## ALLOCATION OF PRENEED FUNDS (EXPENSES, CANCELLATION & PORTABILITY)

The Working Group dedicated significant discussion to the proper allocation of preneed contract funds and related interest. The Working Group considered the proper allocation of preneed funds based on four distinct preneed scenarios:

1. **Contract Fulfillment:** The beneficiary dies and the preneed contract is fulfilled by the original seller and provider according to the contract terms. In this scenario, the purchaser has paid all outstanding costs and the provider and seller have complied with all contractual obligations.

2. **Transfer of Providers**: The purchaser decides to maintain the preneed contract but desires to select a different provider to perform the disposition or to provide the facilities, services or merchandise identified in the contract.

3. **Cancellation By Purchaser**: The purchaser decides to cancel the contract entirely. Here, the purchaser does not wish to designate a new provider or make other changes to the contract. Instead, the contract is to be completely terminated.

4. **Cancellation By Seller For Non-Payment:** This option is exercised by the seller in those instances when the purchaser has failed to remit payment as required by the contract. If exercised, the preneed contract is cancelled and is no longer in effect.

Each of the foregoing scenarios are vastly different and raise different consumer and funding concerns. Accordingly, the Working Group recommends that the Joint Committee separately consider the allocation of preneed funds/interest for each scenario.

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### A. Contract Fulfillment:

The Working Group approved the following unanimous recommendations:

- On fulfillment, sellers should be entitled to payment of all funds held in trust and any related income, unless otherwise provided in the contract.

### B. Transfer of Providers:

The Working Group approved the following consensus recommendations:

- Chapter 436 should clearly allow for 100% portability. Purchasers should have complete and unrestricted freedom to select an alternative provider and should not be penalized or assessed any additional fee/costs for a transfer.

- The seller should be required to pay the newly designated provider the remaining payments owed to the original provider under the contract, if the . Here, the newly designated provider would simply "step into the shoes" of the original provider for purposes of payment and fulfilling the contract.

! ***BOARD RECOMMENDATION:*** *The Board recommended that if the provider does not agree to accept the remaining payments, the newly designated provider should then be entitled to a minimum of 100% of the preneed payments made by the purchaser plus 1% of any interest earned.*

- The Seller should be required to accept the new provider designated by the purchaser if the provider agrees to accept the remaining payments owed to the original provider, as designated in the contract.

! ***Comments:*** *While MFDEA generally supported this recommendation, concerns were raised that: 1) A seller should not be forced into a legal relationship with a party the seller does not have a contract with and with whom the seller does not wish to be in business with and 2) A seller/provider could be forced to invest funds on behalf of, and for the benefit of, a competitor.*

- Interest should be allocated to the seller as provided in the original contract.

## C. Purchaser Cancellation:

The Working Group approved the following unanimous recommendations:

- Purchasers should be entitled to a full refund of payments if the purchaser cancels the contract within thirty (30) days after receiving a fully executed contract.
- Purchasers should be allowed to cancel after the thirty day cancellation period with or without cause (see additional recommendations below).

Additional Recommendations:

! ***Comments:*** *MFDEA commented that cancellation and portability cannot be adequately discussed until the allowed amount for administrative expenses is determined. In accordance with MFDEA's comment, the recommended allocation and refunding are generally based on the administrative expense recommended by the participant. Accordingly, the following allocation/refunding amounts are being provided for informational purposes only. Should the amount of administrative expenses change, the recommendations would also change.*

After extensive discussion and research, the Working Group did not reach a unanimous, consensus or majority recommendation for the refunding of preneed funds if the purchaser cancels the contract after the 30-day review period. However, Working Group Participants suggested the following allocation/refund amounts:

- 100% of all funds held in trust. *Note: This option would require the seller to refund its expenses to the purchaser plus any related income.*
- 100% of the amount paid by the purchaser. *Note: This option would require the seller to refund expenses, however, the seller would retain any related income.*
- 90% of the amount paid by the purchaser. *Note: This option would allow the seller to retain a portion of the funds for expenses plus any related income.*
- 90% of all payments plus a portion of the income earned. *Note: This option would allow the seller to retain a portion of the funds for expenses, however, a portion of the income would be refunded to the purchaser.*

- 80% of all payments plus a portion of the income earned. *Note: This option would allow the seller to retain a portion of the funds for expenses, however, a portion of the income would be refunded to the purchaser.*

- 80% of the payments made by the purchaser. *Note: This option would allow the seller to retain its expenses plus any related income. [State Board Recommendation]*

> ! ***Comments:*** *The above recommendations were also suggested based on the premise that 100% of payments will be placed in trust with the seller being reimbursed for administrative expenses from the trust. The recommendations would necessarily change if the 100% trusting recommendation is not accepted and the seller allowed to automatically retain its administrative expenses from the initial payments.*

## D. Cancellation By Seller For Non-Payment:

The Working Group approved the following consensus recommendations:

- Sellers should be allowed to cancel the contract unilaterally if the purchaser is in default of payment for sixty days *(see additional recommendations for refund provisions).*
- Prior to cancellation, purchasers should be provided written notification from the seller of the seller's intent to cancel. The notice should be provided thirty days prior to cancellation and should notify the purchaser of the proposed cancellation date and that the contract will be cancelled if payment is not received on or before such dates.

> ! ***Comments:*** *Currently, a seller can cancel a contract that is 90-days in arrears by notifying the purchaser and issuing the required refund. Notification and cancellation may be completed on the same day. APS suggested the current law is fairer to all parties and should be retained. APS indicated the proposed recommendation could be problematic when handling purchasers that are habitually late.*

- If the seller fails to cancel the contract prior to at-need services being required, the purchaser should be provided the opportunity to remit the payment in arrears. If payment is not remitted, the seller should be required to credit the purchaser's preneed payments towards the at-need cost for services. If a credit is applied, the seller may determine funeral/burial costs based on the seller's at-need prices.

The Working Group approved the following majority recommendations:

- On seller cancellation, 80% percent of the contract payments should be refunded to purchasers. *Note: This option would allow the seller to retain its administrative expenses plus any related income.*

> ! ***Comments:*** *Other Participants recommended that 100% of all payments made by the purchaser should be refunded to the purchaser. Note: This option would require the seller to refund any administrative expenses, however, the seller would be allowed to retain any income.*