Facilities,  
18 services, or merchandise not immediately  
19 required. So, funeral merchandise is just a  
20 little piece of what can be covered in a  
21 preneed contract. All of that other stuff  
22 falls into other parts of the definition of a  
23 preneed contract, and it doesn't need to be  
24 part of what is funeral merchandise.

25 MS. GRINSTON: I think what -- am I

1 hearing you guys say that you would like that  
2 clarified -- something that says that it can  
3 be included in the preneed contract, but it's  
4 not deemed funeral merchandise?

5 MS. BOHRER: But it already is.

6 (Several people talking simultaneously.)

7 MS. BOHRER: You guys are arguing  
8 points that are in the preneed-contract  
9 definition, not in the funeral-merchandise  
10 definition.

11 CHAIRMAN: Okay.

12 MS. GRINSTON: Let's throw that out  
13 for a consensus. Is the consensus that we do  
14 not need to clarify that portion and that it's  
15 already covered in the definition of preneed  
16 contract? Do I see anybody objecting?

17 (Several people talking simultaneously.)

18 MR. CLINE: Personal property and/or  
19 services incidental, and that might take care  
20 of it.

21 MS. GRINSTON: Okay. All right.

22 CHAIRMAN: All right. Everybody  
23 agreed?

24 (Numerous people answer yes.)

25 MS. GRINSTON: And, again, if you

1 would like to note an objection on the final  
2 language, we will include it for you or just  
3 raise a question about it. The definition of  
4 funeral service, Mr. Meierhoffer has proposed  
5 that we define funeral service.

6 CHAIRMAN: Sharon?

7 MR. STALTER: Let me go back just for  
8 a second on one issue.

9 MS. EULER: We went round and round on  
10 this when we were doing regulations before,  
11 and the problem is that funeral service means  
12 two different things. Funeral service means  
13 the ceremony and funeral service also means  
14 the services the funeral home provides  
15 relative to final disposition of a human body,  
16 and the terms are used in both meanings  
17 throughout the statute and the regulations  
18 which creates defining it to be a problem,  
19 because when we redid the regulations a few  
20 years ago, we struggled with that because we  
21 wanted to define funeral services, and we  
22 couldn't come up with a way to distinguish the  
23 two of those because they are used  
24 interchangeably throughout the Chapter 333,  
25 Chapter 436, and the regulations.

1 MR. MEIERHOFFER: So, you propose?

2 MS. EULER: That we not define it --

3 MR. MEIERHOFFER: Okay.

4 MS. EULER: -- because it's

5 self-evident.

6 MR. MEIERHOFFER: Fine. I'd much

7 rather leave them broad, too.

8 MS. GRINSTON: Funeral service, no

9 definition. Going once, going twice.

10 CHAIRMAN: Bill has got a comment.

11 MR. STALTER: Finish that one out.

12 Finish that one out, first.

13 MS. GRINSTON: I'm finished. I sold it

14 already.

15 MR. STALTER: Okay. Now, I want to go

16 back. I was talking to Todd and not paying

17 any attention to this. Can we go back to the

18 funeral merchandise. Funeral homes and

19 cemeteries kind of overlap with regard to

20 vault sales. So, if the cemetery sells a

21 vault preneed, I mean, if 214 picks up and

22 provides trusting, do you have joint

23 jurisdiction? I mean, how does this Board

24 take care of those kind of sales to make sure

25 that it's -- you know?

1 MS. GRINSTON: Can you give me a  
2 second to get to the applicability section  
3 because I think we may need to intertwine that  
4 back over.

5 MR. STALTER: Okay. Well, then we'll  
6 get to that later. I'm sorry. Okay.

7 MS. GRINSTON: Yeah. Just on  
8 cemeteries, because I think it's a good point.  
9 Okay. Insurance-funded preneed contract, we  
10 -- you can see the change that I think we  
11 talked about, and I don't think we got any  
12 objections to that. Stop me if you have one.  
13 Investigation, again, I'd like to reserve the  
14 same comments for defining examination and  
15 audit, and look at some of the provisions that  
16 are proposed later. Market value, the  
17 Department of Insurance has recommended a  
18 definition of market value. You all -- I  
19 don't know if everyone has this on their  
20 handout. This was given out last week. It  
21 says preneed trust legislation on it. It's  
22 just in black and white.

23 MS. DUNN: If somebody needs a copy, I  
24 have extras from two weeks ago. It looks like  
25 this. Like this, Kim?

1 MS. GRINSTON: Yes. The suggestion is  
2 that we define market value as laid out.

3 CHAIRMAN: Bill?

4 MR. STALTER: Again, maybe it's one of  
5 those issues addressed by regulation. I  
6 wonder -- I mean, depending on what we  
7 encounter out there. I mean, there's -- you  
8 need some kind of a basis when you go into --  
9 and look at -- examine these accounts, that  
10 the -- it's kind of hard -- I mean, it might  
11 be better addressed by regulation.

12 CHAIRMAN: Linda?

13 MS. BOHRER: I don't know. I guess I  
14 don't know why you would need to carve this  
15 one out for regulations when the definition  
16 that's been proposed is one that clearly  
17 establishes you've got to have a value to the  
18 asset that you put into the trust.

19 MR. STALTER: And where did you pull  
20 that definition from?

21 MS. BOHRER: I don't -- I mean, I  
22 can't answer that because I didn't like it, so  
23 I'd have to go back to the source of where  
24 the --

25 MR. STALTER And that's fine. I would

1 have to go back and take a look at what the  
2 banks take, you know, as far as that value,  
3 you know. They're out there looking for some  
4 -- a market, as well, and we just need to  
5 kind of reconcile that, but it's going to have  
6 a universal-type definition.

7 CHAIRMAN: Don?

8 MR. OTTO: I'll let you finish this  
9 one first.

10 CHAIRMAN: Well, we've got to look it  
11 up.

12 MS. BOHRER: I mean, I can go back and  
13 see what the source is and we can talk to  
14 banking. Rich isn't here today, so we can go  
15 back to Rich and see if he has any questions  
16 with this definition under the banking  
17 auspices.

18 MS. GRINSTON: I can say from the  
19 regulator aspect, we would -- if there is a  
20 definition, we would much rather have it in  
21 statute so that we're not challenged on  
22 whether we've exceeded our scope in adopting  
23 the definition. So, to the extent that  
24 there's a definition, we would support -- I  
25 legally think it would be better to be in a

1 -- in the statute itself.

2 CHAIRMAN: Don, do you --

3 MR. OTTO: Yeah. I need to go back a  
4 step on one that you just voted on. Sorry.  
5 But in any auction, you've got, like, what is  
6 it, an hour or something to go back and --  
7 yeah. Okay.

8 UNIDENTIFIED: That doesn't count for  
9 you.

10 MR. OTTO: Oh. It's not a big deal, I  
11 don't think, but we might need a clarification  
12 on that for insurance-funded preneed  
13 contracts; okay. I could see somebody saying  
14 that that applied to if you had a trust and  
15 then went out and bought insurance, as opposed  
16 to -- you know, you've got two situations  
17 where insurance is involved. You buy an  
18 insurance policy and that -- the proceeds of  
19 that Prudential Insurance policy are funding  
20 your preneed, or you've got the situation  
21 where the trust, as part of their investment  
22 strategy, buys whole-life policies on  
23 preneed-contract beneficiaries, and that  
24 definition was designed for the first  
25 situation, I know, when you go out and you

1 take -- you've got your Prudential or your  
2 whatever it is life-insurance policy that you  
3 then -- yeah.

4 MS. GRINSTON: Don, we addressed that  
5 concern if we put which is designated in the  
6 contract to be funded by payments of proceeds  
7 from insurance because if the insurance option  
8 is going through the trust, that won't be in  
9 the contract.

10 MR. OTTO: Yeah. That probably would  
11 solve it.

12 CHAIRMAN: Linda?

13 MS. BOHRER: Yeah. But don't you -- I  
14 mean, I don't now where all the protections  
15 are in the full body of this relative to  
16 insurance funding of preneed contracts, but  
17 you want those same protections to apply to  
18 the NPS situation, which is exactly the second  
19 one that Don referenced where the money -- you  
20 know, the insurance contract was the trusted  
21 funding mechanism for the preneed contract.

22 MS. OTTO: They're all protected. The  
23 protections cover that.

24 MS. BOHRER: Pardon?

25 MR. OTTO: The protections -- I don't

1 -- we haven't gotten to it yet, but I think  
2 the protections cover that. But this  
3 definition was for that situation where I'm  
4 buying -- the consumer is buying a Prudential  
5 policy that is going to pay for their preneed  
6 contracts.

7 MS. BOHRER: Okay. And so, I guess my  
8 only comment is if you're going to amend this  
9 definition to apply exclusively to the former  
10 example, you want to make sure that the  
11 balance of what's in here doesn't then exclude  
12 protections that are intended to protect the  
13 NPS situation. You want to be very careful if  
14 you're going to limit the scope of that  
15 definition.

16 MR. MEIERHOFFER: That's going to get  
17 into the crux of the matter. It really is.  
18 I guess, the question I ask is: We have two  
19 options. One is to prevent it entirely,  
20 meaning you can't do it, or keep it an  
21 arm's-length transaction meaning it isn't from  
22 one owner to another owner from trust to  
23 insurance --

24 MS. BOHRER: Right. And I think we  
25 talk about that in our recommendation. I'm

1 just saying that if you're narrowing the scope  
2 of this definition, you want to make sure that  
3 you've not narrowed the scope of protections  
4 in the context of the full provisions of these  
5 laws to eliminate a protection that needs to  
6 be there.

7 CHAIRMAN: Mark?

8 MR. WARREN: I was just going to say,  
9 other than a policy purchased through a trust,  
10 just tag that on to the end of it.

11 CHAIRMAN: Bill, did you want to come  
12 forward and make a statement?

13 MR. STUART: I just wanted to ask --

14 CHAIRMAN: You've got to come up here,  
15 Bill.

16 MR. STUART: I apologize for being new  
17 to the game and I appreciate everything that  
18 you all have been doing in the behalf of the  
19 consumer.

20 CHAIRMAN: Bill Stuart.

21 MR. STUART: And I'm Bill Stuart with  
22 Cater Funeral Home. The question that I had  
23 was Kim passed over the joint account and went  
24 to market value. And I was curious if you  
25 wished to discuss that, if the split that you

1 talked about for the trust -- 80-20, 90-10, or  
2 whatever -- if it becomes, in fact, what  
3 happens, 90-10 or 80-20, would that be  
4 applicable or have you all discussed that for  
5 the joint-held CD accounts that would be in  
6 your local bank by your local funeral director  
7 under local control, easily audited, and my  
8 comment would be I hope that we can have the  
9 same level playing field and have that split  
10 available to us. But that's all. I just  
11 wanted to go back and ask about that  
12 discussion.

13 CHAIRMAN: Okay. Thank you, Bill.

14 MS. GRINSTON: Bill, you are correct  
15 that I did skip over joint funded, and that  
16 was purely unintentional, but we should  
17 probably go back and look at that definition.  
18 But the handling of joint accounts, we're  
19 probably going to discuss in a little bit, but  
20 we probably do need to discuss if the  
21 definition of joint account is acceptable  
22 and/or if there are any concerns on that one.  
23 But, Bill, I think we're going to get back to  
24 some of your issues in just minute. On the  
25 issues that Don raised on insurance-funded

1 preneed contract, I've got a note of the  
2 language. We want to distinguish it from the  
3 second option. But as Linda said, as we get  
4 to the protections page, let's make sure that  
5 that definition or redefining that would not  
6 be inappropriate and that they're still  
7 covered under all of the protection issues.  
8 All right. In market value, my understanding,  
9 definition of market value, Department of  
10 Insurance is going to do some checking with us  
11 on that and probably get back to us to see  
12 whether that needs to be considered.  
13 Nonguaranteed contract, that would be -- that  
14 definition, to me, would just be the opposite  
15 of --

16 MR. OTTO: Any contract that's not  
17 paragraph 7, or whatever it is.

18 MS. GRINSTON: Yes. It works for me.  
19 Does it work for everybody else?

20 (Numerous people answer yes.)

21 MS. GRINSTON: All right. Definition  
22 of preneed contract, we have person in the  
23 middle. I think definition of preneed  
24 contract is the next issue.

25 MR. OTTO: Well, if we're going to

1 reduce the definition of funeral merchandise  
2 on the previous page, we do need to extend  
3 other merchandise, making clear that it can  
4 include other merchandise. Because right now,  
5 it says --

6 MS. EULER: It's in there.

7 MR. OTTO: Well, no. I don't see it.

8 MS. EULER: Merchandise.

9 MR. OTTO: No.

10 MS. EULER: Funeral merchandise for  
11 such disposition --

12 MR. OTTO: Funeral merchandise.

13 MS. EULER: Yeah. We can add  
14 something. I'm fine with that.

15 MR. OTTO: Yeah. I'm talking about we  
16 just took stuff out of funeral merchandise, so  
17 we need funeral or other merchandise. Yeah.  
18 Funeral or other merchandise solves the  
19 problem.

20 MS. GRINSTON: Okay. Adding more  
21 other after funeral. Any objections on that?  
22 Again, you'll take a look at this before it's  
23 finalized. We had a suggestion -- well, we  
24 had a question about the language that says  
25 "including, but not limited to an agreement

1 providing for a membership fee." This is  
2 something that, of course, has become more  
3 popular where you have these groups that are  
4 doing -- they are, for all intents and  
5 purposes, a preneed seller. Sharon could  
6 probably speak to this better than I.

7 MS. EULER: Right. What we're seeing  
8 are cremation societies, and there are a  
9 number in the Kansas City area and I know  
10 there's been some in St. Louis, where people  
11 join the society and, in return for their  
12 membership in the society, they get direct  
13 cremation, which is essentially a preneed  
14 contract just under a different name -- with  
15 newsletters. That was a joke.

16 MS. GRINSTON: Hearing that  
17 explanation, does anybody want any other  
18 further definition or clarification on that  
19 one? Hearing none, we're moving on to 16,  
20 preneed counselor. Josh Slocum recommended  
21 that we change that to sales agent. Mr. Kutis?

22 MR. CLINE: Yes. George Cline, Kutis.  
23 Preneed sales agent, that's not really an all-  
24 inclusive descriptive term since a lot of your  
25 folks are already funeral directors. They're

1 not necessarily sales agents. I would  
2 recommend that we would change it to something  
3 like preneed licensee since we are going to be  
4 licensing these people as opposed to sales  
5 agent.

6 CHAIRMAN: Does everybody like that?

7 MR. MEIERHOFFER: I agree. I think  
8 that's great.

9 MS. GRINSTON: How would we  
10 distinguish that preneed licensee from a  
11 licensed preneed seller or a licensed preneed  
12 provider in the public mind because all of  
13 them would be preneed licensees?

14 MR. CLINE: Well, they would be a  
15 preneed licensee only as opposed to a licensed  
16 funeral director or a licensed funeral  
17 provider.

18 MS. GRINSTON: And licensee, for our  
19 purposes, again, would include sellers,  
20 providers, and the counselors actually  
21 selling. So, for our purposes from the  
22 division level, licensee may be a little bit  
23 broad. I don't know if there's another way we  
24 could narrow that down. Sales licensee, maybe?

25 MR. CLINE: Well, because you've got to

1 realize -- I mean, I don't know what other  
2 folks in here are in the funeral business.  
3 They don't deal with people every day. And a  
4 lot of times, you're not selling them  
5 anything. They're coming to you to buy  
6 something and your job is to just help them  
7 along. So, there's a misconception that  
8 everybody is out there knocking on your door  
9 and calling you on the phone and everything  
10 else, and I just don't feel that sales agent  
11 is fair to the people who aren't sales agents  
12 like NPS and the people who did put the time  
13 in to become a licensed funeral director.

14 MS. GRINSTON: What about preneed  
15 agent? Would that work for you?

16 MR. CLINE: I would go for that.

17 MS. GRINSTON: Group, do you want to  
18 change it from sales agent? Do you want to  
19 change it from sales agent, just have it be  
20 preneed agent? Any objections? Okay.  
21 Someone said Mark has got a puzzled look on  
22 his face.

23 MR. WARREN: Well, I mean, my only  
24 thought would be, you know, agent tends to  
25 have a specific legal definition, and you

1 could have somebody selling preneed who is not  
2 really --

3 MR. MEIERHOFFER: What's your  
4 definition, Mark? Are you connotating it to  
5 insurance; is that what you're thinking?

6 MR. WARREN: Yeah. Well, and also  
7 just, you know, you could sell a policy -- not  
8 a policy. You could sell a preneed contract  
9 and say so-and-so funeral home is going to do  
10 the service, and you're saying I'm a preneed  
11 agent, which someone may say, oh, that means  
12 you work for -- you're a funeral home, when,  
13 in fact, you don't, you're an independent.

14 MS. EULER: But you'll be an agent of  
15 the seller.

16 MR. WARREN: Ma'am?

17 MS. EULER: The preneed salesperson,  
18 counselor, whatever, is always going to be an  
19 agent with a little A, of the licensed preneed  
20 seller.

21 MR. WARREN: So, that would -- well, I  
22 think agent would probably work.

23 MR. OTTO: You've got insurance agents  
24 and you've got preneed agents. You don't say  
25 insurance sales agents.

1           CHAIRMAN:   Todd?

2           MR. MAHN:   Well, how about we just  
3 have the minimal restriction as apprentice  
4 funeral director and then if the salesperson  
5 wants to run around, you know, as apprentice  
6 funeral director on their card, they'll want  
7 to up it to a funeral director at some point  
8 because no one likes the word "apprentice"  
9 behind their name, but then you don't have to  
10 call them an agent, you don't have to call  
11 them a sales vacuum-cleaner rep or anything  
12 else, just apprentice funeral director. You  
13 know, you can take the law exam with Don Otto,  
14 he gets to meet all of them and straighten  
15 them out.

16           MS. GRINSTON:   I think the last  
17 consensus was, I think, respectfully, that --

18           CHAIRMAN:   Are you giving them booze  
19 back there or what?

20           MS. GRINSTON:   What about preneed  
21 representative? Todd did say agent. What  
22 about preneed representative? Or do you want  
23 to keep it sales agent? Let me know what  
24 your pleasure is.

25           MR. OTTO:   I like preneed agent. You

1 have insurance agents, you have real estate  
2 agents, and now you've got preneed agents.

3 (Numerous people answer yes.)

4 MS. GRINSTON: Don said preneed agent.  
5 Anybody object to preneed agent? I understand  
6 if you want to make a concern.

7 CHAIRMAN: George?

8 MR. CLINE: Just a question. Does  
9 that mean that a licensed funeral director  
10 also has to be designated as a preneed agent?

11 MR. OTTO: That's already in here.  
12 You don't have to --

13 MS. GRINSTON: And we're going to  
14 discuss that in just a second about a licensed  
15 funeral director.

16 CHAIRMAN: Go ahead.

17 MR. MOORE: John Moore, Moore Funeral  
18 Homes. I haven't been here for a while. I'm  
19 sorry for that. I've got a small business to  
20 run and it's, at this point, in the negative  
21 of about \$16,000 a month due to a preneed  
22 company. I have since let two employees go  
23 and made some major changes to my business.  
24 Was hoping to retire in about 13 years, but I  
25 have \$2.1 million on the books of preneed, so

1 my business is really not worth diddly crap.  
2 I don't blame the State Board, I don't blame  
3 anybody but myself. I chose to use that  
4 company. And I'm afraid third-party companies  
5 from the past, it's proven where we're at.  
6 Funeral Security Plans, several others, all  
7 the way down the list, it doesn't work. You  
8 guys are busting your tails, you're doing a  
9 great job. Preneed should be outlawed in  
10 Missouri, but that's not going to happen. The  
11 people of this state won't let it happen;  
12 third-party owners won't let it happen. So,  
13 the funeral home, me, my staff, all of the  
14 other independent funeral homes are going to  
15 sit back and pick up the pieces. Without  
16 100-percent trusting, nobody cares about us.  
17 When it goes under, the third-party company is  
18 not there making arrangements with that  
19 family. They're not there going to my banker  
20 saying I can't make my payments. They're not  
21 there helping with my payroll, with my  
22 insurance, my electric, nothing. I had an  
23 example the other day where a contract was  
24 wrote in 1982. I got \$2,360. The inflation  
25 on it was \$2,100. I don't know where that

1 inflation amount is at. It's not in my  
2 pocket. Does anybody care? Honestly?  
3 Honestly, does anybody care that I lost that  
4 money? No. The banker doesn't, the utility  
5 company doesn't, my insurance company doesn't,  
6 the county collector that wants my taxes  
7 doesn't, my employees don't. Nobody cares.  
8 It's not going to work. We've been there for  
9 how many years? How many companies have went  
10 under and the independent funeral home, nobody  
11 else, helped us. We had to do it on our own.  
12 Had to take money out of college fund for a  
13 child, had to take money from your mom and dad  
14 to make the bills. Who cares? The  
15 third-party company doesn't because they're  
16 gone. They could care less. And if that's  
17 not true, where are they at? If a company  
18 doesn't want to invest 100 percent of somebody  
19 else's money, what's fair? I go down to  
20 Edward Jones to invest money, I give them 100  
21 percent. Fair is fair. The consumer is the  
22 person to worry about. If 200 funeral homes  
23 in the state of Missouri go out of business  
24 this year, what is the State Board going to do  
25 with those contracts, sir? What are you going

1 to do about them? Who's going to handle those  
2 contracts, sir? Are you going to go around to  
3 the independent funeral homes in that town  
4 like we did when it happened in Salem,  
5 Missouri, and beg other funeral homes? I felt  
6 sorry for those people. I took 11 of those  
7 contracts that were earmarked by NPS, cut a  
8 deal with NPS. Where does that put me now?  
9 Further in the hole because I tried to help  
10 the consumer. I'm an independent funeral  
11 home. Nobody cares about me. The proof is  
12 on the table, the proof is in the last 80  
13 years of this great state that we have allowed  
14 third-party companies that don't get up at  
15 2:00 in the morning and go on that death call,  
16 that don't worry about that, okay, that  
17 contract was with AB Funeral Home, now it's  
18 with your funeral home, but I'm not going to  
19 give you any of that interest, and I'm going  
20 to keep 20 percent of Mr. Moore; you only get  
21 80 percent of it. Darn, I'm sorry, you're  
22 doing such a good job, you're picking up  
23 business. Did me good to bust my butt with  
24 that family and acquire business when I can't  
25 get the money, didn't it? We need licensed

1 funeral directors, licensed embalmers to run  
2 the funeral industry. Everybody is governed  
3 by a Board that does a fabulous job. They  
4 have a way to track these people. They have  
5 a way to trace it. We need to give the  
6 independent funeral home the right to take his  
7 money to his local bank, invest it with the  
8 guy that's walking on the street meeting these  
9 people, and his tail end is at risk as much  
10 as the funeral home, not somebody that lives  
11 in a nice home somewhere else and when they  
12 decide they're done, they walk off with \$100  
13 million, \$300 million, \$500 million, and  
14 they're having fun. And the local funeral  
15 director is picking up the pieces again. We  
16 did it and we continue to do it. I hear  
17 people say that the average life of a preneed  
18 is seven to ten years. Something is wrong.  
19 I'm still servicing preneeds from 1966.  
20 That's a little more than seven to ten years.  
21 If it's just seven to ten years, then  
22 guarantee that price for only seven to ten  
23 years. After that, the price goes up. Better  
24 yet, outlaw preneed. Let somebody look at you  
25 and say that's restriction of trade. Let's

1 stand up to them. Let's show them it's not.  
2 Let's go with 100 percent. If it's such a  
3 good idea and it's such a grand thing for the  
4 consumers of Missouri, then put 100 percent of  
5 the money up, let the third-party people and  
6 the funeral home figure out how they pay their  
7 taxes, how they pay their payroll by investing  
8 people's money correctly and standing up where  
9 it doesn't go under a few years down the road.  
10 We've got to protect the people of this state,  
11 and you all can do it. Thank you.

12 CHAIRMAN: Thank you.

13 MS. EULER: I don't know if everybody  
14 in this room has heard the latest on NPS.  
15 We're not here because of NPS, but I think Mr.  
16 Moore might like to hear the latest news on  
17 NPS, and I don't know if everybody else in  
18 this room has heard it, either, so if we could  
19 take just a few minutes, I'll give everybody  
20 just a quick update. Yesterday, about noon,  
21 the special deputy receiver filed a  
22 liquidation plan with the receiver court in  
23 the court in Texas, and that includes a plan  
24 of a settlement agreement between the National  
25 Organization of Life and Health Guarantee

1 Associations and the special deputy receiver  
2 for the Guarantee Associations of the various  
3 states to provide payment on NPS contracts.  
4 There are going to be some contracts that  
5 aren't covered, but what we are being told is  
6 that the vast majority of the Missouri preneed  
7 contracts, there will be some money for.  
8 There will not be inflation, there will not be  
9 growth, but the Guarantee Associations,  
10 assuming this plan is approved, will be paying  
11 out to funeral homes the amount of the face  
12 value of the life-insurance policy that was  
13 purchased on the preneed-contract beneficiary.  
14 We don't know for sure, you know, how much  
15 that amount will be as of yet, but there will  
16 be some money and that's what we're hearing.  
17 Our office and Department of Insurance and the  
18 State Board has been working very closely with  
19 Texas on this. We had a conference call with  
20 them yesterday. I have asked if they can  
21 provide to the Missouri funeral homes some  
22 information about how much contracts will be  
23 covered so you all will have something to go  
24 on, so you'll know how much money on your book  
25 of business that's with NPS you can

1 potentially look to recover. Like I said,  
2 there will be a few contracts that won't be  
3 paid, but what I'm -- what they're telling us  
4 is that virtually all of the Missouri  
5 contracts, there will be some money on, but we  
6 don't know how much.

7 MS. BOHRER: And I will just add that  
8 there are -- we have been told there are about  
9 49,000 contracts in Missouri that were issued  
10 by NPS, the preneed contract. Of those, there  
11 about 5,000 without insurance involved, so  
12 it's a fairly small percentage of contracts  
13 that don't have some type of an insurance  
14 contract standing behind them. The Guarantee  
15 Association is standing behind not the NPS  
16 contracts, but the insurance contract issued  
17 by Lincoln Memorial to -- that were supposed  
18 to be the funding mechanism for those preneed  
19 contracts. And I will just also caveat this  
20 with the plan needs to be -- the plan has  
21 been approved by the National Organization,  
22 the receivership, and the special -- or,  
23 excuse me -- the Texas Department of Insurance  
24 and the special deputy receiver, but each  
25 individual guarantee association for those

1 states affected by this have -- those Boards  
2 have to approve and agree to accept that plan  
3 of rehabilitation. And the Missouri Guarantee  
4 Association has not voted on that yet, so they  
5 will be voting on that within a week. So, we  
6 should know within a week whether or not  
7 Missouri's Guarantee Association has accepted  
8 and agreed to that rehabilitation plan. I  
9 will tell you that the executive director of  
10 the Guarantee Association of Missouri has been  
11 very actively involved with the National  
12 Organization in developing the plan, but it is  
13 not up to him as to whether or not Missouri  
14 agrees to accept that; it is the Board of the  
15 Guarantee Association, and Missouri has the  
16 biggest exposure relative to the number of  
17 people. And I can't remember, was it 49,000  
18 Missourians or was it 49,000 in total across  
19 all of the states?

20 MS. EULER: No. Missouri.

21 MR. STALTER: 46,000. I think it was  
22 46,000 in Missouri, 39,000 in Texas.

23 MS. EULER: There are 44 state  
24 guarantee associations that are sharing this  
25 risk. The guarantee associations have gone

1 far above and beyond what we expected them or  
2 anybody else, I think, expected them to do, to  
3 step up to make sure that these policies are  
4 covered and supported. So, I think what the  
5 guarantee associations have done and what the  
6 special deputy receiver has negotiated with  
7 the guarantee association, while it's not what  
8 everybody was hoping for, it is far better  
9 than anybody ever expected.

10 MS. BOHRER: Anything that they would  
11 or, by law, obligated to do.

12 MS. EULER: Right.

13 MS. BOHRER: They have reversed all of  
14 the loans that were taken against these  
15 contracts. They have reinstated whole-life  
16 contracts where they had been converted to  
17 term. I mean, they have made a lot of  
18 revisions to the inappropriate and detrimental  
19 actions by Lincoln Memorial to those -- or by  
20 NPS to those contracts, so --

21 MS. EULER: And how this is going to be  
22 handled administratively is that the  
23 purchaser, the beneficiary, the insured will  
24 be the owner of these policies, and the  
25 beneficiary of the policies will be the

1 funeral homes. And so, NPS, Lincoln, all of  
2 those people are completely cut out of this  
3 process. So, when you have an NPS contract,  
4 the person dies, you provided the services,  
5 you make the claim to the special deputy  
6 receiver who will then process the claim and  
7 send the check directly to you. So, all of  
8 the NPS stuff is being completely cut out of  
9 it.

10 MR. OTTO: Time line, and this may have  
11 changed yesterday, but there's tentatively a  
12 September 15th hearing date in Texas for the  
13 court to hear objections to the plan.

14 MS. EULER: August 25th is hopefully  
15 when the special master will sign.

16 MR. OTTO: Have they moved it up?

17 MS. ERICKSON: No, actually, Don, they  
18 didn't move it up. There's two separate  
19 operative dates.

20 MR. EULER: Right.

21 MS. BOHRER: If they receive no  
22 objections by August 22nd, the plan goes in  
23 front of the special master on the 25th who  
24 will make a recommendation to the --  
25 hopefully, to the district court that day. If

1 there are objections filed, the date for the  
2 hearing is September 15th.

3 MR. OTTO: September 15th.

4 MS. BOHRER: And at this point, short  
5 of funeral homes -- individual funeral homes  
6 making objections, it's not expected that  
7 there should be objections.

8 MS. EULER: And under the plan, if  
9 there are objections made, the guarantee  
10 association reserves the right to walk.

11 MS. GRINSTON: Again, if there are no  
12 objections, then there would be no need for a  
13 hearing on September the 15th?

14 MS. ERICKSON: That's correct.

15 MS. EULER: There will be just the  
16 August 25th.

17 MS. ERICKSON: The best of all worlds  
18 is if there would be no objections to this  
19 plan, and it's an extremely generous plan on  
20 the part of the guarantee associations.

21 MR. MOORE: It sounds very generous,  
22 ma'am. I've got 65 of those noninsured  
23 contracts, ma'am -- \$193,000. It sounds  
24 fabulous.

25 MS. EULER: I spoke yesterday with the

1 Texas Department of Insurance attorney who is  
2 working on this. And the way the plan is  
3 worded, it's not who has insurance, it's who  
4 -- for any contract for whom there is any  
5 indicia of insurance or any intent in the  
6 agreement. And what they told us yesterday  
7 was that the number of people who will not be  
8 covered is shrinking, and as of yesterday, it  
9 was a very small number, and it had been cut  
10 in half.

11 MR. MOORE: And how are we supposed to  
12 inquire if our contracts are covered or not?  
13 Where is the audit on this? Where is the --

14 MR. ERICKSON: That is being  
15 developed, Mr. Moore.

16 MS. EULER: I have requested that  
17 information from the Department of Insurance.  
18 I made that request yesterday and told them  
19 that the Missouri funeral directors really  
20 need to know how much money.

21 MR. MOORE: Chairman, I'm sorry. I  
22 got us off track and I didn't mean to do  
23 that. I'm so sorry, sir. Thank you all.

24 MS. ERICKSON: I would like to further  
25 respond to your last question. I think that

1 everyone has already heard that the records  
2 that have been at NPS and Lincoln Memorial are  
3 rather confusing and mixed up. The special  
4 deputy receiver has been working very  
5 diligently to learn not only who is covered  
6 and who is not, but, as Sharon indicated, if  
7 there was an indicia of insurance, meaning if  
8 it was supposed to go to insurance, that  
9 probably will be covered, and these details  
10 are being fleshed out and they're doing right  
11 now all of the investigation necessary to  
12 learn who those people are and to get Sharon  
13 and Missouri and then the funeral homes that  
14 specific information. They're still working  
15 on it, but they have very high hopes that they  
16 can get that together and then the number is  
17 decreasing. We have been assured that as they  
18 continue to investigate each individual  
19 consumer, their policy, their contract, the  
20 numbers are decreasing, so --

21 MS. BOHRER: And I will also tell you  
22 that even though the guarantee association in  
23 Missouri through Chuck Wren has really no  
24 obligation to the pure preneed contracts with  
25 no insurance involved at all, he is trying to

1 work out some type of an agreement with a  
2 third party to take over those contracts that,  
3 in the end, through the Texas DOI and the  
4 special deputy receiver, will be determined to  
5 have no protection under this plan whatsoever.  
6 He's talking to a third party to try to work  
7 out something for protection of those plans,  
8 as well. Whether that will materialize has  
9 yet to be decided, but they are looking out  
10 for your interests as much as is possible over  
11 the entirety of this problem.

12 MR. MEIERHOFFER: Question to the  
13 legal folks: What about objections as far as  
14 class-action suits, one in Texas, one in  
15 Missouri, that we know of now? How does that  
16 impact it?

17 MS. ERICKSON: Those are not  
18 objections within the context of the  
19 rehabilitation of the liquidation.

20 MR. MEIERHOFFER: Okay.

21 MS. ERICKSON: Those are actually --  
22 by law, they are stayed because the matter is  
23 in receivership. There's a -- every state has  
24 different time periods, but there is an  
25 automatic stay, very much like in bankruptcy.

1 So, those actions are not, per se, objections  
2 to the plan, although it is certainly  
3 conceivable whoever brought those actions may  
4 wish to file an objection which, as Sharon  
5 indicated, the guarantee association, you  
6 know, will -- they could walk, and then there  
7 is nothing. So, these are touch choices right  
8 now, Mike.

9 MR. STALTER: Just question about the  
10 plan. Is it that the funeral home acts as  
11 kind of like a clearing agent to make the  
12 claims? I mean, is it assumed that all claims  
13 will come through the funeral home then to  
14 each of the guarantees?

15 MS. EULER: No. From the funeral  
16 homes' perspective, nothing will change.  
17 They'll submit their claims to Donna Garrett,  
18 who is going to administer this. And then  
19 Donna Garrett will administer on behalf of the  
20 guarantee associations.

21 MR. STALTER: Okay. But my point is  
22 if Mr. Moore goes out of business, I mean,  
23 where do the consumers go with their  
24 contracts? Can they make claims directly?

25 MS. EULER: No. But we are talking

1 with Texas about clarifying that so that the  
2 funeral home that provides the services can  
3 make the claims. And if you want to look at  
4 the plan itself and the liquidation, they are  
5 posted at lincolnmemorallife.com under the  
6 legal docs.

7 MS. DUNN: Sharon, we have posted it  
8 on our Web site as -- it's on an alert and  
9 I've got it posted as of yesterday.

10 MS. BOHRER: You said Lincoln Memorial  
11 Life?

12 MS. EULER: lincolnmemorallife.com

13 MS. BOHRER: Because in their draft  
14 press release, they have the wrong Web site,  
15 but I've already told them and I cleared that  
16 because --

17 MS. EULER: I saw it there yesterday.

18 CHAIRMAN: All right, folks. If we  
19 can finish up this one section, we'll have a  
20 break and then you can all visit.

21 MS. GRINSTON: We are looking at the  
22 definitions from preneed trust, the  
23 trust-funded preneed contract. We had very  
24 minor revisions, I think, across the board.  
25 The only one that we probably need to reserve

1 is the definition of seller, but removing the  
2 definition of seller, any objections to  
3 anything else in that section except the  
4 definition of seller?

5 CHAIRMAN: Todd?

6 MR. MAHN: Well, just back up for a  
7 second. I don't think we ever gave people  
8 selling prearranged funerals a title, and  
9 these are folks that are sitting down making  
10 final arrangements with the family. Most of  
11 the time, a lot of the ones that I've seen  
12 that's worked out in the field usually screws  
13 it up because the funeral director has to  
14 straighten it out when it gets back in-house  
15 because they don't know what they're talking  
16 about. And I'm thinking at a minimum -- and  
17 I think we need a show of hands here at this  
18 roundtable or a yes or no or whatever we want  
19 to do. At a minimum, they ought to be an  
20 apprentice funeral director. If they can't  
21 afford that investment, I don't think they  
22 ought to be doing it. Now, if they want to  
23 sell just the merchandise -- caskets, vaults,  
24 or something like that, they can go to  
25 Wal-Mart and sell those or Sam's Club or

1 whatever. But I'm talking about actually  
2 making a prefuneral arrangement -- they're  
3 arranging a funeral. And, I mean, if we're  
4 just sending up the -- you know, how we feel  
5 on things, why can't we send them?

6 CHAIRMAN: Sharon?

7 MS. EULER: Because it violates  
8 federal law.

9 MR. MAHN: You know what, I mean,  
10 maybe it will violate federal law and let the  
11 Capitol figure that out. We're not here to  
12 worry about federal law. I'm not.

13 MS. EULER: The federal agents will  
14 come to the Board --

15 MS. DUNN: I mean, we're under order  
16 now, Todd, the Federal Trade Commission --

17 MR. MAHN: But we're not acting as the  
18 Board. I thought we were acting as a  
19 roundtable panel here just to send up stuff  
20 that we -- that these guys feel. Now, I'm  
21 just saying as a feeling that these -- if this  
22 -- the people at this table feel like people  
23 that sell prearrangements ought to be a  
24 minimum of an apprentice funeral director --

25 MS. GRINSTON: And, Todd, what I'm

1 hearing is a recommendation that you all  
2 reconsider the vote earlier because originally  
3 you guys said you didn't want a required  
4 funeral-director or  
5 apprentice-funeral-director license. I think  
6 I'm hearing Todd say do you all want to  
7 reconsider that vote and instead require that  
8 sales counselors have a funeral-director or  
9 apprentice-funeral-director license? I share  
10 Sharon's FTC concerns, but if that's the  
11 recommendation you would like to make, then I  
12 throw that open to the group as to whether you  
13 would like to reconsider that.

14 MS. EULER: No.

15 MR. MEIERHOFFER: No.

16 MR. OTTO: I wish we could, but it's --

17 CHAIRMAN: Who wants that? Hold up  
18 their hand.

19 MR. CLINE: That the preneed seller be  
20 licensed -- the individual person?

21 MS. GRINSTON: As a funeral director  
22 or as an apprentice funeral director.

23 CHAIRMAN: One, two, three. How many  
24 don't?

25 MR. BAKER: State it again, please.

1 MS. GRINSTON: That a preneed seller's  
2 agent must be licensed as a funeral director  
3 or an apprentice funeral director.

4 CHAIRMAN: Those that don't.

5 MS. EULER: You can sell preneed  
6 without being a licensed funeral director.  
7 That's what we're voting on.

8 MR. MOORE: How come I can't do  
9 surgery as a doctor without a medical license?  
10 How come I can't sell life insurance without a  
11 life-insurance license?

12 CHAIRMAN: Well, I think we're trying  
13 to narrow the field. They're saying, like,  
14 Todd is wanting to make an apprentice funeral  
15 director or a funeral director to sell preneed.

16 MR. MOORE: Very good.

17 CHAIRMAN: Okay. But we've got a  
18 bigger pot is the federal government is going  
19 to say, well, that's a restriction of trade,  
20 and then we've been through that before.

21 MR. MOORE: Then how come the federal  
22 government makes me have a license to do  
23 surgery?

24 CHAIRMAN: Well, they've got a pretty  
25 heavy hand, and they like to use it. So,

1        anyway -- I mean, yes, I see what you're  
2        saying. I would like to do it, but I've been  
3        there, I've been subpoenaed. We had to go  
4        through the whole thing on this other deal we  
5        just got done with on funeral directors  
6        selling merchandise in a funeral home, which  
7        that was funeral directors selling merchandise  
8        in a funeral home, not selling caskets in a  
9        casket store. And you just got noticed on  
10       that. Did everybody read the big letters and  
11       all that, and we had to do certain things.  
12       When they say jump, you jump pretty damn fast  
13       and pretty damn high, and that's -- and we're  
14       under that for ten years, so --

15                MS. EULER: It's already been  
16       determined. There's federal case law out  
17       there that says you don't need to be a  
18       licensed funeral director to sell preneed  
19       contracts.

20                MS. BOHRER: If anybody disagrees with  
21       that, they need to go the federal courts and  
22       ask them why.

23                CHAIRMAN: Thank you, Linda.

24                MS. GRINSTON: I agree.

25                CHAIRMAN: Okay. Now vote. Now,

1 we're going to go back to the program, and  
2 then we're going to get to break.

3 MS. GRINSTON: Do you want to take a  
4 break or define seller?

5 CHAIRMAN: No, let's do this.

6 MS. GRINSTON: Okay. What I'm hearing  
7 that seller, there was a suggestion that the  
8 definition of seller be changed to the person  
9 who executes a preneed contract with the  
10 purchaser and who is obligated under such  
11 preneed contract. Anyone have any concerns or  
12 suggestions on redefining seller other than  
13 what you see in the document?

14 MS. EULER: I have a suggestion.

15 MS. GRINSTON: Yes.

16 MS. EULER: What the seller is  
17 obligated to do is to provide payment.

18 MS. GRINSTON: To the provider?

19 MS. EULER: To the provider. I think  
20 if you say obligated under the preneed  
21 contract, you need to say what they're  
22 obligated to do.

23 CHAIRMAN: Don, have you got a comment?

24 MR. OTTO: Yeah. No, that's -- yeah.  
25 I agree with you.

1           CHAIRMAN:   Mark?

2           MR. WARREN:   Yeah.   Homesteaders made a  
3 comment, like Sharon was saying, to put down  
4 what you're obligated to do, and we were  
5 worried about collecting more than the initial  
6 premium on an insurance-funded contract, that  
7 they should only collect the initial premium,  
8 so there's not a middleman, so to speak,  
9 between the insurance company and the insurer.

10          MS. EULER:   And the seller's real  
11 obligation is to pay out.

12          MS. GRINSTON:  I'm going to need to  
13 tinker with that language and bring it back to  
14 you.  Anybody have any concerns with that?

15          MS. BOHRER:   But that's already in  
16 there; right?  I mean, it says collect and  
17 administer all payments made under the  
18 contract.  Doesn't that contemplate what they  
19 pay out?

20          MS. EULER:   The problem is with the  
21 collect-and-administer language because that's  
22 -- does counter to insurance.

23          MS. GRINSTON:  Okay.  Seller, the  
24 person who executes a preneed contract with  
25 the purchaser and who is obligated under such

1 preneed contract to provide payment to the  
2 provider?

3 MR. OTTO: No. You need to take that  
4 preneed contract --

5 MR. CLINE: You can take every preneed  
6 contract, yeah.

7 MR. OTTO: Yeah. The preneed contract  
8 is between -- is what the consumer signs.

9 MS. GRINSTON: And the seller?

10 MR. OTTO: And the seller, but --  
11 yeah. But you just need to be -- well, my  
12 version here says sells a preneed contract to  
13 the purchaser. You're saying the word  
14 "execute"?

15 MS. GRINSTON: Yeah. That was the  
16 comment, that we change to execute.

17 MR. OTTO: It still says "sells" in my  
18 copy here.

19 MS. GRINSTON: It does. It does. In  
20 Homesteaders comments, their suggestion was to  
21 change "sells" to "executes."

22 MR. OTTO: Okay. That's -- okay.  
23 That -- never mind then.

24 MS. GRINSTON: Would that remedy your  
25 concern?

1 MR. OTTO: Never mind.

2 MS. GRINSTON: But as I understand.  
3 Any concerns, objections with that? Mr. Cline?

4 MR. CLINE: If you're selling a  
5 contract or they're buying a contract, you're  
6 not really executing the terms of the  
7 contract. I think that's what confuses me  
8 right there. Does that make sense?

9 MR. OTTO: The execute makes sense  
10 from the legal end of it.

11 MS. EULER: Execute makes sense to --  
12 yeah.

13 MS. GRINSTON: Yeah, it does.

14 CHAIRMAN: Well, there are some other  
15 people that need to be executed, and we'll get  
16 to them later.

17 MS. GRINSTON: Let's take a break  
18 before you execute anybody.

19 CHAIRMAN: We'll take a break.

20 (Off the record)

21 CHAIRMAN: All right. Go ahead.

22 MS. GRINSTON: Okay. Well, then let's  
23 go to the applicability section. The chairman  
24 told me to start. One of the concerns, and  
25 this is one of the concerns that Bill has

1 raised, is with the inclusion of cemetery  
2 operators and some of their definitions. I  
3 think that on the good -- when you read 214  
4 and 436 together, there is a potential for  
5 some overlap. What you see in the  
6 applicability section, that first section is  
7 not the language you all looked at. That is  
8 my suggestion to you because I think it may be  
9 of some value to clarify where cemetery  
10 operators fall. They're either under 436 or  
11 under 214. Right now, if you read both  
12 provisions, there's a concern from both the  
13 Office of Endowed Care Cemeteries as well as  
14 from through 436 that cemetery operators may  
15 be regulated right now technically by two  
16 different entities and operations. And so, I  
17 would like to submit the applicability  
18 language in subsection one under the  
19 applicability section as a possible way of  
20 clarifying what cemetery operators are  
21 required to comply with.

22 CHAIRMAN: Comment?

23 MS. GRINSTON: Hearing no comments on  
24 that. Subsection 2 which is the language of a  
25 contract of insurance. I think we wanted to

1 clarify what 436 now would apply to. And so,  
2 that is subsection 2. We didn't get any  
3 comments on that specifically. So, I'll open  
4 that -- the applicability section open to the  
5 floor for any questions or concerns.

6 MS. BOHRER: So, is this the -- oh. A  
7 piece down here. Is this the provision that  
8 is supposed to separate the concept of right  
9 now that's a problem with some insurance  
10 companies when you designate a funeral home or  
11 a provider of funeral services as the  
12 beneficiary of a contract or the owner of a  
13 contract?

14 MS. GRINSTON: I think that we -- that  
15 may be addressed a little bit later on and  
16 I'll check again. But I think this is just  
17 the one that says that the contract of  
18 insurance itself does not comply with the  
19 preneed law for the insurance contract, but  
20 would apply to any preneed contract that is  
21 sold with the insurance. So, if I have a  
22 preneed contract, again, it's going to be  
23 funded by insurance, the preneed contract is  
24 under our law, the insurance portion is not.

25 MS. BOHRER: Okay.

1 MS. GRINSTON: But I think the  
2 assignment-of-beneficiary language is  
3 probably, I think, addressed a little bit  
4 later.

5 MS. BOHRER: Okay.

6 MS. GRINSTON: But, Linda, I'll make  
7 sure I mark that because I want to make sure  
8 I didn't forget that.

9 MS. BOHRER: Okay.

10 MS. GRINSTON: Hearing nothing.  
11 Preneed-provider licensing -- and, of course,  
12 these headings are just -- really, were for my  
13 benefit. They are not intended for anything  
14 else, just so that I could tag where I'm  
15 going. You all looked at the requirements for  
16 preneed-provider licensing. The language that  
17 you see here, the changes that you see here  
18 without a name attached to it we believe is  
19 what you all said that you wanted to see.  
20 First, in subsection 2 -- well, no. First, in  
21 subsection 3, I think, was the consensus vote  
22 that you've got to be registered with the  
23 Secretary of State. Becky and the Board asked  
24 that we clarify that. We got some comments on  
25 this section, and I'll just go through them by

1 the common area. Subsection 2, I wanted to  
2 add something that said that nobody would be  
3 exempt from complying with the  
4 funeral-establishment licensing requirements.  
5 It's unnecessary, but I just -- it's not  
6 absolutely necessary, but I thought it would  
7 be a good idea just to clarify that  
8 registering as a provider doesn't mean that  
9 you get out of being registered as a funeral  
10 establishment if you have to be. That's  
11 actually been raised as a question.  
12 Subsection 3 is the language that says they  
13 have to be authorized and registered with the  
14 Missouri Secretary of State to conduct  
15 business in Missouri. Subsection 6, and I  
16 have to clarify this. Six, seven, and eight  
17 -- I think Sharon said this before -- these  
18 are not recommendations from the AGs office,  
19 these are recommendations that Sharon just  
20 gave us as we were walking through, so it's a  
21 little bit different. But it was suggested  
22 that we add something in subsection 6 that  
23 would require applicants, as well as their  
24 officers and directors, to be of good moral  
25 character, and that should be moral and not

1 morale. I do know the difference. But that  
2 is some language that is standard for most of  
3 the division's boards and professions, or  
4 several of them, and so, I'd submit that out  
5 there for your review. It was also  
6 recommended that we require a high school  
7 diploma.

8 MS. EULER: If you're an individual.

9 MS. GRINSTON: Or equivalent if you're  
10 an individual. And it was suggested that we  
11 say under 8, meet all requirements for  
12 licensure. I'd like to open up this section  
13 generally just for discussion, comments,  
14 concerns, and your thoughts on the additions  
15 that you see. Again, those are not what you  
16 agreed to, they are the additions and comments  
17 that came in on these sections.

18 CHAIRMAN: Don?

19 MR. OTTO: I guess with 7, you might  
20 need to make that clear you're talking about  
21 an individual.

22 MS. EULER: Right. I just --

23 MR. OTTO: Yeah. I know that's what  
24 you said, but I think you should insert that.

25 MS. EULER: Yeah. Yeah.

1           MR. OTTO:   And then on 8, meet all  
2 requirements for what licensure.

3           MS. EULER:   For the preneed-provider  
4 license.

5           MR. OTTO:   That's fine.   I mean, I  
6 think you should -- are we talking about dog  
7 license or marriage license or -- you know,  
8 maybe you need to reference the licensure as  
9 spelled out in sections something to something  
10 or as in this section or something.

11          CHAIRMAN:   Linda?

12          MS. BOHRER:   And I wasn't sure where  
13 you were going with the high school diploma  
14 thing, but if you really think that the people  
15 that own these businesses should at least have  
16 a high school diploma, then would you want to  
17 make that be for the officers and directors as  
18 well so that you don't have somebody  
19 sideskirting that obligation by just setting  
20 up a limited partnership and then they don't  
21 -- you know, the officer doesn't have a  
22 diploma.   I mean, if that -- if you truly  
23 feel that's something that they need, then I  
24 would --

25          MS. EULER:   Yeah.   One of the things

1 we had talked about maybe at another section  
2 is that each officer, director, manager, and  
3 controlling shareholder be eligible for  
4 licensure on their own, and that didn't make  
5 it in here, but something along those lines  
6 for that very reason.

7 MS. GRINSTON: Did anyone else have  
8 any other comments on that, with the  
9 clarification of that -- of making sure that  
10 reference is an individual in that section?

11 MR. OTTO: And what you're licensing in  
12 subparagraph 8 on page 5.

13 MS. GRINSTON: Okay. Any other  
14 concerns with that section?

15 CHAIRMAN: Seeing no other concerns.

16 MS. GRINSTON: Then I think we can  
17 move on to page 5. Looking at subparagraph 4.  
18 One of the things that I want to know on this  
19 is you'll see that the renewal fee says of  
20 blank dollars. Depending on what the final  
21 product is, the office, the Board, the  
22 division, they're going to have to go back and  
23 really run some very strong numbers to get a  
24 better idea of what that fee should be. And  
25 so, right now, we don't have an express fee

1 that we can recommend to you. We're going to  
2 have to look at the numbers to see what may  
3 be reasonable. We hope to have that out and  
4 e-mailed out to everyone so that you'll know  
5 what we're thinking may be reasonable for a  
6 preneed-provider fee.

7 MR. MEIERHOFFER: Question: Why put a  
8 number in there at all? Why not let the  
9 Board establish the fee, and that's going to  
10 change all the time?

11 MS. GRINSTON: This is -- that's a  
12 logistics question. If the statute passes  
13 8/28 of '09, it's probably not going to be  
14 until December, January until we can get a fee  
15 done by rule. And if we --

16 MR. MEIERHOFFER: So, basically,  
17 that's the reason?

18 MS. GRINSTON: Yeah. If we get a fee  
19 done by rule, if not, we won't be able to  
20 renew or charge a fee until six to eight  
21 months and --

22 MR. MEIERHOFFER: Why not draft it  
23 with a fee then with the proviso that the  
24 Board can change the fee or something? I  
25 mean, otherwise, you're going to be behind the

1 eight ball forever.

2 MS. EULER: They've got -- that's what  
3 they have.

4 MR. MEIERHOFFER: Is that what they  
5 have?

6 MS. EULER: Yeah.

7 MS. DUNN: It says, "Or in an amount  
8 established by the Board." Typically, you do  
9 set the fee in rule, but we just didn't want  
10 to operate for a period of time without any  
11 fee.

12 MR. MEIERHOFFER: Sure.

13 MS. GRINSTON: And that's just a  
14 logistics concern about getting the rule  
15 through fast enough to allow us to do that.  
16 Subsection -- on that same page, subsection 4,  
17 you'll see the change. Again, it was  
18 suggested that we include again that you're  
19 still authorized and registered with the  
20 Secretary of State's office. Becky had a  
21 concern about your DBAs. Right now, and  
22 there's been an issue with being -- you know,  
23 how DBAs are registered and everything else.  
24 I don't know if that's a concern that you  
25 would like to address in statute or whether it

1 would be something that you would like the  
2 Board to address by rule.

3 MS. DUNN: Right now, establishments  
4 -- we've talked about this in open several  
5 times throughout the last year. Right now, an  
6 establishment can have one DBA. Sellers have  
7 no limitation on DBAs right now. So, you  
8 could be a seller and have 25 DBA names. So,  
9 is it something that would -- a protection to  
10 the consumer to make sure that they know  
11 exactly who you are as the seller?

12 MR. OTTO: We're in the provider  
13 section right now.

14 MS. DUNN: Pardon me?

15 MR. OTTO: We're in the provider  
16 section.

17 MS. DUNN: Okay. I'm sorry.

18 MS. EULER: No. We're in the seller  
19 section.

20 MR. STALTER: No. We're in the seller  
21 section.

22 MR. OTTO: Are we in the seller section  
23 already?

24 MS. GRINSTON: No. We're in the  
25 provider section.

1 MS. EULER: I had moved on to the  
2 seller section.

3 MS. GRINSTON: Okay. See, my little  
4 headings help. We're getting ready to go into  
5 the seller section. We're in the provider  
6 section only.

7 MS. DUNN: Okay.

8 MS. GRINSTON: So, all the stuff about  
9 the good moral character, high school diploma,  
10 all of that, that relates to providers.

11 MS. EULER: I thought we had moved on.

12 MS. GRINSTON: No. I'm sorry.

13 MS. EULER: Okay.

14 MS. GRINSTON: No. We're at 5, we  
15 should be in the renewal section, which is  
16 where Becky had her question.

17 MS. COLLINS: Point of clarification,  
18 Becky. Do those DBAs apply to the provider  
19 section or the seller section? I'm just  
20 trying to be clear.

21 MS. DUNN: No. No. Because the  
22 provider is covered under establishment. So,  
23 an establishment's license with one DBA, and  
24 establishment is a provider. So, we shouldn't  
25 have discussed that right now.

1 MS. COLLINS: Oh, okay. That was  
2 premature.

3 MS. DUNN: Yes.

4 MS. EULER: But do you want to address  
5 -- not all providers will be funeral  
6 establishments.

7 MS. GRINSTON: When it comes to DBAs  
8 -- and this might be my suggestion. Maybe we  
9 might need to give that back to the Board by  
10 rule because some of those applications may  
11 change in times to come. And so, that may be  
12 a rule-making thing that we probably may want  
13 to include with that instead of doing a  
14 mandate through, you know, statute. So, if I  
15 can, if it's okay with everybody, I would make  
16 just the suggestion legally that we look at  
17 that issue again when it comes to rule-making  
18 on that.

19 MS. DUNN: Okay.

20 MS. GRINSTON: Again, we're on page 5,  
21 we're looking at lines 2 through 22. This is  
22 for renewal of a provider license -- renewal  
23 of a provider license. Anyone have concerns  
24 with renewal of a provider license? And  
25 you'll see the comments that were suggested.

1 Hearing none, let's move to page 6, which is  
2 preneed-seller licensing.

3 CHAIRMAN: Todd?

4 MR. MAHN: Yeah.

5 CHAIRMAN: Do you have a comment?

6 MR. MAHN: I've had lots of comments.

7 MS. GRINSTON: During the break,  
8 Homesteaders gave you a copy of their  
9 suggestions -- Mark did on behalf of  
10 Homesteaders. I've been reading them, so you  
11 guys should have -- it has Homesteaders has a  
12 highlight on the front page, if you see it.  
13 It should say Homesteaders. The first page  
14 should begin "HLC comment."

15 MS. COLLINS: They gave us  
16 black-and-white copies.

17 MS. GRINSTON: Right. I'm sorry.  
18 Black and white. It should say, "HLC comment."

19 MS. COLLINS: Yes.

20 MS. GRINSTON: If you look at page 6  
21 of that draft that says "HLC comment," you'll  
22 see Homesteaders suggestions. And the first  
23 suggestion was to -- right now, it says a  
24 seller is obligated to administer all  
25 payments. The suggestion was to add

1 "excluding insurance premium payments made by  
2 a consumer." And we'll take comments on any  
3 concerns with that. Sharon?

4 MS. EULER: My concern is I think it's  
5 -- in theory, I like it. I'm wondering if we  
6 need to limit it to insurance-premium payments  
7 because I can envision where consumers would  
8 make payments directly to a trust -- directly  
9 to the trust as opposed to making them through  
10 the seller. So, I wonder if we can  
11 incorporate that idea, but not limit it to  
12 insurance-premium payments.

13 MR. OTTO: What about excluding  
14 payments made by the consumer directly to an  
15 insurance company or a trustee?

16 MS. EULER: Or maybe just say  
17 excluding direct payment made by a consumer.

18 MS. GRINSTON: I'd like saying direct  
19 payments made to whom.

20 MR. OTTO: To -- yeah. To the  
21 insurance company or a trustee under this  
22 section, or something like that.

23 MS. BOHRER: Because does the consumer  
24 make payments to the preneed seller after  
25 they're sold?

1 MS. EULER: Yes.

2 MS. BOHRER: So, then --

3 MS. EULER: Currently.

4 MS. BOHRER: -- if you just exclude  
5 payments made directly by the consumer, you  
6 would be excluding all payments, wouldn't you?

7 MS. EULER: We would allow consumers  
8 to make the payments directly to the trust.

9 MS. GRINSTON: Is this the proper  
10 section for that, though, because right now  
11 we're saying they're obligated to administer.  
12 From what I hear, do we really need to add a  
13 section that says nothing in this section  
14 shall prohibit a consumer from making payments  
15 directly to a trustee or an insurance company  
16 or, you know, to a joint account?

17 CHAIRMAN: Mark?

18 MR. WARREN: We weren't worried about  
19 the consumer making payments to the company,  
20 we were worrying about the consumer making  
21 further payments to the seller after the  
22 initial premium, and then for whatever reason,  
23 those premiums not being remitted further up  
24 to the company. I mean, in most cases, I  
25 think you would envision they might make the

1 initial premium payment to the seller and then  
2 it would be a payment directly to the company  
3 from that point on.

4 MS. BOHRER: You don't want it to be  
5 obligated that they funnel those payments  
6 through the seller?

7 MR. WARREN: Exactly. Exactly.

8 MS. BOHRER: And absent that, they  
9 would be obligated to funnel their payments  
10 through the seller?

11 MS. EULER: Right.

12 MS. BOHRER: The consumer.

13 MR. WARREN: Right. That they would  
14 only have to -- you know, the initial premium  
15 payment they would make, but after that, it  
16 would be, in essence, a direct bill, so to  
17 speak, where a company would bill them and  
18 they'd pay directly to the company.

19 MS. GRINSTON: So, I'm hearing two  
20 concepts out here. Number one, the language  
21 that excludes premium payments made directly  
22 by consumer to for insurance in trust, or a  
23 trust or a joint account, and then the second  
24 issue of whether all subsequent life-insurance  
25 premium payments should be made directly to

1 the insurance company. I think, if I read  
2 your suggestions correctly, those are two  
3 different things. The change to excluding  
4 payments directly made to the insurance  
5 company, trust, or joint account, does anyone  
6 have any problematic issues with that?

7 MS. EULER: I have a suggestion.

8 MS. GRINSTON: Yes, Sharon?

9 MS. EULER: How about we just say the  
10 preneed seller designated in a preneed  
11 contract shall be obligated to insure that the  
12 preneed contract is managed and fulfilled in  
13 compliance with section 333.700, blah, blah,  
14 blah?

15 MR. OTTO: Well, does that give them  
16 now more obligations, though, than --

17 MS. EULER: No.

18 MR. OTTO: I mean, if it says they're  
19 obligated to make sure the contract is  
20 fulfilled?

21 MS. EULER: That's what it says right  
22 now.

23 MR. OTTO: But that goes beyond  
24 payment of funds, potentially.

25 MS. GRINSTON: I think that's her

1 suggestion.

2 MS. EULER: That's -- the language --  
3 all I'm saying is that we take out the  
4 language that says administer all payments  
5 made by or on behalf of a purchaser of a  
6 preneed contract. That's all I'm doing is  
7 taking that phrase out.

8 MS. GRINSTON: So, it would read, "The  
9 preneed seller designated in the preneed  
10 contract shall be obligated to insure the  
11 preneed contract is managed and fulfilled in  
12 compliance with sections" -- blah, blah, blah.

13 MS. EULER: And as provided by the  
14 contract.

15 MS. GRINSTON: That's a legal term,  
16 blah, blah, blah.

17 MS. EULER: Yeah.

18  
19 MR. OTTO: But that language that says  
20 "insure the preneed contract is managed and  
21 fulfilled," where did that come from?

22 MS. GRINSTON: I think -- I don't  
23 know. I don't know. I need to check to see  
24 if it's currently --

25 MR. OTTO: I don't think that's

1 currently in the law, and I'm saying -- if  
2 what we're saying is the seller -- what the  
3 seller is obligated to do is to pay the people  
4 the money they're supposed to pay them?

5 UNIDENTIFIED: Yes.

6 MR. OTTO: Then if you say the phrase,  
7 "fulfill the contract," arguably that means  
8 provide a Batesville #125 silver casket, you  
9 know, 20-gauge.

10 MS. GRINSTON: While the provider is  
11 responsible for, as the one providing it,  
12 technically, shouldn't it be the seller's  
13 responsibility to make sure that consumer gets  
14 what's in the preneed contract? For example,  
15 if my provider decides they're going to give  
16 me a different casket, shouldn't I be able to  
17 go to the seller and say, "Seller, that's not  
18 what I agreed for you to get me"?

19 MR. OTTO: Yeah, because then the  
20 seller would have to be a licensed funeral  
21 establishment to do a lot of this stuff.

22 MS. GRINSTON: No. No. Not for a  
23 seller to go back and say, "Dear Provider, why  
24 are you selling them a contract that's  
25 different than what's in our contract?"

1           MR. OTTO: Well, the seller's  
2 obligation -- we talked about this in the  
3 definition section. What the seller's  
4 obligation is is to pay people money. Whether  
5 it's the provider or the consumer, that's what  
6 the seller's obligation is.

7           MS. GRINSTON: So, if the provider  
8 says -- if a consumer going into a provider  
9 and the provider says, "I'm charging you  
10 more," the seller has no obligation then  
11 because all they have to do is write a check.  
12 That's the only obligation they have.

13          MR. OTTO: That's under the current  
14 law. The seller's --

15          MS. GRINSTON: I don't believe so.

16          MS. EULER: But we're not talking  
17 about the current law.

18          MR. OTTO: I know. But that's -- if  
19 you expand it beyond that, then we've got a  
20 whole -- you've opened up a whole other issue.

21          MS. BOHRER: I think that the language  
22 you're talking about is in the current law  
23 because if you look at Kim's copies, the only  
24 thing she has revised is what's in red, and  
25 insure the preneed contract is managed and

1 fulfilled is not in red in Kim's copy.

2 MR. OTTO: Well, no, I don't think so.

3 CHAIRMAN: Bill?

4 MR. STUART: Clarification to Sharon.

5 You were talking about a seller shall be  
6 responsible to keep track of the funding, or  
7 how did -- I just needed clarification of what  
8 you just said a minute ago, because it sounded  
9 like you wanted me as -- if I'm a seller -- a  
10 funeral director is the seller, but I choose  
11 the funding source as an insurance company or  
12 a third party, that I'm going to be  
13 responsible to check on their funds?

14 MS. EULER: No.

15 MR. STUART: Okay. Well, that's what I  
16 thought I heard. Could you clarify that,  
17 please?

18 MS. EULER: No. No. The seller's  
19 obligation is to, if it's trust funded, to  
20 make sure the money is timely placed in trust.  
21 If it's insurance funded, to make sure that  
22 the consumer knows -- gets their information  
23 about their insurance and how to make the  
24 payments, and to make sure that the payments  
25 are made out at the time of need and that the

1 preneed contract is fulfilled from the  
2 seller's point of view.

3 MR. OTTO: Well, that would be okay if  
4 it says from the seller -- I mean, here's my  
5 problem with the way that language is right  
6 now; okay? At need, somebody gets a 20-gauge  
7 instead of a 10-gauge. As Missouri Funeral  
8 Trust, are they going to say, "Well, you  
9 haven't fulfilled the terms of the contract  
10 because I don't have a 10-gauge casket"? Or,  
11 "I wanted three funeral directors out there at  
12 this grave site, and you've only got two, so  
13 Missouri Funeral Trust, send me down another  
14 funeral director."

15 MS. GRINSTON: Don, I don't have a  
16 contract with the provider. If I contract  
17 with you for a certain casket and your  
18 provider doesn't give it to me, is it your  
19 understanding that the seller has no  
20 responsibility for what you get under the  
21 contract?

22 MR. OTTO: The seller should refund the  
23 consumer's money.

24 MS. GRINSTON: What you get is not my  
25 responsibility?

1           MR. MEIERHOFFER: I think there is a  
2 disconnect here. Just turn it into insurance,  
3 and I should go back to the insurance company  
4 and say the same thing. I should say to  
5 Homesteaders, they didn't provide it. Really,  
6 the dilemma is with the provider and then  
7 they'll come to the State Board. That's where  
8 the circuit breaker hits at that point.

9           MS. GRINSTON: That may be true, but  
10 as a provider and the purchaser, we have no  
11 contract. We have no agreement. If the  
12 seller says in exchange for \$10,000, I will  
13 provide you this, or the provider designated  
14 here, I'll make sure he provides you this.  
15 What you're telling me is that if the provider  
16 defaults, the seller then has no  
17 responsibility. Because if that's the case, I  
18 can sell for myself and then when you show up  
19 for the casket, give you whatever casket I  
20 want to and then say, you know, as a seller,  
21 not my responsibility. And provider, I have  
22 no contract with you.

23           MR. MEIERHOFFER: Yeah, you do. You  
24 have a contract with the provider.

25           MS. GRINSTON: The purchaser has a

1 contract with the provider?

2 MR. MEIERHOFFER: Yeah, that's the key  
3 there. You do have a contract with the  
4 provider.

5 (Numerous people answer no.)

6 MR. STALTER: No. No. Let's talk  
7 about, like, FSP. And that's not the case if  
8 you've got an FSP contract, and it is --  
9 basically, it's between Kim and I as FSP. And  
10 if she didn't get -- if you didn't give her  
11 that 18-gauge versus a 16-gauge, then, you  
12 know, I've got to go back and sue you. I  
13 mean, it's, basically, she sues me, I sue you.

14 MS. GRINSTON: That's it. And that's  
15 the way the law is currently set up. I can't  
16 -- the provider may have some obligation with  
17 you. But if the provider defaults, the  
18 provider has no contract with me. The  
19 provider has never promised me anything. The  
20 provider has promised -- is in contract with  
21 the seller, but the provider has no document  
22 with his name on it. If I said, "Provider" --

23 MR. MEIERHOFFER: Wait. Wait. Isn't  
24 there a master agreement that exists between  
25 the provider and the --

1 MR. STALTER: Well, and the seller,  
2 yeah, but that's what I sue you on. That's --

3 MS. EULER: Can I jump in this? Under  
4 the current law -- and this doesn't mean this  
5 is the way that all these people -- under the  
6 current law, the purchaser has a contract with  
7 the seller. And I'm going to pick on John.  
8 Becky wants to buy a preneed contract. She  
9 goes to John, John sells her a funeral -- a  
10 preneed contract. Becky signs that piece of  
11 paper.

12 MS. DUNN: Is John a provider or a  
13 seller?

14 MS. EULER: John is a seller. John  
15 signs that piece of paper. They have a  
16 contract.

17 MS. DUNN: Am I provider or a  
18 purchaser?

19 MS. EULER: You're a person.

20 MS. DUNN: Okay.

21 MS. EULER: And John then says or puts  
22 in the contract that Mike is going to provide  
23 the funeral. Becky and Mike, there isn't a  
24 document that Becky and Mike have both signed.  
25 Mike's contract is with John. And so, Becky

1 dies -- sorry -- and Mike goes, "You know,  
2 this preneed contract, it called for, you  
3 know, a metal casket, but I've got this really  
4 nice pine box that, you know, my son made in  
5 shop class." The contract with Mike is not  
6 between Mike and Becky, it's between Mike and  
7 John. And the question is: Does John have  
8 an obligation to say, "Mike, it says metal  
9 casket. I sold Becky a metal casket. You  
10 need to provide a metal casket." And if not  
11 with John, then with whom?

12 MS. GRINSTON: And what I'd like to  
13 envision is if I go into court, Don, and I  
14 say, "Mike Meierhoffer promised Becky a metal  
15 casket," the Court will say, "Show me the  
16 contract." They'll have a contract with  
17 John's name and Becky's name on it. He'll say  
18 -- you know, if the Court said, "Show where  
19 Mike has told you" --

20 MR. OTTO: My problem with this is if  
21 the seller -- if the consumer doesn't get what  
22 they're supposed to get, they should have a  
23 cause of action.

24 MS. GRINSTON: Against whom?

25 MR. OTTO: Against the seller,

1 obviously. But to say that it's the  
2 responsibility of the seller to fulfill the  
3 contract is a different thing. That means  
4 I've got to have a funeral director. If it's  
5 my responsibility to fulfill the contract --  
6 under the current law, the damages under  
7 Chapter 436 against a seller are the amount of  
8 money that was paid in the trust. So, if the  
9 consumer doesn't get what they want, they can  
10 sue and get the amount of money paid in the  
11 trust. They can't -- what I'm concerned  
12 you're setting us up for with that fulfilled  
13 language is an action for specific performance  
14 where I, as the Missouri Funeral Trust, am  
15 going to have hire five funeral directors, and  
16 I don't have a funeral-establishment license.

17 MS. GRINSTON: But, Don, does it read  
18 that you have to fulfill or that you shall  
19 insure that it's fulfilled, meaning that it's  
20 not for you to do it, but you've got to make  
21 sure that it gets fulfilled.

22 MR. STALTER: Yeah. It's like you  
23 cause it. You have to cause it to perform.

24 MS. GRINSTON: Yes. Which is the  
25 insuring, not I have to do it, I've got to

1 insure that this contract is fulfilled.

2 MR. OTTO: This language, I think,  
3 arguably, greatly extends a seller's  
4 liabilities beyond what current 436 does.

5 MS. EULER: And that may be.

6 MS. GRINSTON: So, how can we better  
7 define, Don, what the seller's responsibility,  
8 because we just spent, you know, in this time  
9 -- room between attorneys and everyone else  
10 trying to figure out what a seller's  
11 obligation to the purchaser is. I am most  
12 positively sure that a purchaser doesn't know.  
13 So, how can we better define -- maybe because  
14 we've got -- the Board has a conference call  
15 in a few minutes afterward.

16 MR. OTTO: The seller's obligations  
17 are to make the payments as required in the  
18 contract. That's what a seller's obligations  
19 are is --

20 MS. GRINSTON: So, if that's your only  
21 obligation, why would I sue you if it's not  
22 fulfilled? If it's not fulfilled, why would  
23 the consumer ever sue you because your only  
24 obligation is to pay the provider? You have  
25 no other obligation. So, my suing -- the

1 purchaser suing you should never be an option  
2 as long as you write a check to a provider.

3 MR. OTTO: No. No. Because if the  
4 consumer doesn't get what they want, then the  
5 contract hasn't been fulfilled, and then they  
6 sue the seller.

7 MS. GRINSTON: And that's the exact  
8 language that we have, the contract hasn't  
9 been fulfilled, so they sue the seller. How  
10 do we put that in language?

11 MR. OTTO: And then -- but the seller  
12 -- if -- the seller's obligation is to pay out  
13 the money, not to have -- that's the seller's  
14 obligation is to pay people money. The seller  
15 is like a bank. It collects money --

16 MR. MOORE: And steals money.

17 MR. OTTO: It collects money and then  
18 pays the money out.

19 MR. MOORE: And you want the funeral  
20 home to say we've got to guarantee you where  
21 those payments are going? Somebody comes in  
22 and pays me \$50 a month for their payments.  
23 I send it to you guys and you guys don't have  
24 to prove nothing where it goes and then you're  
25 missing? Good plan.

1 MS. GRINSTON: Well, under 725 -- I  
2 don't know. As we break for lunch, my  
3 suggestion would be let's think about that,  
4 but I think we need somehow, Don, to capture  
5 the language that if the purchaser -- if this  
6 contract isn't fulfilled, my right of remedy  
7 is against you, the seller, and not the  
8 provider.

9 MS. EULER: Yes.

10 MR. MEIERHOFFER: Before we break --

11 MS. GRINSTON: Which I think everybody  
12 agrees on.

13 MR. MEIERHOFFER: Yeah. We've got 41  
14 pages to go through here and we've gone  
15 through not quite six. We've got to pick it  
16 up. I mean, we've really got to move through  
17 it. And there will be some areas here we  
18 just have to say, as Gerry said, we go on  
19 because we've got a lot of stuff to go through  
20 if we're going to -- otherwise, as you say,  
21 we're going to lose people.

22 MS. GRINSTON: Should we leave it as  
23 is and then just move on then?

24 MR. MEIERHOFFER: I mean, we -- or Don  
25 drafts some language or something to get back

1 and we can pass because we're trying to solve  
2 problems and we really need to just get  
3 through the information here.

4 CHAIRMAN: Gerry?

5 MR. KRAUS: I'd break the question or  
6 the section in two. You've got the who's in  
7 charge of the payments piece, and then what do  
8 you do about the performance piece. Split  
9 those issues because I don't think anybody has  
10 a problem with the seller being responsible  
11 for payments the seller received, and not  
12 being responsible for the payments that were  
13 made to the insurer, so you can kind of set  
14 that aside. We get down to what's the seller  
15 responsible for on performance.

16 CHAIRMAN: All right. Lunch.

17 (Off the record)

18 CHAIRMAN: We're going to resume the  
19 water boarding. Facilitator, facilitate.

20 MS. GRINSTON: Connie and I went back  
21 and had some discussion over lunch about where  
22 we are and we revisited what we believed we  
23 were originally tasked with doing for the  
24 general assembly. For those of you who have  
25 been involved in legislation, and I know a lot

1 of you have, for the lobbyists and everyone  
2 else here, legislation is a very detailed  
3 process. It is -- when we do legislation for  
4 this Board or we do legislation for any other  
5 Board or for the division, it is, literally, a  
6 line by line, page by page to make sure that  
7 what we're suggesting or that what we're  
8 gathering together really reflects the intent.  
9 Sometimes, Don -- a lot of people can speak to  
10 this, you know, you are literally relooking at  
11 commas and ands and ors, or, you know, does  
12 this really reflect what we want to do. That  
13 process is extensive; it is painstaking; it is  
14 exhausting -- trust me -- and a lot of you  
15 have experienced it. But that is the way --  
16 the only way to make sure that the language  
17 that you come to is what it is you, indeed,  
18 intend to suggest or propose. I think our  
19 original understanding was that we were being  
20 asked as a group to attempt to come up with  
21 some suggested language for the general  
22 assembly to start with. I understand from the  
23 comments today, from the comments we have  
24 received, and from just taking a poll informal  
25 around the room, that this process is probably

1 one that, with this group, that kind of  
2 vetting and screening process is probably  
3 going to be very difficult to do in this  
4 setting, especially since, you know, Mr.  
5 Meierhoffer pointed out, we are, you know, on  
6 page 6 of a very lengthy draft. I understand  
7 that -- you know, that you all have things to  
8 do. As we talk about doing 436, we've met,  
9 what, five times. I don't think anybody  
10 envisioned that we could come in, discuss the  
11 topics, rewrite it and get it done in five  
12 days, you know, on partial days, you know,  
13 with lunches and everything built in, but I do  
14 understand that this process has been a bit  
15 lengthy. So, having said that, we've done  
16 some thinking about what it is that we would  
17 like to suggest to you all. To the extent  
18 that we do have the topic areas that we have  
19 discussed and/or reached a consensus on, it  
20 may be a good suggestion to submit to the  
21 Joint Committee a list of the topics that we  
22 agreed on and what we agreed on. And, of  
23 course, we would submit that and circulate  
24 that to everyone so that you know by topic  
25 what it is that we agreed on. Maybe the idea

1 of pulling together draft language on paper is  
2 just unrealistic for this setting and for the  
3 time that we are able to devote right now.  
4 Having said that, Connie and I visited, and  
5 what we think may be a reasonable alternative,  
6 we'd like to throw this out as a suggestion  
7 for the group. Again, that we submit the  
8 topic listing, which, of course, we would get  
9 to everyone to approve to make sure that it  
10 reflects the consensus based on our notes and  
11 the transcripts. For those areas where we  
12 disagree, we will mark the disagreement. In  
13 the proposed draft that you see now, Connie is  
14 envisioning that we do a document that is  
15 maybe on legal-size paper that has two columns  
16 where we have the language, and we'll  
17 represent that this is not language that has  
18 been uniformly agreed on, but we just include  
19 your comments, you know. We'll send it out on  
20 a document, we include your comments on the  
21 sections, and we just cut and paste your  
22 objections, your comments, your notes, on some  
23 of the language on paper and we send that  
24 over, as well, as two separate documents  
25 instead of trying to vet through and come up

1 with language on paper that we can say we  
2 agree upon because, again, that is going to be  
3 a painstaking and very detailed, exhaustive  
4 process. If we did it that way, I think our  
5 suggestion would be from the division and  
6 office, is that we send you a document and  
7 that we ask that comments be made in the text  
8 of the document itself. So, literally, all we  
9 need to do is a cut and paste, and so that  
10 all comments are coming over in the same  
11 format. I think that that may be probably a  
12 more reasonable alternative for the time that  
13 we have now and, apparently, some of the  
14 issues that we have left so that as we finish  
15 up, there are probably -- I know we have seen  
16 -- a lot of people have asked about some of  
17 the things that we haven't discussed. As I  
18 sit here today, there are probably four major  
19 topics that we need to discuss left on the  
20 original topic list which were included in the  
21 draft for review, but we probably could just  
22 discuss by topic area for purposes of doing a  
23 listing. That we finish those four major  
24 topic areas today, let us send out the topic  
25 agreement listing for your approval, let us

1 send out this language for you to comment on,  
2 and, again, we won't be doing any editing;  
3 we'll just be cutting and pasting your  
4 comments onto one document. Let us do that  
5 and then conclude this process today with the  
6 exclusion of sending in comments to the  
7 proposed language and everything else because,  
8 again, I don't know -- the process of trying  
9 to agree on language and to get something that  
10 we can agree on is probably going to be much  
11 more detailed and take a lot more time than  
12 what we have probably in front of us right  
13 now. I'd like -- and, Connie, I don't know  
14 if you have anything you would like to add to  
15 that?

16 MS. CLARKSTON: The only other  
17 important thing I would like to add is that  
18 the comments come to the e-mail address that  
19 was just handed out to you. We've got  
20 comments coming into Becky, some on fax, and  
21 some to me. So, in order to help us keep  
22 organized, and the short time frames that we  
23 are dealing with, if you could direct those to  
24 my e-mail. I will assure you that I will  
25 share those with the Board office. We are not

1 housed in the same office suite within the  
2 division. Becky is down the hall from me a  
3 little bit, so we're not immediately available  
4 to each other. So, if you can, again, send  
5 that to that e-mail address that you have just  
6 received, it would be very, very helpful to us.

7 MS. GRINSTON: And, again, we would  
8 like to send off a suggestion --

9 MS. COLLINS: One quick question, Kim.  
10 Can you lay out the time line for us getting  
11 comments back, reviewing the list that you  
12 mentioned, because I know that this interim  
13 committee will be meeting soon, so it would be  
14 helpful to me to know what your time line is.

15 MS. GRINSTON: Sure. And this is  
16 assuming -- I said this last week to the  
17 Endowed Care Cemeteries group. This would be  
18 our time line assuming that all licensees  
19 behave themselves from now until September  
20 1st, and that all media people lose our phone  
21 numbers. No, I'm joking. Today is August the  
22 11th. If we could try to get a draft out to  
23 you --

24 MS. COLLINS: Today is the 12th.

25 MS. GRINSTON: Today is the 12th.

1 Good Lord. Okay. Today is the 12th. At  
2 least I'm in the right month. Is it August?  
3 Okay. Good. Today is August the 12th. If  
4 we could try to get something turned around to  
5 you probably by next week, Monday, which would  
6 be the first day of the Board's board meeting.  
7 If you guys can give us comments and  
8 suggestions back by maybe that Friday, if we  
9 can, which will give us the weekend and that  
10 entire week afterwards to just cut and paste  
11 and pull everything together before September  
12 1st, which we understand will be the first  
13 time that the Joint Committee may legally  
14 meet. Now, I don't know that they won't --

15 MS. COLLINS: Which Friday? You said  
16 the Friday before the 18th or after the 18th?

17 MS. GRINSTON: After the 18th.

18 MS. COLLINS: Okay.

19 MS. GRINSTON: Which would be August  
20 the 22nd, which would give Connie and I from  
21 the 23rd all the way through the 31st to try  
22 to get everything done and formalized and,  
23 hopefully, maybe even submitted back out to  
24 you for one last time to look at. Again, my  
25 thought is that as we go forward, the process

1 of really formulating and drafting language is  
2 -- it is an extensive process, and I don't  
3 know that right now -- and I can see the  
4 faces around the room. This is -- and just  
5 so that you know, when people always call the  
6 Board and say, you know, "Why don't you guys  
7 draft it," this is the process that the Board  
8 goes through sometimes with four, five, six,  
9 seven bills a year. Every 436 bill that we  
10 go through, we generally go through this line  
11 by line, comma -- and we're not the only ones.  
12 Don, the lobbyists in the room, this  
13 line-by-line, comma-by-comma, and/or semicolon  
14 review for every single bill. I understand  
15 that that is a process that we are used to,  
16 but that may not be a process that is probably  
17 particularly suited to this group, especially  
18 with the time frames that you're looking at.  
19 Anybody have any --

20 MR. OTTO: The only thing I even have  
21 a slight concern about, and I don't think --  
22 know if there's a good way around it. If you  
23 have in this column here, here is the  
24 language, whatever we came up -- and over here  
25 is people's comments to it, it kind of makes

1 it sound like that language was -- has some  
2 kind of status or that was the consensus and  
3 now I'm over here complaining about what ten  
4 -- the consensus wanted when it may be that  
5 that might not be something that we even  
6 discussed.

7 MS. GRINSTON: Got you.

8 MR. OTTO: And like this thing that I  
9 got off on -- I'm sorry -- before lunch on  
10 this insure language. I mean, even if I'm  
11 wrong on that issue, that's not something we  
12 discussed before, and all of a sudden, it  
13 appears in a draft. And so, if that's  
14 language over there and I'm talking about it  
15 over here, it makes it sound like I'm raising  
16 an objection to something that was -- that has  
17 the weight and authority of the rest of the  
18 group or something like that. I don't know.

19 MS. GRINSTON: And, Don, I think you  
20 raise a good point. To that extent, the best  
21 way we could fend that off would be to do  
22 some type of education, but will that -- you  
23 know, as it gets passed around the halls of  
24 the Capitol, will that be carried through? I  
25 don't know if that will be a good thing to

1 carry through. My understanding -- and  
2 everyone can correct me if my understanding is  
3 wrong. My understanding of what we were  
4 originally going to do is that we were going  
5 to give them some language as a starting point  
6 and that they would be building on our  
7 starting point, not necessarily agreeing, but  
8 building on our starting point. I don't know  
9 if for the type of language that we need to  
10 do, since I understand, you know, that this is  
11 becoming an exhaustive process. And we've  
12 heard the comments in the halls, outside the  
13 halls, in the room, about, you know, the way  
14 the process is going. To the extent that that  
15 may be an exhaustive process, it may be -- I  
16 don't know. Would it be advisable not to have  
17 that draft language at all? I mean, I'm not  
18 saying that rhetorically at all. I am not  
19 saying that rhetorically. I really -- I am  
20 asking the question honestly about how we best  
21 do this because I don't know which other way  
22 to look at language other than looking at the  
23 language and walking through that process. If  
24 this is not something that we think we can get  
25 done in this time frame -- and I know we

1 talked about another meeting next Wednesday or  
2 during the Board's meeting or at some other  
3 time. If this is not a process, then maybe  
4 we do need to look at just giving a listing  
5 of topics because when it comes to language,  
6 there is no other way to get joint language  
7 other than walking, literally, through the  
8 language. Amen. Let's go.

9 MR. MEIERHOFFER: Comment?

10 CHAIRMAN: Yes.

11 MR. MEIERHOFFER: I submitted to the  
12 group Wednesday, I think, of last week changes  
13 as well as topics not discussed to date. Do  
14 you have those in front of you, Kim?

15 MS. GRINSTON: I do.

16 MR. MEIERHOFFER: Do you think it  
17 would make sense, since it's now 2:00, we  
18 still have 18 subjects we've never even talked  
19 about, never even got through the list, that  
20 we talk a little bit about some of those, or  
21 run through them quickly and see if there's  
22 any hang-up on any of those areas, or do you  
23 not think it's worthwhile?

24 MS. GRINSTON: We can.

25 MR. MEIERHOFFER: Or are other areas

1 of more importance? I guess we've got time  
2 that we need to use judiciously, and I'm just  
3 asking, what's the best way to do that?

4 MS. GRINSTON: We probably could.  
5 Some of these on this list, we have already  
6 discussed and disposed of. For example -- and  
7 I'll just skip to page 2 -- a document  
8 requiring standard forms for preneed  
9 contracts, we talked about that, I believe,  
10 last time; forty-one, we have discussed;  
11 forty-two, we have discussed; forty-three, we  
12 have discussed; forty-eight, we haven't;  
13 forty-nine and fifty, we have pretty much  
14 discussed and reached some agreement/consensus  
15 on; number two, I believe, we have discussed;  
16 number nine, ten, eleven, twelve, and  
17 thirteen, I think those are all under one  
18 topic, just trustee's responsibilities;  
19 rule-making for the Board, we have discussed;  
20 licensing requirements for preneed  
21 registrants, we started providers today, we  
22 did sellers already, we did agents. I don't  
23 know if we have any other -- I think that's  
24 probably all we have. We've done cemetery  
25 sellers, providers, and agents, and I think

1 that was it. And so, thirty-five we probably  
2 have done, as well. Thirty-nine may be the  
3 other one topic that we haven't discussed.  
4 So, having said that, I think that probably,  
5 once you break it down, it probably falls into  
6 about three or four major areas that we  
7 haven't. But I need to know, as we discuss  
8 these topics, what are we going to do in a  
9 going-forward basis, because if we're just  
10 going to do the topic areas, then let's finish  
11 the topic areas, which I think we could do in  
12 about maybe half an hour, forty-five minutes,  
13 or maybe an hour, and conclude and do  
14 everything else by comments with that  
15 suggested plan, because, again, some of these  
16 issues, unless we walk through the language,  
17 there is no way we're going to be able to  
18 walk through the language.

19 MR. MEIERHOFFER: Do you realize you  
20 just did 18 points in 30 seconds? That's  
21 wonderful. We're on to a good start.

22 MS. GRINSTON: Well, good. Well, you  
23 know, I could do all of them in about ten if  
24 you let me.

25 CHAIRMAN: Sharon?

1 MS. EULER: I would suggest that we  
2 finish up with the topics we haven't discussed  
3 yet, those three, and then proceed with  
4 comments from there on.

5 MS. GRINSTON: Okay.

6 MR. CLINE: I'll second that.

7 CHAIRMAN: All right. Go ahead.

8 MS. GRINSTON: Is that okay with  
9 everyone? Okay. We'll do that. Just as a  
10 note, for those -- I don't know if everyone  
11 has Mr. Meierhoffer's suggestions, but I'm  
12 going to start off of this. It sort of  
13 coincides with what we had left. Number two,  
14 if you look at Mr. Meierhoffer's number two,  
15 collections of funds by preneed providers, we  
16 actually talked and discussed this. You guys  
17 voted on 60 days; not 45, it was 60 days, so  
18 I just wanted to throw that out as an issue.  
19 Number three, record-keeping for preneed-fund  
20 payments, I think that when we originally  
21 discussed it, and I think this is one of the  
22 areas that we didn't finish discussing. But I  
23 think that the suggestion was, and Mr.  
24 Meierhoffer has made the suggestion for  
25 trustees to keep records of payments, which is

1 what we put under trustee responsibilities.  
2 So, I would like to come back to that for  
3 just a minute -- in just a moment. Number  
4 eight, payment to providers for services  
5 rendered. There was something that -- the  
6 suggestion from Mr. Meierhoffer was not to  
7 require a certified copy of the death  
8 certificate. We'll throw that out on the  
9 floor. If there are any other issues under  
10 payment to providers for services rendered,  
11 timeliness or anything of that sort that you  
12 guys would like to discuss.

13 MR. MEIERHOFFER: Does everybody  
14 understand what a certificate of performance  
15 is, signed by the --

16 (Numerous people answer yes.)

17 MR. MEIERHOFFER: Okay.

18 MS. GRINSTON: Go ahead, Sharon.

19 MS. EULER: I don't have Mr.  
20 Meierhoffer's suggestions in front of me  
21 because I'm a loser. But the -- as far as  
22 the death certificate goes, from a regulatory  
23 viewpoint, we have had problems with simply  
24 having a certificate of performance with no  
25 death certificate because it's easier for

1 people to falsify deaths and collect payments  
2 when there has been no death. We've also had  
3 courts -- one decision that I know of in the  
4 circuit-court level rule that a contract with  
5 a -- I think it was a third-party seller that  
6 required a death certificate before they paid  
7 out, the Court said no, you can't require a  
8 death certificate because the statute says  
9 certificate of performance and that's it, so  
10 your contract that says you have to provide a  
11 death certificate is invalid. So, I would  
12 suggest requiring a copy of the death  
13 certificate before payment is made.

14 MR. MEIERHOFFER: I disagree,  
15 respectfully.

16 MS. EULER: That's fine. I expected  
17 you to.

18 MR. OTTO: I'm neutral on the death-  
19 certificate part, but under the current law  
20 with a joint account, the certificate of  
21 performance must be signed by the funeral  
22 home, a witness, and the purchaser or the  
23 purchaser's heirs. With a trust, it's just  
24 the funeral establishment and a witness. I  
25 certainly would like to see those match up and

1 be the same. And, particularly, if there's  
2 ever going to be any implication that the  
3 seller has some duty to insure -- I'm not  
4 going to bring that up again -- the contract,  
5 I would like to see that the purchaser has  
6 signed off on the goods and services because  
7 that's required under -- for joint accounts,  
8 but it's not required for a straight trust.

9 MR. MEIERHOFFER: You know, I don't  
10 know that we have a requirement for a  
11 certificate of performance, do we, in the  
12 statutes now?

13 MR. OTTO: For the -- yes.

14 MR. MEIERHOFFER: Are they in there?

15 MR. OTTO: Yes. For a trust, before  
16 the seller pays the provider in a trust, a  
17 certificate has to be delivered to the  
18 provider saying that the goods and services  
19 were provided or that alternate goods and  
20 services were selected. That form is signed  
21 by the funeral -- the provider and a witness,  
22 without the witness being defined. In a joint  
23 account, before the bank is supposed to  
24 release the money to the funeral home, it must  
25 present to the bank -- how many times has this

1 happened. It must present to the bank a  
2 certificate that says the same thing, but, in  
3 that case, it's signed by the provider, a  
4 witness, and the purchaser, so there's --  
5 that's not it.

6 MR. MEIERHOFFER: Yeah. We can fix  
7 that.

8 MR. OTTO: I would like it matched up  
9 with both things.

10 MS. NEUMANN: Don, is that witness --  
11 could that just be the guy's wife?

12 MR. OTTO: Under the -- yeah.

13 MS. EULER: Yeah.

14 MR. OTTO: It could be the janitor,  
15 somebody that's off the street.

16 MS. NEUMANN: Can we not word it so  
17 that someone who is neutral is a witness?

18 MR. OTTO: Well, if we just match the  
19 language that's already in there on joint  
20 accounts. It's signed by the provider, a  
21 witness, and a purchaser. Or, of course, if  
22 the purchaser is the one who has passed away,  
23 then it would be the purchaser's heirs, next  
24 of -- something like that.

25 MS. NEUMANN: I don't like the idea of

1 the witness being the same person.

2 CHAIRMAN: George?

3 MR. CLINE: What we do, just so you  
4 know, is that the seller and the provider has  
5 signed it and it's notarized, because a lot of  
6 times, the purchaser, who knows where they  
7 are, you know. You really can't go up to  
8 them at the funeral and say, "Can you sign  
9 this for me and make sure, you know, that we  
10 did this?" So, with the notary public, you  
11 know, it's got their seal and it's got their  
12 name. Does that work?

13 MS. GRINSTON: What about a provider  
14 and a witness from the person -- or a  
15 representative from the person making the  
16 arrangements for the beneficiary because, that  
17 way, you've got someone who is there with the  
18 funeral and you've got the provider signing  
19 off together. That way, you'll have an  
20 independent person because it's the person --  
21 representative of the person making  
22 arrangements for the beneficiary.

23 MR. MEIERHOFFER: Why shouldn't it be  
24 the purchaser -- of that purchaser?

25 MS. GRINSTON: Because what if the

1 purchaser is gone?

2 MR. OTTO: We've already got that in  
3 the law, Mike.

4 MS. GRINSTON: No. What I'm --

5 MR. OTTO: Here's how the language is  
6 under joint accounts. It's on page 18 of the  
7 orange hymnal, if you want to follow along.  
8 It says, "Within 15 days after provider and a  
9 witness certifies in writing to the financial  
10 institution that he has furnished the final  
11 disposition for funeral services" -- blah,  
12 blah, blah, that's all legal language -- "if  
13 the certification has been approved by the  
14 purchaser, then the financial institution  
15 shall distribute the deposit of funds to the  
16 provider." That's -- so that's already in  
17 there under joint accounts.

18 MS. GRINSTON: What happens in  
19 instances where you can't find the purchaser?  
20 Not that I don't --

21 MR. MEIERHOFFER: No, we're not  
22 talking about that. We're talking about the  
23 person signing the funeral contract, the one  
24 that makes himself responsible -- the same  
25 person.

1 MS. EULER: Oh, then you're saying the  
2 same thing that Kim is.

3 MS. GRINSTON: Yeah. Then we're  
4 saying the same thing.

5 MR. MEIERHOFFER: Well, the purchaser  
6 isn't the person that's deceased necessarily.

7 MS. EULER: But Kim was talking about  
8 the preneed-contract purchaser.

9 MR. MEIERHOFFER: And I understand --

10 MS. EULER: And you were talking about  
11 the person making the arrangements.

12 MR. MEIERHOFFER: Right.

13 MS. EULER: Which is what she was  
14 talking about, so you're saying the same thing.

15 MR. MEIERHOFFER: Then we're fine.  
16 Then we're fine.

17 MS. GRINSTON: Yeah. The person making  
18 the arrangements.

19 MR. MEIERHOFFER: Yeah. That makes  
20 sense.

21 MS. GRINSTON: Just in case the  
22 person who bought the preneed contract is no  
23 longer speaking to them, but the contract is  
24 out there and not come to the funeral, I don't  
25 have to go chase them down to get paid --

1 MR. MEIERHOFFER: That's right.

2 MS. GRINSTON: -- when there is  
3 someone who is there who made the  
4 arrangements, just have them sign off on it  
5 right now.

6 MR. OTTO Well, will that -- that's  
7 fine. I don't have any problem with that --

8 MS. EULER: Yeah. The person  
9 responsible for payment.

10 MS. GRINSTON: Yeah.

11 MR. OTTO: Yeah. I don't have a  
12 problem with that if that signature now  
13 alleviates the seller of responsibility of  
14 answering to the purchaser. Follow me?  
15 Because let's say the purchaser says, "That  
16 wasn't an 18-gauge." Remember, I've got to  
17 insure that the contract was provided. My  
18 contract is with the purchaser. And so, I  
19 have no problem with your suggestion, but that  
20 certificate of completion now has to relieve  
21 me, as a seller, of my contractual -- that has  
22 to say my contractual obligations have been  
23 completed with that.

24 MS. GRINSTON: Yeah, but I've got  
25 issues with that, too, Don.

1 MR. OTTO: Well, then you've got to  
2 have the purchaser signing it.

3 MS. GRINSTON: But what if you can't  
4 find the purchaser?

5 MS. EULER: What if the purchaser is  
6 dead?

7 MR. OTTO: Their next of kin -- their  
8 heirs or next of kin.

9 MS. GRINSTON: But what if I have no  
10 next of kin or heirs.

11 UNIDENTIFIED: Exactly.

12 MS. GRINSTON: What if the purchaser  
13 dies in California --

14 MS. EULER: What if it's me? I have  
15 no heirs and the rest of my family is going  
16 to die before I am.

17 MS. GRINSTON: Then what do you do?  
18 Do you just hold it in limbo?

19 MR. OTTO: You would have to provide  
20 for --

21 MR. MEIERHOFFER: Public administrator  
22 --

23 MR. OTTO: You would have to provide  
24 for that somehow.

25 MR. MEIERHOFFER: Yeah.

1 MR. OTTO: But we have that problem  
2 pop up in other situations, too.

3 MS. EULER: It seems to me that so  
4 long as the person who is responsible for the  
5 bill has signed off on it, you've got a  
6 neutral third party, you alleviate the problem  
7 of having a funeral director and their  
8 employees being able to falsify deaths.

9 MR. STALTER: I mean, from the  
10 fiduciaries, that's the way I would approach  
11 it. If I've got -- I can't confirm who  
12 signed the certificate of performance, I want  
13 to see if it's the same person that signed the  
14 statement of goods of services.

15 MS. EULER: Right.

16 MR. OTTO: I've got no problem with  
17 that, but then two months later, the purchaser  
18 shows up and says, "Those weren't the goods  
19 and services that were in the contract."

20 MS. GRINSTON: Well, then you prove  
21 that it was.

22 MR. MEIERHOFFER: Yeah. They're not  
23 even there. They won't even know, so -- you  
24 know.

25 MS. GRINSTON:. It was. There goes the

1 casket, there goes everything else. If you've  
2 provided under the contract, if they show up,  
3 they're going to have to prove that you didn't  
4 give them what they asked for. And if they  
5 got what they asked for, it's sort of like a  
6 -- you know, it's dead on arrival. If you  
7 can say, "You asked for a 20-gauge, here's a  
8 20-gauge." It's sort of like a done issue.  
9 I don't know, but let's just take this to a  
10 consensus of the committee. Will it be okay  
11 for the certificate of performance -- and I'll  
12 talk about that in a minute -- to be signed  
13 by the provider and the person making  
14 arrangements?

15 (Numerous people answer yes.)

16 MS. GRINSTON: Any concerns or  
17 objections to that? And, Don, I'll note --  
18 it's noted.

19 MR. OTTO: Oh, I just have a concern  
20 about it, and I also think whatever it is, it  
21 ought to be the same for joint accounts.

22 MS. GRINSTON: And let's talk about  
23 joint accounts in a minute.

24 MR. MEIERHOFFER: The same thing.

25 MS. GRINSTON: The other thing is, we

1 used this term "certificate of performance."  
2 Certificate of performance is never fully  
3 defined or identified in the statute, it just  
4 says that you certify in writing that you have  
5 provided and/or performed. To the extent that  
6 you guys want to officially adopt this term  
7 "certificate of performance," since I  
8 understand that's what's in use, the statute  
9 came before the Board and we said, "Show me in  
10 the statute where it says certificate of  
11 performance," and it doesn't say certificate  
12 of performance.

13 MR. MEIERHOFFER: That's what I  
14 thought.

15 MS. GRINSTON: So, I would make a  
16 suggestion if we're going to require a  
17 certificate of performance, we call it a  
18 certificate of performance. Any objections?

19 MR. STALTER: Now, let me raise an  
20 issue with that. Now, would that be a form  
21 that the Board approves? This is an issue in  
22 Indiana at the current time.

23 MS. GRINSTON: Let's talk about that  
24 when we get to rule-making.

25 MR. STALTER: Okay.

1 MS. GRINSTON: So, does this answer  
2 the death-certificate question? Okay.

3 MS. EULER: Yes.

4 MR. MEIERHOFFER: Well, which way did  
5 we agree? Yes or no for a death certificate?

6 MS. GRINSTON: I thought I heard no.  
7 Certificate of performance is fine.

8 MS. EULER: If you've got it signed  
9 off by the person making the arrangements.

10 MR. MEIERHOFFER: Perfect. Fine.

11 MS. EULER: My concern is I just don't  
12 want funeral directors and their employees be  
13 able to say somebody is dead when they're not.

14 MR. MEIERHOFFER: Okay. I agree.

15 MS. EULER: Because we've had people  
16 do that.

17 MR. MEIERHOFFER: Well, they can do it  
18 with a death certificate, too, though. That's  
19 the problem, Sharon, and they've done that,  
20 too.

21 CHAIRMAN: Jim's got a comment.

22 MR. BUCHHOLZ: On the death  
23 certificates, a copy or a certified copy?

24 MS. EULER: We're not going to use  
25 death certificates.

1           MR. MEIERHOFFER: We're not even using  
2 them.

3           MS. GRINSTON: Just a certificate of  
4 performance.

5           MR. CLINE: However, we should have  
6 put in there maybe have a notary as an  
7 exception if you can't find the purchaser.

8           MR. STROUD: This is Larry Stroud. I  
9 won't come up there. You guys know me. A  
10 certificate of performance is fine. We have  
11 this anyway in our firm, you know, but if you  
12 really want to avoid fraud or you're concerned  
13 about fraud, then I have to think that you  
14 would have to have a certified death  
15 certificate. If you're concerned about fraud  
16 -- if you're really concerned about fraud,  
17 then I think you need a certified death  
18 certificate. And it's real easy to tell a  
19 family that, hey, this is the law. They  
20 require a certified death certificate because  
21 your money is in trust and it's protected, and  
22 nobody can take that money out unless I  
23 present this or if you want to cancel it or  
24 something else, but you know what I'm saying.  
25 The death certificate, is a great piece of

1 paper and you eliminate a lot of headaches.

2 Good Lord.

3 CHAIRMAN: Thank you, Larry.

4 MR. STROUD: You're welcome.

5 MS. GRINSTON: Okay.

6 CHAIRMAN: So --

7 MS. GRINSTON: Okay. I think we are  
8 okay with that. Does everyone understand we  
9 are -- no death certificate, so certificate of  
10 performance -- we'll actually use the term --  
11 must be signed by the person making  
12 arrangements.

13 CHAIRMAN: Or a death certificate.

14 MS. GRINSTON: Or the death  
15 certificate.

16 MS. EULER: Yeah. Or a certified copy  
17 of the death certificate.

18 MS. GRINSTON: Okay. Let's talk about  
19 trustee responsibilities, and I'm using this  
20 as a broad topic. It will include #9 through  
21 probably #13 of Mr. Meierhoffer's list, but  
22 you guys saw in the draft, and I am not  
23 asking for anyone to comment on the language,  
24 but you guys saw in the draft some of the  
25 language that we thought we heard some of you

1 talk about and some of the suggestions we had  
2 on what a trustee is responsible for doing.  
3 Instead of doing a list of what the trustee is  
4 responsible for doing, outside of independent  
5 investment advisors, can we talk about trustee  
6 responsibilities. In the language that was  
7 proposed, it begins on page, I think, 14 of  
8 your copy, and goes through a course, we are  
9 going to remove language that talks about  
10 income and the distribution of income because  
11 I think that goes back to the 80-20 and the  
12 income split. But that language on the  
13 trustee's duties, is there anything -- or  
14 trustee's responsibilities -- that anybody  
15 would like to add or amend or change? Again,  
16 we're not going to use the language, we'll use  
17 the concepts when it comes to a trustee's  
18 responsibilities.

19 MR. STALTER: Are you referring to  
20 what we started out with this morning or --  
21 what are you asking about changes to?

22 MS. GRINSTON: Oh. What we started  
23 out with this morning. On page 14 of that,  
24 there are some suggestions in there that  
25 include -- well, some language in there on the

1 trustee requirements. One of the things that  
2 you guys asked me to do, and this is on page  
3 17, is to draft things about investment of  
4 preneed trust funds. I pulled some of this  
5 from 469, some of it from 456, but I was sort  
6 of careful in pulling over some of the  
7 provisions that were objectionable. To the  
8 extent that we're talking about the  
9 responsibilities of a trustee -- and this is  
10 something that we could do by comments. If  
11 you disagree with anything, you could always  
12 notify us and let us know and we won't list  
13 that as a part of the agreed-on trustee  
14 responsibilities. Or if there's anything you  
15 would like to talk about under the  
16 responsibilities of trustees, why don't we do  
17 that now?

18 MR. STALTER: And there's a lot of  
19 things I'll address and comment. It's just  
20 basically to avoid ambiguity. Once we say  
21 that there is a prudent-investor rule imposed  
22 upon the trustee, then be careful about we  
23 don't double back and there's provisions, I  
24 think, that were copied in that said unless  
25 there are other circumstances that warrant it.

1 I mean, that kind of thing is what's gotten us  
2 in trouble. And, basically, once we set a  
3 standard, you know, let's avoid any kind of  
4 issue or language that creates -- you know,  
5 where there's discretion for the trustee. So,  
6 I had several comments, but I think it would  
7 be better for me just to address those in  
8 writing to you all. And part of them I tried  
9 to address in the letter to Linda's office,  
10 but it -- and it just -- they have a little  
11 different concept than you did and, basically,  
12 it was how to try and reconcile these and how  
13 to -- that's investment. And the other should  
14 get back to, unless we're talking about what  
15 is the trustee's duty for oversight on  
16 distributions. And in Indiana, the issue came  
17 down to should the trustee be going through  
18 every contract to see whether it's performed  
19 or not. And the issue there was the  
20 class-action suit involved one of the  
21 consolidators about whether or not they're  
22 delivering the kind of vaults described in the  
23 contract. I mean, is that the trustee's  
24 responsibility, or do we say -- you know, once  
25 we get a form approved by the -- whether it's

1 by the Board or whoever, I mean, are we then  
2 done? Can we just -- and write the check, or  
3 do we have to go in and confirm whether or  
4 not that contract has been performed according  
5 to its terms?

6 MS. GRINSTON: I'm going to start with  
7 your second comment, Bill. This is something  
8 that came up with 214. Some of the discussion  
9 that we had with Endowed Care Cemeteries was  
10 whether they suggested language that said for  
11 their side that trustees are not responsible  
12 once payment is made out -- and I'm  
13 paraphrasing very loosely, and they're only  
14 responsible once payment is in. So, there is  
15 no duty for the trustee to go out and  
16 supervise the activities of the seller and/or  
17 the provider. I think that that's what --  
18 Bill, am I summarizing that very correctly?

19 MR. STALTER: Yeah. Yes, you are.

20 MS. GRINSTON: Because they were  
21 concerned that trustees, especially in light  
22 of things that were happening, may begin to  
23 pull out in bulk, if you will, if they believe  
24 that they're going to be on the hook for  
25 something other than just administering the

1 trust. With that concept, again, the concept  
2 that a trustee, you're responsible for what  
3 you get, you're responsible to make sure  
4 you're paying out in accordance with the law.  
5 After that, there is no additional duty for  
6 you to monitor the activities of the seller.  
7 Does anyone have any objection to that?

8 Sharon?

9 MS. EULER: I don't have an objection.  
10 I think the trusts' duties begin when the  
11 money is paid into the trust and their  
12 obligation is to safeguard and try to grow  
13 those assets the best they can and to pay out.

14 MS. GRINSTON: And I think that's the  
15 same thing that we heard in the 214 side. Your  
16 responsibility kicks in when you get the  
17 money, it lifts once the money is paid out  
18 appropriately. Does anyone have any objection  
19 to that as a concept for trustees? Okay.  
20 Your first comment, Bill, if I may, deviation  
21 from the prudent-investor rule. There are  
22 provisions in 456 and 469 which govern trusts,  
23 and one is the Uniform Trust Act and, Bill,  
24 help me with the other one. But it does  
25 establish a prudent-investor rule for

1 trustees; however, there are provisions that  
2 would allow them to deviate from the  
3 prudent-investor standard by agreement. And  
4 what we heard suggested from the 214 side is  
5 that we include something that says you have  
6 to follow the prudent-investor standard, no  
7 exceptions, no changes, no deviations. That  
8 way, for those who don't know, the  
9 prudent-investor rule basically says that you  
10 have to exercise reasonable skill or prudent  
11 skill, diligence, you know, and diligence in  
12 investing and handling trust funds. It is a  
13 standard of investment that, again, is the  
14 standard of Missouri law, standard across the  
15 states. It is well entrenched in the law, so  
16 there's a good body of case law to support it.  
17 It prohibits conflicts of interest. It  
18 prohibits a lot of the things that we have  
19 talked about under the standard. And so, I  
20 think the suggestion is that we bring that  
21 over. Some of that is in here, but we also  
22 added language that says that you cannot  
23 deviate from that by agreement or otherwise.  
24 Anyone have any concerns about that?

25 MS. EULER: It sounds good.

1           MR. KRAUS: Gerry Kraus, Homesteaders.  
2 I think I mentioned this a couple weeks ago,  
3 but just in case we forgot -- and I didn't  
4 see it in the draft. But the prudent  
5 investors at the Illinois Funeral Directors  
6 Trust thought it was good to invest in key  
7 life, and I think we want to drive a stake  
8 through that one with this opportunity to make  
9 a revision. So, I'd recommend in addition to  
10 banning trust investment in term, we also ban  
11 trust investment in any type of insurance  
12 that's not on the life of the funeral  
13 beneficiary.

14           MS. GRINSTON: And I think this came  
15 up, I know on the 214 side. Bill, I don't  
16 know if anybody from the 214 side wants to  
17 address this. They actually recommended for  
18 Endowed Care Cemeteries that there be a ban on  
19 using trust-fund monies -- using those to  
20 invest in any insurance product whatsoever.

21           MR. STALTER: Yeah. Endowed care is a  
22 different thing, but on preneed, the thing  
23 would be if we implement the prudent-investor  
24 rule, almost by definition, it would exclude  
25 insurance. What we'd almost have to have by

1 statute, would it be an exception if they did  
2 a trust rollover. I mean, basically, some  
3 states, we do that and say, you know, prudent  
4 investor, diversification, but create an  
5 exception where it's approved either by -- you  
6 know, the procedure is set out by statute, but  
7 then usually it has to be approved by a  
8 regulator in terms of each kind of rollover.  
9 And there's circumstances where that might be  
10 approved, but it would have to be -- it would  
11 have to actually come through the State Board  
12 before --

13 MS. GRINSTON: And are you talking  
14 about rollovers right now?

15 MR. STALTER: Yeah.

16 MS. GRINSTON: Yes. You guys voted  
17 that no term life insurance and that the  
18 investment would have to be -- increase in  
19 value or have a reasonable potential of  
20 increasing in value. And I don't think -- you  
21 guys did not take a final vote on whether it  
22 needed to be tied to the life of the  
23 beneficiary alone. You all did not vote that  
24 out, and I think you thought you wouldn't do  
25 that restriction, if I remember the

1 discussion, if the other restrictions were in  
2 place. Is that still the way you want to go  
3 -- no term life insurance, it must be able to  
4 reasonably gain in value, and you must follow  
5 the prudent-investor rule? I see nods. I'll  
6 take objections. Okay.

7 CHAIRMAN: Gerry has got an objection  
8 or a comment.

9 MR. KRAUS: Just a concern. We have  
10 to be careful how we talk about -- or how we  
11 word the part on increases in value. If we  
12 do something general like it must designed to  
13 increase in price or something like that to  
14 keep pace with future increases in funeral  
15 costs, then we'll be okay. If we get specific  
16 about how it must perform, then we get into  
17 reserving requirements and all that, so we  
18 just have to be careful.

19 MS. GRINSTON: And I think line 22  
20 says, "Must have a reasonable potential for  
21 growth." And so --

22 MR. OTTO: Yeah. Just reasonably  
23 calculated to increase in growth.

24 MS. GRINSTON: Got it.

25 MR. OTTO: Over the life of whatever

1 it is.

2 MS. GRINSTON: We all -- you guys  
3 wanted a diversification requirement, that you  
4 wanted them to be required to diversify unless  
5 the purposes of the trust are better served by  
6 doing otherwise. That language, if you look  
7 at page 17 of what you have -- page 17, lines  
8 8 through 10. And, again, we're not asking  
9 for the language, but it basically said that  
10 you have to diversify. I think this came over  
11 from Chapter 469 word for word. Investing and  
12 managing trust assets, right underneath that,  
13 you all asked us to look at some of the  
14 provisions in 469 and 456 on investing funds  
15 with limits on insurance, with the requirement  
16 that it have a reasonable potential for  
17 growth. I believe this is cut and pasted from  
18 456, if I'm not mistaken. Again, this is a  
19 body of law already in place for investment of  
20 trust funds. I think something else that we  
21 talked about -- I'm moving on to page 18.  
22 Again, not looking at language, but trying to  
23 cover the issues you all discussed about  
24 trustee responsibilities, that no one could  
25 procure or accept a loan against any

1 investment or asset of the trust. No loans on  
2 trust assets; I think that was what you guys  
3 voted on.

4 MR. OTTO: Well, be careful how you  
5 define that, too.

6 MS. GRINSTON: Say that again. I'm  
7 sorry, Don.

8 MR. OTTO: I mean, if no loans are --  
9 I mean, just have to be real careful. I know  
10 what we're trying to prevent, but you have to  
11 be careful how you word that, too.

12 MS. GRINSTON: Okay.

13 MR. OTTO: Because depending on what  
14 the -- you know, it could be a perfectly  
15 reasonable investment. I mean, that's what a  
16 bank does, it loans money out.

17 MS. EULER: But the language of the  
18 statute is tight enough to prevent that.

19 MR. OTTO: Yeah. I mean, just --  
20 we've got to -- when we get to the  
21 nitty-gritty, we ought to be careful with that  
22 one, too.

23 MS. GRINSTON: And, again, since --  
24 with our -- I'm sorry, Bill.

25 MR. STALTER: Well, this is one of

1 those abuses that -- where the preneed funds  
2 turn into a loan. I mean, it just --

3 MR. OTTO: Yeah. No. We all know  
4 what we want to prevent, but we're just --  
5 it's one of those wording ones we've got to be  
6 careful with.

7 MS. GRINSTON: Got it. Having said  
8 that, since we are -- my understanding is that  
9 we can note this as an agreed-on concept. No  
10 loans against trust assets or funds, and that,  
11 you know, when it comes to language, you know,  
12 we'll probably need to be careful -- I think  
13 you're right, Don -- in drafting that. And if  
14 you would like to submit a comment on that,  
15 that would be great. The bottom of page 18,  
16 top of page 19, is some of the enhanced  
17 conflict-of-interest provisions from 456, I  
18 believe. My chapters are running together  
19 right now. And if, again, your  
20 prudent-investor rule will prohibit the  
21 majority of your conflicts, I think this is  
22 just additional language for purposes of  
23 spelling it out. You guys want it to say you  
24 can't do it with the spouse or any place or  
25 entity that you control, and that was just the

1 majority vote. Again, the language, if you  
2 have any comments, let us know. Bill?

3 MR. STALTER: There is one issue to  
4 point out here and that is these larger banks  
5 will allow the seller, you know, to designate  
6 the investment advisor. And it's one of those  
7 cases where it's an agent of the investor --  
8 or the seller, if they have a contract, as  
9 well. So, I mean, it's one of those cases  
10 where on the face of it, it's a conflict, but,  
11 I mean, that's just the nature of those  
12 relationships. I mean, it has to be -- I  
13 mean, they get to contract with whoever they  
14 want to, but it's on their responsibility if  
15 there's a problem with that, so --

16 MS. GRINSTON: And I think as we bring  
17 up the investment advisors, that brings us to  
18 our next issue is the allowance of investment  
19 advisors. I think that originally the  
20 recommendation was that we not allow -- from  
21 the department that we not allow investment  
22 advisors. We asked finance to take a look at  
23 this, and I think he reported back from his  
24 banking people that they -- there were some  
25 favorable ideas or concerns about allowing

1 independent investment advisors in certain  
2 circumstances. This is something we were  
3 going to bring back to the group as to whether  
4 you wanted to prohibit and/or otherwise  
5 restrict independent investment advisors by  
6 use of -- well, designated by the seller.  
7 Yeah, I think I'm saying that right. Or use  
8 of independent investment advisors at all, and  
9 I think this is probably a good time to open  
10 it up for discussion.

11 MR. STALTER: I mean, I'll start. I  
12 mean, the problem with 436, I think, is where  
13 the seller gets to dictate to the trustee this  
14 will be your investment advisor. Once it's  
15 over \$250,000, it's the seller who gets to  
16 designate to the fiduciary. And, I guess, the  
17 way to address that issue is to take that  
18 authority away. The trustee should always  
19 have the ability to veto appointment of an  
20 investment advisor. I mean, they cannot  
21 forsake their obligation for the investments,  
22 but they can delegate that authority. And,  
23 truthfully, here is that they can appoint an  
24 advisor that's independent of the bank. Now,  
25 we kind of look at those as being independent

1 of the seller, but the fact is that if the  
2 fiduciary uses their discretion and approves  
3 the appointment, they'll remain responsible.  
4 Just a matter of not tying their hands and  
5 allowing the seller to designate buying into  
6 that investment advisor.

7 CHAIRMAN: Mike?

8 MR. MEIERHOFFER: That's what my  
9 brother does for a living is he matches up  
10 investors for people who have monies to  
11 invest. That's what he does. Obviously, it  
12 has to be done in conjunction with the seller  
13 or the people that are providing the money and  
14 the trustee. There is always an agreement,  
15 but the person that has the money in the bank  
16 is the person that makes the decision on  
17 whether or not, number one, you have one and  
18 who it is, and then the bank has to agree --  
19 or the trustee has to agree. So, to say that  
20 you can't have the people with the money  
21 involved in selecting an investment advisor is  
22 outlandish.

23 MS. ERICKSON: I'm going to go the  
24 outlandish route and say that if the  
25 provisions allow for an independent investment

1 advisor, there can be no affiliation of the  
2 investment advisor with the seller in any  
3 capacity. We must avoid all conflicts of  
4 interest. If the fiduciary is the one to  
5 choose and decides it is prudent to use an  
6 independent investment advisor, as Bill said,  
7 the fiduciary is still ultimately responsible.  
8 If the investments go bad, it's the fiduciary  
9 or the trustee who is held responsible, but  
10 there cannot be input by the seller. There  
11 cannot be any business affiliation between the  
12 independent investment advisor and the seller,  
13 or the trustee, for that matter. It must be  
14 truly an independent investment advisor.

15 MR. MEIERHOFFER: I agree with all you  
16 say, but I question about the input in itself.  
17 I mean, they've got come up with somebody to  
18 help them out.

19 CHAIRMAN: Sharon?

20 MS. EULER: I'm going to echo what  
21 Mike and Bill have been saying in that I think  
22 it's okay to have an independent investment  
23 advisor. But the trustee, the financial  
24 institution, ultimately, is responsible to  
25 make sure that the assets are properly

1 managed, and I think the bank should  
2 absolutely have to sign off on who that person  
3 is --

4 MR. MEIERHOFFER: And they would do  
5 nothing else.

6 MS. EULER: -- and have the right to  
7 -- if they see an investment advisor is doing  
8 bad things, the bank has the right to fire  
9 them.

10 MR. MEIERHOFFER: Sure.

11 CHAIRMAN: Don?

12 MR. OTTO: Well, what about it's -- the  
13 easiest thing with the current language is you  
14 just insert "with approval of the trustee."

15 MR. MEIERHOFFER: I mean, a banker is  
16 not going to do this without --

17 MR. OTTO: Yeah. I mean, the  
18 independent investment advisor is hired by the  
19 seller with approval of the trustee. Or you  
20 could do it hired by the trustee with approval  
21 of the seller.

22 MS. GRINSTON: But, Don, I'm concerned  
23 about the possibility for, you know, undue  
24 influence. If I've got millions of dollars in  
25 this bank and I come in and say, "Don't you

1 want to use this person," I am concerned that  
2 your smaller banks will say, "Oh, yeah, that's  
3 who I want to use." I think if we use a  
4 defining line that says it's picked by the --  
5 if the trustee decides you need one, let the  
6 trustee pick whomever he wants to, he has to  
7 be truly independent, like Mary said. But I  
8 think that there's a concern for overreaching  
9 when -- because the seller then, if something  
10 goes bad, is not going to be, you know --  
11 this is going to be the trustee's  
12 responsibility. And if it's my  
13 responsibility, let me choose. I shouldn't be  
14 taking recommendations from the same person  
15 who is paying me.

16 CHAIRMAN: Mike?

17 MR. MEIERHOFFER: I don't know where  
18 else to go, but, I mean, it depends on what  
19 your investment policy is, it's depending on  
20 what kind of a person you hire. That would  
21 have to be done in conjunction with the bank  
22 or the trustee. So -- but to have the bank  
23 go out and pick somebody, I don't know how you  
24 would -- how they would do that without your  
25 input.

1 MS. GRINSTON: Well, I don't know. As  
2 a trustee, as a person who invests funds, do I  
3 need a seller to tell me who the person is  
4 who invests? I deal with investors all day,  
5 and I probably have a long list of them. Do  
6 I really need a seller to tell me how to  
7 invest because I'm looking at the permanency  
8 of the funds, maintaining capital. I don't  
9 know what input the seller brings when I'm the  
10 financial expert.

11 MR. STALTER: Well, what usually  
12 happens with these, they'll go in and look at  
13 Mike's portfolio and see what ages the folks  
14 are and what -- they're going to look at the  
15 liquidities and so forth. And, typically,  
16 what the fiduciary will say, I mean, they'll  
17 talk to my firm and say, "Do you have  
18 recommendations?" And then -- but the  
19 fiduciary has to go out and interview them,  
20 you know, determine whether that's a prudent  
21 selection or not. And then it's the fiduciary  
22 who contracts directly with that independent  
23 advisor. I think what we see now is that the  
24 independent advisor contracts with the seller,  
25 and it's just a matter of -- okay. I mean,

1 if we contract -- if the contract goes through  
2 the fiduciary and it's a fiduciary expense and  
3 there's more disclosure, more requirements,  
4 and you have other regulators looking over  
5 your shoulder, as well, so --

6 MS. GRINSTON: So, if we just said it  
7 has to be selected and approved by the  
8 trustee, period, without any comments or  
9 anything else about, you know, the seller  
10 can't choose it, the seller can't do anything  
11 else, the trustee has to, and then say that  
12 the trustee is liable for the actions of the  
13 independent investment advisor, would that  
14 address everyone's concerns?

15 CHAIRMAN: Bob?

16 MR. BAKER: The only thing I can see  
17 is -- we have run up against this with the  
18 Missouri Funeral Trust -- everybody wants to  
19 be the investment advisor, including the  
20 trustee. So, if you've got a big trust,  
21 that's one situation. If I've got a small  
22 trust with my funeral home, then the  
23 investment advisor, if they're chosen by the  
24 trustee, is going to be that financial  
25 institution, they're going to probably put it

1 in an investment that maybe makes him a little  
2 more money because of the fees involved in it,  
3 and you don't have the arm's-length  
4 transaction for one looking over the other's  
5 shoulders to make sure that the investments  
6 are proper because I think you have to really  
7 have a lot of money in a trust before we even  
8 talk about independent investment advisors.

9 MS. GRINSTON: So, if you're talking  
10 about the seller being involved in selecting  
11 that investment advisor and everything else,  
12 then shouldn't the sellers have some liability  
13 for that independent investment advisor, as  
14 well? Because if you're involved in the  
15 selection, then you should also be involved in  
16 sharing the fault if something goes wrong.

17 MR. MEIERHOFFER: Yeah. Oh,  
18 definitely. There's definitely a liability  
19 out there anyhow without that facet. The  
20 seller is ultimately responsible -- ultimately.

21 MS. GRINSTON: Well, they're ultimately  
22 responsible for the contract, but not the  
23 trust. I just think, honestly, and I can say  
24 this without stepping out on a limb, the  
25 situation that you're proposing would have

1 encouraged what we see today. Not only would  
2 it have encouraged it, it would have given it  
3 a stamp of approval. I have a problem with  
4 putting that stamp on anything going forward.

5 MR. MEIERHOFFER: No, not as long as  
6 it's an arm's -- as long as it's an  
7 arm's-length arrangement with a bona fide  
8 trustee, I disagree with that. I mean, I  
9 understand where you're coming from, but  
10 that's basically saying every -- I don't -- I  
11 mean --

12 CHAIRMAN: John?

13 MR. McCULLOCH: The problem I have is  
14 if you're going to make me responsible and so  
15 the trustee chooses this investment advisor,  
16 and, typically, sometimes what they can do is  
17 things start looking bad like they have here  
18 of late, and so, they dump stuff out of  
19 another portfolio into yours and things like  
20 that, well, we're responsible for guaranteeing  
21 a certain amount of return, but I have no  
22 control over that. So, you're looking  
23 confused there.

24 MS. GRINSTON: You guarantee a return  
25 on your investment for your provider?

1           MR. McCULLOCH: To our funeral homes  
2 that we represent, yes.

3           MS. GRINSTON: You guarantee that  
4 their funds will make X amount of money?

5           MR. McCULLOCH: Yes. We guarantee  
6 them that we will pay them X amount of dollars.

7           MS. GRINSTON: Okay. That's what I  
8 wanted to clarify, if you were guaranteeing  
9 that they will make X amount of money.

10          MR. McCULLOCH: Yeah. A little  
11 different then. Okay. So, now I have no  
12 control over that situation, and so, they're  
13 doing all these bad things, but you're taking  
14 all the control away from them. That's what  
15 your concern is; right?

16          MR. McCULLOCH: Well, to some degree.  
17 And when you get into a larger amount of  
18 money, then you're looking at, you know, a  
19 difference in a tenth of a basis point or  
20 two-tenths of a basis points can be a lot of  
21 money. And depending on how you're directing  
22 the trustee to invest or the help that you're  
23 asking to be given to the trustee, that's what  
24 I'm talking about. And I understand where  
25 you're coming from, but you're basically

1 restricting the person like John or myself or  
2 anybody else that is trying to guarantee or to  
3 generate an income not to be able to have the  
4 help if there is available out there in the  
5 market -- these people who are niche players  
6 who can help you.

7 MS. GRINSTON: And I just think that  
8 the financial expert, the trustee, should be  
9 identifying the niche players. But -- and I  
10 can tell you this, I guess, from the regulator  
11 side, and I'll say this with -- quite frankly.  
12 The situation that you're proposing will  
13 create an NPS all over again.

14 MR. MEIERHOFFER: Well, let me ask  
15 you: You say -- okay. Let's say they  
16 identify the player, then I have to have the  
17 ability to agree to the player. That's what  
18 I'm saying. You're saying they can identify  
19 them and hire them, and then we've got to take  
20 them. I don't agree with that.

21 MS. GRINSTON: Yeah. And I could see  
22 someone saying I identify this independent  
23 person, I say no. You identify that  
24 independent person, I say no. I identify  
25 Wolfe & Bates, and you say yes.

1           MR. MEIERHOFFER: No. No. No. No.  
2 No. It comes from -- if you say it comes  
3 from the bank or the trust, that's fine, but  
4 I've got to have an ability to approve it, not  
5 have them say this is who you're going to have.

6           MS. GRINSTON: Again, and let's put  
7 this out for a consensus of the group because  
8 we could go back and forth. I think the  
9 regulators probably would all voice a very  
10 strong objection because -- and I say this  
11 from being inside on the regulator side of NPS  
12 that from the regulators -- and maybe I'm not  
13 the only regulator in here that thinks that --  
14 that is fraught for abuse. Not only have we  
15 seen it, we've seen it in epic proportions,  
16 and if we do it, I am telling you it will  
17 happen again. But let's put it out on the  
18 floor for the consensus of the group, and if  
19 the consensus of the group is to allow  
20 independent investment advisors with the  
21 approval of the seller, then we will put that  
22 in the document and the regulators will just  
23 -- we'll just note, as will everybody else,  
24 our strong objections because of what we've  
25 seen in the market. How is that? Let's take

1 it out there. Independent investment advisors  
2 with the approval of the seller, how many  
3 people agree with that? And for the record,  
4 maybe you could say your names?

5 MR. McCULLOCH: John McCulloch.

6 MR. CLINE: George Cline.

7 MR. WARREN: Mark Warren.

8 MR. BAKER: Bob Baker.

9 MR. MEIERHOFFER: Michael Meierhoffer.

10 MS. COLLINS: Norma Collins.

11 MS. GRINSTON: Okay. For those who  
12 want independent investment advisors to be  
13 selected by the trustee and not by the seller  
14 or approved by the seller, let's see how may  
15 people agree with that. And maybe we could do  
16 this for the record.

17 UNIDENTIFIED: (Inaudible.)

18 MS. NEUMANN: Barb Neumann for  
19 Representative Meadows.

20 MS. RUSSELL: Darlene Russell, CFL  
21 Preneed.

22 MR. TRIMM: Bill Trim, Silver-Haired  
23 Legislature.

24 MS. ERICKSON: Mary Erickson,  
25 Department of Insurance.

1 CHAIRMAN: Jim Reinhard.

2 MS. GRINSTON: Well, Mark?

3 MR. WARREN: Yeah.

4 MS. GRINSTON: Okay. Mark Warren.

5 All right.

6 MS. DUNN: Did you not vote for the  
7 last one?

8 MR. WARREN: Yeah, I voted for that,  
9 too.

10 MR. STALTER: You didn't notice I  
11 didn't vote at all, either, did you?

12 MS. GRINSTON: Would you like to note  
13 another comment, Bill?

14 MR. STALTER: Well, I mean, as a  
15 practicality, I mean, the trustees aren't  
16 going to force an investment advisor on you.  
17 I mean, it just becomes -- if it's a large  
18 enough account, I mean, they're going to work  
19 through and find somebody. But the fact is, I  
20 mean, it comes down to it, the fiduciaries  
21 can't have an investment advisor forced on  
22 them, either, so --

23 MR. MEIERHOFFER Exactly right. You  
24 can't force them.

25 MS. GRINSTON: Yeah. But if I have to

1 approve it, I withhold my approval until you  
2 get one, and now you're for it. And, again --

3 MR. STALTER: No. At that point, you  
4 just go find yourself another trustee.

5 Basically, that's always the trustee's out is  
6 if we could -- if it's going to be forced, go  
7 find somebody else that would do it.

8 MS. GRINSTON: But -- and you're  
9 dealing with a good trustee. But if you have  
10 a trustee, oh, let's just say, that listens to  
11 the seller, and let's just say they say we'll  
12 use your investment advisor, and let's just  
13 say funeral homes are out of hundreds of  
14 millions of dollars, it could happen in my  
15 hypothetical world.

16 MR. MEIERHOFFER: But in that world,  
17 it'll happen anyhow. It'll happen anyhow.

18 MS. GRINSTON: Not if I -- I don't  
19 know if -- I don't know if --

20 MR. MEIERHOFFER: Yes, it will. If  
21 you've got a bad trustee, it's going to happen  
22 anyhow.

23 MS. GRINSTON: I don't know if you're  
24 going to get a seller choosing an investment  
25 advisor if the law says they can't choose the

1 investment advisor, but --

2 MR. MEIERHOFFER: No, but it'll happen  
3 anyhow. That's my point.

4 MS. GRINSTON: Okay. Let's go to  
5 reporting and notification requirements for  
6 trustees. What you see in the draft before  
7 you are suggestions from the Board on some of  
8 the things that we would like to have included  
9 in annual reports when it comes to -- let's  
10 begin looking at page 22 going into 23. Some  
11 of our suggestions duplicate with DIFP what  
12 insurance has proposed. Their language, I  
13 think, is just a little bit different,  
14 probably a little more exact. But as far as  
15 the concepts go, this is -- what you see in  
16 front of you is some of the information as  
17 recommended by the Board on some of the  
18 information that we believe should be included  
19 in annual reports. And if we can, to the  
20 extent that there are comments on this,  
21 because some people suggested that we strike  
22 some of the information in annual reports,  
23 possibly talk about what sections of the  
24 annual-reporting language you believe are not  
25 necessary or should be required. And, again,

1 we'll compile a list of what we agree on.

2 MR. STALTER: Just some of the general  
3 comments I hear, people don't want to see the  
4 addresses or phone numbers in there.

5 MS. GRINSTON: Sorry?

6 MR. STALTER: They don't want to see  
7 the purchasers' phone numbers or addresses  
8 listed in the reports. I mean, just -- and  
9 it's just afraid, you know, they'll be -- the  
10 document will be disclosed and somebody else  
11 will use it, so --

12 MS. ERICKSON: Well, would those be  
13 subject to disclosure in the open-records  
14 request?

15 MS. GRINSTON: No, they're closed  
16 records.

17 MR. STALTER: Okay.

18 MS. GRINSTON: And the concern that we  
19 have is when we have entities like -- and,  
20 again, I'm going to use current examples or  
21 even examples before -- someone will say --

22 MS. ERICKSON: Spencer Turner.

23 MS. GRINSTON: Right -- who are you  
24 writing for or who are your purchasers. We  
25 may need to notify your purchasers of

1 something unusual or we need to know, you  
2 know, for some reason, the Board may need to  
3 contact them, and that happens quite often.  
4 You wouldn't believe how often that actually  
5 comes up, to allow us to at least have a  
6 contact number where we can start. One of the  
7 things that happened not just with Spencer  
8 Turner, but in successor issues, people,  
9 including regulators, said, "Can you tell us  
10 who they sold to? How do we contact them,"  
11 and there was just no way for us to even give  
12 them a name or anything else.

13 MS. ERICKSON: I want to follow up on  
14 that and say that I think this information is  
15 critical to be in the Board's possession. I  
16 might mention before that I was the civil  
17 attorney at the AG's office handling Jane  
18 Spencer Turner's mess, and to say her  
19 record-keeping was poor is an understatement.  
20 We literally took every piece of paper from  
21 her funeral homes and tried to compile lists  
22 of consumers to try to understand who bought  
23 anything from her. It was a nightmare and Don  
24 Otto can attest to that, John. And I was  
25 just talking to John earlier and he just said

1 another consumer came out of the woodwork just  
2 recently that we had never known about. There  
3 was no written record. And if this is a  
4 reporting requirement and a funeral home shuts  
5 down and their records are in as woeful shape  
6 as we found them with Salem, this -- well, it  
7 might not mean we know exactly what contract  
8 they had, but at least we know we can contact  
9 the consumer or their family and say, "Do you  
10 have any paperwork left," you know. "Please"  
11 -- you know, "this is what you need to do  
12 next." But we were at such a disadvantage and  
13 had to rely only on press releases because we  
14 simply could not understand who the universal  
15 consumers were, so I would advocate strongly  
16 for this information.

17 MS. GRINSTON: Thoughts on names,  
18 address, and contact numbers for purchasers?

19 CHAIRMAN: Gerry?

20 MR. KRAUS: Gerry Kraus, Homesteaders.  
21 We do contracts around the country, and about  
22 five states require numbering. All of them  
23 have found out after the fact that it's really  
24 not worth the effort to try and number them  
25 because number becomes as meaningless as a --

1 or as useful -- or unuseful as any other  
2 criteria in a contract like the name or the  
3 date or some other thing that -- it just  
4 becomes another identifying factor that is  
5 more difficult to administer than it's often  
6 worth.

7 MS. GRINSTON: Any thoughts on  
8 prenumbering -- requiring prenumbering?

9 CHAIRMAN: John?

10 MR. McCULLOCH: Well, I've been doing  
11 it for a long time, but he's totally correct.  
12 It doesn't really fix anything. It's a  
13 feel-good-type thing. It's an, "Oh, we really  
14 did something," but using Ms. Spencer, she  
15 would just take our application and just make  
16 copies of it. And I certainly didn't know  
17 about those. And even after we had cut her  
18 off and said we don't want to do business with  
19 you any longer, she continued to do that. So,  
20 how does that fix anything? It doesn't.

21 MS. GRINSTON: Would it have fixed  
22 anything if you would have gotten 15 contracts  
23 numbered #2, and you realized, uh-oh, somebody  
24 is copying?

25 MR. MEIERHOFFER: But you're not going

1 to get them.

2 MR. McCULLOCH: It would, but they're  
3 not going to do that. That's the whole point.  
4 There is no record anywhere. She gave it to  
5 the consumer.

6 MS. ERICKSON: She didn't forward them  
7 to anyone.

8 MS. GRINSTON: No. No. No. What I'm  
9 saying is, all of a sudden, you get someone  
10 from presenting for payment and you've got 15  
11 numbered 002 contracts. And you say, "Wait a  
12 minute. If these are consecutive, how did she  
13 sell 15 002s?"

14 MR. McCULLOCH: But that's the whole  
15 point, they don't. They don't contact us.  
16 Those are -- typically, those are paid in full  
17 or they've paid the funeral home. They don't  
18 want us to know about it. That's the whole  
19 idea.

20 MS. GRINSTON: So, you don't ever see  
21 the contracts? Even when they become at-need,  
22 you would not know what this contract -- you  
23 wouldn't see the contract?

24 MR. McCULLOCH: Not if they're trying  
25 to deceive us and not turn them in, certainly.

1 If she wants to get a commission and she wants  
2 to have it come into us, certainly, we would  
3 get those. But the family is not going to  
4 know to do those things. We're cut out of  
5 the process.

6 MS. DUNN: So, what she did is wrote a  
7 preneed contract with the purchaser, collected  
8 the money and kept it, and you never knew  
9 about it?

10 MR. McCULLOCH: Exactly. You never  
11 know about those.

12 MR. OTTO: And then when the person  
13 died, they covered the funeral.

14 MR. McCULLOCH: The one that just came  
15 up the other day, it came from out in the  
16 country. I don't know if the folks just  
17 didn't see the news releases and all the talk,  
18 and they went to another funeral home,  
19 actually, who we sell for. And they called me  
20 up and said, "Well, I've got bad news, but are  
21 you going to pay for this thing?" That's the  
22 bottom line. And, of course, the answer is  
23 yes, we will, but no one knew about that  
24 contract.

25 MS. GRINSTON: So, what about a

1 contract number, if any?

2 MR. STALTER: Well, maybe -- there are  
3 going to be contract numbers. I mean, from  
4 what we do, administer contracts, we have to  
5 have some way to identify the contract. But  
6 just to say that to dictate or require it, I  
7 mean --

8 MR. McCULLOCH: I'll just say I'm  
9 going to continue to do it. I don't  
10 necessarily want you to tell me I have to, but  
11 I'm going to continue to do it, but it doesn't  
12 really fix anything.

13 MS. GRINSTON: So, if we say that you  
14 have to report to us the contract number, if  
15 there is one -- I don't understand the -- help  
16 me understand the concern.

17 MR. MEIERHOFFER: Yeah, that's fine.  
18 If there is one, that takes care of it.

19 MS. GRINSTON: Yeah. If there is one,  
20 tell us what the number is.

21 MR. MEIERHOFFER: Yeah. But don't  
22 mandate.

23 MS. ERICKSON: I think that's going to  
24 --

25 MR. WARREN: Just say from the

1 regulator standpoint, you don't really care  
2 what the number is. If you've got to enforce  
3 one, if you've got to put on the evidence,  
4 it's not going to be based on a number, it's  
5 going to be based on a name and a person,  
6 because having a number on it doesn't really  
7 make -- amount to a hill of beans.

8 MR. STALTER: The only thing I would  
9 add to that is maybe you want to require that  
10 it's a unique number because, I mean, I have  
11 encountered accounting systems where they were  
12 assigning the same number to the contract or  
13 the account. They could go out and break that  
14 apart. I mean, that's --

15 MS. GRINSTON: So, contract number, if  
16 any, anyone have a problem with that?

17 MR. STALTER: It has to have a unique  
18 number.

19 MS. GRINSTON: Oh, a unique number.

20 MR. MEIERHOFFER So they aren't all  
21 #2s.

22 MR. STALTER: Unique number.

23 MS. GRINSTON: Yeah. You mean, so  
24 that every contract has a distinct number as  
25 opposed to --

1           MR. STALTER: Has a distinct number.  
2 In other words, that you -- you know how to  
3 track them.

4           MR. ERICKSON: Right. It's not a form  
5 number, Bill.

6           MR. STALTER: Huh?

7           MS. ERICKSON: It's not a form number,  
8 like form number 115.

9           MR. STALTER: Yes, exactly.

10          MS. ERICKSON: We'll know --

11          MS. GRINSTON: Got it.

12          MS. ERICKSON: Yeah.

13          MS. GRINSTON: Okay. With no form  
14 number. I understand what you mean now. Does  
15 anybody have a problem with the  
16 contract-number thing? Okay. And saying that  
17 there can't be a form number, is that a  
18 problem? Did you, Mark?

19          MR. WARREN: Yeah. I'd voice the same  
20 objection that Gerry made. I don't really see  
21 what purpose it serves in the grand scheme of  
22 things. Because you could -- you know, you  
23 can give some company -- funeral home a sheaf  
24 of contracts each that has a unique number and  
25 they lose those or they're copied. And then,

1 you know, you're already bogged down in trying  
2 to figure out where they went. You have a  
3 gap, and you can have a reporting gap. Now,  
4 if you're going to have numbered contracts,  
5 then when these companies do these reports  
6 that we're talking about, by golly, they  
7 better all be sequential or you've immediately  
8 got a regulatory issue about, well, where is  
9 contract, you know, #3 and #4 and -- so --

10 MS. GRINSTON: I think the last  
11 suggestion was that when you file your annual  
12 report with the Board, when the seller lists  
13 names, they'll have a contract number if there  
14 is a contract number. What I'm hearing you  
15 say is that you think that that may be  
16 burdensome for them to tell us what their  
17 contract number is if there's one on the  
18 contract.

19 MR. WARREN: Yeah. If it's -- I mean,  
20 if they're -- if you're requiring a number on  
21 the contract --

22 MS. GRINSTON: No. We're just  
23 requiring you to tell us if there is a number.

24 MR. WARREN: -- I would rather -- all  
25 right. So, you don't have to have one?

1 MS. GRINSTON: No.

2 MR. WARREN: But you can have one?

3 MS. GRINSTON: Right.

4 MR. WARREN: Well, I'm not that far,  
5 so never mind.

6 MS. GRINSTON: Bill?

7 MR. STALTER: I don't know how you  
8 audit if you don't have a contract number,  
9 though.

10 UNIDENTIFIED: Yeah, how do you?

11 MR. STALTER: And that -- I mean, I go  
12 in there and audit them or not. I mean, if  
13 they give me a bunch of numbers and, you know,  
14 I see that, you know, they're overlapping,  
15 there's no way to tell, you know, how much is  
16 supposed to be in that trust. They have to  
17 have a unique number.

18 MS. GRINSTON: Okay. We've done  
19 preneed-contract numbers. What about the  
20 number and face value of the contract sold  
21 since the filing of the last report? Any  
22 concerns with that? The contract amount --

23 CHAIRMAN: Hold it. Gerry?

24 MR. KRAUS: From the other states that  
25 we help with reporting on, they most commonly

1 ask how many preneed contracts did you have at  
2 the beginning of the period and what is their  
3 value, how many were performed or completed  
4 during the period and what is their value,  
5 what did you add and what is their value, and  
6 what's left.

7 MS. GRINSTON: Right.

8 MR. KRAUS: So, they monitor the  
9 beginning balance, the ending balance, and the  
10 pluses and minuses.

11 MS. GRINSTON: Right. And I think  
12 that that's the total face number and total  
13 face value of the contracts sold since the  
14 filing of the report. I think later on we  
15 talk about what's been added and what's been  
16 deducted and everything else from there.  
17 Anyone have a problem with the total number  
18 and total face value of preneed contracts sold  
19 since your last report? I think they're  
20 filing it now. Contract amount of each  
21 preneed contract; anyone have a problem with  
22 that? No. Number 4, it's deleted, but I  
23 think I'm going to read it. The amount of  
24 funds received as a payment for each contract  
25 since your last annual report -- how much you

1 got in on each contract. Concerns? How much  
2 you retained for administrative expenses --  
3 the seller -- since the last report. Concerns?

4 MR. MEIERHOFFER: Well, I'm just -- I  
5 struck them, obviously, because I don't think  
6 it's necessary.

7 MS. GRINSTON: Okay.

8 MR. McCULLOCH: So, you want the date  
9 of each payment that came in?

10 MS. GRINSTON: No, not the date. Just  
11 how much you've gotten on this contract since  
12 the last time you filed a report. So, if  
13 they paid another \$1,500 in the last year,  
14 you'll say contract 001, amount received,  
15 \$1,500.

16 MR. MEIERHOFFER: But you're going to  
17 get that in the total, and that's where we end  
18 up --

19 MR. McCULLOCH: I was going to say,  
20 when we send you that huge report, it's going  
21 to have all that information in it -- unpaid  
22 balance.

23 MR. MEIERHOFFER: Here it is. This is  
24 what you're going to get, right there, and  
25 you're going to have to get through --

1 MS. GRINSTON: But that's what all  
2 annual reports look like.

3 MR. MEIERHOFFER: I know, but that's  
4 -- a lot -- you're going to have -- you're  
5 going to have 600 of these things, you know,  
6 coming at you from various -- and it's  
7 burdensome. This becomes burdensome when we  
8 start doing all this intricate detail.

9 MS. GRINSTON: And I'll tell you where  
10 some of this came from, again. From the  
11 consumer standpoint and the Board and looking  
12 at information and seeing what's there, it  
13 would be nice to match what, you know, you  
14 tell us or tell the consumer with what you  
15 have reported to the Board and what you have  
16 received in the last year so that if you have  
17 a consumer who shows up at the final time of  
18 death and this funeral home has been purchased  
19 over and over again, we can look at it and  
20 say, according to annual reports, \$3,000 was  
21 paid on this contract, and the funeral home is  
22 saying, no, it was \$1,500. We have a report  
23 so that we can compare those numbers in cases  
24 of a complaint or something else. This was  
25 purely a consumer-protection issue. How

1 burdensome would it be to you, since you're  
2 going to have to list out the names anyway,  
3 you're going to have to list out the contract  
4 numbers anyway, and you're going to have to  
5 list out all of that anyway, you're just  
6 adding another column on the end.

7 MR. MEIERHOFFER: Well, it's actually  
8 more than that, but, I mean, it -- this is  
9 CYA is what this is. This is what ends up  
10 taking the time and administrative material to  
11 get done, and that's what we're trying to do.  
12 We're generating volumes and reams of stuff  
13 which end up going in the corner someplace,  
14 and it just -- it's becoming overwhelming for  
15 businesses to do this stuff.

16 MS. GRINSTON: Well, since it's not a  
17 requirement now, I don't know how overwhelming  
18 it is right now since it's not required.

19 MR. MEIERHOFFER: It's where it's  
20 going, though. It's where it's going.

21 MS. GRINSTON: But, again, this was a  
22 consumer-protection issue on the amount of  
23 funds. We could take this up for a consensus  
24 of the group. Mark?

25 MR. WARREN: One thing the Department

1 of Insurance does if they have a complaint --  
2 I mean, I don't think they get information to  
3 the effect of how much premium was received on  
4 each contract. What they do, if there's a  
5 complaint that says I've paid X, the company  
6 says I've paid Y, they send the company a  
7 letter and say send me a copy of what you  
8 got. And if they are not satisfied with that,  
9 they subpoena them in. And that way, you  
10 don't have -- it would be a huge -- I mean,  
11 you're going to have to have somebody sitting  
12 there doing data entry, you know, 365/24  
13 trying to keep up with all this stuff, and as  
14 soon as it goes out the door, it's inaccurate  
15 because somebody could make a payment, you  
16 know, the day after it goes out --

17 MS. GRINSTON: Which, of course, we  
18 wouldn't know --

19 MR. WARREN: -- which, of course, skews  
20 everything, so --

21 MS. GRINSTON: Well, when you deal  
22 with a trustee, let's say someone has  
23 canceled, how does the trustee ever figure  
24 that out? Like, how does the trustee ever  
25 figure out how much someone has paid on a

1 cancellation since it's -- I mean, if it's --

2 MR. McCULLOCH: They look at the  
3 report that you send them.

4 MS. GRINSTON: So, it's in a report?

5 MR. McCULLOCH: In my case, it is.

6 MR. WARREN: I assume --

7 MS. GRINSTON: So, it's in a report,  
8 so the question is who the report goes to.  
9 If you're giving it to the trustee, give it to  
10 the Board, too. Just copy it -- photocopy.

11 MS. EULER: Not everybody does that  
12 kind of report.

13 MR. MEIERHOFFER: Yeah. It's not that  
14 simple, though. I mean --

15 MR. OTTO: Just, I mean, our trust can  
16 handle -- can do that as long as we use our  
17 computer program and you don't mandate that we  
18 type it into a form.

19 MR. MEIERHOFFER: Exactly.

20 MR. OTTO: But just from your  
21 perspective, how many contracts are alive out  
22 there right now? We know 46,000 NPS ones;  
23 okay? So, let's double that and say in the  
24 state of Missouri, just there's 100,000 -- so,  
25 that's 100,000 line-item entries that you're

1 going to get every year.

2 CHAIRMAN: We're hiring Stroud and  
3 he's going to go through it.

4 MR. KRAUS: As a halfway step, maybe  
5 we want to do this not from an income  
6 statement, draw a picture of the whole fiscal  
7 period, but, rather, from a balance-sheet  
8 standpoint. At the end of the year, ask your  
9 licensees how many contracts they have, what  
10 their liability is on that -- the amount of  
11 those contracts, and how much funding is  
12 available so you know if there's a difference.

13 MS. GRINSTON: And I think that's sort  
14 of the same question. To figure out how much  
15 money is available will require you to do the  
16 same calculation. But let's -- the amount of  
17 funds that you received, this is no consensus.  
18 Do you guys agree that it should be or  
19 shouldn't be? If you say no, we'll scratch it.

20 MS. NEUMANN: I guess I have a  
21 question. You talked about if the consumer  
22 said I paid \$3,000 and the company says  
23 \$1,500, are they not getting a receipt when  
24 they pay each time, so they can come back and  
25 say here's my receipts, you're lying, I did

1 pay \$3,000? Is there something the consumer  
2 has to back them up? If not, there's the  
3 hole. This guy could take \$1,500 and walk out  
4 the door and spend it, and you think you've  
5 paid on your account.

6 MS. GRINSTON: Yeah. We have nothing  
7 right now that requires a receipt.

8 CHAIRMAN: Sharon?

9 MS. EULER: Perhaps let me make a  
10 suggestion. We could require that each  
11 preneed seller maintain these records, and if  
12 they don't have them, then we could -- I mean,  
13 if we went out to investigate and they didn't  
14 have them, it would be cause for discipline.  
15 I understand the desire to have all this  
16 information -- trust me, I do. I'm concerned  
17 about how the Board is going to store that  
18 information in terms of will you get boxes of  
19 information from people? I don't know.  
20 Because I --

21 MS. GRINSTON: I don't know how many  
22 contracts you write. I mean, a listing, would  
23 it be -- would you send us a box of a list of  
24 things that you have? I don't know. What  
25 about that; just maintain the records?

1 Maintain records of what you're getting in and  
2 what you have deducted for your administrative  
3 expenses, just you have to maintain them.

4 (Several people talking simultaneously.)

5 MS. GRINSTON: Does anyone have a  
6 concern with just maintaining those?

7 CHAIRMAN: Bill does.

8 MR. STALTER: Yeah. We prepare these  
9 kind of reports in Nebraska, and some of these  
10 reports are 700 pages long. Usually, what we  
11 do is we give them a summary. And if they  
12 want to come in and look at it in detail,  
13 they can do that. But often, we produce them  
14 in a PDF format so that -- nobody wants that  
15 paper. I mean, that was one of the first  
16 things the bank said, you're not going to send  
17 that paper anymore, no. I mean, basically, so  
18 -- we just -- we have to get worked out what  
19 the auditor, what kind of format they want to  
20 see it in and then just create the PDF and --  
21 you know. In fact, I had the telephone call  
22 last week with the auditor, you know, about  
23 the reports, so --

24 MS. GRINSTON: So, am I hearing you  
25 say yes on maintaining, but no on reporting?

1           MR. STALTER: No. I think what you  
2 want to do it -- I think, basically, what I'm  
3 hearing is it's the individual reporting  
4 that's really the difficult part, but I think  
5 what you'll see, when you get the summary  
6 report, you assume that they're doing the  
7 individual part of it. So, you need to see  
8 some kind of a summary report and they'll just  
9 know, at some point, somebody will come out  
10 and take a look at it to see whether they're  
11 doing the individual reporting.

12           MS. GRINSTON: I got it. Again, let's  
13 talk about that because the records would have  
14 to be there. You would have to be required  
15 to keep those records in order for us to look  
16 at them. So, can we just require you to keep  
17 those records and not include them in the  
18 annual report? Any objections? Okay.  
19 Maintenance only. Is that for #4 and #5, as  
20 well? I think we did those together.

21           MS. EULER: Do you also want to talk  
22 about what goes in the annual report since  
23 it's not going to be as extensive? Do you  
24 still want an annual report?

25           MS. GRINSTON: Well, this is -- my

1 understanding is that all of this will be in  
2 the -- what we're talking about now would be  
3 what is in the annual report. So, do you  
4 mean -- help me.

5 MS. EULER: There are two issues. One  
6 is what records the preneed seller is required  
7 to keep, and, two, does the Board want an  
8 annual report, and, if so, what information  
9 should be contained in that annual report if  
10 it's not all the information?

11 CHAIRMAN: I think Gerry had the  
12 answer.

13 MS. GRINSTON: I don't know. I  
14 thought we were at going through the list of  
15 what is contained in the annual report. Am I  
16 right about that? We're going through a list  
17 of what will be in the annual report. Those  
18 two things they asked us to pull out and make  
19 that maintenance only and not in the annual  
20 report. My understanding is we're doing a  
21 list of what is in the annual report.

22 MR. MEIERHOFFER: Now, is that #4 and  
23 #5 you're talking about the plan?

24 MS. GRINSTON: And that's #4 and #5.

25 MR. MEIERHOFFER: Okay.

1 MS. GRINSTON: Six is all your sales  
2 agents, and, of course, we're going to change  
3 that definition. Any objections? The date of  
4 the report, the number of preneed contracts  
5 fulfilled during the last year. Anyone have  
6 concerns about that? Your providers?

7 MR. OTTO: Well, what's -- yeah.  
8 What's the purpose of that one?

9 MS. GRINSTON: Which one?

10 MR. OTTO: The number -- to put in an  
11 annual report the number of contracts  
12 fulfilled?

13 MS. GRINSTON: I think it was the same  
14 thing, allow -- so that when you have a  
15 complaint, a consumer issue, we can figure out  
16 how --

17 MR. OTTO: I think it's another one  
18 you just ought to keep track of. I mean, I  
19 don't see how it would help -- I don't see  
20 how it helps you guys at all, and it's just  
21 another --

22 MS. GRINSTON: It does, but --

23 MR. OTTO: Although we have space for  
24 rent, by the way, if you've got a lot of boxes.

25 MS. GRINSTON: No. There's this weird

1 thing called microfilming and electronics now.  
2 They've got optical imaging; it's real cool.

3 MS. EULER: And it's a number.

4 MS. GRINSTON: Yeah. And it's on a  
5 little computer that big.

6 MS. EULER: It's a number on a column.

7 MS. GRINSTON: But #8, do you guys  
8 want to switch that to maintenance only?

9 MS. EULER: I think the Board -- it's  
10 a number in a column.

11 MR. MEIERHOFFER: So, what does it  
12 mean to you, I guess is the question?

13 MS. GRINSTON: Again, when we get it --

14 MS. EULER: So, that we know how many  
15 outstanding contracts. When Don Otto's  
16 preneed seller puts a lock on the door and Don  
17 goes to Jamaica or some Cayman Island, the  
18 Board office can know how many contracts have  
19 been fulfilled, how many contracts he has  
20 sold, so he knows how many outstanding  
21 contracts there were.

22 MS. GRINSTON: Because, if not, we  
23 have your last annual report. We don't know  
24 what happened during the middle of that year,  
25 so if you cease doing business and walk away,

1 we can say, again, this is how many he  
2 fulfilled this last year, this is where we  
3 are, this is what we have. But what is the  
4 consensus; to move that to maintenance only or  
5 to include it in the annual report?

6 MS. EULER: No. It should be on the  
7 annual report.

8 MS. NEUMANN: Annual report.

9 MS. GRINSTON: I hear people saying  
10 annual report, annual report. Any objections  
11 to it being in the annual report? Number  
12 nine, the name and address of providers.  
13 Number ten, your custodian, and then the  
14 written consent authorizing the Board to do  
15 what it does.

16 MR. OTTO: Don't say that A word.

17 MS. GRINSTON: Excuse me?

18 MR. OTTO: Don't say that A word.

19 MS. GRINSTON: Yeah, I'll get in  
20 trouble. Number fourteen, Josh suggested a  
21 copy of each preneed contract sold. I can  
22 tell you strongly on behalf of the Board, we  
23 strongly don't want your contracts.

24 MS. EULER: But that could be  
25 something to be required. You have to

1 maintain it.

2 MS. DUNN: They have to maintain it, I  
3 hope.

4 MR. MEIERHOFFER: We do that now.

5 MR. WARREN: Yeah.

6 MS. ERICKSON: Is there a separate  
7 section here for maintaining? Is it coming?  
8 Record retention. Thank you.

9 MS. EULER: We're creating that. Not  
10 everybody does, Mike.

11 MR. MEIERHOFFER: Oh, I'm sure that's  
12 true. Nobody does a lot of this stuff.

13 MS. GRINSTON: The next two pages are  
14 annual-report requirements for trust-funded  
15 versus insurance-funded accounts. That's  
16 spilling over to #24 and #25. What I'd like  
17 to do is if there are any objections or  
18 additions to this list, please include that in  
19 your comments because this may be a little bit  
20 more detailed because that's more information  
21 relating to the trust, relating to -- I'm  
22 sorry -- trust or joint-account funded  
23 products and insurance products. So, that'll  
24 take you through #26. Comments or  
25 suggestions, changes, disagreements, or

1 additions, please let us know, and we'll  
2 include it under the entire -- page 26 is  
3 record retention, so, Mr. Chairman, I'm  
4 suggesting we take a break before we do that.

5 CHAIRMAN: Let's take a break.

6 (Off the record)

7 CHAIRMAN: Kim, you all go ahead and  
8 start.

9 MS. GRINSTON: Okay. I think that we  
10 were at the end of trustee responsibilities.  
11 Does anyone have anything additional when it  
12 comes to trustee responsibilities? Oh, I did  
13 have one other thing that was brought up  
14 during the break. Reporting requirements to  
15 purchasers, it has been suggested that we  
16 require the trustee and/or the seller to  
17 report to purchasers at least some information  
18 about what is being held in trust or what has  
19 been deposited. I think what I hear the  
20 common suggestion being from different places  
21 is at least the amount that's been received  
22 over, you know, the last calendar year, sort  
23 of like an annual report, where the trustee  
24 is, the amount that's been received over the  
25 last calendar year, and giving purchasers that

1 information without a request -- having an  
2 annual requirement for that. I'd like to open  
3 up the floor for suggestions on that issue.

4 MR. OTTO: The Missouri Funeral Trust  
5 wants to be able to do that; however, under  
6 the current law, we're concerned that that  
7 might arguably breach the fiduciary duties  
8 that the trustee has to the seller or  
9 provider, so -- because under the current law,  
10 you know, the contractual relationship is not  
11 to the purchaser from the trustee, it's to the  
12 other people. So, although we would like to  
13 do that, we would like a CYA on sending that  
14 report out.

15 MR. MEIERHOFFER: Why don't you send  
16 it to the funeral home, let them do it?

17 MS. GRINSTON: Not mandatory, but  
18 permission, is what you're saying, Don?

19 MR. OTTO: That's what I would prefer.

20 MR. GRINSTON: Okay.

21 MS. EULER: And, Kim, to clarify, are  
22 you talking about a report from the trustee of  
23 the amounts received in trust or are you  
24 talking about a report from the seller?

25 MS. GRINSTON: I don't know. We've had

1 suggestions both ways; trustee and seller. I  
2 guess we can discuss --

3 MS. EULER: Because when I hear  
4 trustee, I hear report from the bank as  
5 opposed to a report from the seller.

6 MS. GRINSTON: Right. I think we're  
7 hearing trustee and seller -- or seller --  
8 and/or seller. It's really what's your  
9 pleasure.

10 MR. OTTO: Yeah. That's why I would  
11 like it -- I don't think -- if you get it  
12 mandatory, then it gets complicated as to who  
13 is doing it, what you do it, and all that. I  
14 would just like to make it clear that if the  
15 seller and/or trustee wishes to send a report  
16 annually to the purchaser about payments made,  
17 that that is permissible.

18 MS. EULER: I think that the purchaser  
19 ought to be entitled to receive some notice  
20 from the bank indicating that their money has  
21 been received, whether that's a one-time  
22 notice, I don't know that it's required to be  
23 annually, because if you pay in full, you  
24 know, you pay -- the trustee received your  
25 \$10,000 in 2003. It seems not useful to have

1 the bank send you a notice every year saying,  
2 yeah, \$10,000 in 2003, but any new money  
3 received --

4 MS. GRINSTON: So, I hear, again, not  
5 mandatory, but permissible upon request?

6 MS. EULER: I think it should be  
7 mandatory.

8 MR. STALTER: It's going to be  
9 difficult for the banks to be able to send  
10 those kind of reports without full cooperation  
11 from the seller. Basically, I mean, you know,  
12 we won't have addresses and so forth.

13 MS. EULER: Right. Cooperation from  
14 the seller would be required, but I think the  
15 people need to hear from the bank that their  
16 money is where it's supposed to be.

17 MS. GRINSTON: Let's open the floor  
18 for that discussion and let's separate those  
19 discussions into two different things: Number  
20 one, a report of what is -- you know, what  
21 has been paid in by the purchaser during the  
22 year. Should that be mandatory or should it  
23 be permitted for specifically in law?

24 CHAIRMAN: Mary?

25 MS. ERICKSON: I want to echo Sharon's

1        comments.  I believe that it's very important  
2        for the purchasers to get this information and  
3        I also agree -- so, I believe it should be  
4        mandatory, number one, and, number two, as  
5        Sharon indicated, if it's a paid in full, they  
6        don't need to receive reports every year  
7        succeeding that, so the first time, one-time  
8        report to the consumer with the notation you  
9        will receive no other reports as you are -- we  
10       have all your money, that's sufficient.  So, I  
11       believe it should be mandatory and, of course,  
12       the seller will have to cooperate with the  
13       trustee to make that happen.

14                MR. OTTO:  And I'm operating under the  
15       assumption of our earlier vote that all the  
16       money was going to go to the trust first.  If  
17       that would change, that would complicate  
18       things, but based upon my assumption that the  
19       earlier vote was that all money would go into  
20       the trust first, and then you pull out whether  
21       it's the 10 percent or the 20 percent, that's  
22       what makes it possible.

23                MS. GRINSTON:  So, again, maybe we can  
24       call that issue.  Should it be mandatory for  
25       that report or just permitted, and are there

1 any objections to it being mandatory?

2 MR. CLINE: Just make it permitted.

3 MS. GRINSTON: Okay. I hear one just  
4 permit. Again, how many people want it to be  
5 mandatory that the report be provided? And  
6 let's do a hand vote -- a voice vote if you  
7 can, for the record.

8 MS. ERICKSON: Mary Erickson.

9 MS. COLLINS: Norma Collins.

10 MS. EULER: Sharon Euler.

11 MS. NEUMANN: Barb Neumann.

12 MS. RUSSELL: Darlene Russell.

13 MR. TRIM: Bill Trimm.

14 MS. GRINSTON: Not mandatory, but  
15 permitted? And if we could do a voice poll  
16 again.

17 MR. McCULLOCH: John McCulloch.

18 MR. CLINE: George Cline.

19 MR. BAKER: Bob Baker.

20 MR. OTTO: Don Otto.

21 MR. MEIERHOFFER: Michael Meierhoffer.

22 UNIDENTIFIED: (Inaudible.)

23 MR. MEIERHOFFER: Just remember, all  
24 of these requirements end up with a cost, and  
25 it costs administratively and postagewise, and

1 they never go away. They just get to become  
2 more and more. That's the only thought there.  
3 It's not free. The trustees are going to  
4 charge you.

5 MS. GRINSTON: Okay. I think the next  
6 issue that we had was record retention, and we  
7 promised to get to this on Mary's comments.  
8 On #27 to #28, you see some very -- I'm  
9 sorry. I'm looking at the wrong draft -- #26  
10 to #27, you see some very general comments on  
11 record retention. And we talked about some  
12 other things that we were going to require  
13 preneed sellers to maintain. Right now, it  
14 reads just adequate records and that the  
15 records have to be maintained for no less than  
16 two years after the disposition or after the  
17 contract is canceled/transferred. Mary?

18 MS. ERICKSON: Can you tell me what  
19 the origin of the word "adequate records" is  
20 and what do you mean by "adequate"?

21 MS. GRINSTON: I think the word  
22 "adequate" actually is in our current statute,  
23 and I don't think it has a definition.

24 MS. ERICKSON: Well, I think it needs  
25 to be removed. I think we have to have

1 records, not adequate, because that leaves  
2 discretion to the -- you know, whoever is  
3 holding the records that what's adequate.

4 MS. EULER: I agree with Mary, but  
5 from a regulator viewpoint, it's sometimes  
6 nice to have that wiggle room because --

7 MR. MEIERHOFFER: Yeah, that's really  
8 helping, I think -- (inaudible.)

9 MS. EULER: Because we can argue  
10 dictionary definition of what it means to be  
11 adequate and it gives us some flexibility  
12 because if you just say records, Jane Spencer  
13 Turner had records for preneed contracts, but  
14 they were horribly inadequate. So, I like the  
15 wiggle room on that particular statute.

16 MS. ERICKSON: I will defer to my  
17 compadre on this suggestion.

18 MS. GRINSTON: That one should be easy  
19 then.

20 MR. MEIERHOFFER: Well, we've got the  
21 bureaucrats agreeing.

22 MS. EULER: And lawyers on top of that.

23 MS. GRINSTON: Anything else on  
24 records? We talked about some other things  
25 that were going to be maintained when we were

1 going through the annual-reports information.  
2 Anything else that you would like to add to  
3 the maintenance of records? Hearing no  
4 objections, let's just move on. Rule-making  
5 authority for the Board, this was something  
6 that was an issue last year. I know that  
7 there are several people who are of the  
8 opinion that the Board has rule-making  
9 authority. I can tell you that -- to a  
10 certain extent. I can tell you that legal  
11 minds have strongly disagreed that that  
12 authority is clear. And to the extent that  
13 there is even a question, the Board would like  
14 to very much clarify --

15 MS. COLLINS: Where did you go?

16 MR. MEIERHOFFER: Where are you?

17 MS. COLLINS: Because I have  
18 investigations and inspections. Did you just  
19 skip over that?

20 MR. MEIERHOFFER: Yeah, I think you  
21 did.

22 MS. GRINSTON: No. Everyone asked me  
23 to go through -- we were going through Mike  
24 Meierhoffer's suggestions --

25 MR. MEIERHOFFER: Okay. So, you --

1 MS. GRINSTON: -- on topics, and when  
2 we had a topic that was on the paper, I just  
3 brought you to the specific section because we  
4 asked not to go through the proposed draft  
5 anymore.

6 MS. COLLINS: Okay.

7 MS. GRINSTON: That we were going to  
8 do this. On the first page after  
9 record-keeping for trustees, trust  
10 disbursements -- I'm looking at Meierhoffer's  
11 listing now -- trust disbursements, we did.  
12 Rule-making for the Board was the next  
13 section. And so, while -- and it starts --  
14 on the proposed draft, it starts on page 41,  
15 generally, but it's not in sequential order  
16 because my understanding was that we were  
17 ready. We're not going to do the language  
18 review, we're just going to do a topic review  
19 for right now or to finish up. Sharon?

20 MS. EULER: Yes, absolutely, the Board  
21 needs explicit rule-making authority.

22 MS. GRINSTON: And one of the battles  
23 that we fought last year was they wanted to  
24 give the Board rule-making authority, but the  
25 question was the scope of the Board's

1 rule-making authority. And I think if we  
2 discuss rule-making, let's talk about what  
3 scope you're looking at because a lot of the  
4 things that, you know, that we're talking  
5 about, we would have to give the Board some  
6 really good discretion. Sharon?

7 MS. EULER: Everything the Board deems  
8 just and proper, they should have rule-making  
9 authority to do.

10 MR. MEIERHOFFER: Whoa. What do you  
11 want to do, Kim?

12 MS. GRINSTON: Which is the way it is  
13 in 333, I think, to a large extent. So, the  
14 Board already has an authority for funeral  
15 directors. A lot of the boards do, so it's  
16 not unusual language.

17 MS. EULER: And that's consistent  
18 language with most state agencies.

19 MS. GRINSTON: That's true.

20 MS. ERICKSON: All rule-making  
21 authority for the agencies?

22 MS. EULER: Yes. All rule-making  
23 authority available.

24 MR. MEIERHOFFER: And that's what  
25 you're going to say?

1 MS. GRINSTON: Barb?

2 MS. NEUMANN: Explain that why in the  
3 field -- I went back and did some history on  
4 this. When this chapter was set up, you all  
5 made the decision that they were not to have  
6 any rule-making decisions, so it was out of  
7 their hands the minute the chapter was  
8 written, and I think that was a mistake. I  
9 was not here, though, I was still in Maryland.  
10 But having read that area, somebody got really  
11 smart and took care of -- took you out of  
12 everything practically, from what I'm seeing,  
13 and I think we need to put you back in there  
14 to make it -- we wouldn't be where we are  
15 with NPS if you had the authority. You should  
16 be able to go out there and audit all the  
17 sellers and see what they've got in their  
18 contracts and not wait till NPS happens. And  
19 I'm understanding there were two that have not  
20 been audited anyway, and I don't know why they  
21 haven't been just to make sure they're on the  
22 up-and-up and not next week find out we've got  
23 problems someplace else, too.

24 MS. GRINSTON: Question and comments  
25 on rule-making? All right. Does anyone

1 object to that rule-making authority for the  
2 Board? Jim?

3 MR. MEIERHOFFER: You don't want it?

4 CHAIRMAN: No, we don't need -- no.  
5 We need it. We need it.

6 MR. MEIERHOFFER: I think it would be  
7 good to hear from the Board, though, to some  
8 degree, what's your thinking in this respect.

9 CHAIRMAN: Oh, no. It needs it. It  
10 truly does. I've served on it nine years and  
11 it would have made a difference.

12 MR. MEIERHOFFER: Well, the think the  
13 answer to your question, Barb, is it was  
14 stripped from the Board early on because of  
15 the concern that numbers of people had that  
16 the Board would probably not act properly, and  
17 I don't think that's the right thing to be  
18 thinking at all.

19 MS. NEUMANN: No.

20 MR. MEIERHOFFER: But, I think that's  
21 part --

22 MS. NEUMANN: Other agencies have  
23 them. I don't understand why this Board --

24 MR. MEIERHOFFER: Well, yeah. But  
25 that was the petty work with the funeral homes

1 here -- funeral directors.

2 CHAIRMAN: Exactly, Mike. That's a  
3 good statement, yes.

4 MR. MEIERHOFFER: Is that not right,  
5 saying it the way it really was? I think  
6 we're beyond that. We've got to get -- I  
7 mean, that's what these people are doing their  
8 work for.

9 MS. GRINSTON: We are doing very good.  
10 I want to go back and we have to clarify  
11 something on investigations, examinations, and  
12 audits. I am pulling of a -- and this is #43  
13 on Mr. Meierhoffer's listing. And I would  
14 also like to cross-reference insurance's  
15 section. One of the questions that we've had  
16 issues with is the Board's ability to do a  
17 random audit. Right now, we are essentially  
18 complaint driven. We have been legally  
19 advised that that is what the Board's process  
20 is. If we don't have a complaint, we can't  
21 do an examination, we can't do an audit, we  
22 can't do an investigation. There is some  
23 wiggle room there -- very little wiggle room  
24 there. Insurance has suggested random  
25 examinations, audits with cause,

1 investigations as the Board deems necessary.

2 And I'll do that again.

3 MR. MEIERHOFFER: And that's pretty  
4 much what I was stating in that draft you have  
5 here -- exactly.

6 MS. GRINSTON: I'll state it again:  
7 Investigations as the Board deems necessary,  
8 examinations randomly, audits with cause. Do  
9 I have any --

10 MR. BUCHHOLZ: Jim Buchholz, Buchholz  
11 Mortuary in St. Louis. You're talking about  
12 random audits. I say the hell with it.  
13 Let's have audits every three years -- all  
14 funeral homes. How we -- and I submitted this  
15 to Ms. Clarkston and -- because we can't count  
16 on anyone to really do the job for us because  
17 I go back to 1990 and '91, I was one of ten  
18 funeral homes that tried to get these people  
19 out of business. Our illustrious attorney  
20 general at the time said he'd take the case.  
21 What did he do? He sealed the case up, it  
22 went from one county to another county,  
23 nothing. We couldn't find out anything. They  
24 sealed the case. So, I'm under the aggression  
25 factor to let's have everybody audited once

1 every three years. And I say to pay for this  
2 audit, we have actuaries. Everybody looks at  
3 me when I say an actuary because they cost  
4 money, but they're bonded, they're insured.  
5 Your CPAs, they can put their front page on  
6 your sheet and they're not responsible for  
7 anything. Well, if you've got an actuary,  
8 it's -- they're bonded, they're insured. So,  
9 if something gets out of hand within three  
10 years, you can go to them, you know, we're  
11 safe on our money. There's a lot of money  
12 put into preneed today and it's been going on  
13 like this. So, every three years, it's  
14 nothing, but everybody gets inspected from the  
15 seller, insurance trust, and we get this money  
16 to pay for the actuaries by raising the fees  
17 off of certified copies and so forth. And Ms.  
18 Clarkston can read some of the stuff that I  
19 put down, how we come up with some of those  
20 figures, and they could be reviewed every  
21 three years, too.

22 MS. CLARKSTON: Could you resend your  
23 comments, because I never received those.

24 MR. BUCHHOLZ: Oh. Well, I have a  
25 copy.

1 MS. CLARKSTON: Okay. That would be  
2 great.

3 MR. BUCHHOLZ: Just in case.

4 MS. GRINSTON: And I want to  
5 paraphrase some on the comments. This is  
6 something that we slightly talked about a  
7 little bit earlier. You all talked about  
8 audits, so you guys know an audit is very  
9 expensive, very extensive. I think that what  
10 probably is closer to what he's suggesting is  
11 an examination of books and records. The last  
12 vote you took was once every three years. We  
13 started talking about the numbers back in the  
14 office. Once every three years may be quite  
15 expensive for the Board -- well, not for the  
16 Board, for you all because that's where the  
17 fees are going to come from. And so, I think  
18 that -- and they are still going to run  
19 numbers on once every three years. We are  
20 thinking preliminarily that once every five  
21 years is probably more fiscally feasible  
22 because, you know, we ran the numbers of,  
23 what, 600 sellers, I think it was, Lori? Six  
24 hundred sellers, once every three years,  
25 that's two hundred sellers a year. Two

1 hundred sellers a year at \$1,000, which is an  
2 extremely conservative number for even an  
3 examination. Two hundred sellers at \$1,000 a  
4 year, just look at the numbers and how that  
5 will begin to add up. That doesn't even touch  
6 investigations, audits, all the other expenses  
7 of the Board in 436. And so, I personally  
8 would say that if we allow random  
9 examinations, that I think, fiscally, that we  
10 at least start at the number five years, and  
11 then allow the Board to run the numbers  
12 because, again, I don't know if the industry  
13 will be able to afford examinations through  
14 the Board at that price.

15 MR. MEIERHOFFER: You know, Jim, I'm  
16 all for what you're saying. I think that the  
17 fiscal responsibility of it would be -- I  
18 don't know. Were you here when I was talking  
19 about Sarbanes-Oxley -- one of the names --

20 MR. BUCHHOLZ: No.

21 MR. MEIERHOFFER: You know, beware of  
22 what you ask for because you might get it, and  
23 that's exactly what happens with  
24 Sarbanes-Oxley. It's gotten to the point  
25 where it's so expensive, nobody can afford it,

1 and now the SEC is going back and telling the  
2 accounting places, the accounting firms to  
3 reduce their amount of charge, but, yet, they  
4 didn't realize what they were asking for. I  
5 would love to have an actuary. I used to pay  
6 an actuary. I couldn't afford him anymore,  
7 and that's the dilemma we get into.

8 MR. BUCHHOLZ: Well, now, if you've  
9 got a CPA guy, a CPA doesn't have any -- look  
10 at what happened to Exxon -- not Exxon --

11 MR. MEIERHOFFER: I just -- I think  
12 what you ought to do, though, is just check  
13 with your own actuary and CPA and see what it  
14 would cost to audit yourself every three  
15 years. Just find that out.

16 MS. GRINSTON: But if the Board did the  
17 examination, the examination would be done  
18 through our auditors, which we have authority  
19 to contract with, and you guys suggested  
20 language that we could use the examiners at  
21 insurance and/or finance who have more of a  
22 financial background, and you guys have  
23 already approved that. I would, again,  
24 suggest that you guys consider random  
25 examinations at least once every five years

1 and/or randomly.

2 MS. EULER: Could you give the group  
3 an idea of how much an audit costs?

4 MS. GRINSTON: Wow.

5 MS. EULER: And I know it varies, but  
6 --

7 MS. DUNN: An audit for ten years  
8 would be approximately \$35,000 to \$40,000.

9 MS. EULER: For a small --

10 MS. DUNN: For a small firm, and then  
11 an examination of books and records for five  
12 years is about \$5,000.

13 MS. EULER: For a small firm?

14 MS. DUNN: Yes. And I will tell you  
15 the Board itself right now with, as you know,  
16 our fees haven't changed since '82. We are  
17 just maintaining a level with what we take in  
18 and what we're putting out for mandatory  
19 investigations, audits, and examination of  
20 books and records because I don't know -- and  
21 we're going to hopefully change that, but I  
22 don't know how we would withstand random  
23 audits or examinations right now with the load  
24 that we have that are mandatory by complaints,  
25 so it would substantially have to increase the

1 fees.

2 MR. MEIERHOFFER: Well, I would say in  
3 an organization our size, if I was seeing  
4 \$35,000 audits, I would just shut it down.  
5 Those are major impactful events, and ours  
6 would be more, I'm sure.

7 MS. GRINSTON: Uh-huh. Which is the  
8 reason why we would suggest if we do anything,  
9 do an examination. That's closer to probably  
10 \$5,000, \$2,500 maybe if we cut it down. But,  
11 still, \$2,500 on 200 people once every three  
12 years, look at those numbers. And that's  
13 going to have to come out of your fees which  
14 would, again, not include the audits we do,  
15 the complaints we do, staff, time, and  
16 everything else.

17 MR. MEIERHOFFER: And then you're  
18 asking for 100 percent trusting or 90 percent  
19 trusting, and then you want us to pay for  
20 audits? I mean, it just won't work.

21 MS. EULER: The audits are paid by the  
22 Board staff.

23 MR. MEIERHOFFER: Well, they'll end up  
24 coming to us before --

25 MS. EULER: Right. Right. But what

1 I'm saying is that they don't charge -- it's  
2 not like insurance. They don't charge you  
3 back. If they come out and audit your place  
4 and it costs the Board \$50,000, they don't  
5 send you, Mike Meierhoffer, a bill for  
6 \$50,000. Indirectly, you'll pay for it, but  
7 you don't get a bill.

8 MS. DUNN: At the end of the day,  
9 you'll pay for it through fees.

10 MS. GRINSTON: But that's something we  
11 need to address because that was one of the  
12 recommendations that came over that possibly  
13 audits and/or examination costs be charged  
14 back to the person -- the auditee or the  
15 person being examined. I would like to throw  
16 that out there to see what the vote is or  
17 thought is on receiving those costs back to  
18 you, then we wouldn't have to worry about  
19 costs of the Board.

20 MS. EULER: Assuming you collect it.

21 MS. GRINSTON: Assuming -- you know.

22 MS. ERICKSON: As Sharon indicated with  
23 insurance companies, that's exactly how it  
24 happens whether it's a market-conduct  
25 examination or a financial examination. Our

1 examiners go in, conduct the examination.  
2 Sometimes it could take a few weeks, sometimes  
3 it takes months depending on the size of the  
4 insurer, and that is all charged back -- all  
5 of their time, their expenses is charged back  
6 to the insurance company, and there are  
7 certain funds dedicated by statute that the  
8 payment for these employees and their expenses  
9 comes out of, and from what I'm hearing, it is  
10 not economically feasible for the industry  
11 that you all have. It just not feasible.  
12 These are insurers. Hopefully, they're large  
13 enough to -- and if they want to do business  
14 in Missouri, they better be willing to accept  
15 these not just random audits, but they do have  
16 periodic audits, three, five years, whatever  
17 the time frame is. So, I do not think that  
18 having -- charging it back to you all is the  
19 right answer.

20 MR. OTTO: Yeah. I mean, I don't know  
21 how many mom-and-pop insurance companies we  
22 have in Missouri. Dad is 80 years old, has  
23 got a son that's taking over the business, and  
24 that's it. You can put somebody out of  
25 business real quick.

1 MS. ERICKSON: Well, that's an  
2 insurance company, not an agency.

3 MR. OTTO: I know.

4 MS. ERICKSON: Yeah.

5 MR. OTTO: But, yeah. But if we're  
6 talking about the 200 -- we're talking about  
7 auditing, some of them are very small business.

8 MS. ERICKSON: Well, they can be, but  
9 then, again, in those situations, Don, the  
10 audits are usually very small, too -- for  
11 those insurers, if they're that small. But it  
12 is a cost, yes.

13 MR. BUCHHOLZ: You're saying cost.  
14 What's it costing us now? I'm out \$60,000  
15 since the 1st of January, so what the hell?

16 MS. GRINSTON: Well, let me open the  
17 first one. Audit costs, examination costs,  
18 charge back to the seller. Anybody disagree  
19 with that?

20 MR. McCULLOCH: About the charge-back,  
21 yes.

22 (Several people talking simultaneously.)

23 MS. GRINSTON: Disagree. Let's do  
24 disagree. I think we're going to see this is  
25 going to be monumental. Anybody disagree with

1 charging the seller for the cost of the audit  
2 exam?

3 (Numerous people answer yes.)

4 MS. GRINSTON: All right. I think  
5 that one has failed. Now, let's talk about  
6 examinations every three years, every five  
7 years. The last time, you guys talked about  
8 every three years. Can I suggest, again, for  
9 financial reasons, that we at least look at a  
10 minimum of five years? Anybody have any  
11 objections to five years? I hear no  
12 objections. Larry, did you -- Mr. Stroud, did  
13 you have?

14 MR. STROUD: I was just going to make a  
15 comment. Larry Stroud. Why don't we just up  
16 our preneed sales -- this is going to be in  
17 effect, hopefully, next year. Why don't we  
18 increase that dollar amount on each preneed  
19 contract so that when our five years comes  
20 around, then we have -- I'm not saying raise  
21 it \$1,000, but we'll have some -- but we would  
22 have some money there. And I think you talk  
23 to your consumer and you explain to them,  
24 which we do, about this is their protection;  
25 okay? This is so the State can come in and

1       audit our books or whatever is necessary to  
2       make sure that these funds are there.  And if  
3       we charge \$30 or \$40 -- I'm just giving you a  
4       --

5               MR. MEIERHOFFER:  I'm going to tell  
6       you what really happens after you're through,  
7       though.  Go ahead.  What really happens to  
8       that money.

9               MR. STROUD:  Well, it better damn well  
10       stay in the pot.

11              MR. MEIERHOFFER:  It goes in the  
12       general account.

13              MR. STROUD:  I know they do.

14              MR. MEIERHOFFER:  They sweep these  
15       things --

16              MR. STROUD:  But it's time they got  
17       their act together.

18              MR. MEIERHOFFER:  Well, but you're not  
19       going to change it.  You're not going to  
20       change that, Larry.

21              MR. STROUD:  It's like she said, money  
22       grows on trees.  I'm sorry.  I -- you know, I  
23       didn't know that.

24              MR. MEIERHOFFER:  That's the dilemma.  
25       If we could keep our money --

1 MR. STROUD: But what I'm saying is,  
2 yes, and that money cannot go any place except  
3 in, by gosh, our auditing.

4 MS. GRINSTON: And, Larry, I think  
5 that's one of the suggestions that's been  
6 talked about in talking about fees.

7 MR. STROUD: Well, I'm tired of the  
8 government taking our money and government  
9 takes our money. It's our State Board of  
10 Embalmers and Funeral Directors, why should  
11 the State come in and sweep our funds?

12 MS. GRINSTON: Well, Connie fixed that  
13 for us.

14 MS. CLARKSTON: I did.

15 MS. GRINSTON: They voted that out  
16 last year so that we could stay out of sweep  
17 a little bit. But -- a little bit. Pretty  
18 much it allows us to lower fees.

19 (Several people talking simultaneously.)

20 MS. CLARKSTON: It's a lot better than  
21 you had.

22 MS. GRINSTON: Before, they were going  
23 to do a general sweep. Have you guys noticed,  
24 this year, you didn't fight the sweep fight at  
25 the Capitol? Connie was able, in talking with

1       --

2               MS. CLARKSTON: Representative Wasson  
3 and Senator Nodler.

4               MS. GRINSTON: -- Representative  
5 Wasson and Senator Nodler, she was able to  
6 suggest give us the ability to lower our fees  
7 by emergency rule if we're headed towards a  
8 sweep, that way, we can avoid the boards  
9 getting swept. That language went through  
10 this year and was passed as opposed to you  
11 guys having to fight out the sweep language.  
12 So, we did sort of save you guys from that  
13 fight -- not we. Connie did with the work of  
14 Senator Nodler and Representative Wasson. But  
15 on your charging per contract, that's probably  
16 an interesting suggestion. One of the  
17 concerns we have is that if the fees are too  
18 high, that charge by contract may go up  
19 incredibly high. For example, you know, what  
20 -- it's \$2 now. That charge to cover all  
21 expenses may go up, you know \$10, \$15, \$20,  
22 depending on how often we go in and how much  
23 we charge, or it could even go up higher than  
24 that. If we're doing 20 audits a year, you  
25 know, that could very clearly exhaust a huge

1 amount of funds all at one time. But I do  
2 think it's a mechanism that they probably  
3 could consider.

4 MR. STROUD: To me, it's a very fair  
5 mechanism to -- we're all going to be on the  
6 same playing field if we've got the same  
7 charge on every preneed that we sell, whether  
8 you're big or small. The big guy that sells  
9 500 preneeds a year, and he pays that \$20,000  
10 -- let's say \$40 a contract, but he knows  
11 there's going to be \$20,000 up there that --  
12 in case he gets audited, and he does that over  
13 five years, there's \$100,000 let's say. He  
14 shouldn't have to foot a big bill; read me?  
15 And it would apply to everybody in the funeral  
16 business. So, I -- to me, it's a fair way of  
17 going and not overcharging a family for a  
18 death certificate. Some people want death  
19 certificates and they don't have a bit of  
20 preneed; they could care less about it. So,  
21 let's don't gouge them in order to,  
22 unfortunately, take care of our preneed  
23 people. If a person wants a preneed, we can  
24 put that right in there, preneed charges, just  
25 like the \$2 today, we could do \$40. And that

1 money will stay in the State Board's account  
2 under a separate auditing dollars, and not to  
3 be swept away or played with.

4 MS. CLARKSTON: Well, and that concept  
5 is new. We're going to have to work on that  
6 language to protect that fund. It's not your  
7 general State Board fund.

8 MS. GRINSTON: But as far as fees go,  
9 we're going to ask that you give us a chance  
10 to run the numbers better so that we are  
11 working with the real numbers so you know what  
12 everyone is looking at. A couple of tie-up  
13 things that we haven't done. Forty-eight,  
14 allowing the Board to hire legal counsel.  
15 That is another one of the suggestions that we  
16 heard, and I'd like to open the floor for  
17 discussion on that.

18 MR. MEIERHOFFER: Okay. I think we  
19 need more lawyers. Why in the world would the  
20 Board hire another attorney? I guess that's  
21 -- and where would you get the money?

22 CHAIRMAN: Becky, how many boards are  
23 over there and how many have lawyers?

24 MS. GRINSTON: If I could, Connie is  
25 going to explain.

1 MS. CLARKSTON: Well, let me -- well,  
2 I'm not going to explain probably what you all  
3 want me to explain, but there -- you know, we  
4 have different types of boards within the  
5 division; we have autonomous boards and admin  
6 boards. The admin boards, obviously, use the  
7 division's legal counsel which is Kim and  
8 David Barrett. We have boards that are  
9 autonomous that have the ability in statute to  
10 hire a staff which includes legal counsel. We  
11 have four boards right now that are autonomous  
12 that do not have the ability to hire legal  
13 counsel, which includes this Board. There was  
14 a period of time -- and, Sharon, I'm sorry --

15 MS. EULER: That's okay.

16 MS. CLARKSTON: Okay. -- that this  
17 Board was not represented by the attorney  
18 general's office which left them without legal  
19 counsel. Now, we have been very fortunate  
20 that resources have allowed the division's  
21 attorneys to assist this Board along with the  
22 attorney general's office right now. But  
23 there is some concern about the amount of  
24 legal services this Board requires. You have  
25 two huge issues going on in this industry

1 right now. Resource is a problem. Kim  
2 services 15 boards. That's huge. So, there  
3 -- we are requesting some consideration to  
4 alleviate some of the burden on this Board to  
5 hire their own legal counsel. It may not be  
6 full-time staff; it may be contract as some of  
7 our other boards work under.

8 MS. EULER: I'd just like to clarify  
9 that the attorney general's office right now  
10 provides litigation services to all of the  
11 State boards including the Embalmers Board.  
12 At one point a few years ago, the attorney  
13 general's office provided litigation services  
14 as well as general counsel services, and that  
15 is what changed. The AG's office continues to  
16 provide litigation services and other special  
17 projects as requested. That's why I'm here.  
18 So -- and to clarify that.

19 MS. CLARKSTON: (Inaudible) -- the  
20 division obtained the internal counsel that we  
21 have. So, up until that point when that  
22 changed at the attorney general's office, we  
23 didn't have legal counsel that serviced the  
24 boards within the division. That since has  
25 come upon us, but it's a resource issue for us.

1 MS. DUNN: So, Mike, there was a  
2 period of time that the Board had no  
3 day-to-day legal counsel. So, the Board  
4 members themselves were concerned about making  
5 decisions on items that they had no legal  
6 advice to attain on items, so it's not like we  
7 would -- it would be a choice. We weren't  
8 exactly asking for an FTE, we were asking for  
9 the option to be able to retain a contractual  
10 outside legal counsel if we needed it.

11 MR. MEIERHOFFER: And, of course, the  
12 logical follow-up is how do you pay for it.

13 MS. DUNN: We could sustain that with  
14 the -- we've used Kim and Mr. Barrett over 500  
15 hours the last fiscal year.

16 MS. CLARKSTON: Now, the Board is  
17 charged back for those services. They're  
18 allocated time. So, right now, the Board is  
19 paying for those types of services.

20 MR. MEIERHOFFER: Through the State?

21 MS. CLARKSTON: Yes.

22 MS. DUNN: Through the fees that we  
23 have.

24 MS. CLARKSTON: For the setup that we  
25 have as a division through funding.

1 MR. MEIERHOFFER: I see.

2 MS. CLARKSTON: Now, one thing I think  
3 that Kim wanted to mention was the delays, and  
4 I guess I'll let you get into that.

5 MS. GRINSTON: And I say this  
6 respectfully, the other thing that has been a  
7 concern, because I work for Boards who have  
8 authorities to hire legal counsel and I work  
9 with their legal counsel, and Boards who  
10 don't. One of the concerns that has come up,  
11 also, and this is something you all have heard  
12 me say again, is the process for handling  
13 complaints. The AG's office represents, like  
14 Sharon said, all of the boards and divisions  
15 out -- boards and professions out at the  
16 division. To the extent that there's -- if  
17 there is an issue, like, I'm just going to  
18 throw out a name, NPS, and staff at the AG's  
19 office is dedicated to a task, there may be a  
20 problem with getting things prioritized and/or  
21 getting things through the AG's office because  
22 the AG's office's resources are dedicated  
23 somewhere else. That was one of the things  
24 that I think was a concern, that when we are  
25 in the situation where the AG's office may not

1 be able to handle something that may be more  
2 of a priority for the Board, that the Board  
3 have the ability to say, "Let's hire outside  
4 counsel. Can you handle this for us," even  
5 though they recognize that they are working in  
6 conjunction with the AG's office and everyone  
7 else to handle the services of the Board.  
8 And, again, I represent boards who are in both  
9 positions. They have authority to hire  
10 outside counsel and they also don't.

11 MS. CLARKSTON: And they utilize you  
12 on a regular basis.

13 MS. GRINSTON: Yes. Both --

14 MS. CLARKSTON: So, there's a  
15 combination of the two.

16 MS. GRINSTON: And there's a  
17 difference. For example, my boards who have  
18 the ability to hire outside legal counsel,  
19 they may do litigation of certain other  
20 issues, and then when it comes back to  
21 rule-making or legislation or personnel, I do  
22 all personnel stuff while they do all the  
23 litigation stuff. Some of the boards that I  
24 have, their attorneys do board meetings and I  
25 don't. Some boards, I do the board meetings

1 and they don't. It's really sort of handoff  
2 on how the board wants to use resources.

3 MS. ERICKSON: I guess I want to ask a  
4 direct question is: What would the Board and  
5 you, Kim, like to see happen? Would you like  
6 that authority to hire outside counsel or to  
7 contract?

8 MS. CLARKSTON: I think that from the  
9 division standpoint, and I'm sorry to speak  
10 ahead of the Board, we would like to see this  
11 Board have the ability to hire legal counsel  
12 or the staff that they need to administer  
13 these chapters. Right now, I believe it's a  
14 resource issue. The Board, obviously, can't  
15 afford any delays in any of the situations  
16 that they're readily dealing with right now.  
17 That's from the division. I hope I --

18 MS. DUNN: We've asked for it for  
19 several years.

20 CHAIRMAN: And the Board would really  
21 like it, so --

22 MR. MEIERHOFFER: Well, what's the  
23 downside then? I guess I should ask this:  
24 What's the downside?

25 MS. CLARKSTON: I think it's probably

1 an education issue, that if we put something  
2 like that in a legislative proposal, that  
3 there is not a brick wall that we hit at the  
4 Capitol. So, this was providing an  
5 opportunity and a forum for us to discuss what  
6 we need.

7 MR. MEIERHOFFER: Okay.

8 MS. DUNN: Consumers do ask the Board  
9 why it takes us so long to pursue a case.  
10 And in defense of the attorney general, they  
11 have a great deal of workload. We go into  
12 almost a three-year statute of limitations on  
13 some cases because that's how long it takes to  
14 -- for them to work with a consumer case.  
15 So, if you had the ability to use an outside  
16 legal counsel, you could possibly utilize them  
17 and possibly speed up the process. And this  
18 is nothing negative against the attorney  
19 general, but you have the workload, too.

20 MS. CLARKSTON: Someone just asked me  
21 about cost. Obviously, that's something we  
22 would have to evaluate, but we've just simply  
23 not had the time to do. What my proposal  
24 would be, with the Board's permission, is to  
25 work with Becky and Kim, and to look at a

1 board of similar size that has contracted out  
2 a similar number of hours to see what those  
3 transfer costs were, what their contract hours  
4 were, and kind of come up with an estimate of  
5 what those legal fees would be and how this  
6 Board would be impacted, which would,  
7 obviously, affect our fiscal numbers.

8 CHAIRMAN: Anybody got any problems  
9 with this? Okay. Apparently not. Go ahead.

10 MS. GRINSTON: Okay. No problems.  
11 Last major topic I think that we had out there  
12 was the treatment of joint accounts. Well,  
13 before I do joint accounts, let me back up to  
14 something that I did forget. One of the  
15 issues that is a continuing problem with the  
16 Board is the ability -- is what happens when  
17 the Board ceases -- when a company ceases  
18 doing business. I'd like everyone to look at  
19 the proposals that are on -- let me get the  
20 right draft -- pages 36 through 40. And,  
21 again, look at any suggestions you may have to  
22 that language, if you could e-mail those in.  
23 I think everyone -- from our earlier  
24 discussions, everyone appeared to be okay with  
25 the Board having a process for ceasing to do

1 business and being able to actually go in and  
2 look at the books and records before you  
3 cease. And I think that we just played with  
4 some language, but let us know if that is in  
5 line with what you -- what I believe you  
6 authorized was the ability of the Board to go  
7 in and actually look at the books and records  
8 prior to someone ceasing doing business.

9 CHAIRMAN: Sharon?

10 MS. EULER: I'd like to add a comment  
11 that I think this is all fine when we have a  
12 nice orderly process, but I get involved in  
13 cases when things have gone south. And I  
14 think that the statute needs to provide the  
15 Board with some authority on how to handle a  
16 situation when a preneed seller or a preneed  
17 provider locks the doors and walks away.  
18 Because this process is good when you've got  
19 an orderly sale, but if you've got somebody  
20 whose funeral home has been foreclosed upon,  
21 or you've got somebody who simply walks away,  
22 closes the door, funeral director dies, things  
23 happen, and I think the Board needs to have  
24 some authority when that happens to take  
25 charge of books and records or has -- I'm not

1 sure what the answer is, but that needs to be  
2 addressed.

3 MR. MEIERHOFFER: What are you asking  
4 for, essentially?

5 MS. EULER: What I'm asking for is for  
6 the Board to be given some authority to step  
7 in and take action when there's not a sale,  
8 where the funeral home just closes, where they  
9 walk away, so somebody can go in and make sure  
10 that those contracts are transferred, the  
11 records, you know, the files are maintained,  
12 something.

13 MR. MEIERHOFFER: Okay. I'm going to  
14 ask a silly question. I don't know what the  
15 Board's legal ability is. Realizing the  
16 problem, say, okay, we need to get in there,  
17 then what happens from there? I mean, I can  
18 understand -- but they're not going to be able  
19 to order -- maybe the sheriff can go in there  
20 or the public administrator or -- no? So,  
21 you're looking for legal language here to --

22 MS. GRINSTON: But can I echo your  
23 comments because it may be a good idea for the  
24 -- since we're talking about an entity that's  
25 already ceased doing business and not going

1 through the process, that that authority be  
2 given to the AG's office or someone who can  
3 actually go in and get into the books and  
4 records, to go in and audit or to take actions  
5 necessary when we have someone who just goes  
6 out of business, locks doors, and doesn't do  
7 anything.

8 MR. MEIERHOFFER: So, the Board is  
9 notified and turns it over to the AG and they  
10 do it; right?

11 MS. GRINSTON: Yeah.

12 MS. ERICKSON: I was going to  
13 recommend that any such authority to enter a  
14 premises and remove any items would belong to  
15 the AGO. There is the attendant risk that the  
16 property may be owned by someone else and it  
17 is a trespass. And if you remove property,  
18 that's theft. And if the AGO has the  
19 authority, well, as the chief law-enforcement  
20 officer, to go in and protect consumers, he  
21 can use that authority, where the Board -- it  
22 should not really be risking itself in that  
23 situation.

24 MR. MEIERHOFFER: I agree to that  
25 wholeheartedly.

1 MS. EULER: We've had situations where  
2 the State Board has been called and, you know,  
3 the sheriff or the landlord or the bank is  
4 going to take all the funeral-establishment  
5 files and records and put them out on the  
6 curb. And somebody needs to have the  
7 authority to step in in that situation.

8 MR. MEIERHOFFER: In a timely manner.  
9 Quickly.

10 MS. EULER: In a timely manner.

11 MS. GRINSTON: I'm seeing nods, giving  
12 the attorney general's office --

13 CHAIRMAN: Everybody agrees to that.

14 MS. GRINSTON: -- authority to seize  
15 and/or capture books and records to determine  
16 obligations and take any action necessary and  
17 vest it in the attorney general?

18 MS. EULER: That's fine.

19 MS. GRINSTON: Does anyone have an  
20 objection with that? That was very quick.  
21 The last thing, and this is the last  
22 discussion, joint accounts. Joint accounts  
23 has been the one subject that we really  
24 haven't talked about too much.

25 MR. OTTO: I've got my one little

1 thing.

2 MS. GRINSTON: Oh, yeah. Don has got  
3 one little thing.

4 MR. OTTO: I've got one little thing.  
5 I'm sorry. But in the last three-quarters of  
6 a second when we were talking about death  
7 certificates and their certificate of  
8 performance, the word "or" got thrown in  
9 there, that you would do a death certificate.  
10 I've got a problem with that because Warren  
11 Funeral Home could have sent in a lot of death  
12 certificates and they never performed the  
13 funerals. So, a seller, I don't think, should  
14 be obligated to pay the funeral home without a  
15 piece of paper saying that they did the  
16 funeral because the death certificate just  
17 says the person has died, it doesn't say that  
18 the funeral home did the funeral. And,  
19 unfortunately, we have a very nasty example  
20 this last week where, arguably, a person  
21 wasn't -- I mean, at least you'd have a piece  
22 of paper saying that they did the funeral. If  
23 all it is is the death certificate, you don't  
24 know if the funeral home has provided the  
25 goods and services that the purchasers paid

1 for.

2 MR. MEIERHOFFER: Well, they're  
3 warranting, they don't necessarily provide it;  
4 right?

5 MR. OTTO: What?

6 MR. MEIERHOFFER: They can warrant it,  
7 but they may not necessarily have done it.

8 MR. OTTO: Yeah. Yeah. But then at  
9 least you have -- you've got a cause, you've  
10 got something to go against.

11 CHAIRMAN: Good point.

12 MS. GRINSTON: So, are you suggesting,  
13 Don, that we go back to the certificate of  
14 performance --

15 MR. OTTO: Well, I don't mind -- I  
16 don't even require -- I don't mind both, but  
17 the death certificate, I don't think, is  
18 enough in and of itself.

19 MS. EULER: Why don't we add a  
20 provision that the preneed seller may require  
21 a copy of the certified death certificate so  
22 that that's covered.

23 MR. OTTO: That's fine. That's works  
24 good.

25 MS. DUNN: What did you say, Sharon?

1 MS. EULER: That the preneed seller may  
2 require copies of the death certificate before  
3 paying out.

4 MS. ERICKSON: In addition to the  
5 certificate of performance. Thank you.

6 MS. GRINSTON: Any objections to that?  
7 I think that was a good point made. Joint  
8 accounts, we haven't really talked about joint  
9 accounts much. When we originally started our  
10 discussions, I think that the thought was that  
11 joint accounts would pretty much be maintained  
12 the same way they are now because of the  
13 nature of a joint account and some of those  
14 issues. I'd like to open the floor to  
15 discussion on any issues with joint accounts,  
16 and this doesn't have to be very long at all.

17 MR. MAHN: I'd leave them alone.

18 MS. GRINSTON: Todd says leave them  
19 alone. Don?

20 MR. OTTO: I just know there's  
21 questions from the membership as to why it's  
22 different on 80-20 versus 100 percent on joint  
23 accounts. There are people out there that  
24 feel it should be the same, that if it's 80-20  
25 for a trust, it should be 80-20 for a joint

1 account; if it's 90-10, 90-10, or whatever,  
2 but they should match up.

3 CHAIRMAN: Sharon?

4 MS. EULER: I think joint accounts  
5 should be 100 percent because there aren't any  
6 administrative expenses like we're being told  
7 there are with trust accounts. You go down to  
8 the bank, you put your money in the bank, it  
9 sits there until they die.

10 CHAIRMAN: Well, they've got the  
11 lights on, they've got the contract they've  
12 got to get all on the computer and put it on  
13 there. That takes the secretary a few hours  
14 to do that. There's some costs to it.  
15 You've got to spend an hour or two with the  
16 family.

17 MS. EULER: Do you have a rubber band  
18 for him?

19 CHAIRMAN: Todd?

20 MR. MAHN: I reiterate. I say we move  
21 -- leave it alone. We've got one less monster  
22 we've got to deal with next year.

23 MR. MEIERHOFFER: In retrospect, yeah,  
24 Todd is right because you have the opportunity  
25 to do the 80-20, 90-15 trust insurance. Those

1 are opportunities that the funeral director  
2 has. If he elects to go that way, then he  
3 needs to go 100 percent with his bank accounts.

4 MS. GRINSTON: The recommendation is  
5 not to change joint-account provisions. Any  
6 objections?

7 MR. STALTER: Now, let me just ask a  
8 question, though. Isn't it an issue about  
9 whether they're complying with the  
10 joint-account contracts? I mean, what we're  
11 hearing about is that everybody is putting  
12 them into a single CD or putting them into a  
13 single account as opposed to separate CDs for  
14 each joint account. I mean, that's -- I mean,  
15 basically, that's just the rumors out there  
16 right now.

17 MS. GRINSTON: So, are you suggesting  
18 that we clarify no commingling?

19 MR. STALTER: Well, I think it's  
20 clear, it's in there now, but I think it's a  
21 matter of just finding out whether they're in  
22 compliance or not.

23 CHAIRMAN: Well, let me ask this: If  
24 you're not going to change them, and a guy is  
25 going to do joint accounts, and you're going

1 to penalize him the 10 percent or whatever  
2 you're going to penalize him, then why do you  
3 need to audit him if he's got joint accounts  
4 and he can send the face sheet of the contract  
5 and the CD in and the bank, why do you want  
6 to audit him every five years?

7 MR. TODD: We don't.

8 MS. EULER: I don't see any reason to.

9 (Several people talking simultaneously.)

10 MS. GRINSTON: So, are we saying  
11 exempt the joint-account people from the  
12 auditing -- I mean, the five-year examination?

13 CHAIRMAN: I think you need to set up a  
14 different kind of --

15 MS. GRINSTON: Audit?

16 CHAIRMAN: -- audit.

17 MR. STALTER: Or report.

18 CHAIRMAN: Or report. Right.

19 MR. STALTER: Different kind of, yeah,  
20 report.

21 MS. GRINSTON: Okay. A report from the  
22 seller?

23 CHAIRMAN: Right.

24 MS. GRINSTON: As opposed to a full  
25 examination? The recommendation is have some

1 type of financial report from the seller as  
2 opposed to a full examination or audit for  
3 joint-account people.

4 MR. OTTO: Well, no. I mean -- no.  
5 No. It's just different reporting  
6 requirements each year. But you can steal  
7 somebody's money just as easy with a joint  
8 account as you can with a trust. If you  
9 exempt people that do just joint accounts from  
10 auditing, guess where all of NPS's money would  
11 have been.

12 CHAIRMAN: So, let me get this  
13 straight. There's how many funeral homes in  
14 the State of Missouri? Seven hundred -- six  
15 hundred and something. How many under 75  
16 calls a year, and you're going to get those  
17 guys to pay every five years \$5,000 or \$6,000  
18 for their audit?

19 MR. OTTO: Well, we just said that you  
20 weren't going to pay individually.

21 CHAIRMAN: Oh, yeah, we're going to pay  
22 individually.

23 MR. MEIERHOFFER: Somebody is going to  
24 pay. That part we know.

25 CHAIRMAN: You know, there's no song

1 and dance you don't pay for. Bob?

2 MR. BAKER: I want to play devil's  
3 advocate for a minute. I just came into the  
4 funeral service. I see all of this problem  
5 with NPS because of a trust. I want to keep  
6 my money locally, I want to know where it is,  
7 I want to control it, but, yet, I want to  
8 have some people out representing me to sell  
9 it, I just don't want to deal with a third  
10 party somewhere in a trust. I can't afford my  
11 own. What's wrong with having it the same way  
12 that we have the trust? You just choose that  
13 as the funding mechanism versus a third party  
14 where your own trust costs you too much money  
15 and your CDs, if you can live with that, you  
16 know where the money is.

17 CHAIRMAN: Todd?

18 MR. MAHN: I say we're just opening up  
19 a can of worms to tap the money in joint  
20 accounts. It's not happening now, leave it  
21 alone. The funeral homes have done it for  
22 years, you know. We have put them in joint  
23 accounts. If a funeral home can't afford it,  
24 to stay in business because they can't tap it  
25 out of their joint accounts, they don't need

1 to be in business.

2 MS. GRINSTON: Okay. The  
3 recommendation was that we leave joint  
4 accounts alone and maintain the status quo.  
5 All those in favor of that for joint accounts,  
6 say aye. Opposed? Maybe we can register  
7 anyone who is opposed to that.

8 (Unanimous voice vote for approval.)

9 MS. GRINSTON: Hearing none, the  
10 chairman's suggestion that we do get a  
11 financial report from joint-account people,  
12 anyone opposed to that? Hearing none, then I  
13 think we've put that to bed. Those are the  
14 major issues that I can identify, I think,  
15 that were left and outstanding for us. Again,  
16 we're going to go back and do the process that  
17 we looked at and we'll give Connie a chance to  
18 have any comments about the way your comments  
19 come in.

20 MS. CLARKSTON: Again, if you'll send  
21 it to the e-mail that was handed out, that  
22 would be extremely helpful.

23 MR. OTTO: So, what is the -- are we  
24 having a meeting on the 20th? Are we not? I  
25 mean, we skipped over one major huge section

1 on page 19, the insurance-funded preneed  
2 contracts. Are we just ignoring that one?

3 MS. GRINSTON: Yeah. I thought we --  
4 what do you mean?

5 MR. OTTO: We didn't talk about it.

6 MS. GRINSTON: I thought that we did  
7 have a discussion that insurance-funded  
8 preneed contracts would be allowed. We would  
9 limit the type of insurance-investment options  
10 that could apply, and I think we were going to  
11 clarify what the preneed law applied to, and  
12 that was generally about all that we agreed  
13 with on insurance-funded preneed contracts.  
14 Is there something else in insurance-funded  
15 preneed contracts, because, again, remember,  
16 we're not looking at this language anymore.  
17 We're just looking at agreed-upon concepts.  
18 If you want to send comments on the  
19 insurance-funded section, because we are not  
20 going to be giving them this language as our  
21 official proposal by itself. We are going to  
22 be giving them a list of agreed-upon topics,  
23 and so, for insurance funding, we're going to  
24 list what we agreed upon on insurance funding.  
25 Is there something specific on insurance

1 funding, because we have time if there's  
2 something you would like to -- if there was  
3 something else, Don?

4 MR. OTTO: Well, yeah. I mean,  
5 there's a lot -- I don't think we have time,  
6 probably. I mean, there's all the issues that  
7 we talked about the disclosure statements, we  
8 talked about the -- with the consumers. We  
9 talked earlier about making sure the -- like I  
10 said, there was a ton of stuff that can't --  
11 you know, does the consumer get notified as to  
12 what happens when the insurance policy is  
13 canceled? Are we going to require that under  
14 333 or 436 or whatever it is? Does -- I  
15 mean, does the consumer know -- you know, what  
16 kind of reporting requirements are going to be  
17 required for the insurance-funded preneed  
18 contracts that are or are not different from a  
19 trust?

20 MS. GRINSTON: And I think that on your  
21 question about reporting to the purchaser, I  
22 think that you all said that you did want that  
23 disclosure on cancellation issues to be  
24 disclosed, and we had some discussion about  
25 who should disclose it because we didn't know

1 if we wanted the seller to disclose it or the  
2 insurer to disclose the cancellation  
3 requirements on that contract. And then we  
4 talked about the model disclosure  
5 requirements, I think, that insurance had in  
6 place. Some of the remaining part of that  
7 about disclosures by the insurance, by someone  
8 selling an insurance-funded preneed contract,  
9 I don't know. We had some suggestions that  
10 were in here on language, but they pretty much  
11 modeled what a trust-funded person was  
12 required to sell. My suggestion would be that  
13 if -- that you allow Connie and I to list out  
14 what you have agreed on and then if there are  
15 additional suggestions and/or comments to  
16 discuss, that we all submit it in the form of  
17 a comment unless -- you know, unless there is  
18 something else specifically by topic that you  
19 would like to discuss?

20 CHAIRMAN: Todd is saying no? Is that  
21 a no, you don't want to --

22 MR. MAHN: No, that's a no.

23 MS. GRINSTON: Todd said yes.

24 MR. OTTO: The last thing is -- again,  
25 we don't have to discuss it, but I just want

1 to throw it out there. I'm going to put it  
2 on my comments if nobody else does, but this  
3 is on page 8. This is the requirements to be  
4 what we're now calling a preneed agent. We've  
5 got a list of things there that you have to  
6 have. This is real easy if it's in Chapter  
7 333. You'd have to have better wording if it  
8 were out of it. But I think there should be  
9 added a #7 under there -- it goes #1, #2, #3,  
10 #4, #5, #6. I would just say that the  
11 preneed agent shall have successfully  
12 completed the Missouri law examination.

13 MS. GRINSTON: And I think that was  
14 one of the issues that we had as a comment.  
15 I think that the last consensus vote we had  
16 was no testing, but, again, as far as a  
17 comment, please -- as you guys submit them  
18 into us, we will reflect it as a comment to  
19 them, but I think that the last vote that we  
20 had as a consensus was no testing on that  
21 issue.

22 MR. MAHN: Hey, Kim. That is a pretty  
23 good one. Can we -- I don't think -- can we  
24 --

25 UNIDENTIFIED: We didn't vote on that

1 one.

2 MR. OTTO: I call for a revote on that  
3 one.

4 MR. MAHN: Let's just put it to a  
5 revote.

6 CHAIRMAN: I agree.

7 MS. GRINSTON: Okay. Okay.

8 CHAIRMAN: All in favor of a funeral  
9 -- what is it -- counselor --

10 MR. OTTO: A preneed agent --

11 CHAIRMAN: Preneed agent.

12 MR. OTTO: -- having successfully  
13 completed the Missouri law examination.

14 CHAIRMAN: All in favor of that?

15 (Numerous people answer aye.)

16 CHAIRMAN: All opposed?

17 MR. McCULLOCH: Opposed. Get me down  
18 on that one.

19 CHAIRMAN: That was a bunch. That was  
20 everybody against one.

21 (Several people talking simultaneously.)

22 MS. GRINSTON: All right.

23 MR. MEIERHOFFER: Mr. Chairman,  
24 question about the next meeting. Is this  
25 going to --

1           CHAIRMAN: Folks, I mean, I know this  
2 has really been painstaking. I mean, God, I'd  
3 rather go to the dentist. But, anyway --

4           MR. MEIERHOFFER: I did that yesterday.

5           CHAIRMAN: Yeah. Do you want to come  
6 back? I mean, if you all want to go to the  
7 Lake, we'll be more than glad to entertain you  
8 down there, buy you a few drinks, watch the  
9 fight in the bar we're going to have.

10          MS. ERICKSON: Who's fighting, Jim?

11          CHAIRMAN: Come and see. Becky is  
12 going to weigh us in. I mean, if you think  
13 you're uncomfortable with some of this and  
14 would like to readdress some of the issues,  
15 we'd be more than glad to do that.

16          MS. ERICKSON: I'd like to say that I  
17 thank all of this committee for all of their  
18 hard work, and we've had difficult  
19 discussions, but it's been very enlightening.  
20 I think that Becky, Kim, and Connie are going  
21 to be commended when we see the final product  
22 with all of our comments. And I, for one, do  
23 not feel a driving need to go to another  
24 meeting to look at the same comments that  
25 we've talked about for the last six weeks, but

1 it's been a pleasure to meet with all of you,  
2 and if you all need anything, please don't  
3 hesitate to call me, but I vote we do not  
4 have another meeting.

5 MR. MEIERHOFFER: Could I have a time  
6 line of where we're going with this? When  
7 will we see the comments back as you're going  
8 to get them together, Connie?

9 MS. CLARKSTON: We are hoping by this  
10 Friday to be able to take this draft and the  
11 comments we have received thus far and send  
12 those out to everyone -- by this Friday.  
13 Given that everybody behaves and we have no  
14 major issues to deal with; okay? That caveat  
15 being said, and if you could get your comments  
16 back to us by Friday, the 22nd. Okay.

17 MS. DUNN: Why don't you explain to  
18 them what -- like the legislation we got last  
19 week, because these -- not everyone may have  
20 known what we went through.

21 MS. CLARKSTON: Okay. Are you talking  
22 about the legislative process as a whole?

23 MS. DUNN: Yes.

24 MS. CLARKSTON: Okay. When a piece of  
25 legislation is introduced, our typical process

1 as a State agency is we receive what's called  
2 a fiscal note, so they ask us what it's going  
3 to cost us as a State agency to administer  
4 that chapter. The other part of the process  
5 is is that we also inquire of the Board what  
6 impact is this going to have, maybe not  
7 monetarily, but how would they implement it.  
8 So, that's when we get into a line by line,  
9 and that's what this Board got into last year.  
10 When the first preneed bill came through, we  
11 went and sat down and went line for line and  
12 talked about the effects of the language. The  
13 process that's kind of happening now is this  
14 will not be a Board proposal, it's a  
15 recommendation that will be given to the Joint  
16 Committee. I expect, in some fashion, it will  
17 come back to us asking for fiscal input and  
18 the Board's -- if they have any changes or  
19 concerns about implementing that process. But  
20 where we go from here is we give a draft --  
21 two draft documents to the Joint Committee.  
22 The draft language with the comments, and then  
23 the topics of discussion that were agreed upon  
24 or that still need to have some discussion  
25 that occurs. I'd like to report off kind of

1 who's saying what, who has what opinion so  
2 they have some idea. Now, what happens after  
3 the 22nd, I guess that needs to be left up to  
4 this group how you want to handle it after we  
5 get the draft out, the comments received back,  
6 put back into the document. I'm assuming we'd  
7 send that back out to you, but, Becky, where  
8 do you want to go from there? Once we get to  
9 the 22nd, and I have their comments back in  
10 the draft, do we stop there or do you want to  
11 go to the Joint Committee with it or do you  
12 want --

13 MS. DUNN: We could possibly, if the  
14 Board agrees and this committee, we could  
15 possibly schedule a meeting the week of August  
16 28th or 29th or whatever that week is.

17 MS. GRINSTON: And that may actually  
18 even be done by conference call because, by  
19 then, you'll have a document in front of you  
20 with comments and everything else suggested  
21 in. You'll be able to give us any revisions,  
22 and maybe that week, possibly schedule a  
23 conference call for maybe a half an hour or so  
24 just to hear if there are any last lingering  
25 comments.

1           MR. STALTER: Kind of like rebuttal;  
2 just a final chance of rebuttal.

3           MS. GRINSTON: Twenty minutes, yeah.  
4 Seventeen minutes at the max -- I'm joking --  
5 for the conference call, and then maybe once  
6 that draft is done, then get something  
7 approved that we could submit to the Joint  
8 Committee as a product of what we've worked on  
9 the week of the 29th.

10          MS. NEUMANN: Kim, Tim wanted me to  
11 thank everybody for their time and effort in  
12 this, and we hope to help him in session to  
13 get this thing out -- the House and the  
14 Senate, and signed by the governor, and he's  
15 going to need those -- (inaudible) -- to get  
16 this out. Without your help, it's not going  
17 to go anywhere. We've tried it for two years  
18 and it's died. We need the help. We really  
19 appreciate all that you have done, your time  
20 and your effort. And since he won't send me  
21 to the Lake, I'm not in favor of the Lake,  
22 either.

23          MS. GRINSTON: Connie had one last  
24 thing.

25          MS. CLARKSTON: The other thing that

1 you'll see coming from the division will be  
2 Chapter 214. We had some -- a meeting last  
3 week and we'll have another one Thursday  
4 coming out with a similar type of product to  
5 give to the Joint Committee. If you are  
6 interested in receiving that, as well, if you  
7 will send me an e-mail, I will assure you that  
8 you will get that once that committee has  
9 signed off on it -- committee meeting  
10 roundtable.

11 MS. DUNN: Connie, could you make sure  
12 everybody provides their comments to you so  
13 that -- because it --

14 MS. CLARKSTON: Okay. I've said that  
15 about three times, so if you could provide  
16 your comments to me so that I can help Becky,  
17 because we're getting them -- you know, if  
18 they're coming into here, she's dealing with a  
19 tremendous amount in her office. If we could  
20 just organize that they come to us, it would  
21 be very, very, very helpful to the process  
22 both on 214 and 436.

23 (Several people talking simultaneously.)

24 CHAIRMAN: Todd?

25 MR. MAHN: I would just like to say --

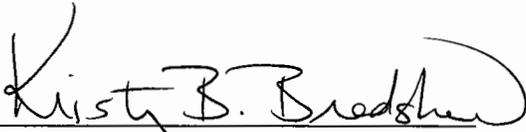
1 I'd like to reiterate and thank everyone on  
2 this panel. We've had some heated  
3 discussions, but I respect everybody on this  
4 panel. And, you know, it's all -- everybody's  
5 interest in the public and seeing everything,  
6 you know, gets taken care of. And I would  
7 also like to mention that the 6th and 7th  
8 district over in St. Louis, we're having a,  
9 well, second annual barbecue at my house on  
10 September 20th, Saturday evening, and everyone  
11 is invited. Calvin, our president over there,  
12 will be getting that information out to  
13 everyone and he'll be communicating with Don  
14 and we're to RSVP and stuff like that so we  
15 know how many to cook for, but we're going to  
16 have a barbecue that evening on Saturday, the  
17 20th.

18 CHAIRMAN: Okay. All right. Thank  
19 you all.

20 (Off the record)

I, Kristy B. Bradshaw, a Certified Court Reporter, within 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 August 12, 2008; that said proceedings were recorded by me and afterwards transcribed under my direct supervision.

Given at my office this 12<sup>th</sup> day of September  
2008.

  
KRISTY B. BRADSHAW, CCR

# 2008-08-12 AARP Comments



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August 11, 2008

Members of the Chapter 436 Review Committee  
c/o Connie Clarkston  
Missouri State Board of Embalmers and Funeral Directors  
3605 Missouri Boulevard  
P.O. Box 423  
Jefferson City, MO 65109

Dear Members of the Chapter 436 Review Committee:

AARP appreciates the opportunity to comment on several weeks of discussions relative to revisions of Chapter 436. While the past several weeks' discussions/deliberations have been enlightening, it is incumbent upon every member of this committee to make thoughtful and equitable decisions that reflect support for consumers. AARP realizes the impact the outcome of this committee will have on consumers for many years to come. It is our belief many of the proposed changes can strengthen or relieve much ambiguity in the current statute.

As stated in previous meetings, AARP supports recommendations submitted by the Funeral Consumers Alliance and the Silver-Haired Legislature. Several issues rated as priorities in our preneed survey include: licensing/registration; reporting/notifications; preneed funds; trust issues; complaints/discipline. Therefore, because these issues were highlighted as top priorities by other members of the committee, AARP is hopeful the committee can do the right thing in terms of reaching agreement on issues important to our members.

Sincerely,

Norma J. Collins  
Associate State Director-Advocacy

**2008-08-12 Bill Stalter Letter to Connie Clarkston 436  
Recommendations**

## STALTER LEGAL SERVICES, LLC

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August 7, 2008

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 29<sup>th</sup> 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:

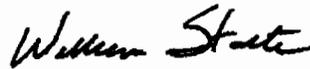
- Basing the consumer's cancellation/transfer rights on deposits plus accrued income exposes the funeral home to market variances. If consumers are to be afforded greater rights in the trust account, they need to share in the market risk.
- If the consumer's cancellation rights are less than the transfer 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

**2008-08-12 Bill Stalter Letter to Linda Bohrer 436  
Recommendations**

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August 7, 2008

Linda Bohrer  
Acting Director  
Missouri Department of Insurance,  
Financial Institutions & Professional Registration  
301 West High St, Room 530  
PO Box 690  
Jefferson City, MO 65102

Re: Missouri Division of Finance (MDF)  
Death Care Trust Oversight

Dear Ms. Bohrer:

The attached legislative proposals have been submitted to the Chapter 436 Review Committee on behalf of the Department. While I do have dissenting comments, I believe that the legislature should give consideration to expanding upon your proposals.

### **Transfer of Fiduciary/Trust Oversight**

With regard to insurance funded preneed contracts, the Chapter 436 Review Committee agreed that oversight of insurance companies should be handled by the Missouri Division of Insurance. I would suggest that oversight of financial institutions that provide fiduciary services for preneed trusts (funeral or cemetery) and endowed care funds be transferred to the Missouri Division of Finance ("MDF"). This would give rise to a jurisdictional issue for federally chartered institutions. However, Missouri could follow the course adopted by other states in allowing for special consents of process that limit the institution's submission to jurisdiction to specified trust accounts.

There is little doubt that Chapter 436 reforms will impose greater requirements upon death care fiduciaries. The MDF will be better equipped than the State Board of Embalmers and Funeral Directors ("State Board") to assess whether financial institutions are fulfilling their obligations to consumers and death care companies.

Trust funded preneed differs from the insurance funded transaction in that the fiduciary is dependent upon the funeral home/cemetery for individual consumer data. This will remain an issue after reform, and thus, would require the MDF and State Board to coordinate more than what is contemplated for the insurance funded transaction. Accordingly, funding for enforcement procedures will have to be provided to both agencies.

### **Rulemaking Authority**

While the Chapter 436 Review Committee has agreed that the State Board should be afforded rule making authority for the preneed transaction, that authority should be restricted to licensed Chapter 333 entities and preneed sellers. (I would anticipate similar provisions to be established under Chapter 214.) With regard to death care fiduciaries, the MDF should be afforded rulemaking authority to ensure proper oversight of the preneed fiduciary.

While certain trust issues need to be addressed by statute (the required trusting percentage and income accrual/rights), other fiduciary related requirements would be better addressed by regulation:

- Pooling administration
- Income/expense allocations
- Trust expenses
- Service provider arrangements
- Reporting and certifications
- Classifications for civil penalties

### **NPS Abuse Remedies**

Missouri's regulators have been guarded when releasing information about the NPS abuses. The public has come to understand that the NPS preneed trusts invested in insurance issued by a related insurer, and that those policies were improperly administered. However, it is difficult to debate provisions intended to preclude NPS abuses when the public is not fully informed as to those abuses.

I agree that RSMo §436.031.2 should be revised to ensure that the trustee is ultimately responsible to provide investment oversight. However, the fiduciary must be afforded a more definitive investment standard. Accordingly, I would recommend that the Prudent Investor Rule be expressly incorporated instead of the isolated references to "prudence".

In addition to the Department proposals, there have been comments made during the Chapter 436 Review Committee meetings that the trustee must always have 'control' over the trust assets. This term is somewhat nebulous with regard to investment delegated to an independent investment advisor. I would suggest that the fiduciary must have title over the assets, and the responsibility for determining compliance with the Prudent Investor Rule.

### **Specific MDF Proposals**

#### 436.027.1 (and 436.032.1.(3)(d)) – Trusting Percentage and Income Disbursements

The 85% trusting requirement may represent a fair compromise in the absence of industry evidence of actual sales expense. A sales expense of 15% would allow trust-based programs to compete with the commissions paid by insurance companies. Because the 85% requirement is lower than that sought by consumers, the industry should concede the income accrual requirement. However, regulators cannot

impose on the fiduciary the responsibility of determining how much income needs to be accrued. All income should be accrued, leaving the question of the consumer's rights to income upon a termination or transfer.

436.032.1(3)(a) – trust administered solely in the interests of the purchasers and beneficiaries

This provision could create irreconcilable conflicts for the fiduciary with regard to any issue that is not expressly addressed by statute or regulation. Defined contribution pension plans contemplate funding by trusts that must be administered solely in the interest of the plan participant. The statutes and regulations known as ERISA are voluminous. To dictate the fiduciary's duties are owed solely to purchasers/beneficiaries without comprehensive guidelines will force reputable institutions to decline the death care account.

436.032.1(3)(e) – prohibition of investment advice by seller agent

If the fiduciary contracts with an independent investment advisor, it should make no difference whether the advisor has a relationship with the seller so long as the fiduciary remains responsible for the trust's compliance with the Prudent Investor Rule and retains title of the assets.

436.032.3 – Cease and Desist Orders

While the Division of Finance will need enforcement powers (perhaps civil penalty provisions similar to those discussed for Chapter 333 licensees), this provision is too vague.

436.032.4 – Fiduciary Reporting and Seller Suspension

Some form of progressive discipline is needed in lieu of program suspensions. Mutual accountability should be required of the death care company and the fiduciary. Transferring preneed (endowed care) fiduciary oversight to the MDF would negate the need for drastic license actions against funeral homes or cemeteries when the deficiency is solely the fault of the fiduciary.

436.057.2 – Trust Exams/Audits

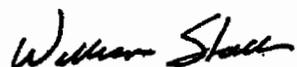
While individual contract sub accounting records are the cornerstone to determining a preneed trust's financial status, funeral directors have a legitimate concern about turning sensitive consumer data over to the State Board. This concern could be addressed by trust reports to the MDF that can be disclosed in situations where cause is shown. However it will be necessary for State Board inspectors to access trustee reports for purposes of reconciling the funeral home's preneed accounts.

436.057.2 – Trust Deficiencies

As today's markets will demonstrate, a 90% threshold of the amount paid is too high for new contracts. A benchmark may be needed for identifying distressed trusts, but this may be a standard that needs to be set by regulation.

I appreciate your consideration of these issues.

Sincerely,



William Stalter

### 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 31<sup>st</sup> 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 31<sup>st</sup> 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 31<sup>st</sup> 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.

# **2008-08-12 Draft of Trusting & Cancellation**

## TRUSTING

333.800.1 One-hundred percent of all payments received for a trust-funded preneed contract shall be deposited into trust within forty-five days of receipt by the seller or the seller's authorized agent. For the purpose of covering administrative expenses, the seller may request from the trustee an amount not to exceed twenty percent of the face value of the contract for the purpose of covering his selling expenses, servicing costs, and general overhead. Such funds may be deducted by the trustee from the initial preneed fund payments.

2. Within thirty days after a provider and a witness has shall certified in writing to the seller that the provider has provided the disposition or the services, facilities, and merchandise described in the contract, or has provided alternative funeral benefits for the beneficiary pursuant to special arrangements made with the purchaser, the seller shall pay to the provider a net amount equal to all payments required to be made to the provider pursuant to the written agreement between the seller and the provider. Upon delivery to the trustee of the provider's receipt for such payment, the trustee shall distribute to the seller from the trust a sumn amount equal to the amount held in trust for the contract all deposits maintained into the trust for the contract with any income authorized by sections 333.700 to 333.900.

*[3.] 4. All expenses of establishing and administering a preneed trust, including, without limitation, trustee's fees, legal and accounting fees, investment expenses, and taxes, may shall be paid from the trust, provided that payment shall not be authorized to the extent that such feespayment will reduce the principal of a preneed trust.*

## CANCELLATION

333.800.1. A signed copy of the completed preneed contract must be provided to the purchaser within thirty days after the contract is executed by all parties. Within thirty days of the

purchaser's receipt of the executed contract, the purchaser may cancel the contract with or without cause by delivering written notice to the seller or the provider. If written notice is received by the provider, the provider shall forward the notice from the purchaser or their purchaser's legal representative to the seller within two (2) business days. Within thirty days after receipt of the notice of cancellation, the seller shall refund one hundred percent of all payments made on the contract to the purchaser. Notice of the purchaser's right to cancel as provided in this provision and the appropriate addresses for notice of cancellation shall be designated on the face of the contract in no less than thirteen point bold type.

2. At any time after the thirty day cancellation period provided in section 1 of this section, and before the disposition or services, facilities, or merchandise described in a preneed contract are provided, a purchaser may cancel a preneed contract with or without cause by delivering written notice thereof to the seller or the provider. If written notice is received by the provider, the provider shall forward the notice from the purchaser or their legal representative to the seller within two (2) business days. Within \_\_\_\_\_ fifteen days after its receipt of the notice of cancellation, the seller shall pay to the purchaser a net amount equal to eighty one hundred percent of all payments made under the contract plus ten percent of any income earned *[a suggestion was made that this should be changed to a flat percentage], less any allowable administrative expenses of the seller.* Upon delivery of the purchaser's receipt for such payment to the trustee, the trustee shall distribute to the seller from the trust an amount equal to all amounts held in trust for the contract.

3. In no instance shall a seller charge, assess or collect any cancellation fee or penalty to a preneed contract purchaser under any circumstances.

**CHANGE OF PROVIDER- (PRE-NEED)**

333.900.1. At any time before final disposition, or the services, facilities, or merchandise described in a preneed contract are provided, the purchaser may change the provider identified in the contract without penalty by delivering written notice thereof to the seller or the provider. The seller shall change the provider as requested by the purchaser if the new provider submits written notification to the seller agreeing to assume all of the obligations of the original provider and to accept the remaining payments owed to the original provider, as agreed upon by the seller and the original provider. Nothing in this section shall be construed to prohibit the seller and the newly designated provider from negotiating or agreeing to alternate payment arrangements. A seller shall not fail or refuse to change a provider as requested by the purchaser if the newly designated provider files written notification with the seller as provided herein.

2. In no instance shall a seller charge, assess or collect any fee or penalty to a preneed contract purchaser for transferring or changing the provider designated in a preneed contract as described herein.

#### **CHANGE OF PROVIDER (AT-NEED)**

333.000.1. If the disposition or services, facilities or merchandise are provided to the beneficiary by any person other than the provider designated in a preneed contract, then the seller shall pay over to the person providing the disposition, services, facilities or merchandise a net amount equal to all payments required to be made to the original provider designated in the preneed contract, as agreed by the seller and the original provider. Upon seller's full performance under the provisions of this section, the trustee of the preneed trust for the contract shall distribute to the seller from the trust an amount equal to all deposits made into the trust for the contract.

2. In no instance shall a seller charge, assess or collect any fee or penalty to a preneed contract purchaser for transferring or changing the provider designated in a preneed contract as described herein.

*333.AAA.1 A seller may cancel a preneed contract if the payments payable under the a preneed contract are more than three month in arrears. Prior to such cancellation, the seller shall provide written notification of intent to cancel to the purchaser \_\_\_\_ days before cancellation. The written notice shall provide that , which shall provide that the purchaser has \_\_\_\_ days to remit the payment in arrears to avoid cancellation. If the payments are not received as provided in the notification of intent to cancel, the seller may cancel the contract by delivering written notice thereof to the purchaser and the provider, and by making payment to the purchaser of a net amount equal to eighty percent of the payments made under the contract. Upon delivery of the purchaser's receipt of such payment to the trustee, the trustee shall distribute to the seller from the trust an amount equal to all deposits made into the trust for the contract.*

*2. If the payments payable under a preneed contract are in arrears at the time of disposition or the services, facilities or merchandise described in the contract are requested for the beneficiary, the seller shall allow the purchaser to remit the payment in arrears. If the purchaser fails to remit payment, the seller may cancel the contract by making payment to the purchaser of a net amount equal to eighty percent of the payments made under the contract. Alternatively, at the purchaser's option, the seller may credit the amount held in trust for the preneed contract towards any disposition or funeral or burial services, facilities or merchandise provided by any entity owned or operated by the.*

OUR NOTES ON THIS SECTION ARE UNCLEAR .

**2008-08-12 Funeral Consumer Alliance Comments 436  
Committee**

July 31, 2008

To the members of the 436 Preneed Review Committee:

I understand from Barbara Neumann of Rep. Meadows' office that the Committee voted to retain the 80/20 trusting scheme. What a terrible choice, and how disappointing for you to miss the opportunity to make the most important, substantive change to better protect consumers and preserve funeral business stability.

To those of you who voted against this decision, you have my thanks. I sincerely hope that whatever legislation is drafted will not include this wrongheaded trusting scheme. FCA National and FCA of Greater Kansas City would have to consider publicly campaigning against any bill that does not increase trust deposit requirements.

I appreciate the work everyone has put into this process from all sides. I especially appreciate the support for positive change from AARP, the members of the state board, and many fair-minded, upstanding funeral directors. However, I was disturbed to notice last week that some at the table who are outside the funeral industry seemed all too credulous when the MFDEA made their claims. I was unpleasantly surprised to see that arguments from industry with a clear economic stake in preserving their profitable sales practices seemed to be given more credence by some than the arguments put forward by FCA and AARP, nonprofit organizations with no financial stake in the matter. The state's job is to protect the \*consumer\*, not facilitate his fleecing by enabling unethical and unsound business practices to continue.

Joshua Slocum  
Executive Director  
Funeral Consumers Alliance  
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**2008-08-12 Homesteader 436 Proposed Draft**

# PROPOSED DRAFT

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(HLC Comment – Homesteaders does not have a trust option so Homesteaders will not comment on trust provisions of this proposal except to the extent that we have overall concerns that are apparent though trust operations are not an area of broad experience.)

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) "Funeral 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; (HLC Comment – This should be funeral beneficiary so there is no confusion with the life insurance term “beneficiary” which has a completely different meaning.)
- (23) “Board,” the Missouri State Board of Embalmers and Funeral Directors;
- (34) "Division", the division of professional registration of the department of insurance, financial institutions and professional registration;
- (45) “Examination of books and records”
- (6)“Guaranteed contact”
- (7) "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; (Meierhoffer)

1 "Funeral merchandise" caskets, grave vaults, grave lots, grave space, grave markers,  
2 monuments, tombstones, crypts, niches, mausoleums, or receptacles and other personal property  
3 incidental to the final disposition of human remains. (Euler)

4 (8) "Funeral service" (Meierhoffer)

5 (59) "Insurance-Funded" Preneed Contract- A preneed contract which is designated to be  
6 fun dedfunded by payments or proceeds from an insurance policy;

7 (10) "Investigation"

8 (611) "Joint-Account Funded" Preneed Contract- A preneed contract which designates  
9 that payments for the preneed contract made by or on behalf of the purchaser will be deposited  
10 and maintained in a joint account with the Seller/Provider and the consumer; (HLC Comment –  
11 Need to say who the joint-account is held.)

12 (712) "Market value" – See DIFP Comment

13 (13) "Non-guaranteed contract"

14 (14) "Person", any individual, partnership, corporation, cooperative, association, or other  
15 entity;

16 (815) "Preneed contract", any contract or other arrangement which that provides for the  
17 final disposition of a dead human body, or for funeral or burial services or facilities, or for  
18 funeral merchandise, where such disposition, services, facilities or merchandise are not  
19 immediately required, including, but not limited to, an agreement providing for a membership  
20 fee or any other fee having as its purpose the furnishing of burial or funeral services or  
21 merchandise at a discount; (Meierhoffer) (HLC Comment -- What is the membership that is  
22 being talked about in this paragraph?)

1 (916) "Preneed Counselorsales agent," any person authorized to sell a preneed contract  
2 on behalf of a preneed seller; (Solocum)

3 (1017) "Preneed trust", a trust established by a seller, as grantor, to receive deposits of,  
4 administer, and disburse payments received under preneed contracts by such seller, together with  
5 income thereon;

6 (1118) "Provider", the person designated to provide the disposition, merchandise,  
7 facilities or funeral services, facilities, or merchandise described in a preneed contract; (Euler)

8 (1219) "Purchaser", the person who is obligated to pay under a preneed contract;

9 (1320) "Seller", the person who ~~sells~~ executes a preneed contract ~~to~~ with a purchaser and  
10 who is obligated to ~~collect and administer all payments made~~ under such preneed contract; (HLC

11 Comment – Under a life insurance funded preneed contract the Seller should only collect the  
12 initial premium and the policyowner will then remit any remaining premiums directly to the  
13 insurance company. This eliminates the possibility of the premiums not being remitted, or not  
14 being remitted in a timely manner. Any responsibilities the parties may have respective to the  
15 collection or administration of payments should be detailed in a place other than the definitions,  
16 as you appear to have already done in 333.725.)

17 (1421) "Trustee", the trustee of a preneed trust, including successor trustees.

18 (1522) "Trust-Funded" Preneed Contract- A preneed contract which provides that  
19 payments for the preneed contract shall be deposited and maintained in trust.

20 **APPLICABILITY**

21 333.710.1 The provisions of sections 333.700 to 333.900 shall not apply to:

22 (1) Any contract or other arrangement sold by a cemetery operator for which payments  
23 received by or on behalf of the purchaser are required to be placed in an endowed care fund or

1 for which a deposit into a segregated account is required under Chapter 214, RSMo, provided  
2 that a cemetery operator shall comply with sections 333.700 to 333.900 if the contract or  
3 arrangement sold by the operator includes services that may only be provided by a licensed  
4 funeral director or embalmer;

5 (2) A contract of insurance, provided that sections 333.700 to 333.900 shall apply to any  
6 preneed contract sold with a preneed contract of insurance. (Meierhoffer)

7 **PRENEED PROVIDER LICENSING**

8 333.720. 1. Except as provided herein, the provider designated in a preneed contract shall  
9 be obligated to provide the funeral or burial services, facilities, or merchandise as described in  
10 the preneed contract.

11 2. No person shall be designated as a provider, or agree to perform the obligations of  
12 a provider under a preneed contract unless, at the time of such agreement or designation, such  
13 person is licensed as a preneed provider by the Board. Nothing in this section shall exempt any  
14 person from meeting the licensure requirements for a funeral establishment as provided in this  
15 chapter. (Grinston) A preneed provider shall be authorized and registered with the Missouri  
16 Secretary of State to conduct business in Missouri and shall be licensed as a funeral  
17 establishment by the Board. A funeral establishment license shall not be required if the person is  
18 the owner of real estate situated in Missouri which has been formally dedicated for the burial of  
19 dead human bodies and the contract only provides for the delivery of one or more grave vaults  
20 and is in compliance with the provisions of chapter 214, RSMo; (Euler)

21 3. An applicant for a preneed provider license shall:

22 (1) File an application on a form promulgated by the Board and pay a licensing fee of  
23 \_\_\_\_\_ dollars or in an amount promulgated by the Board by rule;

1 (2) Be authorized and registered with the Missouri Secretary of State to conduct business  
2 in Missouri; (Euler)

3 (3) Identify the name and address of a custodian of records responsible for maintaining  
4 the books and records of the provider relating to preneed contracts;

5 (34) Identify the name and address of each seller authorized by the provider to sell  
6 preneed contracts in which the provider is designated or obligated as the provider;

7 (45) File with the state board a written consent authorizing the state board to inspect or  
8 order an investigation, examination or audit of the provider's books and records which contain  
9 information concerning preneed contracts sold for or on behalf of a preneed seller or in which the  
10 applicant is named as a preneed provider;

11 (6) Each applicant, or if a corporation, each officer, director, manager, or controlling  
12 shareholder, shall be of good morale character; (Euler)

13 (7) Have obtained a high school diploma or equivalent thereof; and (Euler)

14 (8) Meet all requirement for licensure. (Euler)

15 4. Each preneed provider shall apply to renew his or her license on or before October  
16 thirty-first of each year or a date established by the Board by rule. A license which has not been  
17 renewed prior to the renewal date shall expire. Applicants for renewal shall:

18 (1) File an application for renewal on a form promulgated by the Board by rule:

19 (2) Pay a renewal fee of \_\_\_\_\_ dollars or in an amount established by the Board by  
20 rule;

21 (3) Be authorized and registered with the Missouri Secretary of State to conduct business  
22 in Missouri; (Euler)

23 (4) 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, excluding  
16 insurance premium payments made by a consumer, and ensure the preneed contract is managed  
17 and fulfilled, and payments remitted, in compliance with sections 333.700 to sections 333.900  
18 and as provided by the contract. (Euler) (HLC Comment -- Under a life insurance funded  
19 preneed contract the Seller should only collect the initial premium and the policyowner will then  
20 remit any remaining premiums directly to the insurance company. This eliminates the possibility  
21 of the premiums not being remitted, or not being remitted in a timely manner.)

22 2. No person shall sell, perform or agree to perform the seller's obligations under, or  
23 be designated as the seller of, any preneed contract unless, at the time of the sale, performance,

1 agreement, or designation, such person is licensed by the Board as a preneed seller and  
2 authorized and registered with the Missouri Secretary of State to conduct business in Missouri.

3 3. An applicant for a preneed seller license shall:

4 (1) File an application on a form promulgated by the Board and pay a licensing fee of  
5 \_\_\_\_\_ dollars or in an amount promulgated by the Board by rule;

6 (2) Be an individual resident of Missouri of eighteen years of age or a business entity  
7 duly registered with the Missouri Secretary of State to transact business in Missouri;

8 (3) Each applicant, or if a corporation, each officer, director, manager, or controlling  
9 shareholder, shall be of good morale character; (Euler)

10 (4) Have obtained a high school diploma or equivalent thereof; and (Euler)

11 (5) Meet all requirement for licensure. (Euler)

12 (36) Identify the name and address of a custodian of records responsible for maintaining  
13 the books and records of the seller relating to preneed contracts;

14 (47) Identify the name and address of each licensed provider that has authorized the  
15 seller to designate the licensee as a provider under a preneed contract;

16 (58) Has Have established, as grantor, a preneed trust or an agreement to utilize a preneed  
17 trust with terms consistent with sections 333.000 to 333.071. A trust shall not be required if the  
18 applicant certifies to the Board that the preneed seller will only sell insurance-funded or joint-  
19 account funded preneed contracts, and; (Meierhoffer)

20 (69) Identify the name and address of a trustee or, or if applicable, the financial  
21 institution where any preneed trust or joint accounts will be maintained, and;

1 (710) File with the state board a written consent authorizing the state board to inspect or  
2 order an investigation, examination or audit of the seller's books and records which contain  
3 information concerning preneed contracts sold by or on behalf of the seller.

4 4. Each preneed seller shall apply to renew his or her license on or before October thirty-  
5 first of each year or a date established by the Board by rule. A license which has not been  
6 renewed prior to the renewal date shall expire. Applicants for renewal shall:

7 (1) File an application for renewal on a form promulgated by the Board by rule :

8 (2) Pay a renewal fee of \_\_\_\_\_ dollars or in an amount established by the Board by  
9 rule, and;

10 (3) File annually with the state board a signed and notarized annual report as provided by  
11 sections 333.700 to 333.900 on forms provided by the state board.

12 5. Any license not renewed as provided by this section shall become void. A  
13 licensee who fails to apply for renewal may apply for reinstatement by satisfying the  
14 requirements of section 4 of this section and paying a delinquent fee as promulgated by the  
15 Board by rule.

16 **PRENEED COUNSELORSALES AGENTS**

17 COMMENT: Licensed funeral directors or apprentices need not be designated as pre-  
18 need sales agents. They should not have to pay extra fees nor need to file extra paperwork. They  
19 are already qualified. (Kutis) (HLC Comment – This should be codified, see 333.730.1.)  
20

21 333.730.1 Any person employed or otherwise authorized to sell, negotiate or solicit the  
22 sale of preneed contracts for or on behalf of a preneed seller, except licensed funeral directors or  
23 apprentices, shall be registered with the Board as a preneed counselorsales agent. The Board

1 shall maintain a registry of all preneed counselorsales agents registered with the Board. The  
2 registry shall be deemed an open record and made available on the Board website.

3 2. An applicant for a preneed counselorsales agent registration shall:

4 (1) File an application on a form promulgated by the Board and pay a registration fee of  
5 \_\_\_\_\_ dollars or in an amount promulgated by the Board by rule which shall not exceed  
6 \_\_\_\_\_ percent of the application fee established by the Board pursuant to Chapter 333 for a  
7 funeral director license;

8 (2) Be eighteen years of age, and;

9 (3) Each applicant, or if a corporation, each officer, director, manager, or controlling  
10 shareholder, shall be of good morale character; (Euler)

11 (4) Have obtained a high school diploma or equivalent thereof; and (Euler)

12 (5) Meet all requirement for licensure; and (Euler)

13 (36) Provide the name and address of each seller for whom the applicant is authorized to  
14 sell, negotiate or solicit the sale of preneed contracts for or on behalf of the seller.

15 4. Each preneed counselorsales agent shall apply to renew his or her registration on or  
16 before October thirty-first of each year or a date established by rule of the Board. A registration  
17 which has not been renewed prior to the renewal date shall expire. Applicants for renewal shall:

18 (1) File an application for renewal on a form promulgated by the Board by rule;

19 (2) Pay a renewal fee of \_\_\_\_\_ dollars or in an amount promulgated by the Board by  
20 rule which shall not exceed \_\_\_\_\_ percent of the application fee established by the Board  
21 pursuant to Chapter 333 for a funeral director license, and;

1 (3) Provide the name and address of each seller for whom the counselor preneed sales  
2 agent is authorized to sell, negotiate or solicit the sale of preneed contracts for or on behalf of the  
3 seller.; and

4 (4) Meet all requirements for licensure.

5 5. Any registration not renewed as provided by this section shall become void and  
6 the registrant shall be immediately removed from the preneed counselorsales agent registry by  
7 the Board. A registrant who fails to apply for renewal may apply for reinstatement by satisfying  
8 the requirements of section 4 of this section and paying a delinquent fee as promulgated by the  
9 Board.

10 6. Notwithstanding any other provision of law, the Board may remove a preneed  
11 counselorsales agent from the registry if the counselor agent has been adjudicated and found  
12 guilty, or entered a plea of guilty or nolo contendere, in a criminal prosecution under the laws of  
13 any state or of the United States, for any offense reasonably related to the qualifications,  
14 functions or duties of any profession licensed or regulated under sections 333.700 to 333.900, for  
15 any offense involving the misappropriation or theft of, for any offense an essential element of  
16 which is fraud, dishonesty or an act of violence, or for any offense involving moral turpitude,  
17 whether or not sentence is imposed.

18 7. A preneed counselorsales agent who has been removed from the registry by the  
19 Board may appeal the removal to the administrative hearing commission. Notice of such appeal  
20 must be received by the administrative hearing commission within thirty days of mailing, by  
21 certified mail, the notice of removal. Failure of a preneed counselorsales agent registrant to  
22 notify the administrative hearing commission of his or her intent to appeal waives all rights to

1 appeal the removal. Upon notice of such person's intent to appeal, a hearing shall be held before  
2 the administrative hearing commission in accordance with Chapter 621, RSMo.

3 8. No person shall sell, negotiate or solicit the sale of any preneed on behalf of a  
4 preneed seller unless registered as a preneed counselorsales agent as required by this section.

5 **SELLERS & PROVIDERS**

6 333.738. 1. No seller or preneed counselorperson shall be designated a person as a  
7 provider in a preneed contract unless the provider has a written contractual agreement with the  
8 preneed seller. Any seller who designates a person as a provider in a preneed contract without a  
9 contractual relationship with such person is in violation of the provisions of sections 333.700 to  
10 333.900. (Euler)

11 2. The written agreement required by this section shall include:

12 (1) Consent Written consent from the provider authorizing the seller to designate or  
13 obligate the provider under a preneed contract; (Meierhoffer)

14 (2) Procedures for tracking preneed contract funds or payments received by the  
15 provider in association with trust-funded preneed contracts or joint-account funded preneed  
16 contracts, and for remitting such funds or payments to the seller, including, the time period  
17 authorized by the seller for the remittance of funds and payments, and; (HLC Comment – Under  
18 a life insurance funded preneed contract the Seller/Provider should only collect the initial  
19 premium and the policyowner will then remit any remaining premiums directly to the insurance  
20 company. This eliminates the possibility of the premiums not being remitted, or not being  
21 remitted in a timely manner.)

22 (3) The signatures of the seller and the provider or their authorized representatives  
23 and the date such signature was obtained.



1 ~~conditions are met and the contract completed.~~ (Kutis) (HLC Comment – Preneed contract  
2 numbering sounds great but it is an exercise in futility which provides no great advantages or  
3 benefits to anyone. Contact Iowa’s regulator, Dennis Britson 515-281-4441, for a discussion  
4 about this numbering “gift” he was given by the Iowa legislature.)

5 (2) Identify the name, address, phone and license number of the preneed provider and the  
6 preneed seller;

7 (3) Set out in detail the final disposition arrangements for the beneficiary or the funeral or  
8 burial services, facilities and merchandise to be provided;

9 (4) Identify on its face whether the contract is trust-funded, insurance-funded or joint-  
10 account funded;

11 (5) Designate whether the costs for the final disposition or the funeral or burial services,  
12 facilities or merchandise are guaranteed or nonguaranteed. If only a portion of the costs are  
13 guaranteed, the contract shall clearly and separately identify the costs that are guaranteed and the  
14 costs that are non-guaranteed;

15 (6) Prominently identify how ~~if the contract may be revoked is revocable or irrevocable;~~  
16 (HLC Comment -- Preneed contracts should not be made irrevocable, only the funding should  
17 be made irrevocable to qualify for government aide. Making a preneed contract irrevocable  
18 appears to impair the consumers freedom of choice as to funeral service providers and also gives  
19 the appearance to the consumer that their funding may not be portable.)

20 (7) Set forth the terms for cancellation by the purchaser or by the seller on default of  
21 payment, and transfer of the contract or reassignment of the funding; (Meierhoffer).

22 (8) Identify the preneed trust or joint account into which contract payments shall be  
23 deposited, including the name and address of the trustee or the financial institution thereof; (HLC

1 Comment – This section should be moved to the trust funding section and the joint account  
2 funding section since it is directly related to them.)

3 (10) Include the name, address and phone number of any insurance company issuing an  
4 insurance policy used to fund the preneed contract; (HLC Comment -- This should be placed in  
5 the Insurance-Funded Preneed Contract section since it is related directly to insurance.)

6 (11) ~~Identify the type of insurance that will be used to fund the insurance policy,~~  
7 ~~including, the number of such policy, if available;~~ (HLC Comment -- You have excluded term  
8 insurance later in the statutes. All other types of insurance should be permissible. Why list the  
9 type?)

10 The policy number is not known until the life insurance policy has been issued so why propose  
11 this language to make it seem like the policy number is known before it is issued.

12  
13 The consumer will know the type of policy and the policy number when they receive the actual  
14 policy since the policy is delivered directly to the consumer.)

15 (12) Explain how interest will be distributed and designate the amount of administrative  
16 expenses that will be retained by the seller as authorized by this section; (Meierhoffer).

17 (1312) Identify any other type of expenses or taxes that may be deducted from preneed  
18 funds, and the amount of any such expense if known by the seller at the time of the sale; (HLC  
19 Comment -- This section should be moved under trust-funded preneed contracts since none of  
20 the other types will have expenses or taxes deducted.)

21 (1413) Include the name and signature of the purchaser, and the individual responsible  
22 for the sale of the contract which will be either the preneed counselor sales agent responsible for  
23 ~~the sale of, if any, and~~ of the seller, or its duly authorized representative, or the preneed provider  
24 or its designee;

1 ~~(1514) Include the signature of the preneed provider, or their designee, if the preneed contract is~~  
2 ~~sold to the purchaser by the provider.; and (Meierhoffer). (HLC Comment -- In regards to~~  
3 ~~subsections 13 and 14, it should be limited to the signatures of those who are immediately~~  
4 ~~present at the sale of the contract. The preneed sales agent has the authority to sign on behalf of~~  
5 ~~the seller who hired them and the seller has a contract with the provider that allows them to enter~~  
6 ~~into the preneed contracts on their behalf. Looking for other signatures will delay the transaction~~  
7 ~~for everyone.)~~

8 (16) Include a disclosure statement immediately under the signature of the purchaser  
9 which states that the preneed seller and provider identified in the contract are licensed by the  
10 Missouri State Board of Embalmers and Funeral Directors and that complaints against a preneed  
11 provider, seller or counselor may be filed with the Missouri State Board of Embalmers and  
12 Funeral Directors. The statement required by this section shall also include the current address  
13 and phone number for the Board, and; (Meierhoffer).

14 (1415) Comply with the provisions of section 333.700 to 333.900 or any rule  
15 promulgated pursuant thereto.

16 2. A preneed contract shall be voidable and unenforceable at the option of the purchaser,  
17 or the purchaser's legal representative, if the contract is not in compliance with this section, not  
18 issued by a preneed seller duly licensed by the Board or if the purchaser has not received a copy  
19 of the preneed contract signed by the seller or their designee. (Meierhoffer).

20 3. If a preneed contract does not comply with the provisions of sections 333.700 to  
21 333.900, all payments made under such contract shall be recoverable by the purchaser, or the  
22 purchaser's legal representative, from the contract seller or other payee thereof, together with

1 interest at the rate of ten percent per annum and all reasonable costs of collection, including  
2 attorneys' fees (Meierhoffer).

3 4. After *the seller retains any amount authorized by sections 333.700 to 333.900*, (HLC  
4 Comment – This portion of the paragraph only applies to trust-funded preneed contracts and  
5 should be moved to be under the trust section. It should not be in this section as it makes it look  
6 like the seller may retain fees for contracts funded by life insurance or monies placed in a joint-  
7 account.) all funds paid by or on behalf of the purchaser as payment for a preneed contract shall  
8 be placed in trust, in a joint account or shall be used to purchase insurance, as authorized by  
9 sections 333.700 to 333.900.

10 5. A preneed contract may not be redesignated as a trust-funded, insurance-funded or  
11 joint-account funded preneed contract without the consent of the purchaser. A seller, provider,  
12 or sales agent may not secure the purchaser's consent without providing the purchaser a written  
13 statement explaining in plain language any financial consequences the redesignation may have.  
14 These shall include, at a minimum, any reduction in cash surrender value, interest accrual, and  
15 fees as provided in this section. The seller, provider, or sales agent must secure the purchaser's  
16 signature on such a disclosure statement or purchaser will not be deemed to have consented to  
17 the redesignation. (Solocum)

18

19

**TRUST FUNDED PRENEED CONTRACTS**

20

21

22

333.745.1. A trust-funded preneed contract shall comply with sections 333.700 to  
333.900 and the specific requirements of sections 333.745 to 333.750. A seller shall deposit  
payments received on a trust funded preneed contact into a trust designated by this section within

1 ~~forty-fivethirty~~ days of receipt of such funds by the seller or its designee. (Grinston) (HLC  
2 Comment – most states allow for thirty days, forty five is a long time.)

3

4 2. The trustee of a preneed trust shall be a state or federally chartered financial institution  
5 authorized to exercise trust powers in Missouri. The trustee shall accept all deposits made to it  
6 for a preneed contract and shall hold, administer, and distribute such deposits, in trust, as trust  
7 principal, pursuant to sections 333.700 to 333.900.

8 3. The financial institution referenced herein may neither control nor be controlled  
9 by or under common control with the seller. The term “control” including terms, “controlled by”  
10 and “under common control” with, means the possession, direct or indirect, of the power to  
11 direct or cause the direction of the management and polices of a person, whether through the  
12 ownership of voting securities, by contact other than the power is the result of an official position  
13 with or corporate office held otherwise, unless the power is the result of an official position with  
14 or corporate office held by the person. Control shall be presumed to exist if any person, directly  
15 or indirectly, owns, controls, holds with the power to vote, or holds proxies representing, ten  
16 percent or more of the voting securities of any other person. This presumption may be rebutted  
17 by a showing to the board and within its sole discretion that control does not in fact exist.

18 4. Payments regarding two or more preneed contracts may be deposited into and  
19 commingled in the same preneed trust, so long as the trust’s grantor is the seller of all such  
20 preneed contracts and the trustee maintains adequate records that individually and separately  
21 identify the payments, earnings and distributions for each preneed contract.

22 5. Within a reasonable time after accepting a trusteeship or receiving trust assets, a  
23 trustee shall review the trust assets and make and implement decisions concerning the retention

1 and disposition of assets in order to bring the trust portfolio into compliance with the purposes,  
2 terms, distribution requirements, and other circumstances of the trust, and with the requirements  
3 of sections 333.700 to 333.900.

4 6. All expenses of establishing and administering a preneed trust, including, without  
5 limitation, trustee's fees, legal and accounting fees, investment expenses, and taxes, shall be paid  
6 or reimbursed directly by the seller of the preneed contracts administered through such trust and  
7 shall not be paid from the principal of a preneed trust. In investing and managing trust assets, a  
8 trustee may only incur costs that are appropriate and reasonable in relation to the assets, the  
9 purposes of the trust, and the skills of the trustee. COMMENT: Other states allow the trustee to  
10 deduct a small, reasonable fee directly from the trust. Missouri may want to consider allowing  
11 this, perhaps  $\frac{3}{4}$  of 1%. (Solocum)

12 7. (a) The seller of a guaranteed preneed contract shall be entitled to all income,  
13 including, without limitation, interest, dividends, and capital gains, and losses generated by the  
14 investment of preneed trust property regarding such contract, and the trustee of the trust may  
15 distribute all income, net of losses, to the seller upon the final disposition of the beneficiary or  
16 provision of the funeral or burial services of facilities or funeral merchandise to or for the benefit  
17 of the beneficiary.

18 (b) The seller of a non-guaranteed preneed contract shall be entitled to all income up to  
19 the cost of the services and merchandise provided at the time of need. If there is excess income  
20 after payment to the seller, the trustee shall distribute the excess income to the estate of the  
21 funeral beneficiary. If the cost of the services and merchandise are greater than the income of  
22 the trust, the seller may request those responsible for the funeral pay the difference between the

1 trust income and the funeral bill. (HLC Comment – need to distinguish between guaranteed and  
2 non-guaranteed preneed contracts and what happens with the funding.)

3 8. The trustee of a preneed trust shall maintain adequate books and records of all  
4 transactions administered through the trust and pertaining to the trust generally. The trustee shall  
5 assist the seller who established the trust or its successor in interest in the preparation of the  
6 annual report described in section 333.000. The seller shall furnish to each contract purchaser,  
7 within fifteen days after receipt of the purchaser's written request, a written statement of all  
8 deposits made to such trust regarding such purchaser's contract (Plus principal, plus interest from  
9 the year and principal plus interest over the life of the trust). (Solocum)

10  
11 9. A preneed trust shall terminate when trust principal no longer includes any  
12 payments made under any preneed contract, and upon such termination the trustee shall  
13 distribute all trust property, including principal and undistributed income, to the seller which  
14 established the trust.

15 333.747.1 All property held in a preneed trust, including principal and undistributed  
16 income, shall be invested and reinvested by the trustee thereof and shall only be invested and  
17 reinvested in investments which have reasonable potential for growth or producing income.

18 2. A trustee shall invest and manage trust assets as a prudent investor would, by  
19 considering the purposes, terms, distribution requirements, and other circumstances of the trust.  
20 In satisfying this standard, the trustee shall exercise reasonable care, skill, and caution. In no  
21 instance shall funds in or belonging to a preneed trust be invested in any term life insurance  
22 product. A trustee who has special skills or expertise, or is named trustee in reliance upon the

1 trustee's representation that the trustee has special skills or expertise, has a duty to use those  
2 special skills or expertise when investing and managing trust assets, and;

3 3. A trustee shall diversify the investments of the trust unless the trustee reasonably  
4 determines that, because of special circumstances, the purposes of the trust are better served  
5 without diversifying.

6 4. In investing and managing trust assets, a trustee shall consider the following as are  
7 relevant to the trust:

8 (1) General economic conditions;

9 (2) The possible effect of inflation or deflation;

10 (3) The expected tax consequences of investment decisions or strategies;

11 (4) The role that each investment or course of action plays within the overall trust  
12 portfolio;

13 (5) The expected total return from income and the appreciation of capital;

14 (6) Other resources of the beneficiaries known to the trustee;

15 (7) Needs for liquidity, regularity of income, and preservation or appreciation of capital;

16 (8) An asset's special relationship or special value, if any, to the purposes of the trust or to  
17 one or more of the beneficiaries; and

18 (9) The size of the portfolio, nature and estimated duration of the fiduciary relationship  
19 and distribution requirements under the governing instrument.

20 9. It is unlawful for any trustee, preneed seller, preneed provider or preneed  
21 counselorsales agent to procure or accept a loan against any investment or asset of or belonging  
22 to a preneed trust.

1           333.749.1. A preneed trustee may delegate to an agent duties and powers that a prudent  
2 trustee of comparable skills could properly delegate under the circumstances. The trustee shall  
3 exercise reasonable care, skill, and caution in:

4           (1) Selecting an agent;

5           (2) Establishing the scope and terms of the delegation, consistent with the purposes and  
6 terms of the trust; and

7           (3) Periodically reviewing the agent's actions in order to monitor the agent's performance  
8 and compliance with the terms of the delegation.

9           2. In performing a delegated function, an agent owes a duty to the trust to exercise  
10 reasonable care to comply with the terms of the delegation.

11           3. By accepting a delegation of powers or duties from the trustee of a preneed trust, an  
12 agent submits to the jurisdiction of the courts of this state.

13           4. Delegation of an agent as provided herein shall not relieve the trustee of any duty or  
14 responsibility imposed on the trustee by sections 333.700 to 333.900 or the trust agreement.

15           333.750.1 A trustee shall not salesell, invest or authorize any transaction involving the  
16 investment or management of trust property with:

17           (1) The spouse of the trustee;

18           (2) The descendants, siblings, parents, or spouses of a preneed seller or an officer,  
19 manager, director or employee of a preneed seller, provider or counselorpreneed sales agent;

20           (3) An agent, preneed sales agent or attorney of the trustee, preneed seller or provider; or

21           (4) A corporation or other person or enterprise in which the trustee, preneed seller,  
22 preneed provider, or a preneed provider owns a significant interest or has an interest that might  
23 affect the trustee's best judgment.



1 the initial premium and that should be remitted immediately. Allowing them to collect  
2 successive insurance premium payments is ripe for problems including but not limited to:  
3 premiums not being remitted, remitting them too late and the policyowner receives a double  
4 billing notice since the last payment was not received in time, etc.)

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 for the sale of the insurance product used  
9 to fund the contract. (Meierhoffer)

10 A preneed seller or any preneed sales agent authorized to sell an insurance funded  
11 preneed contract on behalf of a seller shall disclose, in either oral or written format, to the  
12 purchaser at the time of sale if the seller or preneed sales agent is a licensed insurance agent and  
13 if the seller or preneed sales agent will receive any commission, payment or other valuable  
14 consideration, for the sale of the insurance product used to fund the contract ~~and the amount or~~  
15 ~~percentage of any such payments or commissions, (Solocum).~~(HLC Comments – the NAIC  
16 Model for insurance funded disclosures should be used for the sake of uniformity. The  
17 percentage of commissions is not required in the NAIC Model.)

18 5. In no instance shall any term life insurance policy be used to fund a preneed  
19 contract nor shall a preneed seller or provider be listed or otherwise designated as the owner or  
20 beneficiary of an insurance policy used to fund a preneed contract.(HLC Comment – allowing  
21 the provider to be named owner or beneficiary of the policy appears to impair the consumers  
22 right to freedom of choice of providers. The funeral home as beneficiary would allow the  
23 funeral home to receive the proceeds whether they provided the goods and services or not. The

1 assignment of the policy proceeds allows the funeral home to receive the death benefits if they  
2 perform and still allows the consumer the freedom of choice to assign the proceeds to another  
3 funeral home of their choice.)

4 6. It is unlawful for a preneed seller, provider or counselor preneed sales agent to  
5 procure or accept a loan against any insurance contract used to fund a preneed contract.

6 7. ~~No preneed seller or provider shall accept an assignment of insurance proceeds or~~  
7 ~~knowingly allow the preneed seller or provider to be designated as the beneficiary in an~~  
8 ~~insurance policy unless a preneed contract has also been issued by a licensed seller. A preneed~~  
9 ~~contract shall only be required by this section if the insurance proceeds are to be used for the~~  
10 ~~final disposition of a dead human body, or for funeral or burial services or facilities, or for~~  
11 ~~funeral merchandise, where such disposition, services, facilities or merchandise are not~~  
12 ~~immediately required and the price of such services, facilities or merchandise are guaranteed by~~  
13 ~~the provider or seller. A preneed contract written pursuant to this subsection shall be deemed an~~  
14 ~~insurance funded preneed contract and shall comply with this section and all applicable~~  
15 ~~provisions of sections 333.700 to 333.900.~~(HLC Comment – having this section in would  
16 eliminate the ability to have a non-guaranteed contract, which many providers now prefer. If the  
17 Board intends to control or eliminate final expense life insurance assignments we need more  
18 discussions about this topic.)

19 9. Laws regulating insurance shall not apply to preneed contracts, but shall apply to  
20 any insurance sold with a preneed contract.

21 10. If a preneed contract is funded by a life insurance polciy, the preneed contract shall  
22 set forth:

1 (1) The terms for cancellation by the purchaser or by the seller on default of payment and  
2 transfer of the contract; and

3 (2) Cancellation of the preneed contract will not cancel the life insurance policy funding  
4 the preneed contract. The purchaser must cancel the insurance policy with written notification to  
5 the insurance company; and

6 (3) The purchaser will only receive the cash surrender value of the policy, which may be  
7 less than the amount paid in, if the policy is cancelled after \_\_\_ days; and

8 (4) The purchaser has the right to reassign the life insurance policy to another funeral  
9 home at any time.

10 (HLC Comment – these items are specific to a life insurance funded preneed contract and  
11 need to be set forth in the contract.)

12 11. (a) The provider of a guaranteed life insurance funded preneed contract shall be  
13 entitled to all death benefits of the life insurance policy upon providing evidence satisfactory to  
14 the insurance company that all services and merchandise were provided at the time of need.

15 (b) The provider of a non-guaranteed life insurance funded preneed contract shall be  
16 entitled to all death benefits of the life insurance policy up to the cost of the services and  
17 merchandise provided at the time of need upon providing evidence satisfactory to the insurance  
18 company that all services and merchandise were provided at the time of need. If there are excess  
19 death benefits after payment to the provider, the insurance company shall pay the excess to the  
20 named beneficiary of the insurance policy or to the estate of the funeral beneficiary if no  
21 beneficiary is named in the policy. If the cost of the services and merchandise are greater than  
22 the death benefits available in the policy, the provider may request those responsible for the  
23 funeral pay the difference between the death benefits available and the funeral bill. (HLC

1 Comment – need to distinguish between guaranteed and non-guaranteed preneed contracts and  
2 what happens with the funding.)

3  
4  
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 by the purchaser under a joint-account funded contract  
16 shall be deposited into a joint account authorized as authorized by this section within five days of  
17 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 (1) The name and, addresses ~~and contract number~~ of all purchasers with preneed funeral  
2 contracts in-force at the time of the report; ~~as reflected in any preneed contract sold since the~~  
3 ~~filing of the last report~~; (HLC Comment – The Board should collect information about contracts  
4 that are in-force at the time of the report, not just those that were sold since the last report.)

5 (2) The total number and total face value of preneed contracts in-force at the time of the  
6 report ~~sold since the filing of the last report~~; (HLC Comment – again you want those reported  
7 that are in-force, not just new ones that have been sold.)

8 (3) The preneed contract amount of each preneed contract in-force at the time of the  
9 reports ~~sold since the filing of the last report, identified by contract~~; (HLC Comment – see  
10 previous two comments.)

11 (4) The amount of funds received by the seller for payment on each preneed contract  
12 since the filing of the last report, identified by contract, and the date such funds were received;

13 (5) The total amount of funds retained by the seller for administrative expenses from  
14 payments received on behalf of a purchaser since the filing of the last report, identified by  
15 contract; (Meierhoffer)

16 (6) The name, address and license number of all preneed counselorsales agents employed  
17 or authorized to sell preneed contracts on behalf of the seller;

18 (7) The date the report is submitted and the date of the last report;

19 (8) The number of all Missouri preneed contracts fulfilled by the preneed seller during  
20 the preceding calendar year;

21 (9) The name and address of each provider with whom it is under contract;

22 (10) The name and address of the person designated by the seller as custodian of the  
23 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) Certification that Aa copy of each preneed contract sold is contained in files kept by  
10 the seller, which may be kept as provided by a scanned electronic copy; and (Solocum) (HLC  
11 Comment – there is no need to include copies of each preneed contract sold with the annual  
12 report since the Seller can be audited at any time with the auditor reviewing these files for  
13 compliance. Also note that under section 333.762 they must keep a copy of the contract in their  
14 files.)

15 (1415) Any information deemed necessary by the Board to ensure compliance with  
16 sections 333.700 to 333.900.

17 2. A preneed seller that sells or has sold trust-funded preneed contracts shall also include  
18 in the annual report required by section 1 of this section:

19 (1) The name and address of the financial institution in Missouri in which it maintains a  
20 preneed trust account and the account numbers of such trust accounts, and;

21 (2) The trust fund balance as reported in the previous year's report;

22 (3) The current trust fund balance;

23 (4) Principal contributions received by the trustee since the previous report;

1 (5) Total *trust* earnings and total distributions to the preneed seller since the previous  
2 report;

3 (6) A statement of all assets *and investments* of the trust listing cash, real or personal  
4 property, stocks, bonds, and other assets, showing cost, acquisition date and current market value  
5 of each asset and *investment*, and;

6 (8) Total expenses, excluding distributions to the preneed seller, since the previous  
7 report.

8 (9) The information required by subsections (1) to (8) of this section shall be certified to  
9 under oath as complete and correct by a corporate officer of the trustee. The trustee shall be  
10 subject to the penalty of making a false affidavit or declaration.

11 3. A preneed seller that sells or who has sold joint-account funded preneed contracts  
12 shall also include in the annual report required by section 1 of this section:

13 (1) The name and address of the financial institution in Missouri in which it maintains the  
14 joint account and the account numbers for each joint account, and;

15 (2) The amount on deposit in each joint account;

16 (3) The joint account balance as reported in the previous year's report;

17 (4) Principal contributions placed into each joint account since the filing of the previous  
18 report;

19 (5) Total earnings since the previous report;

20 (6) Total distributions to the preneed seller from each joint account since the previous  
21 report;

22 (7) Total expenses deducted from the joint account, excluding distributions to the preneed  
23 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;~~ (HLC Comment – this information would be included in the seller’s files which the  
10 auditor can review. There is no term insurance allowed so therefore it will be regular life  
11 insurance or annuities that are sold.)

12 ~~(3) The total amount of funds collected by the seller for each preneed contract, including,~~  
13 ~~any funds used to pay insurance premiums and the date such funds were received;~~

14 ~~(4) The total amount of premiums received by the insurance company for each insurance~~  
15 ~~policy used to fund a preneed contract sold by the preneed seller;~~ (HLC Comment – Subsections  
16 3 and 4 are items that are controlled by the insurance regulators and should not be subject to  
17 reporting to the Board. In addition, the seller should not be collecting any premiums other than  
18 the initial premium.)

19 ~~(5) The status, and total available death benefit face value and total cash surrender~~  
20 ~~value of each policy in-force at the time of the report, and;~~ ( HLC Comment – the cash surrender  
21 value is not a pertinent number to have on a report. To get current value you need to have the  
22 death benefit that is available at the time of the report.)

1 (6) The information required by subsections (1) to (5) of this section shall be certified to  
2 under oath as complete and correct by an authorized representative of the insurer. The affiant  
3 shall be subject to the penalty of making a false affidavit or declaration.

4 5. All reports required by this section shall be filed by the thirty-first day of October  
5 of each year or by the date established by the Board by rule. Annual reports filed after the date  
6 provided herein shall be subject to a late fee of \_\_\_\_\_ dollars for every month past the  
7 renewal deadline or in an amount established by rule of the Board.

8 6. A seller who fails to file their annual report on or before the thirty-first day of  
9 October shall be prohibited from selling any preneed contracts until the annual report, and all  
10 applicable fees, have been paid to the board.

11 **RECORD RETENTION**

12 333.762. A preneed seller shall maintain:

13 (1) Adequate records of all preneed contracts and related agreements with providers, the  
14 trustee of a preneed trust, or the financial institution holding a joint account established pursuant  
15 to 333.700 to 333.900;

16 (2) Records of Ppreneed contracts, including financial institution statements and death  
17 certificates, shall be maintained by the seller for the duration of the contract and for no less than

18 (2) years after the final disposition of the beneficiary or after the funeral or burial facilities,  
19 services or merchandise designated in the contract or cancellation of the contract. (Euler)

20 **INVESTIGATION/INSPECTIONS**

21 333.765.1. The Board shall have authority to:

1 (1) Conduct inspections of preneed providers, sellers and counselors preneed sales agent  
2 to determine compliance with sections 333.700 to 333.900, at the discretion of the Board and  
3 with or without cause;

4 (2) Investigate the activities of any preneed seller, provider or counselor preneed sales  
5 agent for the purpose of determining violations of sections 333.700 to 333.900 or to determine  
6 whether grounds exist for disciplining any person licensed or regulated under sections 333.700 to  
7 333.900. The Board shall have authority to conduct an investigation if an inspection authorized  
8 by this section identifies a probable violation of sections 333.700 to 333.900 or upon receipt of a  
9 complaint filed with the Board or by the Board staff; (Euler)

10 (3) Conduct a financial examination of the books and records of a licensee, and if  
11 necessary an audit of a licensee or any trust or joint account, to determine *if preneed funds are*  
12 *being maintained or handled by the licensee as required by* sections 333.700 to 333.900. The  
13 Board shall conduct a financial examination of the books and records of each preneed seller as  
14 authorized by this section at least once every [three/five] years, as financially permissible  
15 pursuant to the funding of the board; (Kutis and Meierhoffer) COMMENT: Conducting a  
16 random sampling annually (Solocum). SEE DIFP document.

17 2. Upon determining that an inspection, investigation, examination or audit shall be  
18 conducted, the board shall issue a notice authorizing an employee or other person appointed by  
19 the board to perform such inspection, investigation, examination or audit. The notice shall  
20 instruct the person appointed by the board as to the scope of the inspection, investigation,  
21 examination or audit.

22 (a) The board shall not appoint or authorize any person to conduct an inspection,  
23 investigation, examination or audit pursuant to this section if the individual has a conflict of

1 interest or is affiliated with the management of, or owns a pecuniary interest in, any person  
2 subject to inspection, investigation, examination or audit under section 333.000 to section  
3 333.999.

4 (b) The board may request that the director of the division of professional registration,  
5 the director of the department of insurance, financial institutions and professional registration, or  
6 the office of the attorney general designate one or more investigators or financial examiners to  
7 assist in any investigation, examination or audit, and such assistance shall not be unreasonably  
8 withheld. (Euler)

9 3. Upon request by the board, a licensee or registrant shall make the books and  
10 records of the licensee or registrant available to the board for inspection and copying at any  
11 reasonable time, including, any insurance, trust, joint account or financial institution records  
12 deemed necessary by the board to determine compliance with sections 333.700 to 333.900.

13 4. The board or a designated member thereof or any agent authorized by the board  
14 may enter the office, premises, establishment, or place of business of any preneed seller or  
15 provider of funeral service contracts licensed in this state, or any office, premises, establishment,  
16 or place where the practice of selling and/or providing preneed funerals is carried on, or where  
17 such practice is advertised as being carried on for the purpose of inspecting such office,  
18 premises, establishment, or place to determine compliance with sections 333.700 to 333.900, or  
19 for the purpose of inspecting, examining, investigating or auditing the licensee or the sale of  
20 preneed contracts.

21 5. The board shall have the power to issue a subpoenas to compel the production of  
22 records and papers by any licensee, trustee or registrant of the board. Subpoenas issued pursuant  
23 to this section shall be served in the same manner as subpoenas in a criminal case.

1           6. All preneed sellers, providers, and counselors sales agent, or trustee shall  
2 cooperate with the state board or its designee, the division of finance, the department of  
3 insurance, financial institutions and professional registration and the office of the attorney  
4 general of Missouri, in any inspection, investigation, examination or audit brought under the  
5 provisions of sections 333.700 to 333.900.

6           7. This section shall not be construed to limit the board's authority to file a  
7 complaint with the administrative hearing commission charging a licensee of the board with any  
8 actionable conduct or violation, regardless of whether such complaint exceeds the scope of acts  
9 charged in a preliminary public complaint filed with the board and whether any public complaint  
10 has been filed with the board.

11           8. The state board, the division of finance, the department of insurance, financial  
12 institutions and professional registration and the office of the attorney general of Missouri may  
13 share information relating to any preneed investigation, examination or audit. (Euler)

14           89. If an investigation, audit or examination finds a violation of sections 333.700 to  
15 333.900, the office of the attorney general may initiate a judicial proceeding to:

16           (1) Declare rights;

17           (2) Approve a nonjudicial settlement;

18           (3) Interpret or construe the terms of the trust;

19           (4) Determine the validity of a trust or of any of its terms;

20           (5) Compel a trustee to report or account;

21           (6) Enjoin a trustee from performing a particular act or grant to a trustee any necessary or  
22 desirable power;

23           (7) Review the actions of a trustee, including the exercise of a discretionary power;

1 (8) Appoint or remove a trustee;

2 (10) Determine the liability of a trustee for an action relating to the trust and compel  
3 redress of a breach of trust by any available remedy;

4 (12) Approve employment and compensation of agents;

5 (13) Determine the propriety of investments or of principal and income allocations, or;

6 (17) Determine the timing and quantity of distributions and dispositions of assets.

7 (18) This section does not preclude any other authority vested in the attorney general by  
8 law.

9 **DISCIPLINARY ACTION**

10 333.770. 1. The board may refuse to issue any registration or license required by sections  
11 333.700 to 333.900 for one or any combination of causes stated in subsection 2 of this section.

12 The board shall notify the applicant in writing of the reasons for the refusal and shall advise the  
13 applicant of his right to file a complaint with the administrative hearing commission as provided  
14 by chapter 621, RSMo.

15 2. The board may cause a complaint to be filed with the administrative hearing  
16 commission as provided by chapter 621, RSMo, against any preneed seller or provider licensed  
17 with the board [or preneed counselor registered with the board] or any person who has failed to  
18 renew or has surrendered his license [or registration] for any one or any combination of the  
19 following causes:

20 (1) Use of any controlled substance, as defined in chapter 195, RSMo, or alcoholic  
21 beverage to an extent that such use impairs a person's ability to perform the work of any  
22 profession registered under sections 333.700 to 333.900;

1 (2) The person has been finally adjudicated and found guilty, or entered a plea of guilty  
2 or nolo contendere, in a criminal prosecution under the laws of any state or of the United States,  
3 for any offense involving the misappropriation or theft of funds, elder abuse, or for any offense  
4 an essential element of which is fraud, dishonesty or an act of violence, or for any offense  
5 involving moral turpitude, whether or not sentence is imposed; (Euler)

6 (3) Use of fraud, deception, misrepresentation or bribery in securing any license or  
7 registration pursuant to sections 333.700 to 333.900;

8 (4) Obtaining or attempting to obtain any fee, charge, tuition or other compensation by  
9 fraud, deception or misrepresentation;

10 (5) Incompetency, misconduct, gross negligence, fraud, misrepresentation or dishonesty  
11 in the performance of the functions or duties of the profession for which the individual is  
12 licensed or registered;

13 (6) Violation of, or assisting or enabling any person to violate, any provision of sections  
14 333.700 to 333.900 or sections 333.700 to 333.900, or of any lawful rule or regulation adopted  
15 pursuant to Chapters 333, 194 or sections 333.700 to 333.900; (Euler)

16 (7) Impersonation of any person holding a preneed licensee or registration with the board  
17 or allowing any person to use his or her license or registration;

18 (8) Disciplinary action against the holder of any license or registration or other right to  
19 practice any profession regulated pursuant to this chapter or by any state, territory, federal  
20 agency or country upon grounds for which revocation or suspension is authorized in this state;

21 (9) A person is finally adjudged insane or incompetent by a court of competent  
22 jurisdiction;

23 (10) Misappropriation or theft of preneed funds; COMMENT: Is this needed? (Euler)

1 (11) Assisting or enabling any person to practice or offer to practice as a preneed seller,  
2 preneed provider or preneed counselor as defined or regulated by sections 333.700 to 333.900  
3 who is not licensed or registered and currently eligible to practice under sections 333.700 to  
4 333.900;

5 (12) Issuance of a registration or license based upon a material mistake of fact;

6 (13) Failure to display or present a valid certificate or license if so required by sections  
7 333.700 to 333.900 or any rule promulgated thereunder; (Euler)

8 (14) Violation of any professional trust or confidence;

9 (15) Make or file any report required by sections 333.000 to 333.999 which the licensee  
10 or registrant knows to be false or knowingly fail to make or file a report required by sections  
11 333.000 to 333.999;

12 (16) Use of any advertisement, solicitation or preneed contract which is false, misleading  
13 or deceptive to the general public or persons to whom the advertisement or solicitation is  
14 primarily directed, and;

15 (1617) Willfully and through undue influence selling a preneed contract, or;

16 (18) Violating any provision of the Federal Trade Commission's funeral rule. (Solocum)

17 3. After the filing of such complaint, the proceedings shall be conducted in accordance  
18 with the provisions of chapter 621, RSMo. Upon a finding by the administrative hearing  
19 commission that the grounds, provided in subsection 2, for disciplinary action are met, the board  
20 may, singly or in combination, censure or place the person named in the complaint on probation  
21 on such terms and conditions as the board deems appropriate for a period not to exceed five  
22 years, or may suspend, for a period not to exceed three years, or revoke the license. COMMENT:  
23 Civil penalty/fines. (Solocum)

1           4. Notwithstanding any other provision of this section, the board may automatically  
2 suspend any license issued pursuant to Chapter 333/sections 333.700-333.900 if the board finds,  
3 after an inspection, examination, investigation or audit and after providing the licensee an  
4 opportunity to respond, a shortage in the trust fund or joint account which exceeds [*twenty*  
5 *percent of the amount required to be held in the trust or joint account or fifty thousand dollars,*  
6 *whichever is lesser*] or upon being adjudicated and found guilty, or entering a plea of guilty or  
7 nolo contendere, in a criminal prosecution under the laws of any state or of the United States, for  
8 any offense involving elder abuse, violence, sexual misconduct or involving the stealing,  
9 misappropriation or theft of funds. (Grinston/Euler)

10           5. A person whose license was has been suspended under subsection 4 of this section  
11 may appeal such suspension to the administrative hearing commission. Notice of such appeal  
12 must be received by the administrative hearing commission within ninety days of mailing, by  
13 certified mail, the notice of suspension. Failure of a person whose license was suspended to  
14 notify the administrative hearing commission of his or her intent to appeal waives all rights to  
15 appeal the suspension. Upon notice of such person's intent to appeal, a hearing shall be held  
16 before the administrative hearing commission. (Meierhoffer)

17           6. Use of the procedures set out in this section shall not preclude the application of  
18 the provisions of subsection 2 of section 333.061.

19           333.775. If a seller shall fail to make timely payment of an amount due a purchaser, or a  
20 provider pursuant to the provisions of sections 333.700 to 333.900, the purchaser or provider, as  
21 appropriate, shall have the right, in addition to other rights and remedies against such seller, to  
22 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.

3 333.780. 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 his successor  
6 designated in such contract, and all payments otherwise payable to the purchaser, other than  
7 proceeds payable under a life insurance contract, shall be paid to that person. (HLC Comment --  
8 life insurance policies can only be paid out to an assignee or the named beneficiary of the  
9 policy.)

10 333.785. 1. Any person, including the officers, directors, partners, agents, or employees  
11 of such person, who shall knowingly and willfully violate or assist or enable any person to  
12 violate any provision of sections 333.700 to 333.900 by incompetence, misconduct, gross  
13 negligence, fraud, misrepresentation, or dishonesty is guilty of a class D C felony. Each violation  
14 of any provision of sections 333.700 to 333.900 constitutes a separate offense and may be  
15 prosecuted individually. The attorney general shall have concurrent jurisdiction with any local  
16 prosecutor to prosecute under this section.

17 2. Any violation of the provisions of sections 333.700 to 333.900 shall constitute a  
18 violation of the provisions of section 407.020, RSMo. In any proceeding brought by the attorney  
19 general for a violation of the provisions of sections 333.700 to 333.900, the court may order all  
20 relief and penalties authorized under chapter 407 and, in addition to imposing the penalties  
21 provided for in sections 333.700 to 333.900, order the revocation or suspension of the  
22 [registration] license of a defendant seller or provider.

23 **INJUNCTIONS**



1 days prior to selling or otherwise disposing of its business assets or stock, or ceasing to do  
2 business as a preneed provider, and shall file a notification report on a form established by the  
3 board.

4 2. The report required by this section shall include:

5 (a) The name, phone number and address of the purchasers of any outstanding preneed  
6 contract for which the licensee is the designated provider;

7 (b) The name and license numbers of all sellers authorized to designate the licensee as a  
8 provider in a preneed contract;

9 (c) The name, address and license number of the provider assuming or agreeing to  
10 assume the licensee's obligations as a provider under a preneed contract, if any;

11 (d) The name, address and phone number of a custodian who will maintain the books  
12 and records of the provider containing information about preneed contracts in which the licensee  
13 is or was formerly designated as provider,

14 (e) A final annual report containing the information required by section 333.000;

15 (e) The date the provider intends to sell or otherwise dispose of its business assets, or its  
16 stock if a corporation, or to cease to doing business, and;

17 (f) Any other information required by the Board by rule.

18 3. Within three days after the provider sells or transfers its assets or stock or ceases doing  
19 business, the former provider shall notify each seller in writing that the former provider has sold  
20 or transferred its assets or stock or has ceased doing business.

21 (a) Within thirty days after the seller receives notification from the provider under this  
22 subsection, the seller shall provide written notification to all purchasers with outstanding preneed  
23 contracts in which the former provider was designated as provider indicating that the provider

1 has transferred ownership or has ceased doing business. Such notice shall give the purchaser the  
2 option to select another provider that has a written agreement with the seller pursuant to the  
3 provisions of sections 333.000 or to cancel the contract if an alternate provider is not accepted by  
4 the purchaser.

5 (b) If an alternate provider is selected by the purchaser, the seller shall amend the  
6 preneed contract to reflect the change in provider and shall notify the new provider of the  
7 designation and the new provider shall notify the purchaser that a new assignment of proceeds is  
8 required; (HLC Comment – just transferring the preneed contract does not transfer the funding of  
9 that contract to another provider.)

10 (c) If the purchaser elects to cancel the contract, the seller shall refund all amounts paid  
11 by or on behalf of the purchaser *and any related interest*. If the purchaser elects to cancel a life  
12 insurance funded preneed contract, the consumer must also notify the insurance company in  
13 writing of their election to cancel the life insurance policy. If cancelled, the purchaser will only  
14 receive the cash surrender value of the life insurance policy. Nothing in this section shall be  
15 construed to prohibit a seller from seeking reimbursement from the former provider of any funds  
16 paid to the purchaser after a cancellation authorized by this subsection. (HLC Comment – when  
17 canceling a preneed contract that is funded by a life insurance policy, the insurance policy itself  
18 also has to be cancelled and the purchaser will only receive the cash surrender value of the policy  
19 at the time of cancellation.)

20 4. A preneed provider not subject to subdivision 1 of this section may only transfer its  
21 obligations as a provider to an alternate provider upon the consent of the seller, purchaser and the  
22 provider assuming the provider obligations under the contract. If an alternate provider is

1 selected by the purchaser, the seller shall amend the preneed contract to reflect the change in  
2 provider and shall provide the purchaser with a copy of the amended contract.

3 5. The office of the attorney general shall have authority to initiate legal action to  
4 compel or otherwise ensure compliance with this section by a former preneed provider licensee.

5 **TERMINATION OF BUSINESS- SELLER**

6 333.805.1 A preneed seller that intends to sell or otherwise dispose of *all or a majority* of  
7 its business assets, or its stock if a corporation, shall notify the Board at least sixty days prior to  
8 selling or otherwise disposing of its assets or stock, or ceasing to do business as a preneed seller,  
9 and shall file a notification report on a form established by the board.

10 2. The report required by this section shall include:

11 (a) A final annual report containing the information required by section 333.000;

12 (b) The name, address and phone number of a custodian for the books and records of the  
13 seller that contain information about preneed contracts in which the licensee is or was formerly  
14 designated as seller;

15 (c) The date the seller intends to sell or otherwise dispose of its business assets, or its  
16 stock if a corporation, or to cease to doing business; (Meierhoffer)

17 (d) A notarized and signed statement from the person assuming or agreeing to assume  
18 the obligations of the seller indicating that the assuming seller has been provided with a copy of  
19 the seller's final annual report and has consented to assuming the outstanding obligations of the  
20 seller;

21 (e) In lieu of the notarized statement required by subdivision (8), the seller may file a  
22 plan detailing how the assets of the seller will be set aside and used to service all outstanding  
23 preneed contracts sold by the seller, and;

1 (f) Any other information required by the Board by rule.

2 3. Within thirty days after assuming the obligations of a seller pursuant to this section,  
3 the assuming preneed seller shall:

4 (1) Notify each provider in writing that the former seller has sold or transferred its assets  
5 or stock or has ceased doing business, and;

6 (2) Provide written notification to the purchasers of each preneed contract assumed by  
7 the seller indicating that the former seller has transferred ownership or has ceased doing  
8 business. Such notice shall give the purchaser the option to maintain or to cancel the contract. If  
9 the purchaser elects to cancel the contract, the seller shall refund all amounts paid by or on behalf  
10 of the purchaser *and any related interest*. This section shall not be construed to limit or  
11 otherwise restrict any civil or other legal right a purchaser or provider may have against the seller  
12 for damages, breach of a contractual relationship or for unpaid fees. (Meierhoff)

13 4. Upon receipt of the written notification, the state board or the office of the  
14 attorney general may take reasonable and necessary action to determine that the seller has made  
15 proper plans to assure that the trust assets of the seller will be set aside and used to service  
16 outstanding preneed contracts sold by the seller. Such action may include, but is not limited to,  
17 an examination of books and records or audit of the trust account. The attorney general shall be  
18 authorized to bring legal action to ensure compliance with this section including an action for  
19 injunctive or declaratory relief. (Meierhoffer)

20 5. A preneed seller not subject to subdivision 1 of this section may only transfer its  
21 obligations as a seller under a preneed contract to an alternate seller upon consent of the  
22 purchaser and the person assuming the obligations of the seller under the contract. If the  
23 purchaser fails to consent, the seller shall refund all amounts paid by or on behalf of the

1 purchaser with any related interest or earnings. If the purchaser does not want to transfer their  
2 life insurance funded preneed contract to the new seller, the purchaser may:

3 (1) Execute a new preneed contract with another provider or seller and reassign the life  
4 insurance policy to that provider for funding, however any contract guarantees that were under  
5 the old preneed contract will be forfeited by the purchaser; or

6 (2) The purchaser may cancel the life insurance funded preneed contract. To cancel the  
7 life insurance policy the consumer must notify the insurance company in writing of their election  
8 to cancel the life insurance policy. The purchaser will only receive the cash surrender value of  
9 the life insurance policy..

10 If the purchaser and seller consent to the transfer, the seller shall amend the preneed  
11 contract to reflect the change and shall provide the purchaser with a copy of the amended  
12 contract. The purchaser must reassign the funding policy to the new seller/provider to secure the  
13 guarantees (if any) under the amended contract.

14 6. Nothing in this section shall be construed to require the state board to audit,  
15 investigate or examine the books and records of a seller subject to the provisions of this section  
16 nor shall this section be construed to amend, rescind or supersede any duty imposed on, or due  
17 diligence required of, an entity assuming the obligations of the seller.

18 7. The office of the attorney general shall have authority to initiate legal action to  
19 compel or otherwise ensure compliance with this section by a former preneed provider licensee.

20 333.810. A preneed contract may offer the purchaser the option to acquire and maintain  
21 credit life insurance on the life of the purchaser. Such insurance shall provide for the payment of  
22 death benefits to the seller in an amount equal to the total of all contract payments unpaid as of  
23 the date of such purchaser's death, and shall be used solely to make those unpaid payments.



1           3. The board shall promulgate and enforce rules for the transaction of its business and for  
2 standards of service and practice to be followed for the licensing and registration of providers,  
3 sellers and counselors deemed necessary for the public good and consistent with the laws of this  
4 state.

5           4. Any rule or portion of a rule, as that term is defined in section 536.010, RSMo, that is  
6 created under the authority delegated in this section shall become effective only if it complies  
7 with and is subject to all of the provisions of chapter 536, RSMo, and, if applicable, section  
8 536.028, RSMo. This section and chapter 536, RSMo, are nonseverable and if any of the powers  
9 vested with the general assembly pursuant to chapter 536, RSMo, to review, to delay the  
10 effective date, or to disapprove and annul a rule are subsequently held unconstitutional, then the  
11 grant of rulemaking authority and any rule proposed or adopted after August 28, 2008, shall be  
12 invalid and void.

**2008-08-12 Michael Meierhoffer 436 Proposed Draft**

# PROPOSED DRAFT

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3 333.700. The provisions of sections 333.700 to 333.900 shall be referenced as the  
4 “Missouri Preneed Funeral Contract Act.”

5 333.705. As used in sections 333.700 to 333.900, unless the context otherwise requires,  
6 the following terms shall mean:



7 (1) “Audit” , a systematic examination of financial statements, records and related  
8 operations to determine adherence to generally accepted accounting principles, management  
9 policies, or stated requirements as required by statute. Audit for this purpose will be initiated by  
10 the Board after examination and investigation if deemed necessary. (Meierhoffer August 4,  
11 2008)

12 (2) "Beneficiary", the individual who is to be the subject of the disposition or who will  
13 receive funeral services, facilities or merchandise described in a preneed contract;

14 (23) “Board,” the Missouri State Board of Embalmers and Funeral Directors;

15 (34) "Division", the division of professional registration of the department of insurance,  
16 financial institutions and professional registration;

17 (45) “Examination of books and records” – For the purposes of the statute, the review by  
18 the Board and its staff of the annual reporting as specified in this chapter. After Examination or  
19 for cause the Board may initiate and investigation. (Meierhoffer, August 4, 2008)

20 (6)“Guaranteed contact”

21 (7) "Funeral merchandise", caskets, grave vaults, or receptacles, and other personal  
22 property incidental to a funeral or burial service, and such term shall also include grave lots,  
23 grave space, grave markers, monuments, tombstones, crypts, niches or mausoleums;

1 (Meierhoffer) “Funeral merchandise”, casket, grave vaults, or receptacles, and other personal  
2 property incidental to a funeral service. (Notes: Items such as grave lots, grave space, grave  
3 markers, monuments, tombstones, crypts niches or mausoleums are covered by Chapter 214,  
4 Missouri Revised Statutes, and are under the purview of the Office of Endowed Care)  
5 (Meierhoffer, August 8, 20008)

6 “Funeral merchandise” caskets, grave vaults, grave lots, grave space, grave markers,  
7 monuments, tombstones, crypts, niches, mausoleums, or receptacles and other personal property  
8 incidental to the final disposition of human remains. (Euler)

9 (8) “Funeral service” (Meierhoffer) – Conducting of the ceremony as related to the final  
10 disposition of the deceased as contracted between a licensed funeral establishment and next-of-  
11 kin of the deceased. (Meierhoffer, August 4, 2008)

12 (59) “Insurance-Funded” Preneed Contract- A preneed contract which is designated to be  
13 fun dedfunded by payments or proceeds from an insurance policy;

14 (10) “Investigation”—The process initiated by the Board after an Examination of Books  
15 and Records has shown cause for further review of an funeral establishment, provider or seller’s  
16 financial records. After investigation, or for cause, the Board may initiate an audit.  
17 (Meierhoffer, August 4, 2008)

18 (611) “Joint-Account Funded” Preneed Contract- A preneed contract which designates  
19 that payments for the preneed contract made by or on behalf of the purchaser will be deposited  
20 and maintained in a joint account;

21 (712) “Market value” – See DIFP Comment

22 (13) “Non-guaranteed contract”

1 (14) "Person", any individual, partnership, corporation, cooperative, association, or other  
2 entity;

3 (815) "Preneed contract", any contract or other arrangement which that provides for the  
4 final disposition of a dead human body, or for funeral or burial services or facilities, or for  
5 funeral merchandise, where such disposition, services, facilities or merchandise are not  
6 immediately required, including, but not limited to, an agreement providing for a membership  
7 fee or any other fee having as its purpose the furnishing of burial or funeral services or  
8 merchandise at a discount; (Meierhoffer)

9 (916) "Preneed Counselor sales agent," any person authorized to sell a preneed contract  
10 on behalf of a preneed seller; (Solocum)

11 (1017) "Preneed trust", a trust established by a seller, as grantor, to receive deposits of,  
12 administer, and disburse payments received under preneed contracts by such seller, together with  
13 income thereon;

14 (1118) "Provider", the person designated to provide the disposition, merchandise,  
15 facilities or funeral services, facilities, or merchandise described in a preneed contract; (Euler)

16 (1219) "Purchaser", the person who is obligated to pay under a preneed contract;

17 (1320) "Seller", the person who sells a preneed contract to a purchaser and who is  
18 obligated to collect and administer all payments made under such preneed contract;

19 (1421) "Trustee", the trustee of a preneed trust, including successor trustees.

20 (1522) "Trust-Funded" Preneed Contract- A preneed contract which provides that  
21 payments for the preneed contract shall be deposited and maintained in trust.

22 **APPLICABILITY**

23 333.710.1 The provisions of sections 333.700 to 333.900 shall not apply to:

1 (1) Any contract or other arrangement sold by a cemetery operator for which payments  
2 received by or on behalf of the purchaser are required to be placed in an endowed care fund or  
3 for which a deposit into a segregated account is required under Chapter 214, RSMo, provided  
4 that a cemetery operator shall comply with sections 333.700 to 333.900 if the contract or  
5 arrangement sold by the operator includes services that may only be provided by a licensed  
6 funeral director or embalmer;

7 (2) A contract of insurance, provided that sections 333.700 to 333.900 shall apply to any  
8 preneed contract sold with a preneed contract of insurance. (Meierhoffer)

9 **PRENEED PROVIDER LICENSING**

10 333.720. 1. Except as provided herein, the provider designated in a preneed contract shall  
11 be obligated to provide the funeral or burial services, facilities, or merchandise as described in  
12 the preneed contract.

13 2. No person shall be designated as a provider, or agree to perform the obligations of  
14 a provider under a preneed contract unless, at the time of such agreement or designation, such  
15 person is licensed as a preneed provider by the Board. Nothing in this section shall exempt any  
16 person from meeting the licensure requirements for a funeral establishment as provided in this  
17 chapter. (Grinston) A preneed provider shall be authorized and registered with the Missouri  
18 Secretary of State to conduct business in Missouri and shall be licensed as a funeral  
19 establishment by the Board. A funeral establishment license shall not be required if the person is  
20 the owner of real estate situated in Missouri which has been formally dedicated for the burial of  
21 dead human bodies and the contract only provides for the delivery of one or more grave vaults  
22 and is in compliance with the provisions of chapter 214, RSMo; (Euler)

23 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 (34) 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;

9 (45) 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;

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:

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;

1 (3) Be authorized and registered with the Missouri Secretary of State to conduct business  
2 in Missouri; (Euler)

3 (4) File an annual report with the state board which shall contain:

4 (a) The name and address of a custodian of records responsible for maintaining  
5 the books and records of the provider relating to preneed contracts;

6 (b) The business name or names of the provider and all addresses from which it  
7 engages in the practice of its business;

8 (c) The name and address of each seller with whom it has entered into a written  
9 agreement since last filing an annual report with the Board authorizing the seller to designate or  
10 obligate the licensee as the provider in a preneed contract, and;

11 (d) Any information required by the Board by rule.

12 5. Any license not renewed as provided by this section shall become void. A  
13 licensee who fails to apply for renewal may apply for reinstatement by satisfying the  
14 requirements of section 4 of this section and paying a delinquent fee as promulgated by the  
15 Board by rule.

16 **PRENEED SELLER LICENSING**

17 333.725. 1. The preneed seller designated in a preneed contract shall be obligated to  
18 administer all payments made by or on behalf of a purchaser of a preneed contract and ensure the  
19 preneed contract is managed and fulfilled, and payments remitted, in compliance with sections  
20 333.700 to sections 333.900 and as provided by the contract. (Euler)

21 2. No person shall sell, perform or agree to perform the seller's obligations under, or  
22 be designated as the seller of, any preneed contract unless, at the time of the sale, performance,  
23 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 (36) 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;

13 (47) Identify the name and address of each licensed provider that has authorized the  
14 seller to designate the licensee as a provider under a preneed contract;

15 (58) Has Have established, as grantor, a preneed trust or an agreement to utilize a preneed  
16 trust 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)

19 (69) Identify the name and address of a trustee or, or if applicable, the financial  
20 institution where any preneed trust or joint accounts will be maintained, and;

21 (710) 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.



1 a preneed counselorsales agent. The Board shall maintain a registry of all preneed  
2 counselorsales agents registered with the Board. The registry shall be deemed an open record  
3 and made available on the Board website.

4 2. An applicant for a preneed counselorsales agent registration shall:

5 (1) File an application on a form promulgated by the Board and pay a registration fee of  
6 \_\_\_\_\_ dollars or in an amount promulgated by the Board by rule which shall not exceed  
7 \_\_\_\_\_ percent of the application fee established by the Board pursuant to Chapter 333 for a  
8 funeral director license;

9 (2) Be eighteen years of age, and;

10 (3) Each applicant, or if a corporation, each officer, director, manager, or controlling  
11 shareholder, shall be of good morale character; (Euler)

12 (4) Have obtained a high school diploma or equivalent thereof; and (Euler)

13 (5) Meet all requirement for licensure; and (Euler)

14 (36) Provide the name and address of each seller for whom the applicant is authorized to  
15 sell, negotiate or solicit the sale of preneed contracts for or on behalf of the seller.

16 4. Each preneed counselorsales agent shall apply to renew his or her registration on or  
17 before October thirty-first of each year or a date established by rule of the Board. A registration  
18 which has not been renewed prior to the renewal date shall expire. Applicants for renewal shall:

19 (1) File an application for renewal on a form promulgated by the Board by rule;

20 (2) Pay a renewal fee of \_\_\_\_\_ dollars or in an amount promulgated by the Board by  
21 rule which shall not exceed \_\_\_\_\_ percent of the application fee established by the Board  
22 pursuant to Chapter 333 for a funeral director license, and;

1           (3) Provide the name and address of each seller for whom the counselor preneed sales  
2 agent is authorized to sell, negotiate or solicit the sale of preneed contracts for or on behalf of the  
3 seller.; and

4           (4) Meet all requirements for licensure.

5           5. Any registration not renewed as provided by this section shall become void and  
6 the registrant shall be immediately removed from the preneed counselorsales agent registry by  
7 the Board. A registrant who fails to apply for renewal may apply for reinstatement by satisfying  
8 the requirements of section 4 of this section and paying a delinquent fee as promulgated by the  
9 Board.

10          6. Notwithstanding any other provision of law, the Board may remove a preneed  
11 counselorsales agent from the registry if the counselor agent has been adjudicated and found  
12 guilty, or entered a plea of guilty or nolo contendere, in a criminal prosecution under the laws of  
13 any state or of the United States, for any offense reasonably related to the qualifications,  
14 functions or duties of any profession licensed or regulated under sections 333.700 to 333.900, for  
15 any offense involving the misappropriation or theft of, for any offense an essential element of  
16 which is fraud, dishonesty or an act of violence, or for any offense involving moral turpitude,  
17 whether or not sentence is imposed.

18          7. A preneed counselorsales agent who has been removed from the registry by the  
19 Board may appeal the removal to the administrative hearing commission. Notice of such appeal  
20 must be received by the administrative hearing commission within thirty days of mailing, by  
21 certified mail, the notice of removal. Failure of a preneed counselorsales agent registrant to  
22 notify the administrative hearing commission of his or her intent to appeal waives all rights to

1 appeal the removal. Upon notice of such person's intent to appeal, a hearing shall be held before  
2 the administrative hearing commission in accordance with Chapter 621, RSMo.

3 8. No person shall sell, negotiate or solicit the sale of any preneed on behalf of a  
4 preneed seller unless registered as a preneed counselorsales agent as required by this section.

5 **SELLERS & PROVIDERS**

6 333.738. 1. No seller or preneed counselorperson shall be designated a person as a  
7 provider in a preneed contract unless the provider has a written contractual agreement with the  
8 preneed seller. Any seller who designates a person as a provider in a preneed contract without a  
9 contractual relationship with such person is in violation of the provisions of sections 333.700 to  
10 333.900. (Euler)

11 2. The written agreement required by this section shall include:

12 (1) Consent Written consent from the provider authorizing the seller to designate or  
13 obligate the provider under a preneed contract; (Meierhoffer)

14 (2) Procedures for tracking preneed contract funds or payments received by the  
15 provider and for remitting such funds or payments to the seller, including, the time period  
16 authorized by the seller for the remittance of funds and payments, and;

17 (3) The signatures of the seller and the provider or their authorized representatives  
18 and the date such signature was obtained.

19 3. A provider shall notify the Board within fifteen days of authorizing or otherwise  
20 agreeing to allow a seller to designate him or her as the provider under any preneed contract.

21 4. Any person who knowingly permits a seller to sell a preneed contract designating  
22 him or her as the provider shall be obligated to provide the disposition or the funeral or burial  
23 facilities, merchandise and services described in the preneed contract for the beneficiary. If a

1 provider has knowledge that a seller is designating him or her as the provider under any preneed  
2 contract and fails within thirty days after first obtaining such knowledge to take action to prevent  
3 the seller from so designating him or her as the provider and to inform the Board, the provider  
4 shall be deemed to have consented to such designation and shall be obligated under the contract  
5 as provided herein. Notice to the Board as required by this subsection shall be provided in  
6 writing, within thirty days of the provider having knowledge that a seller is designating him or  
7 her as the provider under a preneed contract without authorization. (Meierhoffer)

8 5. The provisions of subsection 4 and 5 of this section shall not be construed to  
9 exempt any seller or provider from having a written agreement as required by this section.  
10 Failure to comply with the provisions of this section shall be cause for discipline of a preneed  
11 license or of any license issued by the Board under sections 333.000 to 333.700, RSMo.

12 6. Upon request of the board, a licensed seller or provider shall provide a copy of  
13 any preneed contract or any contract or agreement with a seller or provider to the Board.

14 **PRENEED CONTRACT REQUIREMENTS**

15  
16 333.740. 1. A preneed contract made after August 28, 2009, shall be in writing and shall  
17 clearly and conspicuously:

18 (1) Include the contract number on the face of the contract and the name, address  
19 and phone number of the purchaser and beneficiary; Shall be numbered, but only after all  
20 conditions are met and the contract completed. (Kutis)

21 (2) Identify the name, address, phone and license number of the preneed provider and the  
22 preneed seller;

23 (3) Set out in detail the final disposition arrangements for the beneficiary or the funeral or  
24 burial services, facilities and merchandise to be provided;

1 (4) Identify on its face whether the contract is trust-funded, insurance-funded or joint-  
2 account funded;

3 (5) Designate whether the costs for the final disposition or the funeral or burial services,  
4 facilities or merchandise are guaranteed or nonguaranteed. If only a portion of the costs are  
5 guaranteed, the contract shall clearly and separately identify the costs that are guaranteed and the  
6 costs that are non-guaranteed;

7 (6) Prominently identify if the contract is revocable or irrevocable;

8 (7) Set forth the terms for cancellation by the purchaser or by the seller on default of  
9 payment and transfer of the contract; (Meierhoffer).

10 (8) Identify the preneed trust or joint account into which contract payments shall be  
11 deposited, including the name and address of the trustee or the financial institution thereof;

12 (10) Include the name, address and phone number of any insurance company issuing an  
13 insurance policy used to fund the preneed contract;

14 (11) Identify the type of insurance that will be used to fund the insurance policy,  
15 including, the number of such policy, if available;

16 (12) Explain how interest will be distributed and designate the amount of administrative  
17 expenses that will be retained by the seller as authorized by this section; (Meierhoffer).

18 (1312) Identify any other type of expenses or taxes that may be deducted from preneed  
19 funds, and the amount of any such expense if known by the seller at the time of the sale;

20 (1413) Include the name and signature of the purchaser, the preneed counselorsales agent  
21 responsible for the sale of, if any, and of the seller, or its duly authorized representative;

22 (1514) Include the signature of the preneed provider, or their designee, if the preneed contract is  
23 sold to the purchaser by the provider.; and (Meierhoffer).

1 (16) Include a disclosure statement immediately under the signature of the purchaser  
2 which states that the preneed seller and provider identified in the contract are licensed by the  
3 Missouri State Board of Embalmers and Funeral Directors and that complaints against a preneed  
4 provider, seller or counselor may be filed with the Missouri State Board of Embalmers and  
5 Funeral Directors. The statement required by this section shall also include the current address  
6 and phone number for the Board, and; (Meierhoffer).

7 (1415) Comply with the provisions of section 333.700 to 333.900 or any rule  
8 promulgated pursuant thereto.

9 2. A preneed contract shall be voidable and unenforceable at the option of the purchaser,  
10 or the purchaser's legal representative, if the contract is not in compliance with this section, not  
11 issued by a preneed seller duly licensed by the Board or if the purchaser has not received a copy  
12 of the preneed contract signed by the seller or their designee. (Meierhoffer).

13 3. If a preneed contract does not comply with the provisions of sections 333.700 to  
14 333.900, all payments made under such contract shall be recoverable by the purchaser, or the  
15 purchaser's legal representative, from the contract seller or other payee thereof, together with  
16 interest at the rate of ten percent per annum and all reasonable costs of collection, including  
17 attorneys' fees (Meierhoffer).

18 4. After *the seller retains any amount authorized by sections 333.700 to 333.900*, all  
19 funds paid by or on behalf of the purchaser as payment for a preneed contract shall be placed in  
20 trust, in a joint account or shall be used to purchase insurance, as authorized by sections 333.700  
21 to 333.900. Comment: as discussed earlier in our sessions, 100% of the contract amount would  
22 be deposited in the trust and 20% would be reimbursed to the seller for administrative expenses,  
23 commissions, etc. (Meierhoffer, August 4, 2008)



1 with or corporate office held otherwise, unless the power is the result of an official position with  
2 or corporate office held by the person. Control shall be presumed to exist if any person, directly  
3 or indirectly, owns, controls, holds with the power to vote, or holds proxies representing, ten  
4 percent or more of the voting securities of any other person. This presumption may be rebutted  
5 by a showing to the board and within its sole discretion that control does not in fact exist.

6 4. Payments regarding two or more preneed contracts may be deposited into and  
7 commingled in the same preneed trust, so long as the trust's grantor is the seller of all such  
8 preneed contracts and the trustee maintains adequate records that individually and separately  
9 identify the payments, earnings and distributions for each preneed contract.

10 5. Within a reasonable time after accepting a trusteeship or receiving trust assets, a  
11 trustee shall review the trust assets and make and implement decisions concerning the retention  
12 and disposition of assets in order to bring the trust portfolio into compliance with the purposes,  
13 terms, distribution requirements, and other circumstances of the trust, and with the requirements  
14 of sections 333.700 to 333.900.

15 6. All expenses of establishing and administering a preneed trust, including, without  
16 limitation, trustee's fees, legal and accounting fees, investment expenses, and taxes, shall be paid  
17 or reimbursed directly by the seller of the preneed contracts administered through such trust and  
18 shall not be paid from the principal of a preneed trust. In investing and managing trust assets, a  
19 trustee may only incur costs that are appropriate and reasonable in relation to the assets, the  
20 purposes of the trust, and the skills of the trustee. COMMENT: Other states allow the trustee to  
21 deduct a small, reasonable fee directly from the trust. Missouri may want to consider allowing  
22 this, perhaps  $\frac{3}{4}$  of 1%. (Solocum)

1           7. The seller of a preneed contract shall be entitled to all income, including, without  
2 limitation, interest, dividends, and capital gains, and losses generated by the investment of  
3 preneed trust property regarding such contract, and the trustee of the trust may distribute all  
4 income, net of losses, to the seller upon the final disposition of the beneficiary or provision of the  
5 funeral or burial services of facilities or funeral merchandise to or for the benefit of the  
6 beneficiary.

7           8. The trustee of a preneed trust shall maintain adequate books and records of all  
8 transactions administered through the trust and pertaining to the trust generally. The trustee shall  
9 assist the seller who established the trust or its successor in interest in the preparation of the  
10 annual report described in section 333.000. The seller shall furnish to each contract purchaser,  
11 within fifteen days after receipt of the purchaser's written request, a written statement of all  
12 deposits made to such trust regarding such purchaser's contract (Plus principal, plus interest from  
13 the year and principal plus interest over the life of the trust). (Solocum) (Strike Slocum's  
14 addition, Meierhoffer, August 4, 2008)

15           9. A preneed trust shall terminate when trust principal no longer includes any  
16 payments made under any preneed contract, and upon such termination the trustee shall  
17 distribute all trust property, including principal and undistributed income, to the seller which  
18 established the trust.

19           333.747.1 All property held in a preneed trust, including principal and undistributed  
20 income, shall be invested and reinvested by the trustee thereof and shall only be invested and  
21 reinvested in investments which have reasonable potential for growth or producing income.

22           2. A trustee shall invest and manage trust assets as a prudent investor would, by  
23 considering the purposes, terms, distribution requirements, and other circumstances of the trust.

1 In satisfying this standard, the trustee shall exercise reasonable care, skill, and caution. In no  
2 instance shall funds in or belonging to a preneed trust be invested in any term life insurance  
3 product. A trustee who has special skills or expertise, or is named trustee in reliance upon the  
4 trustee's representation that the trustee has special skills or expertise, has a duty to use those  
5 special skills or expertise when investing and managing trust assets, and;

6 3. A trustee shall diversify the investments of the trust unless the trustee reasonably  
7 determines that, because of special circumstances, the purposes of the trust are better served  
8 without diversifying.

9 4. In investing and managing trust assets, a trustee shall consider the following as are  
10 relevant to the trust:

11 (1) General economic conditions;

12 (2) The possible effect of inflation or deflation;

13 (3) The expected tax consequences of investment decisions or strategies;

14 (4) The role that each investment or course of action plays within the overall trust  
15 portfolio;

16 (5) The expected total return from income and the appreciation of capital;

17 (6) Other resources of the beneficiaries known to the trustee;

18 (7) Needs for liquidity, regularity of income, and preservation or appreciation of capital;

19 (8) An asset's special relationship or special value, if any, to the purposes of the trust or to  
20 one or more of the beneficiaries; and

21 (9) The size of the portfolio, nature and estimated duration of the fiduciary relationship  
22 and distribution requirements under the governing instrument.

1           9. It is unlawful for any trustee, preneed seller, preneed provider or preneed  
2           counselorsales agent to procure or accept a loan against any investment or asset of or belonging  
3           to a preneed trust.

4           333.749.1. A preneed trustee may delegate to an agent duties and powers that a prudent  
5           trustee of comparable skills could properly delegate under the circumstances. The trustee shall  
6           exercise reasonable care, skill, and caution in:

7           (1) Selecting an agent;

8           (2) Establishing the scope and terms of the delegation, consistent with the purposes and  
9           terms of the trust; and

10          (3) Periodically reviewing the agent's actions in order to monitor the agent's performance  
11          and compliance with the terms of the delegation.

12          2. In performing a delegated function, an agent owes a duty to the trust to exercise  
13          reasonable care to comply with the terms of the delegation.

14          3. By accepting a delegation of powers or duties from the trustee of a preneed trust, an  
15          agent submits to the jurisdiction of the courts of this state.

16          4. Delegation of an agent as provided herein shall not relieve the trustee of any duty or  
17          responsibility imposed on the trustee by sections 333.700 to 333.900 or the trust agreement.

18          333.750.1 A trustee shall not salesell, invest or authorize any transaction involving the  
19          investment or management of trust property with:

20          (1) The spouse of the trustee;

21          (2) The descendants, siblings, parents, or spouses of a preneed seller or an officer,  
22          manager, director or employee of a preneed seller, provider or counselorpreneed sales agent;

23          (3) An agent, preneed sales agent or attorney of the trustee, preneed seller or provider; or

1 (4) A corporation or other person or enterprise in which the trustee, preneed seller,  
2 preneed provider, or a preneed provider owns a significant interest or has an interest that might  
3 affect the trustee's best judgment.

4 **INSURANCE-FUNDED PRENEED CONTRACTS**

5 SEE DIFP document.

6  
7 333.750751.1. An insurance-funded preneed contract shall comply with sections 333.700  
8 to 333.900 and the specific requirements of this section.

9 2. In no event shall the seller or provider, or any agent, receive or collect from the  
10 purchaser of an insurance-funded preneed contract any amount in excess of what is required to  
11 pay the premiums on the insurance policy as assessed or required by the insurer as premium  
12 payments for the insurance policy. In no instance shall a preneed seller receive or collect any  
13 administrative or other fee to the purchaser for or in connection with an insurance funded  
14 preneed contract, other than those fees or amounts assessed by the insurer.

15 3. Payments collected by or on behalf of a preneed seller for an insurance funded  
16 preneed contract shall be promptly remitted to the insurer or the insurer's designee as required by  
17 the insurer, provided that in no event shall payments be retained or held by the preneed seller or  
18 counselor preneed sales agent for more than thirty days from the date of receipt.

19 4. A preneed seller or any preneed counselor authorized to sell an insurance funded  
20 preneed contract on behalf of a seller shall disclose to the purchaser at the time of sale if the  
21 seller or counselor is a licensed insurance agent and if the seller or counselor will receive any  
22 commission, payment or other valuable consideration for the sale of the insurance product used  
23 to fund the contract. (Meierhoffer)

1           A preneed seller or any preneed sales agent authorized to sell an insurance funded  
2 preneed contract on behalf of a seller shall disclose to the purchaser at the time of sale if the  
3 seller or preneed sales agent is a licensed insurance agent and if the seller or preneed sales agent  
4 will receive any commission, payment or other valuable consideration, for the sale of the  
5 insurance product used to fund the contract and the amount or percentage of any such payments  
6 or commissions, (Solocum). Comment: Are there other regulated disciplines that have to adhere  
7 to such onerous rules? Insurance agents/brokers? Investment advisors? Bankers? Car Salesmen?  
8 Anyone? (Meierhoffer, August 4, 2008)

9           5.       In no instance shall any term life insurance policy be used to fund a preneed  
10 contract nor shall a preneed seller or provider be listed or otherwise designated as the owner of  
11 an insurance policy used to fund a preneed contract.

12           6.       It is unlawful for a preneed seller, provider or counselor preneed sales agent to  
13 procure or accept a loan against any insurance contract used to fund a preneed contract.

14           7.       No preneed seller or provider shall accept an assignment of insurance proceeds or  
15 knowingly allow the preneed seller or provider to be designated as the beneficiary in an  
16 insurance policy unless a preneed contract has also been issued by a licensed seller. A preneed  
17 contract shall only be required by this section if the insurance proceeds are to be used for the  
18 final disposition of a dead human body, or for funeral or burial services or facilities, or for  
19 funeral merchandise, where such disposition, services, facilities or merchandise are not  
20 immediately required *and the price of such services, facilities or merchandise are guaranteed by*  
21 *the provider or seller.* A preneed contract written pursuant to this subsection shall be deemed an  
22 insurance-funded preneed contract and shall comply with this section and all applicable  
23 provisions of sections 333.700 to 333.900.

1           9.       Laws regulating insurance shall not apply to preneed contracts, but shall apply to  
2 any insurance sold with a preneed contract.

3                               **JOINT ACCOUNT-FUNDED PRENEED CONTRACTS**

4           **\*\*\*NOTE: THIS SECTION IS STILL IN THE DRAFTING PROCESS\*\*\***

5           333.755.1. A joint account funded preneed contract shall comply with sections 333.700 to  
6 333.900 and the specific requirements of this section.

7           2.       In lieu of a trust-funded or insurance-funded preneed contract, a preneed seller  
8 and the purchaser may agree in writing that all funds paid by the purchaser for the preneed  
9 contract shall be deposited with a financial institution chartered and regulated by the federal or  
10 state government authorized to do business in Missouri in an account in the joint names and  
11 under the joint control of the provider and purchaser. There shall be a separate joint account  
12 established for each preneed contract sold or arranged under this section.

13           3.       All consideration paid by the purchaser under a joint-account funded contract  
14 shall be deposited into a joint account authorized as authorized by this section within five days of  
15 receipt of payment by the seller.

16           4.       The financial institution shall hold, invest, and reinvest funds deposited pursuant  
17 to this section in savings accounts, certificates of deposit or other accounts offered to depositors  
18 by the financial institutions as provided in the written agreement of the purchaser and the seller,  
19 provided the financial institution shall not invest or reinvest any funds deposited pursuant to this  
20 section in term life insurance or any investment that does not reasonably have the potential to  
21 gain income or increase in value.



- 1           (1) The name, addresses and contract number of all purchasers as reflected in any  
2 preneed contract sold since the filing of the last report;
- 3           (2) The total number and total face value of preneed contracts sold since the filing of the  
4 last report;
- 5           (3) The contract amount of each preneed contract sold since the filing of the last report,  
6 identified by contract;
- 7           (4) The amount of funds received by the seller for payment on each preneed contract  
8 since the filing of the last report, identified by contract, and the date such funds were received;
- 9           (5) The total amount of funds retained by the seller for administrative expenses from  
10 payments received on behalf of a purchaser since the filing of the last report, identified by  
11 contract;
- 12           (6) The name, address and license number of all preneed counselorsales agents employed  
13 or authorized to sell preneed contracts on behalf of the seller;
- 14           (7) The date the report is submitted and the date of the last report;
- 15           (8) The number of all Missouri preneed contracts fulfilled by the preneed seller during  
16 the preceding calendar year;
- 17           (9) The name and address of each provider with whom it is under contract;
- 18           (10) The name and address of the person designated by the seller as custodian of the  
19 seller's books and records relating to the sale of preneed contracts.
- 20           (11) Written consent authorizing the state board to order an examination and if necessary  
21 an audit of any joint or trust account established pursuant to sections 333.700 to 333.900,  
22 designated by depository or account number.

1 (12) Written consent authorizing the state board to order an investigation, examination  
2 and if necessary an audit of its books and records relating to the sale of preneed contracts;

3 (13) The annual status report shall be certified under oath as complete and correct by an  
4 officer of the preneed seller. The preneed seller or officer shall be subject to the penalty of  
5 making a false affidavit or declaration, and;

6 (14) A copy of each preneed contract sold, which may be provided by a scanned  
7 electronic copy; and (Solocum)

8 (1415) Any information deemed necessary by the Board to ensure compliance with  
9 sections 333.700 to 333.900.

10 2. A preneed seller that sells or has sold trust-funded preneed contracts shall also include  
11 in the annual report required by section 1 of this section:

12 (1) The name and address of the financial institution licensed to do business in the State  
13 of in (Meierhoffer, August 4, 2008) Missouri in which it maintains a preneed trust account and  
14 the account numbers of such trust accounts, and;

15 (2) The trust fund balance as reported in the previous year's report;

16 (3) The current trust fund balance;

17 (4) Principal contributions received by the trustee since the previous report;

18 (5) Total *trust* earnings and total distributions to the preneed seller since the previous  
19 report;

20 (6) A statement of all assets *and investments* of the trust listing cash, real or personal  
21 property, stocks, bonds, and other assets, showing cost, acquisition date and current market value  
22 of each asset and *investment*, and;

1 (8) Total expenses, excluding distributions to the preneed seller, since the previous  
2 report.

3 (9) The information required by subsections (1) to (8) of this section shall be certified to  
4 under oath as complete and correct by a corporate officer of the trustee. The trustee shall be  
5 subject to the penalty of making a false affidavit or declaration.

6 3. A preneed seller that sells or who has sold joint-account funded preneed contracts  
7 shall also include in the annual report required by section 1 of this section:

8 (1) The name and address of the financial institution in Missouri in which it maintains the  
9 joint account and the account numbers for each joint account, and;

10 (2) The amount on deposit in each joint account;

11 (3) The joint account balance as reported in the previous year's report;

12 (4) Principal contributions placed into each joint account since the filing of the previous  
13 report;

14 (5) Total earnings since the previous report;

15 (6) Total distributions to the preneed seller from each joint account since the previous  
16 report;

17 (7) Total expenses deducted from the joint account, excluding distributions to the preneed  
18 seller, since the previous report, and;

19 (8) The information required by subsections (1) to (7) of this section shall be certified to  
20 under oath as complete and correct by an authorized representative of the financial institution.  
21 The affiant shall be subject to the penalty of making a false affidavit or declaration.

22 4. A preneed seller that sells or who has sold any insurance-funded preneed contracts  
23 shall also include in the annual report required by section 1 of this section:

1 (1) The name and address of each insurance company issuing insurance to fund a preneed  
2 contract sold by the seller during the preceding year;

3 (2) The type of insurance purchased to fund each preneed contract, identified by  
4 contract;

5 (3) The total amount of funds collected by the seller for each preneed contract, including,  
6 any funds used to pay insurance premiums and the date such funds were received;

7 (4) The total amount of premiums received by the insurance company for each insurance  
8 policy used to fund a preneed contract sold by the preneed seller;

9 (5) *The status, total face value and total cash surrender value of each policy, and;*

10 (6) The information required by subsections (1) to (5) of this section shall be certified to  
11 under oath as complete and correct by an authorized representative of the insurer. The affiant  
12 shall be subject to the penalty of making a false affidavit or declaration.

13 5. All reports required by this section shall be filed by the thirty-first day of October  
14 of each year or by the date established by the Board by rule. Annual reports filed after the date  
15 provided herein shall be subject to a late fee of \_\_\_\_\_ dollars for every month past the  
16 renewal deadline or in an amount established by rule of the Board.

17 6. A seller who fails to file their annual report on or before the thirty-first day of  
18 October shall be prohibited from selling any preneed contracts until the annual report, and all  
19 applicable fees, have been paid to the board.

20 **RECORD RETENTION**

21 333.762. A preneed seller shall maintain:

1 (1) Adequate records of all preneed contracts and related agreements with providers, the  
2 trustee of a preneed trust, or the financial institution holding a joint account established pursuant  
3 to 333.700 to 333.900;

4 (2) Records of Ppreneed contracts, including financial institution statements and death  
5 certificates, certificate of performance signed by the next-of-kin or responsible party for the  
6 deceased (Meierhoffer, August 4, 2008) shall be maintained by the seller for the duration of the  
7 contract and for no less than (2) years after the final disposition of the beneficiary or after the  
8 funeral or burial facilities, services or merchandise designated in the contract or cancellation of  
9 the contract. (Euler)

10 **INVESTIGATION/INSPECTIONS**

11 333.765.1. The Board shall have authority to:

12 (1) Conduct inspections of preneed providers, sellers and counselors preneed sales agent  
13 to determine compliance with sections 333.700 to 333.900, at the discretion of the Board and  
14 with or without cause;

15 (2) Investigate the activities of any preneed seller, provider or counselor preneed sales  
16 agent for the purpose of determining violations of sections 333.700 to 333.900 or to determine  
17 whether grounds exist for disciplining any person licensed or regulated under sections 333.700 to  
18 333.900. The Board shall have authority to conduct an investigation if an inspection authorized  
19 by this section identifies a probable violation of sections 333.700 to 333.900 or upon receipt of a  
20 complaint filed with the Board or by the Board staff; (Euler)

21 (3) Conduct a financial examination of the books and records of a licensee, and if  
22 necessary an audit of a licensee or any trust or joint account, to determine *if preneed funds are*  
23 *being maintained or handled by the licensee as required by* sections 333.700 to 333.900. The

1 Board shall conduct a financial examination of the books and records of each preneed seller as  
2 authorized by this section at least once every [three/five] years, or for cause as determined by  
3 the Board (Meierhoffer, August 4, 2008) as financially permissible pursuant to the funding of the  
4 board; (Kutis and Meierhoffer) COMMENT: Conducting a random sampling annually  
5 (Solocum). (Strike random sampling, Meierhoffer, August 4, 2008) SEE DIFP document.

6 2. Upon determining that an inspection, investigation, examination or audit shall be  
7 conducted, the board shall issue a notice authorizing an employee or other person appointed by  
8 the board to perform such inspection, investigation, examination or audit. The notice shall  
9 instruct the person appointed by the board as to the scope of the inspection, investigation,  
10 examination or audit.

11 (a) The board shall not appoint or authorize any person to conduct an inspection,  
12 investigation, examination or audit pursuant to this section if the individual has a conflict of  
13 interest or is affiliated with the management of, or owns a pecuniary interest in, any person  
14 subject to inspection, investigation, examination or audit under section 333.000 to section  
15 333.999.

16 (b) The board may request that the director of the division of professional registration,  
17 the director of the department of insurance, financial institutions and professional registration, or  
18 the office of the attorney general designate one or more investigators or financial examiners to  
19 assist in any investigation, examination or audit, and such assistance shall not be unreasonably  
20 withheld. (Euler)

21 Comment: What is the purpose of the added language? If there is a statute providing for  
22 the other departments or the attorney general's assistance, should this be necessary?  
23 (Meierhoffer, August 4, 2008)

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 subpoenas to compel the production of  
14 records and papers by any licensee, trustee or registrant of the board. Subpoenas issued pursuant  
15 to this section shall be served in the same manner as subpoenas in a criminal case.

16           6.     All preneed sellers, providers, and counselors sales agents, or trustees shall  
17 cooperate with the state board or its designee, the division of finance, the department of  
18 insurance, financial institutions and professional registration and the office of the attorney  
19 general of Missouri, in any inspection, investigation, examination or audit brought under the  
20 provisions of sections 333.700 to 333.900.

21           7.     This section shall not be construed to limit the board's authority to file a  
22 complaint with the administrative hearing commission charging a licensee of the board with any  
23 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. The state board, the division of finance, the department of insurance, financial  
4 institutions and professional registration and the office of the attorney general of Missouri may  
5 share information relating to any preneed investigation, examination or audit. (Euler)

6 89. If an investigation, audit or examination finds

7 Comment: Please clarify what "finds a violation" means. Does this mean an  
8 investigation/audit has led to a ruling by the AG's office and a decision has been rendered by the  
9 attorney general? (Meierhoffer, August 4, 2008)

10 a violation of sections 333.700 to 333.900, the office of the attorney general may initiate  
11 a judicial proceeding to:

12 (1) Declare rights;

13 (2) Approve a nonjudicial settlement;

14 (3) Interpret or construe the terms of the trust;

15 (4) Determine the validity of a trust or of any of its terms;

16 (5) Compel a trustee to report or account;

17 (6) Enjoin a trustee from performing a particular act or grant to a trustee any necessary or  
18 desirable power;

19 (7) Review the actions of a trustee, including the exercise of a discretionary power;

20 (8) Appoint or remove a trustee;

21 (10) Determine the liability of a trustee for an action relating to the trust and compel  
22 redress of a breach of trust by any available remedy;

23 (12) Approve employment and compensation of agents;

1 (13) Determine the propriety of investments or of principal and income allocations, or;

2 (17) Determine the timing and quantity of distributions and dispositions of assets.

3 (18) This section does not preclude any other authority vested in the attorney general by  
4 law.

5 **DISCIPLINARY ACTION**

6 333.770. 1. The board may refuse to issue any registration or license required by sections  
7 333.700 to 333.900 for one or any combination of causes stated in subsection 2 of this section.

8 The board shall notify the applicant in writing of the reasons for the refusal and shall advise the  
9 applicant of his right to file a complaint with the administrative hearing commission as provided  
10 by chapter 621, RSMo.

11 2. The board may cause a complaint to be filed with the administrative hearing  
12 commission as provided by chapter 621, RSMo, against any preneed seller or provider licensed  
13 with the board [or preneed counselor registered with the board] or any person who has failed to  
14 renew or has surrendered his license [or registration] for any one or any combination of the  
15 following causes:

16 (1) Use of any controlled substance, as defined in chapter 195, RSMo, or alcoholic  
17 beverage to an extent that such use impairs a person's ability to perform the work of any  
18 profession registered under sections 333.700 to 333.900;

19 (2) The person has been finally adjudicated and found guilty, or entered a plea of guilty  
20 or nolo contendere, in a criminal prosecution under the laws of any state or of the United States,  
21 for any offense involving the misappropriation or theft of funds, elder abuse, or for any offense  
22 an essential element of which is fraud, dishonesty or an act of violence, or for any offense  
23 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;

- 1 (13) Failure to display or present a valid certificate or license if so 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;
- 10 (1617) 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 If the Federal Trade Commission finds a violation, the remedy will be determined by the FTC  
13 and no lesser authority or state should have any penalty. (Meierhoffer, August 4, 2008)
- 14 3. After the filing of such complaint, the proceedings shall be conducted in accordance  
15 with the provisions of chapter 621, RSMo. Upon a finding by the administrative hearing  
16 commission that the grounds, provided in subsection 2, for disciplinary action are met, the board  
17 may, singly or in combination, censure or place the person named in the complaint on probation  
18 on such terms and conditions as the board deems appropriate for a period not to exceed five  
19 years, or may suspend, for a period not to exceed three years, or revoke the license. COMMENT:  
20 Civil penalty/fines. (Solocum)
- 21 4. Notwithstanding any other provision of this section, the board may automatically  
22 suspend any license issued pursuant to Chapter 333/sections 333.700-333.900 if the board finds,  
23 after an inspection, examination, investigation or audit and after providing the licensee an

1 opportunity to respond, a shortage in the trust fund or joint account which exceeds [twenty  
2 *percent of the amount required to be held in the trust or joint account or fifty thousand dollars,*  
3 *whichever is lesser*] or upon being adjudicated and found guilty, or entering a plea of guilty or  
4 nolo contendere, in a criminal prosecution under the laws of any state or of the United States, for  
5 any offense involving elder abuse, violence, sexual misconduct or involving the stealing,  
6 misappropriation or theft of funds. (Grinston/Euler)

7         5. A person whose license was has been suspended under subsection 4 of this section  
8 may appeal such suspension to the administrative hearing commission. Notice of such appeal  
9 must be received by the administrative hearing commission within ninety days of mailing, by  
10 certified mail, the notice of suspension. Failure of a person whose license was suspended to  
11 notify the administrative hearing commission of his or her intent to appeal waives all rights to  
12 appeal the suspension. Upon notice of such person's intent to appeal, a hearing shall be held  
13 before the administrative hearing commission. (Meierhoffer)

14         6. Use of the procedures set out in this section shall not preclude the application of  
15 the provisions of subsection 2 of section 333.061.

16         333.775. If a seller shall fail to make timely payment of an amount due a purchaser, or a  
17 provider pursuant to the provisions of sections 333.700 to 333.900, the purchaser or provider, as  
18 appropriate, shall have the right, in addition to other rights and remedies against such seller, to  
19 make demand upon the trustee of the preneed trust for the contract to distribute to the purchaser  
20 or provider from the trust, as damages for its breach, an amount equal to all deposits made into  
21 the trust for the contract.

22         333.780. Upon the death or legal incapacity of a purchaser, all rights and remedies  
23 granted to the purchaser pursuant to the provisions of sections 333.700 to 333.900 shall be

1 enforceable by and accrue to the benefit of the purchaser's legal representative or his successor  
2 designated in such contract, and all payments otherwise payable to the purchaser shall be paid to  
3 that person.

4 333.785. 1. Any person, including the officers, directors, partners, agents, or employees  
5 of such person, who shall knowingly and willfully violate or assist or enable any person to  
6 violate any provision of sections 333.700 to 333.900 by incompetence, misconduct, gross  
7 negligence, fraud, misrepresentation, or dishonesty is guilty of a class D C felony. Each violation  
8 of any provision of sections 333.700 to 333.900 constitutes a separate offense and may be  
9 prosecuted individually. The attorney general shall have concurrent jurisdiction with any local  
10 prosecutor to prosecute under this section.

11 2. Any violation of the provisions of sections 333.700 to 333.900 shall constitute a  
12 violation of the provisions of section 407.020, RSMo. In any proceeding brought by the attorney  
13 general for a violation of the provisions of sections 333.700 to 333.900, the court may order all  
14 relief and penalties authorized under chapter 407 and, in addition to imposing the penalties  
15 provided for in sections 333.700 to 333.900, order the revocation or suspension of the  
16 [registration] license of a defendant seller or provider.

17 **INJUNCTIONS**

18 333.790. 1. Upon application by the board, and the necessary burden having been met, a  
19 court of general jurisdiction may grant an injunction, restraining order or other order as may be  
20 appropriate to enjoin a person from:

21 (1) Offering to engage or engaging in the performance of any acts or practices for which  
22 a registration or authority, permit or license is required by sections 333.700 to 333.900 upon a

1 showing that such acts or practices were performed or offered to be performed without the  
2 required registration or authority, permit or license; or

3 (2) Engaging in any practice or business authorized by a registration or authority, permit  
4 or license issued pursuant to sections 333.700 to 333.900 that is in violation of sections 333.700  
5 to 333.900 or upon a showing that the holder presents a substantial probability of serious danger  
6 to the health, safety or welfare of any resident of this state or client or customer of the licensee,  
7 or;

8 (3) Engaging in any practice or business that presents a substantial probability of serious  
9 danger to the solvency of any preneed seller.

10 2. Any such action shall be commenced either in the county in which such conduct  
11 occurred or in the county in which the defendant resides or, in the case of a firm or corporation,  
12 where the firm or corporation maintains its principal office or in Cole county. (Euler

13 3. Any action brought under this section shall be in addition to and not in lieu of any  
14 penalty provided by sections 333.700 to 333.900 and may be brought concurrently with other  
15 actions to enforce sections 333.700 to 333.900.

16 **TERMINATION OF BUSINESS- PROVIDER**

17 333.800.1 A preneed provider that intends to sell or otherwise dispose of *all or a*  
18 *majority* of its business assets, or its stock if a corporation, shall notify the Board at least sixty  
19 days prior to selling or otherwise disposing of its business assets or stock, or ceasing to do  
20 business as a preneed provider, and shall file a notification report on a form established by the  
21 board.

22 2. The report required by this section shall include:

1 (a) The name, phone number and address of the purchasers of any outstanding preneed  
2 contract for which the licensee is the designated provider;

3 (b) The name and license numbers of all sellers authorized to designate the licensee as a  
4 provider in a preneed contract;

5 (c) The name, address and license number of the provider assuming or agreeing to  
6 assume the licensee's obligations as a provider under a preneed contract, if any;

7 (d) The name, address and phone number of a custodian who will maintain the books  
8 and records of the provider containing information about preneed contracts in which the licensee  
9 is or was formerly designated as provider,

10 (e) A final annual report containing the information required by section 333.000;

11 (e) The date the provider intends to sell or otherwise dispose of its business assets, or its  
12 stock if a corporation, or to cease to doing business, and;

13 (f) Any other information required by the Board by rule.

14 3. Within three days after the provider sells or transfers its assets or stock or ceases doing  
15 business, the former provider shall notify each seller in writing that the former provider has sold  
16 or transferred its assets or stock or has ceased doing business.

17 (a) Within thirty days after the seller receives notification from the provider under this  
18 subsection, the seller shall provide written notification to all purchasers with outstanding preneed  
19 contracts in which the former provider was designated as provider indicating that the provider  
20 has transferred ownership or has ceased doing business. Such notice shall give the purchaser the  
21 option to select another provider that has a written agreement with the seller pursuant to the  
22 provisions of sections 333.000 or to cancel the contract if an alternate provider is not accepted by  
23 the purchaser.

1 (b) If an alternate provider is selected by the purchaser, the seller shall amend the  
2 preneed contract to reflect the change in provider and shall notify the new provider of the  
3 designation;

4 (c) If the purchaser elects to cancel the contract, the seller shall refund all amounts paid  
5 by or on behalf of the purchaser *and any related interest*. Nothing in this section shall be  
6 construed to prohibit a seller from seeking reimbursement from the former provider of any funds  
7 paid to the purchaser after a cancellation authorized by this subsection.

8 4. A preneed provider not subject to subdivision 1 of this section may only transfer its  
9 obligations as a provider to an alternate provider upon the consent of the seller, purchaser and the  
10 provider assuming the provider obligations under the contract. If an alternate provider is  
11 selected by the purchaser, the seller shall amend the preneed contract to reflect the change in  
12 provider and shall provide the purchaser with a copy of the amended contract.

13 5. The office of the attorney general shall have authority to initiate legal action to  
14 compel or otherwise ensure compliance with this section by a former preneed provider licensee.

15 **TERMINATION OF BUSINESS- SELLER**

16 333.805.1 A preneed seller that intends to sell or otherwise dispose of *all or a majority* of  
17 its business assets, or its stock if a corporation, shall notify the Board at least sixty days prior to  
18 selling or otherwise disposing of its assets or stock, or ceasing to do business as a preneed seller,  
19 and shall file a notification report on a form established by the board.

20 2. The report required by this section shall include:

21 (a) A final annual report containing the information required by section 333.000;

1 (b) The name, address and phone number of a custodian for the books and records of the  
2 seller that contain information about preneed contracts in which the licensee is or was formerly  
3 designated as seller;

4 (c) The date the seller intends to sell or otherwise dispose of its business assets, or its  
5 stock if a corporation, or to cease to doing business; (Meierhoffer)

6 (d) A notarized and signed statement from the person assuming or agreeing to assume  
7 the obligations of the seller indicating that the assuming seller has been provided with a copy of  
8 the seller's final annual report and has consented to assuming the outstanding obligations of the  
9 seller;

10 (e) In lieu of the notarized statement required by subdivision (8), the seller may file a  
11 plan detailing how the assets of the seller will be set aside and used to service all outstanding  
12 preneed contracts sold by the seller, and;

13 (f) Any other information required by the Board by rule.

14 3. Within thirty days after assuming the obligations of a seller pursuant to this section,  
15 the assuming preneed seller shall:

16 (1) Notify each provider in writing that the former seller has sold or transferred its assets  
17 or stock or has ceased doing business, and;

18 (2) Provide written notification to the purchasers of each preneed contract assumed by  
19 the seller indicating that the former seller has transferred ownership or has ceased doing  
20 business. Such notice shall give the purchaser the option to maintain or to cancel the contract. If  
21 the purchaser elects to cancel the contract, the seller shall refund all amounts paid by or on behalf  
22 of the purchaser *and any related interest*. This section shall not be construed to limit or

1 otherwise restrict any civil or other legal right a purchaser or provider may have against the seller  
2 for damages, breach of a contractual relationship or for unpaid fees. (Meierhoff)

3 4. Upon receipt of the written notification, the state board or the office of the  
4 attorney general may take reasonable and necessary action to determine that the seller has made  
5 proper plans to assure that the trust assets of the seller will be set aside and used to service  
6 outstanding preneed contracts sold by the seller. Such action may include, but is not limited to,  
7 an examination of books and records or audit of the trust account. The attorney general shall be  
8 authorized to bring legal action to ensure compliance with this section including an action for  
9 injunctive or declaratory relief. (Meierhoffer)

10 5. A preneed seller not subject to subdivision 1 of this section may only transfer its  
11 obligations as a seller under a preneed contract to an alternate seller upon consent of the  
12 purchaser and the person assuming the obligations of the seller under the contract. If the  
13 purchaser fails to consent, the seller shall refund all amounts paid by or on behalf of the  
14 purchaser with any related interest or earnings. If the purchaser and seller consent to the transfer,  
15 the seller shall amend the preneed contract to reflect the change and shall provide the purchaser  
16 with a copy of the amended contract.

17 6. Nothing in this section shall be construed to require the state board to audit,  
18 investigate or examine the books and records of a seller subject to the provisions of this section  
19 nor shall this section be construed to amend, rescind or supersede any duty imposed on, or due  
20 diligence required of, an entity assuming the obligations of the seller.

21 7. The office of the attorney general shall have authority to initiate legal action to  
22 compel or otherwise ensure compliance with this section by a former preneed provider licensee.



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- 2. The board shall promulgate and enforce rules for the transaction of its business and  
5 for standards of service and practice to be followed for the licensing and registration of  
6 providers, sellers and counselors deemed necessary for the public good and consistent with the  
7 laws of this state.

8           4. 3 Any rule or portion of a rule, as that term is defined in section 536.010, RSMo, that  
9 is 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.

## **2008-08-12 Michael Meierhoffer comments**

## **Notes on topics not discussed to date from Michael Meierhoffer (August 6, 2008)**

**2. Collection of funds by preneed providers:** Kim inserted language requiring funds to be deposited within 45 days.

**3. Record keeping for preneed fund payments:** The trustee, as recipient of 100% of the funds should be responsible for keeping records of payments.

**8. Payments to providers for services rendered:** Do not require a certified copy of the death certificate. This is not consumer friendly as the cost of the death certificate will only be passed on to the family. Insurance companies and trust companies currently require a certificate of performance signed by the family.

**9. Trustee responsibilities:** New language in 436 as proposed spells this out.

**10. Independent advisors:** I think we are waiting on language from banking department.

**11. Reporting/notification requirements for trustees:** The Board should be notified with the annual reporting; consumers will be notified at the time of the contract (Trustee should be listed on the contract); Sellers are aware based upon the seller/provider agreement they should have entered into to do business together; the provider and the trustee should be aware of their relationship as well since their payment comes from the trustee and there is no reason for additional reporting to the Attorney General's office (if an investigation/audit is called for, the AG should be able to review annual reports.

**12. Record keeping for trustees:** Is this not a function of the banking/financial institutions statutes?

**13. Trust disbursements:** Is this not a function of the banking/financial institutions statutes?

**22. Rulemaking for the Board:** All for it.

**35. Licensing requirements for preneed registrants:** All discussion seems to be leading to licensure of preneed sellers. As discussed earlier, licensed funeral directors, apprentice funeral directors and licensed insurance producers should be exempt from this requirement. Persons employed by an establishment, provider or seller, or third-party sellers, who do not hold one of the aforementioned licenses or registrations should be required to apply for licensure to sell preneed trust agreements or joint account agreements and should pass a test as designed by the Board based upon the statutes governing preneed trust and joint account agreements.

**39. Changing/clarifying basic requirements for preneed contracts:** Proposed language covers these items fully.

**40. Adopting/requiring standard forms for preneed contracts:** No. Contract should be devised to fit the business needs of individual sellers. One size does not fit all with contracts. The details and items that would have to be included to encompass all items currently provided throughout the state would be burdensome and confusing to the consumer.

**41. Requiring the filing or approval of preneed forms & contracts with/by the Board or other agency:** Too much oversight. A contract doesn't break the law. A dishonest person does with or without an approved contract on file. Contracts should be drafted and approved by the businesses attorney which would provide oversight and adherence to contract law.

**42. Definition of a "preneed contract":** Proposed language addresses this point fully.

**43. Changing/clarifying the Current Chapter 436 investigative/examination/audit process:** Refer to Meierhoffer's proposed changes from August 4, 2008. Examination would be the first step as conducted by the Board or its staff during the annual reporting process. If deemed necessary by the Board and investigation may be initiated after this point for further review. This process could include other agencies as requested by the Board. If the investigation merits, the Board could call for an audit which would be a more comprehensive review conducted by certified professionals.

**48. Allowing the regulatory agency for Chapter 436 to hire legal counsel:** Why? Is legal counsel not already provided to the Board? Is the Attorney General's Office not available if needed? What cause is there for another level of attorney's and more importantly, their fees?

**49. Expanding/modifying investigative, audit or examination powers of the Board/Attorney General's Office/Missouri Department of Insurance, etc.:** Refer to item 43.

**50. Expanding/modifying criminal/civil authority of the Board/Insurance/Attorney General's Office:** This item may have already been discussed and resolved at an earlier meeting.

**NOTES:**

- Nobody has clearly explained why it is necessary to attach this proposed language to Statute 333. Do we run the risk of opening that statute when we do this?
- Do the new statutes apply only to contracts entered after the effective date of the new law, if passed? If so, what law to older contracts fall under if the current 436 is repealed? It is mandatory that changes in Chapter 436 do not affect contracts entered before the effective date of the new law.
- There is a great need to keep funeral service/law and cemetery service/law separate. Although it may seem that the two industries are one in the same they do have very different business cycles, revenue streams and practices that should differentiate them from each other enough to keep them governed by separate statutes (333 and 436 for funeral service and 214 for endowed care cemeteries). Pre-need statute as described in the proposed language could cripple cemeteries. Trusting requirements and disbursements for cemetery property would potentially

take generations to recognize revenue, if at all in some cases. Keep funeral and cemetery separate.

**2008-08-12 Missouri Funeral Trust Comments to  
Funeral Consumer Alliance 436 Committee**

Josh, I am not sure what your reference to MFDEA was referring to, but I hope you are aware that, on behalf of MFDEA, I both stated our view and voted to increase the trust amount to more than 80% on guaranteed-price contracts, which is what the majority of our members support (although there is some disagreement among us on, for example, if it should be 90, 95 or 100% etc.). While it is disappointing that this was not changed, there are going to be a number of very important items in the recommendations from the group that will greatly improve the current law for consumers including:

- Allowing portability
- 100% Trusting on non-guaranteed contracts
- Requiring that all funds be deposited into the trust then any % for expenses paid out
- Requiring that all income earned stay in the trust
- Increasing reporting and disclosure requirements
- Giving the State Board clear investigatory and auditing powers and rulemaking authority
- Streamlining the discipline process
- Providing for civil penalties for violations
- licensing/registering preneed salespeople, "real" licensing of preneed sellers
- Increasing the duties regarding investing and preventing some dangerous investment choices
- Increasing the fiduciary responsibilities of the Trustee
- 10% of income to consumer on cancellation of guaranteed contract, 100% on non-guaranteed contracts.

Given this, even at the 80% level with guaranteed contracts, the consumer is in a far better position than if they wish to cancel an insurance policy where they are lucky to get pennies on the dollar -- if anything at all. There is, in effect, a "charge" to the consumer in exchange for the huge benefit of locking-in prices but, with proper disclosures, why should that not be the consumer's choice? They also get the full value of the money paid into the trust unlike many insurance options where the consumer can very easily wind up paying \$12,000 for a \$6,000 funeral.

Although I feel the group's recommendations could be stronger in some areas and may even go too far in others, what I expect to be the final proposal will so much better than the current 436, I would hate to see it defeated because your group or others did not get everything you would like. Given the realities of the legislative process, as Representative Meadows clearly stated on several occasions, if there is significant opposition to any legislation that comes out of the joint committee, the likelihood is that nothing at all will get passed leaving us with the current 436 language that has so many flaws.

One example that you missed is that, under the current law, if the previous owners of NPS came to the State of Missouri today to start up a new trust to be run the same way as their old one, the State would be powerless to do anything. They would have to give a license to the new company. It can also take up to three years to discipline anyone under Chapter 436 because the enforcement language is so bizarre and the state can't fix the problem or clarify things as it has no rulemaking authority. If nothing else these kind of situations need to be changed and the recommendations that have been approved would do that. If no bill is passed, the current very bad 436 would stay in effect and we would have

lost perhaps our only chance in years to improve the situation.

Lastly, I must also take exception to your phrase "fleecing the consumer." Even with all of the recent problems with preneed, to my knowledge no consumer has failed to receive the funeral that they have paid for because of the chapter 436 provisions, as flawed as they may be. If anyone was "fleeced" in the past several years it was funeral homes who are providing the funerals to the consumers regardless of how much they are receiving from insurance companies, trusts or third-party sellers. Even when a funeral home has gone out of business, the state and the industry has stepped in to protect the consumer. Many of the positions many of us took at the meetings would actually hurt our "bottom line" but we did so because we felt they were best for the consumer while still being workable for the industry.

In short, the State's "job" is to ensure that, when regulation of *any* industry is necessary, it creates a system that is fair and equitable to all parties and that, whatever the rules and regulations may be, that they are clearly understood and properly enforced. The recommendations of the working group, although not perfect, will make that process much easier and will benefit both the consumer and the funeral homes that serve them.

I hope that neither your group, AARP or any other interest will prevent needed changes to the law from going into force just because any proposed legislation is not "perfect." An "all or nothing" approach is going to get us nothing.

As I mentioned at the meeting, please feel free to call me at any time to discuss the matter in more detail

Don Otto  
Executive Director  
Missouri Funeral Directors and Embalmers Association