ORIGINAL

MISSOURI STATE BOARD OF EMBALMERS
AND FUNERAL DIRECTORS

CHAPTER 436 LEGISLATION MEETING

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

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CHAIRMAN: Have you already taken roll call? Well, we're missing Joy, Becky, and Todd. I mean, and John.

MS. DUNN: John is here.

MR. McCULLOCH: Here.

CHAIRMAN: John? Oh, you're in the office?

MR. McCULLOCH: Yes.

CHAIRMAN: Okay. So, the only one we're missing is Joy. All right. We're going to go ahead and discuss 436 legislation.

MS. DUNN: Chairman, would it be okay if we identify who's on the call and who's in the room?

CHAIRMAN: Oh, that would be wonderful, Becky. Do the room first.

(Members in attendance introduce themselves.)

MS. DUNN: Okay. Chairman, if you would like to have everyone on the phone introduce themselves.

(Members on phone introduce themselves.)

MS. DUNN: Okay. And then Martin Vernon is here, Todd Mahn; correct?

MR. MAHN: Yes.

MS. DUNN: Jim Reinhard?

CHAIRMAN: Yes.

MS. DUNN: Gary Fraker?

MR. FRAKER: Yes.

MS. DUNN: Jim, Linda Bohrer from the Department of Insurance has joined us, as well.

CHAIRMAN: Oh, good.

MS. DUNN: So, you can go ahead and start. Did you want to give Mr. Lindley the opportunity to talk first?

CHAIRMAN: Yes. Scott, would you like to take this opportunity to address the committee? Scott?

MR. LINDLEY: Yes.

CHAIRMAN: You know, if you could limit it to about ten minutes, and then I've got to drop off the call here eventually, so, Martin, if you'll take over.

MR. VERNON: All right.

MR. LINDLEY: I want to thank the Board for the opportunity to speak in behalf of our members today, and I want to also thank all of the people that spent all summer working on this. Trust me, I know what those

meetings are like, how gut-wrenching they are, and then have to get in the car and then drive three or four hours somewhere. And I commend you for your efforts and your tenacity in regards to the issues because it's certainly a difficult time in funeral service not only from the standpoint of the consumers, in particular, but also for the industry as a whole. And what the industry represents to the State of Missouri is a $300-billion industry, so we appreciate your time and effort. Our presentation today is just really to highlight and thank people that have been working in behalf of the consumers in regards to this issue. In particular, the first piece of the puzzle is trying to figure out what happened. The second part of it is trying to get and make sure that NOGA, which represents the consumer in the issue and which also that the consumer paid for that protection, and duly his right, he is going to get that, and that's a good thing in this process. And we'd like to thank all those people publicly that took the time and the effort to get that done and particularly the national organization,

NOGA, and in respect to locally, Mr. Chuck Renn, who has been -- (inaudible) -- effort in this and I know. In regards to where we kind of go from here with that piece of the puzzle, and our group feels that, like most people that understand time value of money and understand the issue, that there needs to be something in regards to ongoing process going forward, and it has to be done in order for this to be a reality. I think one of the things that Chuck Renn and people all across the state want to make sure that doesn't happen is that we get five to seven years into this plan and that there has particular problems in regards to delivering these services to the consumer, which is a real issue that needs to be addressed, and our group kind of calls that the total fix. We think that the issues in regard to 436 are fine, but we don't think that until we have the fix of this problem, that we need to be going forward, because how can you not fix the problem unless you have it right, the new law is not going to make much difference in respect to what's going on. I'm sure there

will be some people that will take issue with that, but when you stop and look at it, I think that that's a viable point and it's a difficult point, and I'm sure that that's some of the reasons why that point hasn't actually been gone over. And we would like, in particular, the State Board and their members that represent the consumers and the funeral homes to take a very, very hard look at that in going forward and try and pass that on to the Joint Committee over in the general assembly. We have some particular ideas that were hatched last spring in our relationships in talking with the general assembly in regards to that part of the puzzle. We think that it's -- you know, we hear about the words "bail out" and all that kind of stuff. Well, it has nothing to do with that, and nobody in this room should feel, in particular, that they failed. 436 in 1983, I believe, when we did that senate bill, the third-party sellers and the large funeral homes in the state of Missouri wanted a qualified investment counselor to be part of the process. We, as the Missouri Funeral Directors Association, at

that time, the group that I lobbied for, were against that, and their attorney, Harvey Tettlebaum. A compromise came out of that was that it's very simple. If the seller doesn't pay the provider, the trustee must pay the provider so that the consumer gets his part of the fiduciary contract. It was a three-legged stool. We, in the funeral business, and the consumers had nothing to do with the third leg falling off. And that is the short and the narrow of this. End of statement. We need to fix that. We need to fix it for these 50,000 consumers. Our group not only has tried to think of it in a rationale of the 50,000 here, but the 200,000 in all the other states, and we've been working hard to try and do that, have consented to do lots of things. Everybody knows about the process and it's a very difficult time to what is the best way of doing this. But in liquidation in the state of Texas, everybody that provides these funeral services are a fifth-class claim. You can't sue your way out of it, you can't -- there is no way that on a level five that you're ever going to receive that money. We

have to get above that and something beyond that, and it has to be creative. There are things in this current statute that allow that to happen. There have been similar issues in this state involving other entities that it has happened to. Language is permissive, language allows people to work their way out of it, and language that allows the consumer to be fixed by the industry. I think that's where we need to focus, and I think we need to do that before we go forward with any kind of legislation, or they should be dual tracked and be done that way so that these consumers get what they bargained for. And I appreciate the time today and I know our time is short. I know there are other people that have issues. I'll be glad to try to answer any questions that I can. And I want you to also know that through our negotiations of our group with certain parties, that these funeral homes, while this is going on through NOGA, that we have a situation we believe worked out as late as Saturday, and we're waiting for some documentation so that these funeral homes can catch up their cash flow and be paid and

be paid every 30 days while this is going on, and I think that's going to be coming out in the next day or two. Also, in regards to this, whatever goes forward, we're also working on a plan, and we think it's very viable, in conjunction with other members of this and regulators, to where the actual monies going forward for the part of the puzzle that we talked about to make sure that this time-value-of-money thing works out five to seven years down the road, that we, as funeral homes, will, in turn, garner something that will take care of that deficit and actually pay it all back. Basically, we are looking for a bridge till that time that comes and a way that we can do that. We think we have some viable ideas on that, and we need the Board's support for those. I appreciate your time today. I'll be glad to answer any questions that I can at this time, and I thank you. Thanks, Becky. Thanks, Jimmy.

CHAIRMAN: You're welcome. Anybody have any questions of Scott? Hearing none, I want to go ahead and let Kim Grinston, our attorney, will facilitate the meeting.

MS. GRINSTON: Thank you, Jim. Good morning, Board and everyone. Becky and the court reporter have asked that if you are going to speak, we ask that you announce your name, especially the people on the phone call because we're not going to know who you are, and we want to make sure that we have it adequately recorded for the record. This morning, we have a couple of things still left to go through, and I hope everyone got copies of the latest drafts that were sent out. I understand that you received multiple copies. We did a lot of changes and, initially, I think we sent out a track-changes draft. And if you looked at the track-changes draft, it was very hard to track changes because there were so many changes in it. So, then we sent out a cleaner draft that, hopefully, just had everything together and didn't have all the colors, but if you need it, still want to look at the track-changes draft, that was there, as well. Then we sent out a third copy because, as we began to do some final reviews for today, we realized that we needed to change a couple of provisions that we wanted you all to

see, so there's another three-page document. If you don't have it, please let me know -- members on the phone, as well -- but there's another three-page document with a few changes on that, too. Not anything substantial, but just a few changes we wanted the working group to take a look at. I think we got all of your comments. Thank you to everybody who met Friday's deadline. We really appreciated it. It allowed us -- it gave us some time to do what we needed to do in-house. As you can see, we went back and did some editing, we did some reviewing of votes. I thank you for everybody who -- you guys were able to correct our memory when we had areas where we thought the vote was one way and you all remembered it another, and for those places where we were able to verify, we did go back in and make those adjustments in the text of the document. For the comments that came in, most of the comments that related specifically to the draft or that may not have been echoed as part of the general discussion, we tried to incorporate as many of those as were submitted. Some of the comments, I think,

were probably geared for working-group participants which is the reason why we sent out all of the comments to you all electronically, as well, so that you could see what other people were commenting on. What I would like to do today, if possible, I would like to go through some of the areas that I think we still have yet to resolve, and they are, I think, very few, and we can probably move very quickly. I would also like to take comments on any comments or concerns about the recommendations or about the draft or about your comments that are reflected, also, as well, because I want to make sure that we do this accurately and correctly. Connie will be here a little bit later -- that's Connie Clarkston, our budget and legislative director. She will have information for us on the hearings that are coming up next week. Oh, David is going to do it, so we're going to our Division director, David Broeker to tell us a little bit of information about what's going to happen next week, and that will help shape what we do today. Mr. Broeker?

MR. BROEKER: Thank you, Kim. Next

week, the veto session will be held on Wednesday, September the 10th. On Tuesday, September the 9th, at 10:00 a.m. in the senate lounge, the Joint Committee on preneed funeral-service plans will be holding their first hearing. We understand they are planning more than just this hearing, obviously. What their plans are for this particular hearing is to receive the testimony from this particular group, as well as from the Guaranty Association. They're not planning on any public testimony at this first hearing. That will be coming at some of the additional hearings that they are planning on having. The members of the Joint Committee on the senate side is Delbert Scott, Tom Dempsey, Bill Stouffer, Carl Vogel, Maida Coleman, Jolie Justus, and Wes Shoemyer. On the representative side, the house members are Jay Wasson, Mike McGhee, Jason Smith, Bryan Pratt, Tim Meadows, Curt Dougherty, and Steve Hodges, and Senator Delbert Scott is chairing the Joint Committee. I do have a listing that I'll pass out to everyone here before you leave that gives the committee members' names

again and where it will be held and at what time. Do you have any questions? Kim?

MS. GRINSTON: Thank you, Mr. Broeker. If that's the case, I'd like to jump into the draft, if we can. Before we do that, I would like to open the floor, Mr. Chairman, for any general comments -- before we get into the specifics of the language, any general comments that any of the working-group members would like to share on the draft or on the hearing or anything else at this time. Okay. Hearing none. I think that we probably -- I tried to highlight the areas that I thought that I still had questions on, and if we could walk through those and then possibly take a look at the document as a whole again. Actually, why don't we do this. Why don't we start on page 11, which is the first page of the recommendation sheet, and it's under the topic "General Regulatory Authority." I don't know which draft you may be looking at, but if you're looking at the clean draft, it should be on page 11. Does anyone in the room need a copy? We've got extras on the front table. We're still picking up extras. All right. If

everyone has got a copy, on page 11, are there any comments or suggestions on page 11 that we may have forgotten, incorrect, or need to add? Mr. Otto?

MR. OTTO: Well, we included this in our comments, and perhaps you put it somewhere else, but I didn't see it.

MS. GRINSTON: Okay.

MR. OTTO: And I -- to be honest with you, I don't know if you took a formal vote on this or not.

MS. GRINSTON: Sure.

MR. OTTO: But this is Don Otto, Missouri Funeral Directors Association -- sorry. It was our belief that at one point in time very early on, perhaps even the first meeting, we discussed the State Board coming up with a list of standard disclosures that covered things like portability, cancellation, all of that, that would be signed by the consumer that would be required to be given to the consumer. And I, frankly, don't know if we went around the table and took a vote on that, but it's my belief that everyone was in favor of that. And I didn't see that

reflected in the first draft, and that's why we put that comment here when we put our comments in.

MS. GRINSTON: Sure. And, Don, you're correct. It wasn't reflected in the first draft, and I think our notes match yours, that we had that as an approved recommendation, as well. If you look at page 38 on the draft that went out yesterday, the very first one -- and these are not going to be bullet pointed, they're going to be numbered in the final report, because, Don, we did miss that when we did the first draft. It should be under the consumer reporting/notifications. Does that cover what the working group suggested?

MS. DUNN: Under comments, Don.

MR. OTTO: Oh, okay.

MS. DUNN: Well, the second comment area, I think; right?

MS. GRINSTON: Yeah. It should be -- well, no. It's the first bullet point on the page.

MS. DUNN: Oh, okay. I'm sorry.

MS. ERICKSON: This is Mary Erickson with the Department, and I agree with Don's

recollection. We did discuss it and I, myself, don't recall at this moment if we had a formal vote, but I do believe that there was quite a bit of agreement amongst industry and consumer advocates that a disclosure would be helpful for everyone, industry, as well as consumers, and to insert that comment here would be appropriate. Thank you.

MR. OTTO: I guess the only -- my only issue on that is was it -- this is pretty -- we can't do this on every one, but wasn't that unanimous? Did we have anybody that opposed that?

MS. GRINSTON: Yes, that was unanimous. It was.

MR. OTTO: I mean, I think that's something that we would like to highlight as unanimous.

MS. GRINSTON: Good point, Don. Anyone else from the working group have anything on that? I think that is correct, that it probably should be listed as a unanimous recommendation. Okay. If we could flip back to page 11. Any other comments on page 11? Hearing none, let's move to page 12.

This is one of the areas where we didn't discuss it much, but this is -- but we need to discuss it. And a lot of you all sent in comments on the definition of funeral merchandise and the incorporation of 214. We've been meeting with the 214 -- for those who don't know 214, it's the cemetery-operators law both endowed care and nonendowed care. We have the room the executive director for the Office of Endowed Care Cemeteries, as well. That group is doing a legislative review. And one of the things that I think we briefly discussed, but never really had any in-depth conversation on was how to coincide 436 with 214. I can tell you one of the regulatory concerns that we had. Under 214, the sale of monuments and markers are supposed to be in a segregated account that is governed by 214. Under the definition of funeral merchandise, even though there is some exemption language that is very, very unclear, it could be argued that that same money should also be trusted under 436. The barter-trade language that is currently in 436, to be quite frank, is just very

confusing, and we really haven't been able to get our hands around how do you separate or where is the line between 214 and 436. For those who don't know, under 214, endowed-care cemeteries are required to do a segregated account for monuments and markers, and then an endowed-care trust fund -- right now, it's just called an endowed-care fund, but it really is an endowed-care trust fund -- for sales that are happening on the cemetery side. One of the recommendations that has been tossed around but not finally agreed to was that for under 436, if you are selling -- if it is a cemetery operator selling a monument or marker, and it's supposed to be in a segregated account under 214, then you follow 214 rules. However, if you mix that cemetery contract or endowed-care contract, if you mix that with any other element of 436, or if you include any services that can only be provided by a funeral director or a funeral establishment, then it becomes a 436 contract. And so, to recap, the thought and the idea that was sort of circulated, but not finally agreed on, it was, again, if you are a

cemetery operator, you are governed by 214 unless you sell something outside of a monument or a marker, or you sell something that includes or would require a funeral director's services. I'd like to open the floor to the working group for a discussion on your thoughts on how we should clarify 436 and 214's overlap. I think this definitely will relate to the definition of funeral merchandise that we've got a lot of comments on, and I'd like to open the floor. Mr. Otto?

MR. OTTO: I stayed quiet for a second, gave everybody a chance. Don Otto. Our big concern is that people be treated equally that are doing the same thing. And it would not be fair, for example, for a cemetery -- I don't know what 214 will turn out to be. But it would not be fair for a cemetery operator to be able to sell a vault, a marker, and only have to trust, say, 60 percent, while a funeral director that sells the exact same thing has to trust 90 percent or 100 percent, or something like that. That's just not fair. And you'll see people trying to get around the law by setting up a separate company that owns

a cemetery and does it that way. So, I don't know how to do it while 214 is going on simultaneously, but our concern is that if I'm selling a vault as a funeral director, how that is treated should be the same way as if a cemetery sells a fault on a preneed basis or, you know, a marker or whatever it is. The rules ought to be the same for everybody, whatever those rules are.

MR. STALTER: This is Bill Stalter. I'll speak on this issue, too. Part of -- there's going to be a slight disparity between funeral homes and cemeteries in that when the cemetery sells certain items of preneed, they can be delivered before death, which means they can't use insurance. So, when the trusting gets too high, I mean, they're foreclosed from doing preneed sales. But the cemetery side needs to provide substantially similar protections, trusting, whatever. And at this point, it doesn't exist under 387 -- 214, 387. So, the 214 committee really has some issues to deal with, and I think they ought to bring it back to the funeral side at some point to kind of hash things out.

MS. GRINSTON: Anyone on the phone?

MR. MEIERHOFFER: This is Michael Meierhoffer. I agree with Bill and there are different situations that apply to the cemetery. Typically, cemeteries, especially stand-alone cemeteries that are doing this work on much smaller margins and don't have the additional income that a cemetery with a funeral home might have, as well. So, there are some specific issues that need to be looked at there.

MS. GRINSTON: As we go through on the legislative side, I think if Connie was here, she would tell you that the intention of the Division, to the extent that we can possibly do so, is to possibly keep 436 and 214 separate as far as proposals go. Now, of course, we have no control over what happens once it gets across the street, and they will probably marry them anyway. But I think the thought was that we would discuss 436 separately from 214 because there are different issues that relate to each one. And from an educational standpoint, it is just very hard to help, you know, legislators or

representatives who don't deal with this on an everyday basis, help them understand the difference between a preneed trust and an endowed-care trust. That becomes much harder. Hello, Representative Meadows. That becomes much harder when those concepts are merged into one bill. And so, again, what I'd like to throw out there, because I think what we may need -- what I'm hearing is that we probably need to have some input on the 214 side. But for purposes of 436, am I -- what would be the working group's thought on writing something that says that if you are a cemetery operator and the contract or the goods -- the monument, marker, or the goods you are selling are required to be in an endowed-care trust fund or in an endowed-care segregated account, if they are required to be there under 214, then you are not subject to 436 for those items only. But if you cross over into anything else, it becomes a preneed contract, and you have to fully comply with 436. Is that thought --

MR. MEIERHOFFER: Kim, this is Michael Meierhoffer. I agree with that statement.

MS. GRINSTON: Anyone else have any thoughts on that? Don?

MR. OTTO: Well, that pretty matches what our comment was, is that we should do it the other way. Instead of trying in 436 to say this is what's not included, just say if 214 makes this an exclusive thing for 214, then it's not included in 436. Do it the backwards way.

MS. GRINSTON: I'll tell you, for me, it's just the cleaner thing because, right now, I am concerned that if you read the statutes technically, there may be some items that are being regulated by two different offices and are required to be in two different places. Now, I understand the industry has probably worked that out, but to the extent we can remedy that, I think that might be a good idea. If that's the case, Mr. Chairman, I'd like to take a vote of the working group or an approval of the working group to proceed with that concept. Once again, if it's under 214, in an account or trusted under 214, you don't have to comply with 436. If you cross the line, though, into

436 territory, you have to comply with 436. Mr. Chairman? He has a service at 10:00. Mr. Vernon?

MR. VERNON: He's here.

MS. GRINSTON: Okay. If that's the case, Mr. Vice Chairman.

MR. VERNON: There you go.

MS. GRINSTON: I'd like to open that up for the working group's approval.

MR. VERNON: Somebody make a motion.

MR. MAHN: Kim, I've got a question, first. This is Todd. Are you saying that cemeteries that sell headstones and vaults and other merchandise, that 436 does or does not cover that?

MS. GRINSTON: Well -- Bill?

MR. STALTER: Yeah. You know, Todd, I think -- this is Bill Stalter. I mean, depending on how these operators sell, they can be under 436 or probably should be under 436. And the issue is here is should there be a similar trusting mechanism for preneed under 214 that would govern only the cemeteries?

MR. MAHN: Are we sure that 214, that

we talked to Tom -- this is Todd again. We talked to Tom. Are we sure that 214 is cleaning this up because I own a cemetery and I will tell you that this is the next biggest nightmare that's going to pop on the scene because you have these cemeteries who are not putting a dime back selling all this stuff, preselling the headstones and everything else, and they're not even setting the headstones, and this is going to be a mess. So, I think, you know, we need to know if Tom over the endowed care is going to -- I agree with Don. Is this going to coincide with what we require? And I know you mentioned about Representative Meadows being confused a little bit on the endowed care and the other. It's pretty simple. The endowed care is percentages of grave lots and mausoleum crypts -- okay -- that are sold, that go into endowed care. But we're talking about cemeteries selling merchandise and I will just mention now that that's going to be another side of the coin that we find out on NPS with their cemeteries that they went and tried to funnel as much as they could to the cemetery because

there was lesser laws there about what they had to retain. And we're going to find -- when we get a little closer, we're going to find a big mess. And this is being done in other places, also. So, I think we need to be real careful here on how this goes down.

MR. STALTER: And you're exactly on point. And the issue is that, you know, there are gaps between the two chapters as far as preneed, you know, and the 214 side needs to address it. I mean, if nothing else, we need to clarify how markers are sold. If vaults are -- you know, it's an overlapping sale in terms of vaults and whether, you know, it should be under 436. Right now, we say vaults should be under 436, but if 214 will fortify those trusting requirements, then should cemeteries be able to just comply with 214?

MR. MAHN: Let me just pose a scenario. You go into a cemetery. They've sold 100 graves. That's a low number. That's a low number. They've sold 100 vaults with them, 100 grave openings, and 100 headstones, and all that money is gone; okay -- again.

MS. GRINSTON: And, Todd, Tom is in

the room. He's in the back of the room, probably hiding. We've been meeting with the 214 group, and, Tom, I don't know if you wanted to address this or if you want me to, because we've also been facilitating on the 214 side. This is also the same recommendation that was made to the 214 side. My understanding is that our last discussion, everyone was pretty much in agreement. It hasn't been finalized yet, but they also agreed that that line needed to be drawn. I think they were in favor of -- in fact, the ACM also recommended that if it's just what is required to be trusted under 214, if it's listed in 214, it's not in 436. If they cross the line, they switch over to 436 trusting. Right now, they are considering raising the trusting requirements for segregated accounts because they understood the gap, you know, and that there may be a drive for people to then convert to a nonendowed/endowed-care cemetery just so that they, you know, evade the 436 trusting requirements. They are recommending raising those trusting requirements. In fact, they've

had considerable discussion on matching what is in 436 to 214 even though I don't know if an exact match is probably proper given the nature of the industries, but they are looking at raising that trusting amount. My understanding is that right now -- and, again, this has to be finalized -- that the 214 group does support the same approach generally because they do want to clarify what happens with monuments and markers. They also believe that should be the same thing with grave spaces. When a cemetery operator is selling a grave space, if it's under 214, then let's keep it under 214 unless they cross the line into 436. So, that effort is happening. And, of course, as we walk this through, even though we would like to keep these two concepts separate, I think it would be a good idea for everyone -- the 214 working group will be meeting again -- I don't remember the date right now, and I'm looking at Tom. They're going to be meeting again -- to please track what's happening on the 214 side because 214, again, is looking to match 436's requirements so that we can seal this hole.

MR. MAHN: So, Kim, just real quick, you say Tom is there. Can Tom tell us, are they going to put vaults, headstones, and grave openings in a lockbox -- I'll sound like Al Gore here -- in a lockbox or what? I mean, can you address that, because I think that's a concern of Don and myself and probably other people here on the phone.

MR. STALTER: This is Bill Stalter again. You know, those are the kind of issues that were addressed away yet. I mean, that's been kicked back to the ACM, but that very issue as far as, you know, how to safeguard those funds and what -- how much goes in. So --

MR. MAHN: I didn't hear that very well. I wasn't even sure who was talking to me or what was being said there.

MS. GRINSTON: That was Bill.

MR. STALTER: This is Bill again.

MR. MAHN: Okay. Bill, what now?

MR. STALTER: Now, those issues are what have been kicked back to the ACM.

MR. MAHN: Kicked back to what?

MR. STALTER: They have been kicked

back for another draft from the cemetery association.

MR. MAHN: Oh, it has?

MR. STALTER: Yes. And, basically, we know that there is some time pressures to get some language together, but, frankly, I mean, it's been kind of hard with 436 going on at the same time. But, really, kind of the objective is to get some kind of language back in place maybe by the 15th.

MS. GRINSTON: Of September.

MR. STALTER: Yeah.

MR. MAHN: I'm just saying being out there in the trenches and knowing what's going on, that's a big loophole, and it's happened in a lot of places. And it's a scary thought that folks are buying these things and that it don't have to be 100 percentage of it put back.

MS. GRINSTON: And, Tom, is there anything you wanted to say?

MR. REICHARD: Not at this time. We will be trying to attempt to mirror the language in 436 and the percentages, though, so we should know more in the next two weeks, Todd.

MS. GRINSTON: And, Todd, did you hear Tom? Todd, did you hear Tom?

MR. MAHN: I barely heard him. I think he said it's going to try to mirror 436?

MS. GRINSTON: Yes. They are looking at mirroring 436, and, again, their recommendation is also to close this loophole. Looking -- for our purposes going forward, understanding that the 214 group is still working, and maybe that's something we can make clear as a comment that we understand that this is a -- that this is something that may need to be closely tracked. Do we have any objections to segregating or drawing that dividing line with 436 and 214? If it's required to be in a segregated account under 214 or in an endowed-care trust fund, it should be there. If not, if you cross the line, you go into 436 and you comply with everything.

MR. VERNON: What's the verbiage that's going to draw the line?

MR. MAHN: And what's the line?

MS. GRINSTON: If you look at page 14, that second paragraph 2, and we're going to

fix the numbers on this one. Under the consensus recommendations, it's highlighted. The regulation of cemetery operators, that is the general concept. And giving everybody a chance to take a look at it.

MR. OTTO: This is Don Otto. Since this is just -- these are just -- this isn't statutory language really, this is just the group's recommendations. Why don't we just drop a footnote there that says the working group is concerned that there not be any loopholes between the revisions of 436 and 214, you know, that would allow -- you know, that we do bad things.

MS. GRINSTON: Got it. "That would do bad things." That's a quote. I got it. We can do that. If the concept is agreeable --

MR. OTTO: That would expose the consumer -- that's a better one. It would expose the consumer to bad things.

MS. GRINSTON: Consumer to bad things. Got it. We could definitely do that, add a footnote that the working group is concerned about, you know, the protection of consumers in closing the loophole, as well, and that --

you know, that these two statutory changes should be mirrored and/or considered together -- not considered together, but they are closely related. Hearing -- with that said, with the comment noted, does anyone else have any concerns with that as a recommendation?

MR. MEIERHOFFER: Kim, this is Michael Meierhoffer again.

MS. GRINSTON: Yes, sir.

MR. MEIERHOFFER: Just a comment, and that is, realize we're talking about two different industries and they have different objectives, different margins. I still go back to the fact that putting 100 percent in is a great idea if we could do it. It doesn't make anybody more honest than putting in 60 or 80 percent, so just remember that. And the fact that we want to keep everybody honest I agree with. I think we have to do that. But it's the amount of money that we have to work with has to be considered. And, remember, there's, what, 92 or 94 endowed cemeteries in the state of Missouri out of thousands of cemeteries. I would acknowledge -- I would think that Tom would probably tell

us we don't know how many cemeteries we actually have or how many have funds. So, the people that are actually reporting are probably the people that are doing the best job. Just remember that, and they can always probably switch to a nonendowed-care cemetery if we tighten the hatch or the ratchets down too tight.

MS. GRINSTON: Sure. And, Bill, I don't know if you want to address that, but one of the things that we have had considerable discussion about, even with the 100-percent trusting requirement or whatever the recommendation may be, is that because of the nature of the endowed-care side, doing an identical match with 436 is just not going to be. And I think I can say this pretty much as a -- Bill is giving me the nod. I think I can say this pretty much as an agreement of the group. Everyone, I think, agrees that matching those type of provisions in endowed care would be very problematic because of the nature of the industry. You guys generally don't touch the principal. In a preneed trust, you would tap in what is the

"principal." So, having said that, I think I would agree, and we can add that, also, as just a very strong note. Bill?

MR. STALTER: Yeah. My comments have always been when they say we're going to mirror, you know, I cringe because we can't really mirror, but there has to be substantial similarity, so to speak.

MR. MEIERHOFFER: Thank you.

MS. GRINSTON: Yeah. And we'll make sure that we reflect that accurately, that they're related, but -- and maybe, you know, put a note on the cautions of doing an exact mirror. Having said that, are there any objections to doing that by the working group?

MR. MAHN: I'll just say, Kim -- this is Todd, and I also own a cemetery since '98. And anybody that buys those other items, we do put into a prearrangement fund and secure the money for them 100 percent. We haven't went broke or belly-up or have any problems with it, so as much as we're told that, you know, people are going to be pinched and have problems, you know, some of these people need pinched and they do have problems with the way

they operate their business, and I'm seeing it go on right here in St. Louis right underneath our nose. And there's going to be a lot of poor people out there that are going to be left without a grave to be buried in or a space or a vault or a headstone, and I don't care if they get pinched; okay? They -- this is going on, it's absurd, and, Tom, I applaud the great job you are doing over there at endowed care. Keep up the good work.

MS. GRINSTON: Thank you. All right. Hearing that then, I think we're okay. I think that may address some of our concerns with the definition of funeral merchandise because many of the concerns on the funeral-merchandise definition related to exempting and/or how do we include people under 214. And so, I think we may have resolved that concern. And we'll open up the page again generally in just a moment. Guaranteed contract is the other thing on page 12. Bill sent in a definition of guaranteed contract that, I think, may be a little bit closer to what the working group actually recommended. John, on behalf of APS, also

sent in something, a comment that was concerned about the language, and recommended that we just didn't say, you know, as provided in the contract, but specifically pointed out a short in the contract or using similar language. What you have in front of you is the definition that Bill drafted, and I'd like to submit that to the working group to be included in the recommendations. Again, I think it's a little bit stronger, but I think it includes the recommendations -- the working group's recommendation. And I'm opening the floor for comments or suggested changes to the definition of guaranteed contract. Parallel to that would be a nonguaranteed contract which really is just, you know, the converse of what we put in guaranteed contracts, so those things really go hand in hand. Are there any objections to those definitions? Hearing none, are there any other recommendations on page 12? Mr. Otto?

MR. OTTO: Just because, unlike the other sections, this is pretty close to statutory language that somebody might cut and paste, on the definition of funeral

merchandise --

MS. GRINSTON: Yes.

MR. OTTO: -- our recommendation was that you remove funeral or burial service and just insert final disposition of a dead human body because that matches up the right-of-sepulcher law as to what somebody has control over. And in that list of things that's included there, like including tombstones, crypts, niches, all that, nothing in there really specific to cremations, and we don't want anyone to think that, oh, I'm doing a cremation, I'm selling an urn, therefore, I don't have to include that because that's not funeral merchandise because that's not listed. So, if you just took out funeral and burial service and inserted final disposition of a dead human body, which matches the -- I mean, that sounds rather crass, but that's the phrase used other parts of the Missouri statutes, and then just stick something in there in that list like urns, just to make there no one can try to skate out of this by saying, oh, I'm not doing a funeral or burial, I'm doing a direct cremation.

MS. GRINSTON: Got it. I think that one of the notes we had or that I had on that discussion was that if we change that definition to property incidental to the final disposition of a dead human body, that that may include things like clothes and things of that sort -- of that nature, as opposed to things that are incidental to the service and not just the disposition. And I think that that was -- I think that was discussed, but I don't think we ever voted that up or down. If we could give that to the working group on your suggestions on changing the definition of funeral merchandise to read "and other personal property incidental to the final disposition of a dead human body," and including the remainder of that sentence. Any thoughts on that?

MR. OTTO: I move we make that change.

MS. GRINSTON: Mr. Otto has moved to make that change.

MS. RUSSELL: I'll second the motion.

MS. GRINSTON: I believe Darlene has seconded it. Any other concerns or objections? Hearing none, we'll make that

change. The other change that was suggested is on cremation and urns. Do you want to just include that in the listing, Don? Just put, comma, cremation and urns?

MR. OTTO: Yeah. Just stick that in there. That way -- it's not critical, but --

MS. GRINSTON: Got it. It makes sense because that's been a question that's been raised. Any concerns with adding cremation and urns? Hearing none, I think we can move on. Page 12, preneed contract. APS -- John, on behalf of APS, suggested that we add to the end of that paragraph, and it's highlighted on page 12 --

MR. OTTO: Page 13.

MS. GRINSTON: Page 13. I'm sorry. I'm sorry. I'm using -- looking at a different draft. Page 13, adding the language "or at a future date" to the end of the definition of preneed contract. And I see everyone looking at it. I'll give just a second. I don't know if anyone has any concerns about that or any questions. Any concerns? Hearing none, then we'll just go ahead and add that in. Page 14, we have the

language of regulation of cemetery operators, and we're going to add the comment box that we discussed a little bit earlier. Any questions or concerns from the working group about the recommendations on page 14? Hearing none -- and please correct me if you would like to join a comment or if you would like to change a comment or anything else. And anyone else -- if there's anyone else in the room. We don't have a very large group today. If anyone else has any other comments or suggestions on that, as well. Page 15, under the preneed-contract section. On preneed contracts, what I have highlighted is the recommendation #4 on record-keeping. Originally, when we talked about record-keeping, we talked about keeping preneed records for two years. But then I think -- I forget who pointed it out. It may have been APS or, Mike, it may have been you or Bill, someone did -- that if we're going to do an audit for five years or over a five-year period, then we probably need records around for five years. I thought that made sense to me. And so, the recommendation was that we

require that preneed records be maintained for five years because, if not, the audit would be meaningless because the records would be gone in two. Anybody have any comments, suggestions, or objections to that? Hearing none, page 16. I have subsection 6 highlighted. Bill suggested here -- this is current language in the statute, but Bill suggested that we mirror the right-of-sepulcher law -- I can't talk today -- under 194.119. Instead of just saying accrued to the benefit of the purchaser or his or her successor as designated in the contract, I guess it would say "or his or her next of kin"; is that right? As defined by 194.119.

MR. STALTER: This is Bill. I'm going to ask a question, mostly to John. But, John, do you see any kind of conflict if you have somebody different named in the contract, if there's a conflict, should you defer to the named beneficiary or successor?

MR. McCULLOCH: I don't know if I understand.

MR. STALTER: Okay. You know, what

we're saying is -- what we're looking to is who can enforce the preneed contract at the time of need. And what -- we just said we would look to the right-of-sepulcher law and how it's defined as the next of kin, but could there be a conflict with the way you've structured your preneed contract where you may have somebody otherwise? I mean, are you following me?

MR. McCULLOCH: I do, but I hadn't thought of it that way.

MR. OTTO: Yeah. Right now, that conflict exists. I mean, that is a problem because, right now, under 436, you can designate somebody in your 436 contract to accrue your rights and benefits, but that may not be the person under 119 that is your next of kin. So, that already is a problem. 119 just changed last week so to allow you to do a durable power of attorney to assign somebody, so that will help clear that up. But you're right, current -- under the current law, there is a potential conflict where I bought a preneed for my mother. In my preneed contract, I put my best friend as the guy who

goes -- who will handle this preneed contract if I die, but when I die, it's my son that is my next of kin. And so, now there's an instant conflict as to who controls the funds in that preneed contract, who can cancel, who can get the money out. So, that problem exists right now and your suggestion helps.

MR. STALTER: Maybe if we refer or incorporate the right of kin or the sepulcher law unless there's a conflict in the contract. In other words, what -- I mean, what I always see is where, you know, the purchaser is gone and there was not a clear line of authority of who can enforce the contract. So, what I'd like to see and we'd be able to go right over the next of kin if we don't have a conflict in the contract. Does that make sense without --

(Numerous people agree.)

MR. McCULLOCH: I don't think we've ever had problems with that, but we always refer to the person that's purchasing it; even though it may be for someone else, we always go back to them, but I hadn't thought of it this way, really, that there could be a

problem.

MR. OTTO: Yeah. I've run into it once or twice where there's been a split between what was said in the 436 contract and who the legal next of kin was.

MR. McCULLOCH: Yeah.

MS. GRINSTON: I think I was -- your last comment sort of resolved my concern. Unless otherwise designated in the contract, I think, would probably remedy some of the concerns I have. The next-of-kin language, Don, before you leave the room, does it -- and I'm sorry; I haven't memorized the new language yet, but does it still have that who is willing to accept or be -- you know, accept payment?

MR. OTTO: Yes.

MS. GRINSTON: Will that be problematic for us if we have that since we're talking about a purchaser and there really isn't -- the issue may not be an issue of who is willing to accept payment under the contract?

MR. OTTO: I don't think it's a problem if you just say that in the event of

the death or incapacity of the purchaser, the rights will then go to the person who would be that person's next of kin under 119 whatever it is. I think that's nice and clean.

MS. GRINSTON: All right. Any other concerns or objections on that from the working group? Hearing none, then we can incorporate that into the draft. Do we have any other comments on page 16? Hearing none, 17, which finishes that section. Hearing none, page 18, which begins "Preneed agents." Any comments? I didn't have anything here that I needed to bring to the group's attention. Page 19 -- stop me if you need to. Page 20. Page 21, we've got this five-year record-keeping issue again, and I think you guys already agreed on that. Page 22. Page 22, the one suggestion that I had was I think you all actually discussed, which wasn't in the first draft, and, according to our notes, should have been. And I think that this was -- I think APS -- someone may have pointed this out to us. The recommendation was someone remembered the recommendation that sellers would be required to report the name

of the trustee to the Board and any changes within 15 days. I thought that everyone agreed to that, but I'm not sure. Our notes aren't clear, so we wanted to bring that back up to see if there are any objections to that.

MR. STALTER: This is Bill Stalter. The only thing I'd say about that, maybe the 15 days is a little short of a period. I mean, I would talk 30 days on the 214 side, and that sounds probably a little more lenient, more flexible.

MS. GRINSTON: Sure. Bill's recommendation is that we change that to 30 days. Anyone have any objections to 30 days or would like to keep it at 15? Hearing no objection to 30 days, what about incorporating a 30-day requirement? Is that okay with the working group? Any objections? Hearing none, we'll change it and incorporate it as 30 days. Page 22, any other comments on page 22? We might as well do 22 and 23 together. Giving them a chance to review. Okay. Hearing no comments. Page 24, I had a note on 24 that I wanted to raise with you. Mr. Meierhoffer suggested under recommendation #3, the

termination of the trust, right now, the language says that the trust should terminate when trust principal no longer includes any payments made under any preneed contract. Mr. Meierhoffer suggested that this should be changed to termination when all contracts covered by the trust have been fulfilled. The language, again, is on page 24, recommendation #3. I'd like to open that up for working-group discussion. And to the extent that there may be some lingering interest or anything else in the trust and there are still contracts out there that haven't been fulfilled, I think that it would open the window and allow that trust to be open a little bit longer than what it technically is allowed to be open now. Do I have any objections? I feel like I'm selling a car. Okay. Hearing none, then we'll incorporate Mr. Meierhoffer's changes or suggestions on that one. Any other recommendations on page 24? Page 25, and this -- a lot of this is the trustee duty and obligation language. I need to say -- this was pointed out by the Division of Finance. A lot of this is already

written in Chapter 469 and Chapter 456, so some of this is duplicate language in coming over. Some of these recommendations are from the Department of Insurance, as well. But just so you know, we may be highlighting those things that are duplicated from another statute. Page 26, page 27, and page 28. Please stop me if you need to. Hearing nothing else, then I think our next page is page 29, which is insurance-funded preneed plans. And the first highlight I have is on insurance restrictions. And I want to make sure that I have this recorded correctly because I think we had two different suggestions, but after we checked the notes, I believe this is right. I believe the working work recommended that a seller -- when we talk about term life, I think the last discussion we had was that you couldn't sell a term-life policy -- a seller couldn't sell a term-life policy to fund a preneed. However, if someone walked into your funeral establishment with a term-life policy that was already sold and said I want to sign these proceeds over to the funeral home, that wouldn't be prohibited, but

I would be prohibited from selling you the term-life policy and the preneed policy together because I think -- and I think -- I know that we originally got that wrong in the first draft, and so, we did some revisions on that. I think the thought was, again, we didn't want to stop someone who may be trying to do different things or who may already have a policy and all they need to do is assign it over. We didn't want to say you are hereby prohibited from assigning it over. Am I correct about that?

MR. MEIERHOFFER: I think that's right, Kim.

MS. GRINSTON: Okay.

MR. VERNON: Kim, this is Martin, and I just have a question.

MS. GRINSTON: Yes, sir.

MR. VERNON: Would this be prohibited from selling any term-life product? I don't honestly even know anybody that's doing this, but if a person is putting -- they used to put credit life on the back end of a contract years ago. Would that -- if that product was available or anybody still did that, would

that -- because credit life, I guess, is some form of a term life. Would that prohibit that?

MS. GRINSTON: Since we don't have a definition of term life, I think -- and I'm going to turn this over to the insurance people. I believe, and I'm going to do an amateur guess, that Missouri law makes a statutory definition difference between credit life and term life. And so, I believe that credit life would not fall under the definition of term life, but that is my amateur guess and I think that's a good question to throw out to some of our insurance people.

MS. BOHRER: Well, I mean, yeah, there is a difference between credit life and term life, so I don't know that we -- I did not realize that credit life was used in a capacity to fund these contracts at any point in time. I thought that we had just --

MR. VERNON: Actually, no. I guess not funding the contract, it would just be on the -- well, how do you define that?

MR. STALTER: This is Bill Stalter. I mean, this -- they're like a supplement

coverage. If you sell the preneed contract where there's an obligation to pay, you'll see some who have used credit life to cover that, and it's usually a decreasing credit life, and that could be --

MS. BOHRER: So, the credit life is used as an -- meets the payment obligation as opposed to the funding mechanism for the funeral, so this is at the end of the -- for fulfillment of the contract; is that what you're saying?

MR. STALTER: Yeah. Yes. In other words, it's just a coverage during the pay-in period on the contract.

MS. BOHRER: Okay.

MR. STALTER: It's not the funding arrangement, it's just -- it's the fallback if there's a death during the pay-in period.

MS. BOHRER: Right. Right. Doing the same way that you use credit life to pay off your car loan if you miss your -- I mean, if you pass away.

MR. MEIERHOFFER: I might make a comment. This is Michael Meierhoffer. It was used typically in the days before insurance

was even available. I'm not sure many people do it anymore. It's a combination of insurance and trust, is what it is.

MR. STALTER: Yeah.

MR. McCULLOCH: Well, we should leave that option out there for us.

MR. STALTER: Yes, I think so. I mean, the abuse on the term life is more likely you see some of it in the South where you have the industrial policies where you would see -- I mean, people were paying forever, and it might only be, like, $10 a month, but the fact that, you know, it turned out to be kind of an abusive arrangement because if they stopped paying, they lost their coverage, so -- but I'm not aware of that being in Missouri. I've heard of that, more or less, in Mississippi and Louisiana, to tell the truth.

MS. BOHRER: Well, I thought the concern with term life was that it has no value and it has a defined period unlike whole life that's paid in full, continue --

MR. STALTER: There's two issues where: One is -- you know, we have talked

about how it was abused with NPS, put in the trust. But outside of that, there's also just -- there were some companies who sold a term-life policy as a preneed funding mechanism, but I'm not aware of it being in Missouri. And I guess I think -- I don't think anybody is standing up for it now.

MS. BOHRER: Right. I mean, I thought that's what we were saying, we don't want that.

MR. STALTER: So, basically -- yeah. No. I think that's true.

MS. BOHRER: Okay.

MS. EULER: This is Sharon with the AG's office. In my experience, credit life is currently being used by folks, but it's like what Bill said; the credit life is being used to pay off the preneed contract, it's not being used as a funding mechanism for the contract.

MR. VERNON: So, the key is in the word "fund," and we're okay.

MS. EULER: Yeah.

MS. GRINSTON: I think so.

MS. BOHRER: Okay.

MS. EULER: Yeah, I think so.

MS. GRINSTON: If I have reflected that accurately, because I think in the first draft it was something else and you all pointed out that that wasn't correct. The other question I had was on #6, which was the same thing we talked about before for sellers. Sellers have to tell the Board what insurance companies they're using and should notify the Board within -- it said 15 days, but I think the recommendation will probably be 30 days of any changes. Any concerns with that? Any other concerns on page 29?

MR. OTTO: I just have --

MS. GRINSTON: Mr. Otto?

MR. OTTO: I have one thing. I'm sorry. We moved on while we were --

MS. GRINSTON: Sure.

MR. OTTO: It's on that term-life-insurance issue again.

MS. GRINSTON: Okay.

MR. OTTO: Just to throw it out there. If I'm an insurance agent, I have an insurance license, I can sell somebody a term-life policy, and if that person wants to designate somebody -- a funeral home as a beneficiary,

that's -- you know, that can be done.

MS. GRINSTON: Right.

MR. OTTO: But, now, if I'm the insurance agent and I work for a funeral home, I can't do that.

MS. GRINSTON: Those two things cannot be sold together. My understanding was that you cannot say I'm going to sell you a preneed contract and I'm going to let you fund it through this term-life policy together.

MR. OTTO: All I'm saying is that look at it from the insurance -- the person with the insurance-license perspective for a second.

MS. GRINSTON: Okay.

MR. OTTO: If I don't work for a funeral home, I can sell somebody a term policy, that then he can go then take to the funeral home and assign to them to pay for preneed.

MS. GRINSTON: Correct.

MR. OTTO: If I work for a funeral home, I'm still the insurance agent, I've still got the license, I can't do that.

MR. MOORE: Is that restriction of trade?

MR. OTTO: That's kind of my concern is that you're --

MS. GRINSTON: I'm sorry? Who was that on the restriction-of-trade question?

MR. STALTER: Who asked the question on the phone?

MR. MOORE: John Moore. We've been throwing around restriction of trade forever and how we can answer that, so --

MR. OTTO: That was my only concern is that you're telling an insurance agent -- and perhaps we need the insurance folks back in here. You're telling an insurance agent if you work for John's insurance company, you can sell this policy. If you work for Joe's funeral home, you can't.

MS. EULER: This is Sharon with the AG's office. I don't see that distinction, Don. I'm not sure where it is, but we specifically made clear -- oh, it's on page 29 -- that a purchaser can assign proceeds from the term-life insurance to pay for their funeral, and I don't think it matters what insurance agent sold it. It's just that the funeral home can't --

MR. OTTO: But the funeral director has an insurance license.

MS. EULER: It's -- yes. But it's a difference between preplanning and prepaying. You can preplan and then assign your funeral policy to the -- I'm sorry -- your term-life policy to the funeral home as beneficiary as preplanning, and it doesn't matter who sells it.

MR. MEIERHOFFER: This is Michael Meierhoffer. Sharon, I agree with you wholeheartedly, and I think the difference is basically whether it would be a guaranteed or a nonguaranteed contract.

MS. EULER: Right.

MR. MEIERHOFFER: You can preplan and if it's not guaranteed and they want to use that method, they're certainly welcome to do it.

MS. EULER: Right.

MR. McCULLOCH: I've tried to make that argument to this group before and you all rejected it. You're trying to tell an insurance person they can't sell a term policy, which they can, and you're not going

to be able to do anything about that with 436.

MR. MEIERHOFFER: Right.

MS. EULER: Right.

MR. McCULLOCH: Secondly, if a funeral home wants to accept it, I don't think you're going to be able to stop that, either, because someone is going to challenge you on it and then that will be the end of it.

MS. GRINSTON: And I think that's the recommendation. Don't stop them from accepting it. You can -- an insurance agent can sell it, but I think that the discussion was when you have someone doing term life and the preneed contract together, and that is the same entity, that I can't say here's your preneed contract, now fund this with this insurance option that will probably have no value. If you have an insurance policy and you come in and sell it, that's fine. If you buy it from an insurance agent, that's fine. But I thought that the concern was with someone being at the table and being sold preneed and term life together, knowing that that term-life product has that limited-value option. So that it really wouldn't be

restricting the insurance agent, the insurance agent just can't sell them together.

MR. OTTO: Well, then what will happen is the person comes into the funeral home on day one, buys the term-life policy from the guy who is authorized to sell it because he's an insurance agent, and they'll say come back tomorrow. You come back tomorrow and now I've got this insurance policy that I'm assigning to a preneed.

MS. EULER: But the thing is with term insurance, it's never paid in full.

MR. STALTER: Well, I think there are policies. You can buy a paid-up term. They're usually pretty expensive, but they're out there. It's just a matter of -- I think the abuse with the term in the preneed industry has been these industrial policies, but there -- I mean, there are paid-up term out there. I mean, they're just pretty expensive.

MS. GRINSTON: Again, my understanding was that your concern was with those two things being done in the same transaction by the -- you know, at the same table. And if that's not correct, let us know and we change

it to make sure we match what your recommendation is.

MR. McCULLOCH: I wouldn't recommend that funeral homes do this. It wouldn't make any sense for them to take a term policy that has an end date; okay? But that they guarantee the price. So, I wouldn't recommend someone doing that, but I don't know how you're going to put this in a law. That's going to be the problem because someone may have a -- want to do that and they think it's good business practice. And if that individual -- and they may say, well, we're not going to freeze the cost. Well, then that's okay. Or if the term policy doesn't pay, then we're not going to deliver our services and merchandise. That's okay, too. So, you could -- by contract, you could fix it so it would protect the funeral home, but I'm not sure we should be doing that.

MR. STALTER: Yeah, I mean -- and, truthfully, I've drawn those contracts up like that before where we say it all depends on what the proceeds are at the time of death. I mean, we'll --

MR. McCULLOCH: Exactly.

MR. STALTER: Yeah. But, you know, I guess, the future needs -- I mean, our first objective was to make sure that a trust does not invest in term insurance, and that's a given.

MS. GRINSTON: Right.

MR. STALTER: But then do we go further and say that we can't really associate a preneed program with term insurance?

MR. McCULLOCH: And I thought that was the issue. You really didn't want someone to do what NPS, we think they have done; okay? That's really the idea.

MS. EULER: Well, I think the question -- this is Sharon again, with the AG's office. If there is a term policy, it's not a paid-up term policy, and there are annual premiums, monthly premiums, quarterly premiums, but there are premiums due. If it is the purchaser's obligation to pay those premiums, and you're saying that the term policy is funding a preneed contract, the purchaser quits making the premium payments and the policy is canceled, you don't want the funeral

home to still be obligated to provide under the preneed contract when there is no -- when the funding mechanism hasn't been paid for.

MR. STALTER: Well, that's why I draw the contract the way I do. I mean, basically, you look to the -- what the proceeds will be, you know. You don't want to commit the funeral home to a contract that has -- or an insurance policy it has no control over.

MS. EULER: Right. And that's why, as a general rule, term policies are not a good vehicle for a funding mechanism for a preneed contract. That doesn't mean that they can't be used for preplanning, but you can't -- you're saying it's a guaranteed contract, but if there's no insurance, there is no provision that the preneed contract is canceled along with the term policy because you may not have any way to know whether the term policy has been paid for or not.

MR. STALTER: Well, I guess -- let me clarify. I mean, the ones I've written are not guaranteed contracts. They're nonguaranteed. And the reason I advise the client to do it, so that the consumer knows

what the funeral home's promises were, as well. Because let's say that the death proceeds on that term policy were $10,000 and the funeral was only $7,000, so the consumer had a right to know that they were going to back the excess. So, you know, we didn't want to take the assignment without giving a promise.

MR. McCULLOCH: Sharon?

MS. EULER: Yes.

MR. McCULLOCH: While you're trying to fix this to protect funeral directors, here's what some of them do. They have a local agent that goes out and sells a life policy that has no growth in it whatsoever, and let's just say it's for $10,000. They take it into the funeral home, the funeral director, not understanding, takes and freezes the cost, and all they have is a $10,000 policy --

MS. EULER: Right.

MR. McCULLOCH: -- that's never going to grow at all. So, that's kind of the same thing.

MS. EULER: Yeah.

MR. McCULLOCH: But we're not talking

about --

MR. STALTER: And that's not even a term policy.

MR. McCULLOCH: That's not even term. That's just regular whole life or a ten pay or whatever.

MS. EULER: And that's the distinction between a preplanning with assignment of life insurance as opposed to prepaid.

MR. MEIERHOFFER: Very good.

MR. OTTO: This preplanning thing is a new thing. I mean, why would you stick in there -- I mean, if this is a concern, you know -- what we're trying to do is legislate somebody doing something that's not a good idea.

MR. McCULLOCH: Maybe Bill's idea --

MS. EULER: Preplanning is a great idea, Don.

MR. OTTO: No. No. No. No. Using term.

MR. McCULLOCH: -- about not allowing the trust to invest in term.

MR. STALTER: I'm sorry. No. Go ahead, say it, John.

MR. McCULLOCH: Well, your statement is saying, really, the intent was, we don't want the trust to be able to do this and do what we think NPS did -- okay -- and cause a problem.

MR. OTTO: Well, why don't we just, to make it easier, just say that you can't use a term-life product to fund a guaranteed contract?

MR. McCULLOCH: That kind of helps the funeral directors help themselves.

MR. OTTO: Yeah. I mean, really. Just say a term product cannot be used to fund a guaranteed funeral contract.

MS. ERICKSON: And this is Mary Erickson with the department. In your experience -- and I'm throwing this out to everyone -- when you have a preneed that is funded by a term policy, is there the potential for confusion, though, by the consumer, who doesn't understand the insurance world, that they think that, you know, ten, twenty years from now, I'm still going to get my funeral, or the family members when they -- when grandma says, you know, to her children,

I'm covered, you'll be fine. Grandma dies 20 years later. They think they have a preneed policy, and then, lo and behold, it was term. I think one of the reasons that we had talked about in our previous meeting was the potential for confusion by the consumers. How do you see that actually happening in the industry? And I think that's why we wanted to avoid the term policy -- one of the reasons, in addition to the NPS problem, et cetera.

MR. STALTER: Well, I mean, to jump ahead of that. Part of it is if we say that you can sell a term policy, but it has to be tied to a nonguaranteed contract, I mean, it goes back to the regulations about disclosures, you know. So, if the consumer knows, I mean, that, really, they're not getting any promises from the funeral home other than we're going to take your proceeds and apply them to your cost at the time of death. And I think that's the problem with the industrial life, when you look through the south, is that people would -- I mean, they may have -- they had a policy where they were paying a few dollars on it per week or per

month, and they got $2,500, and, you know, like you said, the contract was out there for 20 years and nobody was going to honor the guaranteed part of that, and that was the abuse in the south.

MS. ERICKSON: And, Bill, when you're talking about sitting down with the disclosures with the consumers, it's going to be made clear to the consumer, "This is for this period of time only. Now, if you die one day later, you have no money to fund this; do you understand?" I mean, I think that's the danger of this vehicle.

MR. OTTO: Well, that danger exists in term insurance right now.

MS. ERICKSON: Absolutely. That's why we're talking about it, whether it's the proper vehicle in preneed.

MR. OTTO: Well, for anything. I mean --

MS. ERICKSON: True. But I think there's a greater level of confusion because you have added -- you have a preneed contract, as well as the insurance backing, which the consumer may or may not understand. And,

Sharon, what do you think?

MR. VERNON: This is Martin, and I want to throw something in. I understand the term thought that Mary was just describing, but you can also draw the same parallel without the stopping of the policy because of lack of payments with the just the whole-life policy because the consumer may walk out thinking I've paid for my funeral, and when there reality is I've only got $5,000 and I'll never have more than $5,000. So, I'm a little concerned and I like the preplanning thought all the way through, but I'm a little concerned. Obviously, we're trying to -- what we're really trying to fix here is the NPS scandal, and then it's messing up a whole gamut of what could be in the other and it really is about disclaimers to the individual when they come in and do their preplanning anyway, so -- because if they don't understand it, they don't understand it.

MR. MOORE: This is John Moore, and maybe I don't understand term life. But as if we went and bought a car for $15,000, we paid $2,000 down and we buy a policy for $13,000

difference. It covers decreasing amounts until that policy is paid when the funeral home should, at the end of the policy period, have that money in trust. So, then your trust starts growing. At that point, the term policy is expired and done. If they die before the date of the paid-in-full policy, the term policy makes up the difference in the contract. So, the term life insurance really is not anything that was used to fund any type of preneed.

MS. GRINSTON: So, is there a recommendation on what you would like to do?

MR. OTTO: Well, I -- you know, our comments on this -- this is Don Otto again -- and the comment we submitted, and this would apply to any insurance product that is sold to the consumer. I think there should -- we think there should be a separate disclosure to the consumer whenever insurance is sold to the consumer as part of a preneed planning process that specifically spells out this is what happens if you don't make your payments. This is what happens if you cancel it. This is what happens -- you know. And I know it was

said that this is all spelled out supposedly in the insurance contracts, but we've just said that that's a problem with people not understanding this. So, you know, from my perspective, if the consumer wants to purchase term life and use that term life to -- if I die, I've got a ten-year term-life policy that I paid $5,000 for, and if I die in the next ten years, I want this to go to my funeral, I don't see any reason that that should be prohibited as long as there is adequate disclosures to the consumer as to what happens when. And that should be whether it's a whole-life policy, whether it's a term-life policy, or whether it's some bizarre combination -- who knows what they're going to come up with a year from now and what they're going to call it -- galactical term life whole universal policies -- that -- so -- and that's also a problem when we start saying, you know, term, you know, they may change the terminology a year from now. If any kind of insurance is used to fund -- I'm not talking about the -- you know, to fund a preneed plan, there needs to be very specific disclosures

given to that consumer that say here's what happens if you don't make the payments on your insurance policy. Here's what happens if you cancel the insurance policy, you know, things like that. And I think that -- I mean, full disclosure to the consumer, I think, is the most important thing.

MR. MOORE: Are we trying to overdisclose, though? I mean, if somebody doesn't make their payments for 60 days and it lapses, does it take a rocket scientist to tell you you don't have coverage? Are we trying to overdo?

MR. OTTO: Apparently, yes.

MR. VERNON: Should we just narrow the focus -- this is Martin -- back to just a -- I'm probably being way too simplified here, just to a simple statement of you can't take trust money and buy term-life insurance policies. That's what you're --

MR. OTTO: We've already done that elsewhere. This is where -- this isn't where -- the issue we're at now isn't the trust buying insurance as their investment vehicle, this is where just the consumer is buying an

insurance policy and the consumer has purchased an insurance policy directly and he's going to use the proceeds of that to pay for their funeral.

MR. MOORE: But how many funeral-home owners out there are going to take and be the beneficiary or have it assigned to them, and when it lapses and that funeral home gets records that it lapsed, how many are going to say, "Oh, well, I agreed to do this whether you paid for it or not." It's a contract with the insurance company, you're just a beneficiary. You have no guidelines to make you do it if they don't pay their bills.

MR. STUART: This is Bill Stuart. Kimberly, I would like to suggest to your committee that they just delete #5.

MS. GRINSTON: Okay. We've got a suggestion that #5 is just deleted altogether.

UNIDENTIFIED: I agree.

MS. GRINSTON: I heard someone say, "I agree." Who is that? Someone said it.

MR. VERNON: So, was the recommendation a motion, Bill?

MR. STUART: Martin, I would ask your

committee -- I'm not a member of the committee -- to just consider deleting item #5.

MR. STALTER: It never stopped you before, Bill.

MS. GRINSTON: Someone suggested that we remove #5. Working group, what would you like to do? Do you want to remove #5 and include language on the disclosure side that talks about disclosures? I told you one of my concerns about disclosures will continue to be that sometimes, you know, funeral establishments or the person writing the contract may not have a good understanding of the insurance contract. And if they give -- tell the consumer that this -- you know, this contract will cancel in 60 days when the contract really says 45, we're going to have this issue of, you know, where is the consumer because the insurance company said one thing, an agent of the insurance company said something else, and it leaves us in between. Unless we can -- I know Mark Warren, when he was here, he suggested just using the NAIC model disclosure law, and leaving it at that. And I haven't gone through that -- gone back

to look at that. I've looked at it years ago, but not recently. Darlene?

MS. RUSSELL: Darlene Russell. I don't see any problem with deleting #5 as long as we assure that the trusts cannot invest in term-life insurance. That was the big problem there. And as far as disclosures for insurance policies, I think we decided that the Board, by rule-making authority, would kind of make up what those disclosures should say as far as the preneed contract. So, I'll make a motion to delete #5.

MS. GRINSTON: We've got a motion to delete #5.

MR. STALTER: Second.

MS. GRINSTON: Bill said he's in agreement. Working-group members, anybody else objecting? For purposes of this one, since we've had some considerable discussion on it, working-group members, if possible, can you please tell us yea or nay?

MS. EULER: Kim?

MS. GRINSTON: Yes, Sharon?

MS. EULER: I have a question. That if term-life insurance is used to fund a

preneed contract and the premium payments are not made and the insurance is canceled, yet there is a still a guaranteed contract out there, how do you deal with that?

MS. GRINSTON: At need?

MS. EULER: Yes. The family comes in and says, "I've got a preneed contract here signed by everybody saying that you, funeral home, are going to provide for my grandmother's services. I want you to provide."

MR. STUART: Excuse me, Kim?

MS. GRINSTON: Yes.

MR. STUART: This is Bill Stuart. Sharon, I'd like to address this just momentarily. The operative word there is fund a preneed contract, whether it be insurance of term or insurance of whole life. Most funeral homes cannot issue a contract frozen by using the word that's funded by preneed -- I mean, by insurance, when they don't control the funds.

MS. EULER: Right.

MR. STUART: And, actually, they're not doing it, most generally. I have never

found many funeral homes that were doing it. And the intent of your all's conversation was the term life that was bought by trustees, and I think that is why we're trying -- I mean, I just don't see finding any people out there that are silly enough -- funeral directors -- to fund when the word "fund" means you have the funding. You don't have it, so I don't know of any funeral homes that would be doing this. And that's why I think this is just moot. And like they said earlier, Don Otto said, and someone else, I believe, you can't restrain the trade of an insurance agent to do whatever he wants. And then you used the word "preplanning." So, if some family chooses to buy a term life, no funeral home is going to accept and freeze their price. I mean, they can't. They don't have funding.

MS. EULER: So, what is -- if no funeral home is going to do it, what's the problem with keeping that in the law? I'm just concerned, from a regulatory point of view, that people will sell term-life insurance to fund a preneed contract and then the payments will not be made and then we will

be faced with a complaint from a consumer saying, "Grandma paid for the life insurance. I've got a contract, and now the funeral home is not complying with the contract."

MS. GRINSTON: Darlene had a comment. thereof

MS. RUSSELL: Sharon, Darlene Russell. In regards to what you're talking about, anytime I've ever seen an insurance-funded preneed contract, it specifies all those things, what you're saying as far as what happens if the purchaser stops making payments, you know, what happens if they become behind and all of that thing. I -- it's going to be all dependent upon how that insurance-funded preneed contract is written. You cannot tell a funeral home -- you would hope that most funeral homes who would take an assignment of any type of insurance, that they would look at the future and decide whether or not they were going to guarantee it or not guarantee it. I would say the majority of them, just like Bill Stalter said, they cannot guarantee the funding mechanism, so they would probably make those nonguaranteed.

MS. GRINSTON: Okay. We have a suggestion that we remove #5 altogether. Oh, I'm sorry. John? I'm sorry.

MR. McCULLOCH: That's okay. That's okay. I'm done.

MS. GRINSTON: I'm sorry. We have a suggestion that we remove #5 on insurance restrictions from the document, and I believe we had a second. Is there anybody who objects to that as a member of the working group?

MR. OTTO: I support removing #5 as long as we understand that there needs to be clear disclosures to the consumer as to what happens on any insurance policy -- term, whole life, or some combination thereof -- what happens if they don't make the payments, what happens if they cancel, what happens if they take a loan against the policy and so the proceeds aren't there at the time of death, all that stuff.

MS. RUSSELL: All those disclosures would, again, come under the Board's rule-making authority on saying what disclosures would need to be in a preneed contract. So, I think we covered that under

the disclosures and giving the Board rule-making authority to specify the disclosures.

MS. GRINSTON: And maybe, Don, if it's okay, if we could add that as a comment from MFDEA under that section that does indicate that language, as well. Don is giving me the okay signal. Do I have anybody else objecting to removing #5? Do I have anyone else who would like to abstain from the vote? I know the attorney general's office, because of pending litigation, cannot vote on the legislative proposals right now.

MS. ERICKSON: This is Mary Erickson on behalf of the Department. My personal inclination would be to leave #5 in, but as Linda Bohrer is not here, I would like the Department's formal vote to be an abstention and that we can send comments to the Joint Committee as needed on that point.

MS. GRINSTON: Okay. We'll note that. All right. Moving on, #6. Again -- oh, we did that already. Any other comments on page 29? On page 30?

MR. MOORE: This is John Moore. On

page 29, #6.

MS. GRINSTON: Yes.

MR. MOORE: If we're going to have the sellers, which would be mainly the third parties, report to the Board of who is funding and what insurance companies they're using, can we not make that where they also have to inform the providers that have contracts with them the same information?

MS. GRINSTON: You want them to tell the providers what insurance companies they're using?

MR. MOORE: Yes. I think it would be beneficial to the funeral homes or the people with those prearranged contracts to also be privileged to that information.

MS. GRINSTON: So, you're talking about when an -- okay. Disclosing to the provider if the preneed contract for his funeral home is funded, who is funding the insurance, or who the insurance is written through. That's John Moore. I'd like to give that to the working group. Any comments or suggestions? Would anybody like to add any language on that point? Okay. Hearing none,

then I think as a part of the formal recommendations of the working group, that that probably would not be included, but we would require the sellers to tell the Board what insurance companies they're using.

MR. MOORE: But they don't have to tell the funeral homes or the providers?

MS. GRINSTON: I don't think that the working group formally considered whether they'll be telling the providers. I'm assuming -- I don't know. I'm assuming that that may be in the contract with the provider what the seller discloses. I'm not sure how that would be worked out, but -- Bob?

MR. BAKER: Bob Baker. I think what John is saying has merit to it if the seller and provider are not one in the same.

MS. GRINSTON: Okay.

MR. BAKER: If you've got a funeral home that does both, then they're going to be aware of it. But if you've got a seller out there, and I think it goes back to the question that we had talked about earlier of the possibility of licensing the insurance company itself as a seller for coming in, like

the scenario that we have seen recently, and selling preneed without any knowledge of anyone.

MS. GRINSTON: Okay. And we addressed the written-agreement issue. But for the working group, do you want to include a requirement that the seller also has to tell the provider what insurance companies they're using?

MS. RUSSELL: I see no problem. Darlene Russell. I seen no problem adding the word "provider" in there.

MR. McCULLOCH: Is he talking about -- just for clarification. This is John McCulloch. Like a preneed seller, third-party seller, and they would use an insurance to fund -- that the trust would invest in? Is that what you're referring to?

UNIDENTIFIED: Yes.

MR. MOORE: Well, I'm just stating that if we're a trust state and, all of a sudden, the third-party people can take the money out of trust and buy insurance policies with our contract money, then we should be privileged to know how they're investing it

and with what companies -- (inaudible) -- to act with before we all got to take this money out of our pocket and cover it again.

MR. STALTER: John, this is Bill Stalter. I mean, what we're talking about here, though, are the insurance-funded contracts. And I'm going to say, maybe there are -- we haven't seen this kind of third party yet, but it could happen where a third party comes in and said we're going to act as this -- your sales agency and we're going to use insurance. But, you know, once they've sold the contract for you, it's in place. I mean, if they change insurance companies, maybe then you would be entitled to a notice, but, you know, for trust funding, you know, that's a different section. What we'll be talking about here is prospectively when they come in and you've signed up with this third party and he's only going to use insurance, do you have a right to know or to be notified when he changes insurance companies?

MR. MOORE: Correct.

MR. STALTER: Okay. I have no problem with that part of it. I mean, that makes

sense, but it's a different area when we talk about trusts switching to insurance funding.

MR. MOORE: Yes.

MR. STALTER: Yeah.

MS. GRINSTON: Okay. Well, then let's throw that out to the working group. I think several people have said that they don't have a problem with adding that notification to the providers, as well. Are there any objections? Is there anyone from the working group who would like to abstain from the vote? Hearing none, we'll add that change in, and that's on page 29. Any other questions or comments on page 29? Page 30. Page 31, I believe -- I'm sorry. Don?

MR. OTTO: No. No. No. You're -- it's 31.

MS. GRINSTON: Okay. Page 31. Don?

MR. OTTO: Can we make, as much as possible, everything 30 days?

MS. GRINSTON: Yes.

MR. OTTO: Please.

UNIDENTIFIED: Is that 30 calendar days or working days?

MR. OTTO: And not in a leap year or a

full moon.

MS. GRINSTON: Representative Meadows, did you have something?

REPRESENTATIVE MEADOWS: Well, I know that -- I mean, I don't recall, and I don't know, I may have been present when we talked about this. But I had some -- I jotted down some notes, but I don't see it in here as of yet, and I'm certain it'll probably be discussed. But, you know, I just want to really keep in mind that joint accounts represented the State option for safe placement of preneed funeral contracts. To change this provision to be like a trust account is a step backwards with regards to the consumers. You know, I'm just trying to keep it consumer friendly. I just would hope that we do that. But, at any rate, I'll just hold some of my comments till later on.

MS. GRINSTON: Well, and in response to that, Representative Meadows, on the joint account, I believe -- and, working group, please correct me if I'm wrong. I believe the recommendation is to maintain the status quo on joint accounts right now, except with the

addition of two things. Again, to say that a preneed seller can use a joint account, because right now it just says providers. And then also to clearly say that you don't need a trust if you're only using a joint-account-funded option, because that was a question. Representative Meadows?

REPRESENTATIVE MEADOWS: Has anybody -- and, you know, I guess that because we have -- when you're talking about trusting, a lot of people have said it's too costly to start a trust. Is anybody -- and I've heard that a lot. But how much, actually, does it cost; does anybody know? Can anybody tell me what that is?

MR. STALTER It'll be a little different from institution to institution, but, usually, they want to charge a flat fee. Sometimes it's $500 or $750. I mean, it costs quite a bit just to set up the trust. So -- and it really does differ from institution to institution. It's just prohibitive for if you say a $7,000 or $5,000 trust, then you have to pay $500 right off the bat just to set it up. Plus then they tend to want -- they'll want to

charge a basis fee, but, you know, for a small trust, they'll just end up charging a flat fee, you know, for that account, so --

REPRESENTATIVE MEADOWS: Well, you know, I guess one of the other options that could be out there, if a person didn't want to start their own trust, wouldn't they have the option of joining a master trust or doing shares instead?

MR. STALTER: Yeah.

REPRESENTATIVE MEADOWS: I mean, there are other options out there?

MR. STALTER: Yeah.

REPRESENTATIVE MEADOWS: Is that correct?

MR. STALTER: Yes.

REPRESENTATIVE MEADOWS: Well, all right. Well, I'll hold my comments. I'm glad to know that we're not going to get too involved in changing this a whole lot.

MS. GRINSTON: Okay. Any other comments on page 31?

MR. STUART: Kimberly?

MS. GRINSTON: Yes.

MR. STUART: Bill Stuart. Is it my

understanding that the working group will maintain the joint-account privilege of a seller -- funeral-home seller, but that they have to have no -- I mean, they have to put 100 percent in?

MS. GRINSTON: Yes. I think if they're maintaining all current requirements.

MR. STUART: Okay. I would like for the committee to, once again, consider the fact that that limits the small funeral director from competing with needs for salespeople and such, and that they should be allowed the cancellation or same amount of commission that the third party gets to compete and be on a level playing field. And the joint-account funding would stay in the local community, but it was easily, you know, sitting there with the growing interest, but the front money or the cancellation fee or whatever you want to call it should be the same as the third-party seller is allowed.

MR. MOORE: This is John Moore. I agree with that. We ought to have the same plain.

MS. GRINSTON: And this is Kim, if I

may. I think that the thought was that the joint accounts would be utilized for people who didn't want to get into that competitive environment, that those are people who are just -- you know, if it's a small funeral home, larger funeral home, who just want to set up an arrangement to allow preneed, but they didn't want them to get into that competitive kind of world. And if you wanted to do that, then you would have to go to through a trusting option because -- and I think that the thought was they wanted to avoid people doing a joint account with, you know, huge excesses of money, that that was not what it was originally intended for. I think that that was what my understanding was, and, working group, I would open that to the working group.

MR. STUART: Well, again, Bill Stuart. That's not -- I mean, that's not being fair to the director that's caught by the third parties that are using that front 20 percent or whatever you arrive at. I don't know that you have arrived at a solid 20, 10, or whatever. But whatever it should be, it's

sort of like Mr. Otto just said, 30 days should be across the board on everything or whatever, and whatever you arrive at gives me the option in the small town that's competing with the preneed sales, whether it's on the Internet or a third party comes to the community, it gives me the option to pick my funding source; "insurance," "third party," or "a bank CD." It gives me that option and I'm on the level playing field, and I can pay my salesperson or pay my expenses out of that same commission that I'm currently finding myself competing with, you know, and it seems only fair to make it a level playing field.

MS. GRINSTON: And Bill and John, I don't know if this helps, but MFDEA did submit a comment that related to that, and that is also included in the draft on page 31 that says that they should be subject to the same requirements. So, I think that that comment -- it has been noted in the draft, as well. Are there any other concerns on page 31?

MR. BAKER: Kim?

MS. GRINSTON: Bob, yes?

MR. BAKER: Bob Baker. Besides John

and Bill, I have received several calls that have the same concerns that -- and I think to answer Representative Meadows' question as far as establishing a trust, we're talking maybe $15,000 to $25,000 by the time you get attorney fees and everything with the banks, and the banks do not want to talk to you until, you know, you say, "I've got one contract I want to start it with," you know, "What's your fees?" And I think a lot of the small funeral directors have the same concern that if they have somebody that occasionally they would like to have selling for them, that we give them a way to pay a commission, but, yet, not have the fees of establishing their own trust or not wanting to take the money outside of their community, and I think that's the main concern of most people.

MS. GRINSTON: And if you would like, I can also add that as a comment, as well, unless the working group would like to change the recommendation, and I'll open the floor to the working group.

MR. OTTO: I know at our last meeting, we suggested that -- I suggested that at our

last meeting, that whatever the rules are for trusts on percentage trusting and cancellation and portability, apply it equally to joint accounts. And I note that I got voted down --

MS. GRINSTON: Yeah.

MR. OTTO: -- not unanimously, because I didn't vote it, but --

MS. GRINSTON: It was pretty substantial, I think.

MR. OTTO: But it was pretty substantial. I got whooped up on that.

MS. GRINSTON: Well, to just throw that out there for consideration for all joint-account people, that would require if they are going to be doing -- if it's the same rules, it would require the same type of reporting, the same type of auditing, the same type of examination, the same type of record-keeping. It would elevate a joint account to the trust level. And I think that the concern was that the smaller funeral homes who may not have the staff -- if they only have one person, you know, in the funeral establishment to do that type of record-keeping and the kind of things that are

required when you have a trust. But, again, this is open to the working group. The working group has previously voted to allow joint accounts to remain as they are with those minor changes. Would anybody -- would the working group like to reconsider that vote?

MR. MAHN: Hey, Kim, this is Todd.

MS. GRINSTON: Yes, Todd?

MR. MAHN: Yeah. I would just like to ask the question: Had we never had trusts and only had joint accounts that 100 percent had been put in, would we still be sitting here? NPS wouldn't have stole the money they took. And, you know what, we've never had any problems with joint accounts. We don't have a bunch of problems with the Board chasing people around because of joint accounts, you know. And with something being -- having no flaws in it at all, and 100 percent of that money is there for those families, can't we just leave something alone? Like, can't we just -- you know, can we just stop preying on everything here? And I say we leave the joint accounts alone. This trust monster is one big monster. If you want -- we want to fix the

whole thing -- (inaudible) -- joint accounts would be 100 percent, but too much has already been done and too much damage already happened, and we have to deal with that now, and we have to compromise now, and we have to bend this and bend that way. But let's -- my point is, just leave joint accounts alone. Again, I'll say like I said the last meeting. If there is little funeral homes out there that can't make it because they can't tap their joint accounts, then they oughtn't be in business.

REPRESENTATIVE MEADOWS: I second that motion. I'm Representative Meadows.

MS. GRINSTON: That's Representative --

MR. MAHN: Thank you, Representative.

REPRESENTATIVE MEADOWS: Thank you, Todd.

MS. GRINSTON: That's Representative Meadows. It's been seconded to leave the recommendation as it is, and I could always add a comment on the commissions and the competitive issues that we talked about. The working group, I'm going to -- I have a motion to leave it as it is. Anybody object to that?

MR. OTTO: Well, I guess if the motion is not to change it, I would vote against that, I think.

MS. GRINSTON: Okay.

MR. OTTO: I mean, again, the statement that we haven't had problems with joint accounts, Todd, I respectfully would disagree with that because those have been stolen, too.

MR. MAHN: Well, if you can show me anywhere that joint account is equivalent to the problem we're having with NPS, I'll drive out there to Jeff City right now and you can show it to me.

MR. OTTO: Well, I'm saying the equivalent.

MR. MAHN: Well, that's what I'm talking about. We're dealing with big things here. You're going to have some little shop here or there misplace a joint account or do something, but this is major potatoes. And you know what, I have sat in these meetings and I have listened to this stuff, and I'm telling you right now, as a Board member, I am here to protect the consumer. And, right now,

these consumers, I don't hear too much word in here for them, period.

MR. STUART: Todd, and all due respect, nobody will be protected more than the local CD by the local banker by the local director. And I need to be --

MR. MAHN: There's 100 percent in --

MR. STUART: No. Todd, I need to be lifted. It's a restrainted trade that I don't get the commission, that I choose my funding vehicle, and I choose my vehicle as 100 percent here in the CD less my administration fee, and that will be as well protected as your trusting third parties and sending the money off to insurance companies or out of town. And I'm only saying just give me a lift here so that I can compete and not have to send my money out of town.

MR. MAHN: I think for all homes that feel like they need a commission to stay afloat, there's plenty of avenues to go here. All I'm asking for is just let's leave one perfect, you know, right in the ballpark for the consumer. And they, you know, are getting tapped everywhere else, and I know where

you're coming from, Bill, and, you know, I understand what you're saying to a point, but all I'm asking for is can we just -- can there just be one thing that we can just say, look, folks, do you want your money at 100 percent somewhere. There's not going to be any commission, there's not going to be anything tacked on it, then we do a joint account.

MR. STUART: Well, joint -- that's what got us in trouble, Todd, in '83. That's why we got put in --

MR. MAHN: Well, what got us in trouble in '83 was letting the people from NPS infiltrate into this --

MR. STUART: But, I mean, I'm telling you, Todd --

MS. GRINSTON: Bill, Todd, Representative Meadows and John have their hands up. Representative Meadows -- sorry.

REPRESENTATIVE MEADOWS: Okay. I personally believe that -- you know, let's face it. Joint accounts are great tools. And to allow 20 percent fee retained, in my eyes, is a step backwards. Correct me if I'm wrong,

but doesn't current law allow already, if it's specified in the contract, a reimbursement of expenses to the seller from the income, anyway? I mean, it's in there. If you put it in the contract, you can do that. I mean, is that correct?

MR. OTTO: From the income earned, that is correct, that expenses of maintaining the joint account. There is an argument that that would not include a commission because that is not a expense in maintaining the joint account. Also, if you put it in an investment vehicle where you cannot draw the interest off, you can't get to it, so that's the problem. I think -- I mean, our position is simply if we come up with rules that we think are good to protect consumers on the trust, that it's easier and simpler and fairer if that applies to joint accounts, as well. I think I'm in the minority on that, but I just as soon we vote.

MS. GRINSTON: Don, John had his hand up, as well.

REPRESENTATIVE MEADOWS: In statute, I'm looking at it right here, 436.053, it

clearly states: "The income generated by the deposited funds shall be used to pay the reasonable expenses of administering the agreement and the balance of the income shall be distributed or reinvested as provided in the agreement." It's in 436.053, subsection 5 -- I believe 4 or 3. I'm sorry. At any rate, personally speaking, and I agree with Todd Mahn on this, I mean, folks, this is a good consumer tool, for the consumer, and I just don't think that we need to be messing with it. That's just my own personal opinion.

MR. MOORE: This is John Moore.

MS. GRINSTON: John, before -- John --

MR. MOORE: And I agree with Todd in a lot of ways. I agree with Representative Meadows.

MS. GRINSTON: John, before you do that -- John, before you do that --

MR. MOORE: If joint accounts is so great and has done such a good job, I would ask the working group to take the standards of joint accounts and apply to the rest of 436 at this time and let everything fall and follow by joint accounts.

MS. GRINSTON: John, John McCulloch is next.

MR. McCULLOCH: Yeah. This is John McCulloch. Just a couple comments. I think if folks want to put 100 percent of their money in, they can go down to the bank and do that. They don't have to have a contract with the funeral home or anyone else. But if they do want to go to the funeral home, and I haven't ever thought of it this way, but I think I agree with Bill and John Moore that they should be handled the same way. It'll give you guys, like you said, a level playing field, and I think it should be handled the same way as the rest of the funding for preneed or what have you.

MS. GRINSTON: Which would include, of course, just -- and we should probably take this to a vote as now just to move it the conversational purposes of having time. Please understand that that would include reporting, auditing, examination, and all the other requirements that are applicable to someone who is running a trust, including annual reports.

MR. OTTO: If -- again, I think I know how the vote is going to go on this. The current motion, I think, on the table is to not do anything, and I never like those kind of motions, to be honest with you, with all due respect, Representative.

REPRESENTATIVE MEADOWS: We do them all the time in the House.

MR. OTTO: I know. I know. Well, and that's how it turns out.

MS. GRINSTON: And the motion is to maintain the current recommendation. That is the motion that I think Representative Meadows has made. Someone else has called a second. Why don't we vote on that, to maintain the current recommendation, which is to leave joint account, except for those few minor changes, as they are right now in the law. Having said that, let's do a voice vote on that since we've had some discussion. Representative Meadows, I'll start in the room.

REPRESENTATIVE MEADOWS: Aye.

MS. GRINSTON: Darlene?

MS. RUSSELL: Aye.

MS. GRINSTON: Bill?

MR. STALTER: Aye.

MS. GRINSTON: Don, what is your vote?

MR. OTTO: My vote on that is nay because I would like to make some changes.

MS. GRINSTON: Okay. Okay. Fine. John?

MR. McCULLOCH: Nay.

MS. GRINSTON: Todd?

MR. MAHN: Yeah.

MS. GRINSTON: Gary?

MR. FRAKER: Yes.

MS. GRINSTON: Martin? Martin? I think we lost Martin. Is Joy on the phone?

MS. DUNN: No.

MS. GRINSTON: Joy is not on the phone. Mr. Meierhoffer?

MR. MEIERHOFFER: Nay.

MS. GRINSTON: Who else? Who are the other working group members? I'm losing my memory here. Sharon is not voting; am I correct about that, Sharon?

MS. EULER: Yes.

MS. GRINSTON: Okay. Is there anyone else on the phone? Hearing no one else, I think the ayes have it, and I will make a

comment on the notes --

MR. STUART: What was the vote, Kim?

MS. GRINSTON: The vote was to leave joint accounts as they are.

MR. STUART: And what was the score, please?

MS. GRINSTON: I have one, two, three, four, five -- six to four.

MR. STUART: Thank you.

MS. GRINSTON: All right. Let's just move on. Page 32 -- and, again, I will make sure that the discussion is included in the comments. Page 32, payments to providers, any questions? That is your certificate of performance. I would like to skip to page 36 simply because we can come back to that last whole section we need to talk about, but let's see if we can get through the document and then come back. Page 36 through 37 is all annual-reporting information. I have no questions for the working group on that. I'll submit -- open those questions for discussion. Again, page 36 and page 37.

MR. VERNON: I'm back on. I'm listening. All right. They may have called

on me and I didn't hear it.

MS. DUNN: Martin, are you back?

MS. GRINSTON: Yeah. I hear Martin talking. Okay. Pages 36 through 37, no comments. Let's go on to page 38. I have the change that the first bullet point will be listed as unanimous recommendation. Anyone else have any questions on page 38? Hearing none. Page 39, which you can't see because there's a box there, but it's the page that says termination of business, and we'll fix that. I have a question here. There was a recommendation made by MFDEA. We talked about -- and for termination of business. We talked about this somewhat. I used a lot of the language that is currently in the law with some of the disclosures that we discussed. But the question was raised as to whether we -- you all talked about notice to consumers. If a seller goes out of business, telling the consumer; a provider goes out of business, you know, telling the consumer. A question was raised as to whether that notification should be made when it's just the sale or transfer of assets, when you don't have the entity going

out of business, but just selling to someone else, whether a notification should be made to consumers on that end, as well. And so, I would like to open it up for the working group's discussion because I don't think we got clear direction or talked about that originally. On a sale or transfer of assets for a preneed provider or seller, should there be a notification to consumers?

MR. STALTER: Well, this is Bill Stalter. I think one of the issues is whether you can actually have effective notice to all those consumers based on how old those contracts are. And if it's just a change of business, a sale transfer in that, it almost becomes incumbent upon the regulators to make sure that those obligations are covered. And I'd say that, you know, so long as the acquisition company, the purchaser, will assume those obligations, then the consumer notice might be burdensome -- (inaudible.)

MR. OTTO: Bill Stuart, this is Don Otto. We talked about this. Perhaps you would like to say something on this? This is being -- are you still there, Bill? I guess

not. Anyway, the concern was that if you have a funeral home in a town and you are getting -- and you're an LLC, and so, you're selling your stock to someone else, and you are required to notify all of your consumers that have a preneed with you that this sale is about to happen, that's going to kill the value of your business. That was the concern. You're now saying to the town, my business is for sale. I'm about to sell it. What's that -- you're just torpedoing the purchase right there.

MS. GRINSTON: Even though the entity buying, you may keep the same name --

MR. OTTO: Even though the entity is staying the same, you know, it's not -- you're not going out and -- Bob Smith Funeral Home, LLC, is going to still be in business, but you're required to say, okay, we're selling our stock to so-and-so, and that will kill the sales. That will kill sales of funeral homes.

MR. McCULLOCH: Yeah, you don't want to that.

MS. GRINSTON: And so, the recommendation was that you do the consumer

notification when you cease doing business and the entity goes out of business all together, but not when you're just transferring stocks or assets?

MR. OTTO: Yeah. Ceasing to do business makes sense because the consumer should be -- at least some attempt, and you're not going to be able to track everybody down. But at least, you know, sending notification to the last known address, if somebody has gone out of business, here's what's going to happen to your contract, makes perfect sense. But if it's just -- if the entity still exists, it's just a transfer of ownership, that's a bad thing.

MR. McCULLOCH: And I think the Board should have to be the one notifying.

MR. MEIERHOFFER: This is Mike Meierhoffer. I think the only people that are going to make a notification of when a business goes out of business is going to be you all, the State Board. Other than that, I agree with Don wholeheartedly.

MS. GRINSTON: And then if that's the case, then with the State Board notifying,

we're going to need to have your purchaser information. You're going to have to tell us who your purchasers are, the names, the addresses, and all that information because it would be hard for us to notify people we don't know about, so that's something that we would have to get from you all on a regular basis because, just in case you do go out of business, if we are responsible for the notification, we need to have -- and that information needs to be updated with us because if the Board is going to notify, we need to know current address. So, if someone moves, there is going to have to be a requirement that you tell us with -- you know, that you've got a change of address on a contract.

MR. MOORE: I disagree with that. If a funeral home goes out of business and just goes belly-up tomorrow, the State Board is going to come in and secure all those records anyhow.

MS. GRINSTON: We hope that we'll be able to after the law passes. Right now, we can't. I like the idea, though. But to be

honest, when you talk about, you know, seizing books and records, you have to talk about electronically. What happens if they just close the doors and they're out of business altogether and we don't have an opportunity to get in and get the books and records. If the notification is going to be on the Board, we're going to have to have that information and it's going to have to be updated on a regular basis.

MS. EULER: This is Sharon with the AG's office. I think that when the funeral home, at some point, and, you know, after the sale has been completed may be the better time to do it. But I think the consumer absolutely needs to be notified when there's a change of ownership so that the consumer knows who they're dealing with.

MR. OTTO: If Prudential Insurance Company, the majority stockholder changes, do you notify all Prudential Insurance Company policyholders that there is now a new majority stockholder?

MS. EULER: But that is usually not what happens, Don.

MR. MOORE: Well, Sharon, if I could add something. If that did happen, what does it matter? The people can't transfer to the other funeral home in their town because whatever third-party agent that funeral home is working will not transfer them contracts with full contract price plus -- (inaudible.) They penalize the other funeral home, so who's going to move?

MS. GRINSTON: And, John, I think that question is --

MS. EULER: Well, but the issue is not just one of portability, the issue is informing the consumer so that they know who they're dealing with.

MS. GRINSTON: So, Sharon, are you talking about when there is a change of name of the ownership or when there's change of ownership?

MS. EULER: I think --

MR. MEIERHOFFER: Sharon, this is Michael Meierhoffer. If I sell the business to my sons, do I need to notify everybody that I'm selling the business to my children?

MS. EULER: Well, I think we can

finesse some of that.

MR. MEIERHOFFER: Well, that's what I think. I mean, I -- this gets really --

MR. McCULLOCH: I have an exception, too, then.

MS. EULER: But, Mike, if you sell your funeral home to Don Otto, even though the name stays the same, but you've, you know, gone to retire in the islands somewhere and Don Otto, LLC, owns the funeral home now, I think the consumer needs to know that.

MR. MEIERHOFFER: I disagree wholeheartedly. I disagree with that. I'm with Don totally. That is not necessarily important information that has to be shared with everybody. I mean, you just don't.

MS. EULER: Well, the company that held my mortgage was recently assumed by another bank, and I'm glad that they sent me a notice about that because I know who I'm dealing with. And it seems to me that the funeral-home issue is the same way, that the consumer has a right to know who they're dealing with.

MS. GRINSTON: Sharon, are you saying

that they should be notified at the time -- if there's a change in the basic information? Like, you know, if there's a change in the name, you know, or something like that, then they need to know who they're dealing with. Because I think what Don was suggesting was that you're going to be dealing with the same person, that if you're dealing -- if ABC -- Mr. Meierhoffer, can I use your example? If your son takes over the funeral chapel and it's still Meierhoffer Funeral Chapel, and you call the number and you ask to speak to Meierhoffer, you're still going to being dealing with Meierhoffer. Mr. Lindley has a hand up in the back of the room.

MR. LINDLEY: You're dealing with people's single purpose asset here; okay? You have people that have spent a lifetime building that asset. That's the only asset that they have. And you cannot or should not, for the consumer's sake, devalue that asset. When you devalue that asset, you devalue the ability for that consumer to get what he bargained for. You cannot do this. Just like in a law practice; okay? If a law practice

transfers hands, you know, typically, they don't notify all the people that are -- have files in their office. The only time that the lawyer, in my correct assumption here, notifies his clients is when he's ceasing to do business; is that not correct?

MS. GRINSTON: I don't think that's -- I think it just depends. It think it depends.

MR. LINDLEY: Well, the same thing in a medical practice. When a doctor has my file, the only time that he notifies me is when he, himself, is going out of business. If he's transferred that to his other physicians, he's not required by law to do anything. And the reason for that is that he's built his whole lifetime building that practice and he can't devalue his asset because you're limiting his ability to retire.

MS. GRINSTON: Well, hearing the discussion, I'd like to open the recommendation up to the working group. The recommendation is, yes, you tell consumers if you're going out of business, but you don't have to if all you're doing is transferring ownership by transferring assets or a change

of stock.

MR. OTTO: Well, I would just -- I would make the motion that the recommendation be as follows: That consumers will be notified when the seller or provider ceases to do business, period.

MS. DUNN: By whom?

MR. OTTO: Well, speaking on behalf of Missouri Funeral Trust, we have no trouble -- we have no problem us notifying consumers at the last known address if a provider goes out of business. We don't have a problem with that. Now, maybe other people do. Obviously, if the seller goes out of business, it's going to have to be the State if the seller goes out of the business because there's nobody above them, really, to do that. If a provider goes out of business, I have no problem with the seller notifying the purchasers at their last known address of the ceasing to do business. I've got --

MS. GRINSTON: Which I think was the last recommendation.

MR. OTTO: But just leaving this transfer of ownership completely out of the

recommendation at this point.

MS. GRINSTON: Okay. That's Don's recommendation. Anyone have -- do I have a second?

MR. McCULLOCH: Second.

MR. MEIERHOFFER: Second. Michael Meierhoffer.

MS. GRINSTON: Mike and John have seconded. Everybody, anyone who objects to the motion, if we can do that -- and I'm doing it this way because someone -- we have a phone. Anyone who objects to the motion, can you please register that now -- working group? Anyone abstaining from the vote, and we do know the attorney general's office and insurance will be.

MR. BAKER: Where are we cutting it off, Kim?

MS. GRINSTON: Pardon me? I think I've already -- in the draft you have -- let's see. He's asking me where do we cut it off, and let's look at the highlighted section. Probably right after within 30 days after ceasing business. "At least 30 days prior to ceasing business." And not required on the

sale or a transfer. You still have to tell the Board, but you just won't have to tell consumers. Okay. I think I hear that vote. Okay. Yeah. Moving on, any other comments on page 39 that you can't see and page 40? All right. Page 41, again, we have a disappearing number, but it's the audits, investigations, and examinations section. Someone recommended, and I think this came through several people, that instead of generally referring to books and records, that we should say preneed books and records so that we're not granting authority to go through every book and record that a seller or someone may have. And so, what you see here in the highlighted section, I added language on preneed books and records. That was the recommendation. I'd like to open that for the working group's discussion on whether it should be just preneed books and records or whether we should allow access to books and records generally. Hearing no discussion, do I have any objections to just saying preneed books and records? I see everyone nodding. On the phone, any objections? Okay. Also, on

that same page 41, Don pointed this out and, again, this was something I needed to bring back. Fees on preneed contracts. I know we all talked about how this is going to cost something for the Board and they are going to have to assess fees for licensing and everything else. Don suggested or remembered that the working group may have voted that the audits, investigations, and examinations should also be funded by the fees on preneed contracts and that that fee on your preneed contracts should be able to be adjusted by the Board by rule. I think I see one shaking head.

MR. STALTER: I agree.

MS. RUSSELL: I agree.

MS. GRINSTON: Everybody is saying "I agree." Will everybody on the phone, any objections? Okay. Hearing no objections, we'll go ahead and incorporate that in. Page 42, Rich, I think this was a concern that you had on page 42. Do you want to --

MR. WEAVER: Sure. I would be happy to talk about that. I just had a couple comments or, I guess, observations on this, that a couple of these issues, primarily when

you say give the AG the responsibility to review the actions of a trustee including the exercise of any discretionary power. And a couple -- the way that we're viewing this -- and I would say it would depend on how it's drafted -- but, basically, this would mean that the AG is a defacto bank regulator, and that would totally contradict state and federal banking laws. And so, that, essentially, could increase the reputation and legal risk for a bank. And so, when they're looking at whether or not they take these accounts, they may or may not want to take these trust accounts if you're going to throw the AG in, basically, trying to say that they're a bank regulator in addition to the FDIC, the OCC, Division of Finance. And so, I point that out because it's my gut feeling that that will be a very big concern. And so, that's something, like I said, that totally contradicts current state and federal banking laws and you raise federal preemption issues primarily for federal chartered financial institutions. So, I just wanted --

MS. ERICKSON: I'd like to echo that

just briefly. If this is still on the books -- and this is my opinion, and, Sharon, trying to -- and the AG attempts to use this authority, any preneed seller or whoever is being audited will immediately say preemption, which will lead to a whole new line of litigation and it will not accomplish anything. So, I echo Rich's comments there.

MR. OTTO: Given that a violation of 436 is already a violation of 407, which we're not taking out, and the attorney general's office has extensive powers under 407, which has already been written so as to not to conflict with the banking laws, I move that we just eliminate this section completely.

MR. STALTER: And before you speak -- this is Bill Stalter. The way I came at this one, this one caused me concerns, too, but I fell to the part that it says you can initiate a judicial proceeding to do these things which, in -- I was very uncomfortable with the AG taking these steps, but I guess I fell back to saying you would have to have a court agree to these things. But I still know the big banks wouldn't want to be subject to this kind

of jurisdiction.

MS. EULER: This is Sharon with the AG's office. Just a quick response. While the AG does have some authority under 407, it is pretty limited as to what we can actually do. And in terms of when there is a problem, nobody right now really has the authority to be able to go in and figure out what the problem is and take steps to correct it. And somebody in the state needs that authority, and it makes sense for it to be the AG's office, to expand the authority at the AG's office to act because we do the litigation for the State. And most of the things that are on this list, the AG currently does not have authority to do.

MR. STALTER: Okay. But how do you reconcile between you assuming that responsibility and the Division of Finance? I mean, this is one of the recommendations that we made some time ago. I would rather go to the Division of Finance and explain the issues so that they understand. I mean, it's something that they deal with on a regular basis. But I assume that you would have

concurrent jurisdiction to pursue those matters even if the Division of Finance decided not to?

MS. EULER: Well, right now, we have authority to pursue some of these issues as they relate to the trustee under 407, only with the consent of Department of Finance. And so, that means for situations like we're dealing with right now, the hands of the AG are tied until Department of Finance gives authority to us to act, which they have not done. So, it just seems to me somebody needs to have the authority to take these issues to court and get them resolved.

MS. GRINSTON: There is some whispering in the room. Thoughts, Rich?

MR. WEAVER: Well, like I said, I just wanted to make that clear to the committee that that is a big change in the current, like I said, state and federal banking law, so I -- my gut feeling is you will have very strong push back from the banking industry on that, and I just wanted to make the committee aware of that. That's just my only opinion, and I just wanted to express that to the committee

so --

MR. OTTO: Well, to take care of Sharon's concerns that perhaps nobody in the law right now is authorized to do anything, or at least it's not clear they're authorized to do anything, but also keeping in mind that we don't want to create a conflict between the existing legislation. And I would ask the Division of Finance this: Would there be a problem with just saying replacing and taking out attorney general and put in Division of Finance or Department of Insurance or whatever?

MR. STALTER: Isn't the issue here, Sharon, just as far as wanting some clear authority to go pursue action?

MS. EULER: Yes.

MR. STALTER: I mean, we're really talking about NPS right here, aren't we?

MS. EULER: No. I mean, the -- this committee was convened because NPS finally was the -- you know, the last bit. But NPS is not the only preneed seller that has had problems in Missouri where there has been some action needed. And so, I think it's a mistake for this committee to think that this

legislation is just about NPS because it's not. It's about giving people in the State agencies the tools that we all need to make sure that the consumer money is being protected and to make sure that preneed contracts are being regulated in the state, and it's not just an NPS situation.

MR. OTTO: This is Don Otto. Keeping with this conversation we just had, I'd like to withdraw my previous motion to eliminate this section completely, and I would instead move that the working group approve this section with the following changes: That the word "attorney general" is deleted in that first section, replaced by Division of Finance, and that the very last bullet point is removed. How does that sound to everybody?

MS. ERICKSON: I'd actually make a different proposal on that. And one of the problems here is while Division of Finance, I'm sure, would be thrilled to be able to do all these things, it does not have the authority to take the next step, to, you know, punch it, to enforce it, to initiate the judicial proceeding. It can investigate and

review till it's blue in the face, but I don't think it can do the next step.

MR. WEAVER: That was going to be my comment, Don, is that -- I was going to -- on the tail end of that when you say we can initiate judicial proceedings. Right now, the way I understand it, we do not have the legal authority to issue or initiate a judicial proceeding against. Now, we can take administrative action and that's -- in the years that I've worked for the Division and the logic behind the way it's designed is that the bank regulator gets the first crack trying to solve a problem, and that's the reasoning for the way the law is designed now. In the event that once we look at it, we can't resolve the problem, then we always can refer that to the AG's office under Chapter 407 if there was an unfair or deceptive trade practice, and that's how our office has always operated for years and years. That's the kind of position that we feel that we have that we can issue cease-and-desist orders, we can issue civil-money penalties, take disciplinary actions in that manner, but as far as

initiating the judicial proceeding against a bank and trust company --

MR. OTTO: Okay. Should that then say: Division of Finance shall be authorized to initiate an administrative proceeding?

MS. ERICKSON: But that won't get you really what you need.

MR. OTTO: But then the last thing is then make it clear that the Division of Finance can then refer the matter to the attorney general's office.

MS. ERICKSON: And why don't we go there? That's what I was going to suggest -- Mary Erickson again -- is when it says the attorney general shall be authorized, we can add in "with the consent and working with the Division of Finance" initiate a judicial proceeding, because I think the clearer thing here is we want Finance to have a firm grip on this, and maybe this is one of those situations where finance does not want to refer it to the AG, or because they know of other federal banking stuff going on, it's not right for that.

MR. OTTO: I withdraw my motion I

withdrew earlier. And at any point, I like what Mary just said.

MS. GRINSTON: Representative Meadows has his hand up.

REPRESENTATIVE MEADOWS: Well, just a case in point. When I first drafted this bill under 825, I gave -- it was in my intent to give the attorney general's office super powers. And after listening to what was just discussed here by all parties, I like that idea rather than -- because that was one of the things where I met the opposition the most from the industry was you're giving the attorney general's office here way super powers and you're going to have problems and, blah, blah, blah, blah, blah. So, I'm in agreement with Don and Mary and everyone here. So, if you can put them both together, give them hand-in-hand authority to work together to get it done. We've got to be able to streamline it the best way we can to help the Board to do what they need to do, and this, I think, is a good tool for you, wouldn't you say, Kim?

MS. GRINSTON: Yes. So, am I hearing

that this would be amended to provide the Division of Finance can do the following, or the attorney general's office, with the consent and cooperation of the Division of Finance?

MS. EULER: Kim?

MS. GRINSTON: Yes?

MS. EULER: Sharon. I think what I heard being said and that I think that I could agree to is that the Division of Finance and the office of the attorney general will work together.

MS. ERICKSON: My proposed language, Sharon -- this is Mary Erickson again -- was with the consent of and working with the Division of Finance. Leave the -- the attorney general shall be authorized, then add in my phrase, that would allow, number one, a referral and consent, but also working with the Division to accomplish the goals that are listed here.

MS. GRINSTON: So, hearing consent and cooperation. Rich?

MR. WEAVER Just one other thought on that, too, Kim. This is Rich Weaver again.

We do not have any jurisdiction over a federal chartered institution, so you might want to consider some wording that's going to incorporate the Office of the Comptroller of Currency, and then you have the FDIC in there, the federal regulators, because if you had a trust in a national bank, then that doesn't -- we don't have zero jurisdiction. We can't go in that door. So, if you're wanting to tighten this up as much as possible, you want to reference those other bank regulatory agencies, as well.

MR. STALTER: With that regard, we -- I think we talked in one of the meetings about with foreign fiduciaries having some kind of a consent of process or where they submit -- yeah. Basically, that they're going to act as fiduciaries on these accounts, and then they consent to certain proceedings, and that's something we probably would deal through with regulation, but, you know, it's out there. It's an issue.

MS. GRINSTON: All right. Okay. I hear the recommendation. The recommendation now is: Division of Finance, OCC, and what

was the other one, FDIC?

MR. WEAVER: Yes.

MS. GRINSTON: The attorney general shall have authority to, with the consent and cooperation of, with the three governmental entities listed. Hearing that, does anybody want to second that?

MR. STALTER: Second.

MS. GRINSTON: Bill did. Do I have any members of the working group objecting to that amendment? Okay. Hearing no objections, do I have anyone who would like to abstain -- of course, understanding the AG and insurance will be abstaining from that right now, as well. Okay. No other questions on that, let's move to pages 43 through 45, which was the disciplinary-authority section. I don't think we got any comments on that. Are there any now?

MR. OTTO: Well, what I said just -- this was the single biggest comment I got back from our membership.

MS. GRINSTON: Okay.

MR. OTTO: Not understanding moral turpitude or how to be -- what that means.

Of course, I replied that that's included in all the statutory language and -- although, you know, it's just interesting. Of all the things to get a comment on, anything that said morals.

MS. ERICKSON: Don -- this is Mary Erickson. You can point out that all of the licensing agencies use that language, and, to some extent, it is purposefully vague because it is difficult to legislate every possible permutation of what someone could do that may or may not be a violation of the law elsewhere, but you want to capture the other wrongdoers. So, yeah. I can -- and courts have problems with that, too, sometimes, Don.

MR. OTTO: Yeah. I pointed out teachers used to have their licenses pulled because they were seen, you know, out with an unaccompanied -- unchaperoned, you know, with a male. You know, that was moral turpitude for a teacher 100 years ago. But, anyway, it's just interesting, that was the biggest single response.

MR. STALTER: One other comment. This is Bill Stalter.

MS. GRINSTON: Yes, Bill

MR. STALTER: On page 44, the automatic-suspension language. You did make a comment about that, and it's always one of those things where you always hate to have automatic suspensions, particularly when it's talking about shortage, you know. If a trust account is short by, you know, capital losses or something of that nature, you know, we do not want to have automatic suspensions. So, it's one of those where I kind of hesitate to grant any kind of authority to a Board for that kind of an issue.

MS. GRINSTON: Okay. Would the working group like to make or amend the recommendation on automatic-suspension language?

MS. DUNN: What other professions have that now?

MS. GRINSTON: There are a couple. The real estate commission does.

MS. DUNN: Architects?

MS. GRINSTON: Architects does. A couple of them do.

MR. STALTER: Yeah. We're going to

have it in 214, too, which we're --

MR. STUART: Kim?

MS. GRINSTON: Yes?

MR. STUART: Bill Stuart.

MS. GRINSTON: Hi, Bill.

MR. STUART: Was that on #4 -- that question was about #4 on page 44?

MS. GRINSTON: Yes, sir.

MR. STUART: So, may I ask, is that meaning that if a joint account has 80 percent in it, it would not be required of -- I mean, regulatory? I don't understand that. I mean --

MS. GRINSTON: I think that that says, Bill, that if an account -- if we go in and we look at the account and it has 20 percent less than what it's supposed to be in the account, that the Board may, in its discretion -- doesn't have to, but the Board may automatically suspend the license, and the thought, I think, behind that was to give us time to figure out if we've got a big problem, a major problem, or something like that. And there is a right to appeal to the Administrative Hearing Commission if that

suspension is done. And, again, that would be discretionary. So, if someone comes in and says it's 20 percent short because, and gives us -- you know, gives the reason, that it would be in the Board's discretion to say this is not grounds for an automatic suspension. And you would have an independent party reviewing that on appeal.

MR. OTTO: This is Don Otto. The words "may" and "automatically" right next to each other don't make sense to me.

MS. GRINSTON: Okay. So, should we remove the word "automatic"?

MR. OTTO: At the very least, the word "automatically" ought to be gotten out of there.

MR. MEIERHOFFER: This is Michael Meierhoffer. Let me ask for a clarification here. When we say suspend a license, we've got a lot of licenses in play here. What license are we talking about?

MS. GRINSTON: You're correct. A preneed-seller license is what I meant. Should we clarify that?

MR. MEIERHOFFER: I think so, because

we're talking facility license, individual funeral-home or funeral-director, embalmer license, all kinds of things.

MS. GRINSTON: I think you're right. Let's make sure we say -- that says a preneed-seller license.

MS. EULER: This is Sharon with the AG's office.

MS. GRINSTON: Yes, ma'am.

MS. EULER: And, Mike, just to be aware that any violation of Chapter 436 is cause for discipline against any license issued pursuant to 333. So, if you have violated 436, just under Chapter 333, the Board can also seek discipline against funeral-director, embalmer, and funeral-establishment licenses.

MR. MEIERHOFFER: Well, Sharon, that's where I'm going, and that's what I would like to understand if that's what you really mean.

MS. GRINSTON: Yeah.

MS. EULER: That's in Chapter 333.

MR. MEIERHOFFER: I know it. We're in 436, and I'd like this to be specific from what Kim is telling us here.

MS. GRINSTON: And, Mike, I understand that. I think that the intent -- my understanding was the intent was that that would be a preneed-seller license and not just any license held by the registrant licensee, if you will.

MR. MEIERHOFFER: Okay. That's good.

MS. GRINSTON: I'll make that change. And, Bill, I will also add your comment on the suspension language, as well, and I apologize I didn't do that. Okay. Yes, Representative Meadows?

REPRESENTATIVE MEADOWS: Also, in #4, just so you might have the power to do so, on the second line there, I think you may -- what if you just put in the word "immediately." And the reason why I say that is, if you read it, it would say, "Notwithstanding any other provision of this section, the Board may suspend a license immediately if the Board finds after and expect," because then you're letting somebody know that you can do it -- it's in the law that you can immediately -- it gives you the power to immediately do something.

MS. GRINSTON: I think that's a good suggestion. I think that's in line.

MR. STALTER: And to add onto that, part of it where we talk about 214, too, was that it was because of a failure to do -- it could be fraud or theft, you know. If there is evidence of misconduct -- willful misconduct, then, yes, you need the power to take immediate action. But if it's a shortage because just the market has done poorly the last six months, you know, that's where we kind of -- you know, that's -- willful conduct would be the basis for taking immediate action.

MS. GRINSTON: Okay. My own thought on that, Bill, is that sometimes we may not be able to figure out willful conduct for months, you know, or years. Trust me. I'm joking. But it may take a while for us to put in line the things to demonstrate a willful misconduct. And so -- but I do understand your concern about triggering it just because the market has gone bad. I do, but I don't -- would you have a shortage in that instance?

MR. STALTER: If the market has gone down? Well, under the current law, you know,

when you draw down the income, you know, and then you have a downturn in the market, and it could be down for a while. I've seen accounts like that where they've stayed down for a year or two, so --

MS. GRINSTON: Yeah. Yeah. And I don't know if that can be addressed through the discretionary, you know, issues of the Board under the language, but I will definitely note that, as well, as a comment. Okay. Pages 46 through 47 on enforcement authority. Any questions or concerns with that? Hearing none. Page 48 on fees, I think we've already answered this question. I think that was the recommendation of the working group that the $2 fee could be adjusted by the Board by rule to cover auditing examination costs. Is there anything else in the main document, and then we'll get to the other addendum section? If there's nothing else in the main document, if you can go to the draft that we circulated with the recommendation. It's just -- it's about three pages. It says, "Allocation of Preneed Funds, Expenses, Cancellation, and Portability." I

tried to do some cleanup on this, and then after I did some cleanup, I noticed that I needed to do more cleanup. And so, I've added some comments to clarify the position of the Board, and also to clarify, I believe, what the recommendations were. In explaining this to people who haven't been at the group, we -- the question kept -- we were continuously asked who gets interest, who gets expenses, and so, we added some language to clarify that. I would like to open up that allocation section for discussion and take any comments that you all may have.

MR. STUART: What page, Kimberly?

MS. GRINSTON: Pages 32 through 34, but we did it as an amendment, and so, it's a separate section now. If you only have the 9/2 draft, it would be pages 33 through 35, but there would be some amendments to the text of that language. Bill?

MR. STUART: Question. Bill Stuart.

MS. GRINSTON: Yes.

MR. STUART: 35. Are you going to change the cancellation from 60 days to 30 days like Don suggested everything 30 days or

--

MS. GRINSTON: Is that cancellation for nonpayment?

MR. STUART: Yes. Could that be 30 days?

MS. ERICKSON: This is Mary Erickson with the Department --

MR. STUART: I think that's traditional insurance language, anyway, that goes with policies.

MS. ERICKSON: I think that we had extensive discussions and voting on that, if I recall correctly, and I would recommend it stays the 60 days.

MR. MEIERHOFFER: Kim?

MS. GRINSTON: Yes?

MR. MEIERHOFFER: Michael Meierhoffer. Are we working off the working draft, September 2, at 5:00 p.m.?

MS. GRINSTON: Actually, no, we're not. Some of the language is in there. You all were given a separate sort of like an addendum. It was three pages. Hopefully, you got it. It said, "Allocation of Preneed Funds."

MR. MEIERHOFFER: Okay. We're printing it now. We're finding it. Thank you.

MS. GRINSTON: Okay. That's what we're looking at now. And I can -- let me tell you one of the questions I had on your recommendation, and John pointed this out on behalf of APS in his comments. Under D, cancellation by seller for nonpayment, which is on page 34 of the handout. It's the third page. It's listed as page 34. When we added up the numbers on the time period for canceling a contract, those numbers went -- I forget how long it was. I think it went past -- way past the current 90-day language that we have now and it was a bit confusing. I think the way -- and I looked at this and I looked at the suggestion, and I wanted to bring this to the working group for their discussion. And I think this is what I think I heard. Let me know if I'm correct. That a seller can cancel the contract if you're in default of payment for 60 days. After the 60 days, the seller can issue notice to the consumer that they're going to cancel and that unless they get payment by the end of the

30-day period. They'll get a 30-day payment window. At the end of that 30-day payment window, then the contract can be canceled. So, we're still in a 90-day time period -- 60 days in arrears, 30 days for notification, and then you cancel on that final day. The last number I think I had in the last draft was 45 days plus a 15 day, and it just didn't add up correctly. So, let me know if that was what your intent was -- 60 days late, notify, you've got to give them 30 days after the notification, tell them what date you're going to cancel, payment doesn't come in, it's canceled on that day. Thoughts?

MR. OTTO: As long as it's just very clear, that's all I really care about with that.

MR. VERNON: What's wrong with that?

MS. GRINSTON: I think that the way I had it in the original draft, it was way past the 90-day period, if I'm not -- John, correct me if I'm wrong. I think it was way past a 90-day period.

MS. ERICKSON: I agree with Kim's ideas and I also know -- this is Mary Erickson

again. I agree with Don. I'm reading this paragraph and I've read it a couple of times, and I'm not sure it's crystal clear, so we should really be careful with the drafting here. We don't want to leave it up to guesswork.

MR. McCULLOCH: I guess our comment was just leave it the way it is at the 90 days. It's just real -- it is clear there that after 90 days, if they haven't paid, then you send them notice. You have to notify them and the funeral home, and then they're canceled.

MS. GRINSTON: But I think the thought was, John -- I think the concern was that they will never have a chance to make up payment because you could cancel and do everything on the same day. Like, let's say it's at-need, and they come in and say we'll pay the amount in arrears. I think the concern was -- and I think this actually came to the Board as an issue from one of our investigators, that when they showed up, they wouldn't let the family pay what was in arrears. They'd say, "Oh, you're past 90 days. I'm canceling you now,"

and now you're at at-need prices. And I think the concern was about doing that cancellation on the same day without giving the purchaser a chance to make up the payments.

MR. McCULLOCH: Give them 15 days to respond then.

MS. GRINSTON: Working group? Someone?

MS. ERICKSON: I like your idea, Kim.

MS. GRINSTON: And, again, I think John suggested doing 90 days in arrears, 15 days to pay, cancel on the 15th day. The way it's written now, 60 days in arrears, 30 days to pay, or you're canceled at the end of that 30 days. So, you still get 90 days, but -- and I think you're right. We do need to clarify that so that that's crystal clear because it may not be in the language right now. Working group, I don't know what your pleasure is. Representative Meadows?

REPRESENTATIVE MEADOWS: Fifteen days doesn't seem long enough.

MS. ERICKSON: Under insurance, you get 30 days. You're in arrears, you get 30 days before --

REPRESENTATIVE MEADOWS: That's what

I'm saying. Fifteen seems like it's too short.

MR. McCULLOCH: When they cancel, you make us pay them back in 15 days. You think it's okay then -- current law.

MR. STUART: Did someone just say insurance is only 30 days and you're canceled?

MS. ERICKSON: There are notifications, et cetera, that go out, but the typical time frames runs the 30 days.

MR. STUART: I mean, even with the notification and everything, the max day is 30; right?

MS. ERICKSON: No. No.

MR. McCULLOCH: You're going to have 90.

MR. STUART: Oh, 90 under insurance?

MS. ERICKSON: But what we're talking about is the curative time. Once the consumer gets notification, can the consumer cure it. How many days? Is it better to have 15 days or 30 days or whatever? I would say 30 days is a better curative period for the consumers.

MR. STALTER: Let me ask this question. This is Bill Stalter. When we say cancel the contract, are we talking about then

refunding or just the cancellation of the frozen price?

MS. GRINSTON: No. Cancellation and refunding.

MR. STALTER: Okay.

MR. McCULLOCH: So, are you looking for a motion?

MS. GRINSTON: Yes. I just need to know which direction to go because this language is different from what you looked at before because, again, before, I think, the time frames were almost 100 days when I added it all up, and I know that's not what you all approved back then. And so, I just need to know what is your wish on how this should be handled.

MR. OTTO: Well, just so we get a vote, I move that we accept the language that Kim has provided.

MR. McCULLOCH: I second that.

MS. ERICKSON: With the clarification that make sure this language is crystal clear.

MR. OTTO: Yeah. Absolutely.

MS. GRINSTON: Yes. Working group, anybody objecting? Anyone abstaining from the

vote? Okay. Hearing none, I'll make sure we clarify that and make sure it's clear. I'll actually send out these three pages again so everyone can see it before we do the final incorporation because I would like that to be -- you all to see that. Page 32 through 34 in your handout, any other questions on that?

MR. OTTO: Several.

MS. GRINSTON: Mr. Otto?

MR. OTTO: First, at the bottom of 32, B, bullet point #2, I don't know what that first sentence -- it ends after the word "the."

MS. GRINSTON: Huh. Oh, okay.

MR. OTTO: I don't -- it looks like something is missing.

MS. GRINSTON: Got it. Okay. Give me just a second.

MR. OTTO: Or it sounds like there's a dependent clause that was taken out.

MR. STUART: What page, Don?

MR. OTTO: It's on this three-page handout -- the three-page item on the bottom of page 32. Big B, second bullet point, the first sentence currently reads, "The seller should be required to pay the newly designated

provider the remaining payments owed to the original provider under the contract, if the."

MS. GRINSTON: Yes. And that was my mistake. That was the beginning of a revision that didn't get finished and I didn't catch that. You guys said that if the new provider agrees to accept it, and I think that that was what that language was going to say. "If accepted by the new provider," but I apologize.

MR. OTTO: Okay. That makes sense. My other one, on page 33, of course, this is the big one.

MS. GRINSTON: Yes, sir.

MR. OTTO: The 80-20, 100, whatever.

MS. GRINSTON: Yes.

MR. OTTO: I note that this draft does not reflect the fact, like it or not, that we did go around the table once and there was a majority vote that 90-10 was acceptable to the majority of the people at the table.

MS. GRINSTON: On purchase or cancellation or for administrative expenses?

MR. OTTO: We voted -- at one point, we voted on 90-percent trusting.

MS. GRINSTON: Right.

MR. OTTO: Retaining 10 percent for -- and that was the majority of the people voted that that would be, although not their first choice and not what they would prefer, would be an acceptable compromise.

MS. GRINSTON: Don, go back to your main draft and look at page 22.

MR. OTTO: Okay.

MS. GRINSTON: And maybe I need to reflect this a little bit different. Under the administrative expenses one, I listed it as a 10-percent administrative expense.

MR. OTTO: So, I guess that probably should be reflected over on this section then.

MS. GRINSTON: Okay.

MR. OTTO: I see what you're saying. Then the last question I have in this then -- well, maybe not the last one, but --

MS. GRINSTON: I'll move that over then, Don, so it's not in two different places.

MR. OTTO: Yeah. That makes sense.

MS. GRINSTON: I get it.

MR. OTTO: I just would like clarified what the Board's position is on the top of page 33. And here's the hypothetical, because

I think it's easier doing a hypothetical; okay? Let's assume we stay at 20 percent. So, somebody comes in and purchases a $5,000 funeral and we stay at 20 percent so that the seller retains $1,000, $4,000 gets put into trust. A year has passed -- several years have passed. It has now grown to $4,400 and they switch to funeral home #2. How much does funeral home #2 get under the Board's recommendation?

MR. McCULLOCH: I think the intent was to give 1 percent of the face amount -- interest on the face amount.

MR. OTTO: But the way this is worded, you would have to give $5,000 back. You would have to go back to your -- the way this is worded, that box at the top of the page, you would have to give the new funeral home 100 percent of the preneed payments made by the purchaser. That means in my hypothetical, you would have to go back to your salesperson and get the commission back from him.

MR. McCULLOCH: That's true.

MR. OTTO: And if that -- I just don't -- I don't -- if that's what the Board voted --

MR. McCULLOCH: That's what they voted. That was my understanding of what we voted. I'll say it that way.

MR. OTTO: So that when you go from funeral home A to funeral home B, then funeral home B is going to get $5,000, in my scenario, plus 1 percent --

MR. McCULLOCH: On the $5,000.

MR. OTTO: -- on the $5,000, even though that $5,000 hasn't been in the trust and earning any money?

MR. McCULLOCH: That's right. That's where someone commented that they would just have to take that out of their general revenue and just pay it.

MR. OTTO: Okay.

MS. DUNN: Todd, are you on there?

MR. MOORE: But, Don?

MR. OTTO: Yeah.

MR. MOORE: This is John Moore. It says 100 percent of the preneed payments made. If I took a contract out for $5,000, paid $500 down and I'm paying $85 a month because that company is insuring it, and I had it for seven years and decided to change, I've paid

drastically more than the contract amount. But you're telling me I get 100 percent of the payment, so do they got to pay me back for that insurance money, also?

MR. OTTO: I think under that wording in that shaded box, there's an argument that that -- you are correct. And, again, I'm not trying to argue the point. This is the Board's recommendation. I just want to understand what the Board's recommendation is.

MR. McCULLOCH: Well, I think the intent was is that you would get back the face amount or whatever has been paid in and then 1 percent interest on that amount. It's like the first dollar that comes in. So, if -- I thought you were talking about a paid in full, but --

MR. OTTO: Well, I was, but he raised --

MR. STALTER: He's got a point, though.

MR. OTTO: He raised a very good point.

MR. McCULLOCH: If it's not paid in full, then you're paying on first dollar that comes in. So, let's say they've paid him $500. You're going to get 1 percent on $500.

And then you're going to get your $500. So, the next funeral home gets $500 plus 1 percent on the $500.

MR. OTTO: Well, I understand. But what John says is a good point. There could be, easily, a scenario where it's an insurance-funded contract where the consumer has paid $10,000 on a $6,000 funeral over the years. And so, under this wording, funeral home B would not get $6,000, it would get $10,000.

MR. MEIERHOFFER: This is Michael Meierhoffer again. Let me go back to the trust issue. Really, the way this is set up, it puts anybody in a trust in an underfunded situation automatically just by the law. If I sold ten contracts and I have ten contracts change, I would end up owing more money than I have in the trust. That doesn't make sense, either.

MR. OTTO: Yeah. That's a good point. If you sold ten $5,000 contracts and you kept 20 percent, you are already underfunded.

MR. MOORE: So, are you saying preneed does not work?

MR. OTTO: This is just the Board's recommendation and I was just trying to clarify what the Board voted on. And I think we've been clarified what the Board voted on, as much as I disagree with it.

MR. STUART: But is the -- Bill Stuart here. Is the Board saying that if the interest earned on that $5,000 contract less, say, if it is the 20 percent that they arrive at, is interest earned on that contract is, say, $5,000, and they change the provider, that the seller only has to provide them with the face value, $5,000, plus 1 percent of the $5,000 that it's grown to be worth?

MR. OTTO: It's the money that was paid in, not the face value with this little gray-box comment.

MR. STUART: Plus 1 percent of any interest earned.

MR. OTTO: Right.

MR. STUART: So, if it earned $4,000 in the interim, is the Board saying that they only owe the face value to the new provider, that's $5,000, plus $40?

MR. OTTO: Well, that's a good point.

MR. STUART: That's not very fair to the consumer.

MR. OTTO: Well, I think, probably, what they meant -- and jump in John or anybody. What they probably meant was that if over the life of that contract, you had earned 3 percent, 1 percent goes to the new funeral home. But the way it's worded, you're right. It's not -- it's one percent of the percentage.

MR. STUART: It's 1 percent of $4,000.

MR. OTTO: Yeah. That's --

MR. STUART: That's $40 -- I mean, that's ridiculous.

MR. McCULLOCH: I think the intent was 1 percent.

MR. OTTO: Yeah. I think the intent was that you're earning 1 percent.

MR. STUART: The consumer is going to be very penalized.

MR. OTTO: But, yeah.

MR. MAHN: This is Todd, and there has been so much talk of this and discussion and -- on this trust. And I know we're going to back up here a minute because I'm going to back up to what John Moore said is that --

and I think a couple other people said this, is why don't we just make an even playing field across the board? If we're going to clean everything up and stop having problems, then let's just treat trusts like the joint accounts, and I'm sure I can get a second from Representative Meadows. Let's just do 100 percent on the trust, too, and put this money back in an account for people like it ought to be just like if they're going to the bank, and let's put it in there.

MR. MOORE: Amen.

MR. MAHN: I make a motion on that. If anybody wants to second it and go around the table and vote.

MR. BROEKER: Did everybody hear that okay? Todd, could you say that again and speak just a little louder?

MR. MAHN: Okay. Everybody, what I'm saying is that the statement was made earlier that trust and joint accounts and trust accounts ought to match up. And we're here representing the public and we're trying to take care of the public. And this time, I say we take care of it for good and fix this

thing. So, I say we match them up, 100 percent in joint account, 100 percent in trust. That's my motion.

MR. STUART: Todd?

MR. MAHN: Yes.

MR. STUART: Comment -- Bill Stuart. When you do get that to pass, then what I was just saying happens. The consumer is well protected. If they do not like their provider or the provider sells out, they transfer that now $4,000, it's not $40 to the new funeral director or the new provider, it's the $4,000. It helps the consumer not be put in a bind by the receiving provider.

MR. MAHN: Right.

MR. STUART: It's only fair for the consumer.

MR. MAHN: Exactly.

MR. OTTO: This is Don Otto. I just would say that we don't have the whole working group here that was here at the earlier meeting. We went around the table, voted on this -- talked for about three hours, I think, went around -- easy. And we voted on this issue, and --

MR. MAHN: Well, we don't have everybody here today, either, Don, and we voted on --

MR. OTTO: Well, no. That's what I'm saying. When we had more people here, the vote was 90-10.

MR. MAHN: You know what, they're just not here. And so, all I'm saying is this is it and this is the day that we are here, and, you know -- and you brought it to our attention that you disagree with the way the Board discussed this. And all I'm saying is is that why not clean the whole thing up?

MR. McCULLOCH: Comment from John McCulloch. What you guys are really saying is, is it's not that it's not taking care of the consumer, you're more concerned it's not taking care of you as a funeral director. That's what you're concerned about.

MR. MOORE: Is there not a motion on the table, President?

REPRESENTATIVE MEADOWS: I'll second that motion on the 100 percent.

MS. GRINSTON: Representative Meadows has seconded Todd's 100-percent motion. Let's

take it to the working group. Working group, all those in favor --

MR. MEIERHOFFER: How about some discussion first?

MS. GRINSTON: Sure.

MR. MEIERHOFFER: I mean, I'm in agreement that we have spent hours and hours on this, and now we're flip-flopping at the last minute and changing the whole ball game, for whatever reason, I don't know. So, I would just like to get it out there and let everybody talk about what we're really talking about doing here.

MR. McCULLOCH: Scott?

MR. LINDLEY: John, in that scenario, then are you actuarially going to have to make provisions in that trust for these refunds like they're talking about here, because if all that money goes and, supposedly, you sweep the income, how are you going to actuarially be able to take care of refunds? Are we going to have to set -- then you're going to get into a situation of reserving this, and I can see, you know -- and I just thought about it for about three minutes here, you know.

When you have that kind of a policy going forward because, basically, then what you're saying is, actuarially, unless there is some kind of statistical data that's out there, and I assume maybe there is in insurance -- I don't know whether there is with us -- that's accurate on refunds, that something is going to have to be -- I mean, if the Board is going to audit these and examine them, there's going to have to be some requirement to set that reserve aside to take care of these.

MS. GRINSTON: Todd, I --

MR. LINDLEY: You can't sweep the income and then --

MR. McCULLOCH: During our discussions, the panel -- people kept suggesting that there weren't very many of these anyway, so I didn't think it was a big issue. Personally, I would think some of the funeral homes would have a problem with that, obviously. From my standpoint, I took the position, well, I'm paying you, why not just pay this person or that person, so it's not affecting me as much. But as a funeral-home owner, I have a problem with it; okay? But

what was suggested, I think it was from Mr. Kutis' firm, is that you just have to take that out of your operating funds to cover that, and that's kind of how we got to where we are.

MS. GRINSTON: Now, the -- Todd, can you clarify just what your recommendation is? Your recommendation --

MR. MAHN: I'm going to clarify my recommendation one more time and if somebody wants to second it, fine, and go around and vote on this thing, and if you want to discuss it, go ahead. But, you know, my thing is that if we're going to do joint accounts at 100 percent, then do trusts at 100 percent. Even it all up.

MS. GRINSTON: Now, you guys already voted 100-percent trusting. You mean -- when you say 100 percent, what do you mean?

MR. MAHN: That's what I mean.

MS. GRINSTON: Yeah. You guys are already at 100 percent trusting, so --

MR. MAHN: Then that's it. You know, it's 100-percent trusting --

MR. OTTO: No. What Todd is talking

about is not being able to take 10 or 20 percent out.

MR. McCULLOCH: Yeah.

MS. GRINSTON: Right. So, Todd's motion is 100-percent trusting, no administrative expenses.

MR. STALTER: No sales expenses. No sales expenses.

MS. GRINSTON: Thank you, Bill. No sales expenses. I believe that that was seconded by Representative Meadows. A hundred percent in, no sales expenses. Let's take that open for a vote. Let's do it like we did the other votes. Anybody objecting to that vote, please register it, if you could do it one-by-one, please.

MR. McCULLOCH: Opposed.

MS. GRINSTON: John.

MR. MEIERHOFFER: Opposed. Michael Meierhoffer.

MS. GRINSTON: John, Mike, I think I heard Bill say opposed. Don?

MR. VERNON: This is Martin. I can't vote; right?

MS. GRINSTON: You can vote.

MR. VERNON: Then I object.

MS. GRINSTON: Don?

MR. OTTO: Our position has always been that we should increase it over 80 percent, that more than 80 percent should be trusted. However, as we pointed out before, we don't have a consensus among our group whether it should be 90, 100, 95; therefore, on this particular version of this, I'm abstaining.

MS. GRINSTON: Okay. Other members of the working group? Darlene?

MS. RUSSELL: I'm for the motion.

MS. GRINSTON: Bob? I'm sorry.

MR. BAKER: I think I'll abstain, as well.

MS. GRINSTON: Gary?

MR. FRAKER: I'll vote for the motion, yes.

MS. GRINSTON: Ann? I know Mark previously abstained from the vote. I don't know if you --

MS. WARREN: Abstain.

MS. GRINSTON: Okay.

MR. STALTER: Have you got me? Did

you get my vote?

MS. GRINSTON: Yes, I did.

MR. STALTER: Okay.

MS. GRINSTON: I have the vote standing now four in favor, five against, and I've got three abstentions.

MR. McCULLOCH: Move on.

MS. GRINSTON: Move on?

MR. STUART: Kimberly?

MS. GRINSTON: Yes, sir.

MR. STUART: Back to the recommendation of the Board, is that going to be left that there is only -- regarding a purchaser changing to a new provider, is it going to be stick only 1 percent of that $4,000 gets to stay in the seller's hands and not go to that new provider; is that solid?

MS. GRINSTON: I think that the recommendation of the Board was that when it goes -- when you go to a new provider, 100 percent of what the purchaser has paid goes with them and 1 percent of the contract -- an additional 1 percent.

MR. STUART: Okay. One percent of the interest earned is what you have written.

MS. GRINSTON: So, if there was interest earned, I think that stays. I think the Board's recommendation was for that to stay with the other seller, but 100 percent of what was paid plus an additional 1 percent moves over with the new -- with the purchaser. But that is a Board recommendation, that's not a recommendation of the working group and won't be listed as a recommendation of the working group. And to the extent that that is what the Board has recommended, I think we have to leave it with the recommendation of the Board, but noting your comments. Representative Meadows?

REPRESENTATIVE MEADOWS: I was just counting -- we were counting these votes --

MS. GRINSTON: Okay. Did I do it wrong? Please let me know.

REPRESENTATIVE MEADOWS: Well, I had John opposed, Bill opposed, Martin opposed, and Mike opposed. I only had four. And then we had four in favor; myself, Darlene, Gary, and Todd. Four, four, and two abstaining. That's what I came up with.

MS. GRINSTON: Did everyone hear

Representative Meadows?

MS. ERICKSON: Could you repeat that, Representative, please?

REPRESENTATIVE MEADOWS: Yeah. We had John opposed, Bill opposed, Martin opposed, and Mike opposed, and that was four. And then Darlene was in favor, Gary was in favor, I was in favor, and Todd Mahn was in favor; that was four. And then you had two gentlemen here, Don and Bob at the end of the table there that abstained, so it's --

MS. GRINSTON: You have it at a tie vote?

REPRESENTATIVE MEADOWS: We have it at a tie.

MS. GRINSTON: Okay. Which is where we are now. No majority decision reached. I'll list, you know, the suggestions, but that's where we are now.

MR. MOORE: So, basically, is what the Board saying is let's do this in another ten years when we all see everyone go under and face this all again?

MS. GRINSTON: No. The Board's recommendation is for transfers. The Board

has made a recommendation on trusting. They made a recommendation on cancellation. That is just their suggestion on transfers. It is not going to be listed as a recommendation of the working group. Okay.

MR. MAHN: Kim?

MS. GRINSTON: Yes, sir.

MR. MAHN: One thing I'd like to do here. I would like to try to put -- I want an extreme there. I'd like to put a motion on the floor if anybody will second, 100-percent trusting with 5-percent administrational fees to be taken out. That's a motion I have on the floor. Would anybody like to second that?

MR. FRAKER: Todd, I'll second it. This is Gary.

MR. MAHN: Put that to a vote, Kim.

MS. GRINSTON: Sure. We've got a second on the floor.

MR. STUART: Todd, may I ask a question?

MR MAHN: Yes.

MR. STUART: Does that mean then 95-5?

MR. MAHN: Right.

MR. STUART: Okay. So, you're out -- okay.

MS. GRINSTON: Okay. 95-5.

MR. STUART: That would be across the board, sir?

MR. MAHN: Yes.

MS. GRINSTON: Five-percent administrative expenses, 95 percent in trust. Let's take a vote on that.

MR. STUART: He called it across the board, and I believe he included joint account; is that right, Todd?

MS. DUNN: I don't think he was including joint account.

MR. MAHN: Right now, what I'm speaking on only is trusts.

MR. STUART: Okay, sir. I'm sorry. Earlier you said -- I'm sorry.

MS. GRINSTON: Trust only. I'll start in the room. John?

MR. McCULLOCH: Opposed.

MS. GRINSTON: Bill?

MR. STALTER: Opposed.

MS. GRINSTON: Don?

MR. OTTO: Abstain.

MS. GRINSTON: Bob?

MR. BAKER: Abstain.

MS. GRINSTON: Ann?

MS. WARREN: Abstain.

MS. GRINSTON: Representative Meadows?

REPRESENTATIVE MEADOWS: Aye.

MS. GRINSTON: Darlene?

MS. RUSSELL: Aye.

MS. GRINSTON: On the phone. Mr. Meierhoffer?

MR. MEIERHOFFER: Nay.

MS. GRINSTON: All right. Gary?

MR. FRAKER: Yes.

MS. GRINSTON: Mr. Martin?

MR. VERNON: Opposed.

MS. GRINSTON: Todd?

MR. MAHN: Yes.

MS. GRINSTON: Any other working-group members on the phone that I have missed? Hearing none. I have the vote at four-four with three abstaining. What do you have?

REPRESENTATIVE MEADOWS: Three opposed.

MS. DUNN: We have Martin, John, Bill, and Mr. Meierhoffer opposing.

MS. RUSSELL: No, he abstained.

REPRESENTATIVE MEADOWS: Mike, what was your vote?

MR. MEIERHOFFER: Nay.

REPRESENTATIVE MEADOWS: Oh, I thought you said abstain. Sorry, Mike.

MR. McCULLOCH: Can I make a motion?

MS. GRINSTON: Yeah.

MR. McCULLOCH: I'd like to make a motion that we accept what the Board approved before and that was to put 100 percent in trust and you can take out up to 20 percent by contract. Would anybody second that?

MR. VERNON: Second.

MR. STUART: What was it?

MR. MAHN: I couldn't hear you.

MR. MEIERHOFFER: Who made the motion?

MS. GRINSTON: This is what the Board approved before. John made the motion. A hundred percent initially placed in trust with up to 20 percent for expenses as provided in the contract. John made the motion, and I believe -- who seconded?

MR. VERNON: Martin.

MS. GRINSTON: Martin seconded. Let's go ahead and vote that one out unless there's

any discussion in the middle.

MR. VERNON: John, change your vote to just accepting what the Board recommended all the way through.

MS. DUNN: Martin, that wasn't the working group's vote, though.

MR. VERNON: Oh. But that's what they're hacking on, isn't it?

MR. SPEAKS: Kim?

MS. GRINSTON: Yes, sir.

MR. SPEAKS: Can I ask for a point of clarification?

MS. GRINSTON: Yes.

MR. SPEAKS: There has been no discussion of accrual of interest in this conversation. What is the intent in this conversation for that interest?

MS. GRINSTON: Can we get to that in just a second? My understanding is the last vote of the working group by majority vote was that income accrues.

MR. SPEAKS: I'm sorry. Say that again.

MS. GRINSTON: Income accrues.

MR. SPEAKS: Okay.

MS. GRINSTON: That's what I understood.

MR. SPEAKS: To who?

MS. GRINSTON: To whom -- you mean, like, who gets it once it's all done?

MR. SPEAKS: Right. Right.

MS. GRINSTON: Income belongs to the seller, generally. Then, again, that changes when you talk about cancellation and transfers. Then there was a split on how that should be handled.

MR. SPEAKS: Well, that's why I asked because this was in regard -- we got started on this because of transfer and portability.

MS. GRINSTON: Sure.

MR. SPEAKS: So, that's why I wondered.

MS. GRINSTON: I think -- good thought. All right. John has made the motion 100 percent in up to 20 percent for administrative expenses or as provided in the contract. Let's call that for a vote. John?

MR. McCULLOCH: For.

MS. GRINSTON: Representative Meadows?

REPRESENTATIVE MEADOWS: No.

MS. GRINSTON: Darlene?

MS. RUSSELL: No.
MS. GRINSTON: Bill?
MR. STALTER: I'm going to abstain.
MS. GRINSTON: Don?
MR. OTTO: No.
MS. GRINSTON: Bob?
MR. BAKER: Abstain.
MS. GRINSTON: Ann?
MS. WARREN: Abstain.
MS. GRINSTON: Mike?
MR. MEIERHOFFER: Yes.
MS. GRINSTON: Gary?
MR. FRAKER: No.
MS. GRINSTON: Todd?
MR. MAHN: No, and I'm going to say this: I'm going to vote one last -- I'm saying no on this. I'm saying I'm voting 100 percent on this deal now, and I'm not voting again.
MS. GRINSTON: Okay.
MS. DUNN: Okay. Thank you, Todd.
MS. GRINSTON: Got you. Any other members of the working group? Martin?
MR. VERNON: What's the motion?
MS. GRINSTON: Martin, the motion is

what the Board voted on, 100-percent trusted, up to 20 percent in administrative expenses as provided in the contract.

MR. VERNON: And that's yes for Martin.

MS. GRINSTON: Okay.

UNIDENTIFIED: Martin, you voted no or yes?

MR. VERNON: Yes. I voted for the -- the way she read it, it's just what it is.

MR. MEIERHOFFER: Eighty-twenty.

UNIDENTIFIED: What did you vote, Todd?

MR. MAHN: I voted no.

MS. GRINSTON: And he's not voting again.

UNIDENTIFIED: Well, I thought I heard that part of it. I didn't get quite get it.

MR. MAHN: That's my vote. That's not another vote.

MS. DUNN: Do you want us to go over the votes?

MS. GRINSTON: I've got three yeses, five nos, three abstentions; does that sound right? Okay. All right. If that's the case, we have the recommendations standing as they are, which is that you guys have a slight

majority vote which was at 90-10 listed -- I shouldn't say 90-10. A 10-percent administrative expense listed as a reasonable compromise even though people thought that that should probably be either adjusted upward or downward, but they wouldn't object. Slight majority vote, but we have everyone else's comments listed and noted. Having said that, I'd like to -- because I'm at the end of the document. Having said that, I would like to open up the floor for any other general comments, the recommendation report, draft, any other suggestions. This is -- I think this might be our last time around on this one.

MR. MAHN: Something Don Otto brought up, and I might have missed this earlier at the last meeting, about a person having to take the law exam in order to sell prearranged funerals. Did we decide on that today?

MS. GRINSTON: Good point, Todd. Thank you. I did forget about that. We -- you guys voted the law exam for preneed agents, and everyone wrote in, I think everyone said funeral directors shouldn't have to take that exam again. I think MFDEA may

have suggested that they should, but I don't know if I got your comment right.

MR. OTTO: No. No. We didn't say that -- we did not say that -- can I get a triple negative in here? We did not say that funeral directors should not be exempted. We did make the comment that we do believe there needs to be some mechanism to make sure funeral directors who are already licensed are well versed in the new Chapter 436 in some mechanism, whether that's a class that's offered, you know, or something like that. But I would -- to the extent that the draft says that MFDEA believes that funeral directors should not be exempted, that would be an incorrect.

MS. GRINSTON: Okay. I'll make sure I clarify that. I apologize.

MR. McCULLOCH: Of course, you're going to do this for free; right?

MS. GRINSTON: Todd, did you want to make a comment on that?

MR. MAHN: Was that Don talking?

MR. OTTO: Yeah, that was me.

MR. MAHN: I couldn't hear you very

well. What did you say?

MR. OTTO: You know, our concern as the association is that everyone who is not a funeral director should have to take the test, period.

MR. MAHN: Right.

MR. OTTO: If you are already a funeral director, we have not taken the position that you are not exempt from this; however, we do have concern that existing licensed funeral directors be made aware of what the new law is in some form, whether it's through a class, whether it's through a testing or something.

MR. MAHN: My motion then is that only nonlicensed people take this test. I don't think the funeral directors need to come back in and be retested again on making a prearranged funeral.

MS. GRINSTON: And I think we've got that. Now --

MR. OTTO: I think that's what the working-group document already says.

MS. GRINSTON: And I think now that I'm hearing MFDEA's clarification, I think that is now unanimous, if I'm not mistaken.

MR. OTTO: I think that would be correct.

MS. GRINSTON: Okay. And I apologize for that, Don. I'll make sure we correct that. Having said that, I don't have anything else on the draft. Working group or anyone else, if you have anything else?

MR. MOORE: This is John Moore. If I could add one last thing?

MS. GRINSTON: Yes, Mr. Moore?

MR. MOORE: With the way this is written and where it's going to probably end up going and with the great work of Representative Meadows, we did nothing for the future to prevent -- (inaudible) -- a shortfall. I feel we need something in this legislation that's going to make up the difference when this happens, not if it happens again, when we have another NPS situation come up in the next five years, eight years, or ten years. We did nothing to try to assist the consumers and the funeral-home owners. I think we need something in there that's going to give a security fee or a seller's fee that's going to

be controlled by the Board into an account to protect and be able to make this shortfall up the next time we're looking at the national organization or whoever to bail out the next third-party company or the next funeral home that goes under and leaves these contract holders shortfalled. We need to add some type of service fee or some type of security fee on to the preneed contract. And just for example, if we charged every consumer that wrote a preneed $100, and that money was turned over to the State Board to control in a special account to only be used for a situation of this again, if we wrote 25,000 contracts a year at 100 bucks and that money is sitting there, and we do that for the next five or eight years, when we're having these meetings again because another company had did this to the consumers and the funeral-home owners, we then have some funds, one, to bail and help out the funeral homes that are being shorted because these companies have walked off with the money, and, two, to give the Board some funds to be able to afford to go and do what needs to be done right. And

we've added nothing like that. We haven't looked at when this happens again. It's not if it happens again. We've had many years of preneed, many years of companies. We all know this is going to happen again. We need to protect that and have a fallback to help us out with that.

MS. GRINSTON: I think what you're suggesting really is sort of like a Guaranty Association type of arrangement that is going to be funded. I think that that discussion probably was tossed around very quickly at the beginning of our discussions. I don't think we revisited it again or made any recommendations. I can tell you that as we head towards the September 10th hearing date, would the working group like to ask for additional time to consider an option like that because it has been talked about quite often, or would the working group like to just add a comment that they would be in support of something like that? How would the working group like to handle that? Would you -- because I just don't think we probably have time to have -- to get that hashed out between

now and the 10th. But I don't want to forestall or take away the time because I think it is an important discussion, and I don't know if the working group would like to address that, reserve additional time or ask for more additional time or what -- on that point alone.

MR. OTTO: There are a couple states that have a preneed Guaranty fund. Florida?

MR. STALTER: Florida has one.

MR. OTTO: Florida has one. In general, that might be a very good idea. The devil, of course, is in the details and hashing out, you know, when does the -- when does it kick in, how much does it pay, you know. The insurance Guaranty fund law is -- how thick is that? That is pretty big. Probably all we can do before the 10th is to put a comment in there that if the working group votes for this -- and I would -- that the working group would strongly support the legislature developing a Guaranty fund type of mechanism funded through the sales of preneed contracts for preneed. I think that's probably all that could be done before the

10th.

MS. GRINSTON: And I need to clarify. It's the 9th. It's the 9th.

MR. OTTO: The 9th. You're right.

MS. GRINSTON: I'm so sorry. It's the 9th. Don's suggestion is that you --

MR. MAHN: I'd second that motion, Kim, if that's what Don likes.

MR. OTTO: I'll make that a motion.

MR. MAHN: I second it. This is Todd.

MS. GRINSTON: Second. Working group, anybody opposed? Anybody abstaining from the vote? Then I will add that as a comment to the draft.

MR. MAHN: I also want to back up for just a second. I've heard phones click on and off and I don't know who is on and who isn't. Is our chairman back?

MS. DUNN: No.

MR. MAHN: Okay.

MS. GRINSTON: He's not back on.

MR. MAHN: Would the chairman have the opportunity to vote on our tie?

MS. GRINSTON: Todd, you would raise a difficult question.

MR. MAHN: Somebody has got the list of who voted and who didn't.

MR. STALTER: But, Todd, if we do that, why don't we bring all the other working-committee members back in to vote, too. I mean, we have beat this issue to death. I mean -- and there's not going to be an agreement upon it.

MR. MAHN: I can't hear --

MR. STALTER: This is Bill Stalter.

MR. MAHN: Bill, what did you say?

MR. STALTER: If we're waiting for Jim to come back in, are we going to wait for the other working-committee members to participate in that, too?

MR. MAHN: No. I just asked the question. I'm just asking the question. He is actually the chairman. I don't think any of the others have got the title chairman, so --

UNIDENTIFIED: Yeah. What was the tie, Kim?

MR. McCULLOCH: I think he's got a good point. You don't have everyone here and you're trying to take advantage of that.

MS. GRINSTON: I would submit this to the working group. What is your pleasure?

MR. MEIERHOFFER: We've already taken a vote. The vote stands.

MS. GRINSTON: Mr. Meierhoffer?

MR. McCULLOCH: And, Vernon, you're the chairman. Say we're out of here.

MS. GRINSTON: Well, before we do that, Mr. Broeker? Mr. Broeker has some final comments for us. I want to thank you for being patient with me, everybody who helped to educate me, who e-mailed me, called me. I really appreciate it. You all helped us through, I think, a very difficult process. I think we've done some really good work. Mr. Lindley?

MR. LINDLEY: I would hope that on this committee the day that this is presented on the 9th, that people in this working group would present proposals that speak to the language that you've talked about and also maybe to affix -- I would hate that that hearing get into a situation that we would start pointing fingers at different people about the causes of this and pointing out some

real deficiencies that would bring more negativity to this than a solution. And I would hope that if there was any group that was thinking about that, that for the benefit of the providers that are in a difficult situation and the consumer, that that group would hold those comments until a solution is worked out because I don't think that will help anybody whatsoever.

MS. GRINSTON: Thank you, Mr. Lindley. Mr. Broeker?

MR. BROEKER: For one last time, I want to say thank you again to everybody who participated. These have been -- this is our seventh meeting, I think, as I recall. They've been long meetings, but they've been, I think, overall, very fruitful. All of you have put in a lot of time on this. You've responded to the requests that the staff has asked of you and it's been very much appreciated, your time, your effort. The hearing coming up on the 9th, obviously, any and all of you are more than welcome to attend. As we mentioned earlier, the committee is planning on -- this is

Representative Meadows, I think, your first meeting.

REPRESENTATIVE MEADOWS: Yes.

MR. BROEKER: You are planning on more after that. Public comment will be asked for at later meetings, not at this first one. But any of the roundtable participants who are interested in coming, as well as the members of the Board, obviously, that -- you know, that's up to you. If your time allows you to do so, I would recommend it if you can. Not only do I want to thank all of those of you who have participated in this, who have driven many miles in many cases to be here, also the staff from the Division, as well as the Board. I can tell you for a fact the hours they've put into this has been immense. They've done a good job. I'm real proud of them, and I don't get to tell them that often enough. They've done a great job and I want to thank them, as well. Thanks to all of you.

MS. GRINSTON: Mr. Vernon, I think we're ready to take a motion to adjourn.

MR. McCULLOCH: I make the motion we adjourn.

MS. GRINSTON: Hello?

MR. VERNON: Is there a second? I think the chairman is there, isn't he?

MR. REINHARD: Go ahead, Martin. Finish it up.

MR. OTTO: Everyone is standing up and leaving. You better vote quick.

(Off the record)

I, Kristy B. Bradshaw, a Certified Court Reporter in the State of Missouri, do hereby certify that the foregoing transcript constitutes a full, true and correct record of said proceedings that were held on September 4, 2008; that said proceedings were recorded by me and afterwards transcribed under my direct supervision.

Given at my office this 1st day of October, 2008.

Kristy B. Bradshaw

KRISTY B. BRADSHAW, CCR

Chapter 436 Draft 090308 Replacement

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.

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 MEDEA 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:*** *MPDEA commented that cancellation and portability cannot be adequately discussed until the allowed amount for administrative expenses is determined. In accordance with MPDEA'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.*

WORKING DRAFT

Recommendations – MFDEA

STATE BOARD OF EMBALMERS AND FUNERAL DIRECTORS

WORKING DRAFT

CHAPTER 436 WORKING GROUP RECOMMENDATIONS

Submitted: September 1, 2008

September 1, 2008

Dear Joint Committee Members:

Over the last year, the nation has witnessed an unprecedented crisis in the preneed industry. Estimates of the financial impact on Missouri consumers and the funeral industry are alarming. While recent concerns relate to a single entity, the crisis has focused much needed attention on the regulation of preneed funeral contracts in the state of Missouri and Chapter 436, RSMo, governing preneed sales.

The State Board of Embalmers and Funeral Directors (the "Board"), under the auspices of the Missouri Division of Professional Registration (the "Division"), regulates embalmers, funeral directors, funeral establishments, preneed sellers and preneed providers licensed in this state. As part of its statutory duties, the Board annually reviews legislation to identify potential recommendations of the Board. In recent years, this process has included a review of Chapter 436.

Senate Bill 780, enacted by the General Assembly 2008, which created the Joint Committee on Preneed Funeral Contracts. As part of its annual legislative review, the Board was invited to gather a working group of representatives from across the preneed industry to collectively identify suggested preneed recommendations for the Joint Committee's review. The Working Group consisted of a diverse representation from all aspects of the preneed industry, including, liaisons from various consumer groups, members of the State Board and representatives from the funeral, preneed and insurance industries.

The Working Group respectfully submits the attached recommendations to the Joint Committee for review. While diverse interests were represented, the Working Group unanimously agreed that revisions to Chapter 436 are desperately needed to better protect Missouri consumers and those funeral directors, funeral establishments, preneed providers and preneed sellers who truly dedicate themselves to serving the public.

We commend the General Assembly in convening the Joint Committee and in dedicating the time and resources to this important task.

Sincerely,

To be determined

OVERVIEW

WORKING DRAFT

I. GENERAL OVERVIEW:

During the 2008-2009 legislative session, various Chapter 436 proposals were introduced. Although not enacted, the proposals sparked intense discussion among regulators, consumers and professional groups. While a consensus was not reached, industry and regulatory groups were able to identify several common areas of agreement.

At the close of the legislative session, various representatives met with Senator Delbert Scott and Representative Jay Wasson to discuss Chapter 436 concerns. The Board was subsequently asked to formulate a working group to help identify agreed areas for legislative recommendations.

The Board hosted five (5) open meetings for the Working Group in Jefferson City, Missouri.[1] All meetings of the Working Group were conducted as open meetings in accordance with Chapter 610, RSMo. Notice of meetings and the proposed agenda were made available to the public and published on the Board's website.

II. PARTICIPANTS:

The Working Group consisted of representatives from consumer groups, funeral directors, preneed providers, preneed sellers, third-party preneed sellers, the Missouri Funeral Directors and Embalmers Association, related insurance companies and representatives from small, large and minority funeral establishments. Participants were chosen from prior legislative involvement and from recommendations made by legislators, Board members and related consumer groups. Members of the public were also invited to attend and given an opportunity to provide both oral and written comments.

The Working Group included:

REGULATORS:

Linda Bohrer	Acting Director- Department of Insurance, Financial Institutions and Professional Registration ("DIFP")
David Broeker	Division Director, Division of Professional Registration*
Sharon Euler	Office of the Attorney General
Mary Erickson	Senior Enforcement Counsel- DIFP
Larry McCord	General Counsel- DIFP
Mark Stahlhuth	Senior Counsel- Financial Section, DIFP
Rich Weaver	Director, Division of Finance

[1] Open meetings were hosted on July 8th. July 15th, July 24th, July 29th and August 12th.
* Did not participate as a voting member of the Working Group.

ADDITIONAL PARTICIPANTS:

James Reinhard,	Chair, State Board of Embalmers and Funeral Directors
Gary Fraker	Board Member
Joy Gerstein	Board Member
Todd Mahn	Board Member
Martin Vernon	Board Member
John McCulloch	Board Member/American Prearranged Services
Bob Baker	Wright Baker Hill Funeral Home
Barbara Brown	Layne Renaissance Chapel, LLC
Norma Collins	AARP
George Kutis/ George Kline	Kutis Funeral Home, Inc.
Jim Moody	Lobbyist, SCI
Rep. Timothy Meadows	
Michael Meierhoffer	Meierhoffer Funeral Home & Crematory, Inc.
Barbara Newman	Rep. Meadows' Office
Darlene Russell	Charter Life Insurance Co.
Josh Slocum	Executive Director, Funeral Consumer Alliance
Bill Stalter	Stalter Legal Services
Bill Trimm/ Jo Walker	Silver Haired Legislators
Don Otto	Executive Director, Missouri Funeral Director and Embalmers Association/Missouri Funeral Trust
Mark Warren	Inglish & Monaco- Representing Homesteaders Life Insurance, etc.
Mike Winters	Lobbyist, American Prearranged Services

COMMITTEE SUPPORT STAFF:

Connie Clarkston	Director of Budget & Legislation, Division of Professional Registration*
Becky Dunn	Executive Director, State Board*
Jeana Groose	Administrative Assistant to Director of Budget & Legislation, Division of Professional Registration*
Kimberly Grinston	Legal Counsel, Division of Professional Registration*
Lori Hayes	Inspector, State Board*

III. REVIEW PROCESS:

To guide the review, the Board circulated a survey with a listing by topic area of Chapter 436 proposals submitted to the Board in prior years. Participants were asked to rank the priority of topic areas listed for purposes of discussion. Surveys were made publicly available and were posted on the Board's website. The Division subsequently compiled the rankings and utilized results to structure the Working Group. [See Appendix 1- Bd. Survey].

The surveyed topics were ranked as follows:

[INCLUDE SURVEY RESULTS HERE]

WORKING DRAFT

RECOMMENDATIONS

WORKING DRAFT

Working Group recommendations have been compiled as follows:

Unanimous Recommendations:	Recommended by a unanimous vote of all Working Group Participants.
Consensus Recommendations:	Recommended by an overwhelming majority of Participants, generally with less than 15% of Participants dissenting.
Majority Recommendations:	Recommended by a simple majority vote of Working Group Participants.
Unresolved:	Majority vote not reached. Suggestions from Participants have been provided.

For purposes of this Report, recommendations have been categorized as follows:

I. General Regulatory Authority 10

II. Definitions 11-12

III. Licensing/Registration 13

IV. Preneed Contracts 14-15

V. Preneed Providers 16

VI. Trust-Funded Preneed Plans 18-19

VII. Regulation of Trusts & Trustees 20-23

VIII. Insurance-Funded Preneed Plans 24-25

IX. Joint Account-Funded Preneed Contracts 26

X. Payments to Providers 27

XI. Cancellation/Portability of Preneed Contracts 28-30

XII. Reporting Requirements 31-32
XIII. Consumer Reporting/Notifications 33
XIV. Termination of Business 34-35
XV. Audits, Investigations and Examinations 36-37
XVI. Disciplinary Authority 38-40
XVII. Enforcement Authority 41-42
XVIII. Fees 43
XIX. Conclusion 45

WORKING DRAFT

GENERAL REGULATORY AUTHORITY

The Working Group unanimously agreed to the following recommendations:

- Regulatory authority over Chapter 436 and preneed licensing should remain with the Board. Regulatory authority should not be transferred to another agency.

> ! ***Comments:*** *The Division and Board support this proposal but would also support transferring authority if another regulatory agency is deemed more appropriate.*

- The Missouri Attorney General should be granted concurrent jurisdiction with local prosecutors to prosecute violations of Chapter 436.

- The Board should be granted general rulemaking authority to administer Chapter 436 and to establish necessary fees.

> ! ***Comments:*** *Funeral Consumer Alliance suggested that the current licensee confidentiality restrictions should be revised to allow the dissemination of more information to the public. Division staff indicated that the current confidentiality restrictions apply to all regulated boards/commissions within the Division and would require a statutory change specific to the Board.*

- The Board should be authorized to hire legal counsel to assist in the enforcement of Chapter 436.

> ! ***Comments:*** *Board staff indicated this proposal would allow them to utilize both the Attorney General's Office and outside counsel, if needed. Representatives from the Attorney General's Office refrained from the vote.*

MFDEA BELIEVES THAT THE GROUP WAS FAVORABLE TO THE LAW STATING THAT THE STATE BOARD WOULD CREATE REQUIRED DISCLOSURES TO BE GIVEN TO CONSUMERS APART FROM THE LANGUAGE IN THE CONTRACTS. THESE WOULD SPELL OUT THE CONSUMERS RIGHTS REGARDING CANCELLATION, PORTABILITY, AND OTHER NOTIFICATIONS.

DEFINITIONS

Several of Chapter 436's current definitions are insufficiently defined. Accordingly, the Working Group approved the following unanimous recommendations:

- ***"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.

- ***"Board,"*** the Missouri State Board of Embalmers and Funeral Directors.

- ***"Division",*** the division of professional registration of the department of insurance, financial institutions and professional registration.

- ***"Funeral merchandise",*** caskets, grave vaults, or receptacles, and other personal property incidental **~~to a funeral or burial service~~ the final disposition of a human body**, and such term shall also include grave lots, grave space, grave markers, monuments, tombstones, urns, crypts, niches or mausoleums. ***THE PHRASE "FINAL DISPOSTION" SHOULD BE USED AS THAT IS DEFINED BY LAW AND IS MORE INCLUSIVE THAN "BURIAL SERVICE." FOR EXAMPLE, IT CLEARLY INCLUDES CREMATION OR CHARGES FOR REMOVAL FROM THE STATE.***

- ***"Guaranteed Contract",*** A preneed contract in which the future costs for the disposition, facilities, services or merchandise identified in the preneed contract are definitively designated and guaranteed/assured in the contract.

- ***"Insurance-Funded Preneed Contract",***- A preneed contract which is designated to be funded by payments or proceeds from an insurance policy.

- ***"Joint-Account Funded Preneed Contract",*** - A preneed contract which designates that payments for the preneed contract made by or on behalf of the purchaser will be deposited and maintained in a joint account.

- ***"Market Value",***- A fair market value,
  (a) As to cash, the amount 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 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.

- ***"Non-Guaranteed Contract",***- A preneed contract in which the costs for the disposition, facilities, services or merchandise are not guaranteed/assured in the contract.

- ***"Person",*** any individual, partnership, corporation, cooperative, association, or other entity.

- ***"Preneed contract",*** any contract or other arrangement which provides for the final disposition of a dead human body, or for funeral or burial services or facilities, or for funeral ***OR OTHER [this was discussed]*** merchandise, where such disposition, services, facilities or merchandise are not immediately required, including, but not limited to, an agreement providing for a membership fee or any other fee having as its purpose the furnishing of burial or funeral services or merchandise at a discount.

- ***"Preneed Agent,"*** any person authorized to sell a preneed contract for or on behalf of a preneed seller.

- ***"Preneed trust",*** a trust established by a seller, as grantor, to receive deposits of, administer, and disburse payments received under preneed contracts by such seller, together with income thereon.

- ***"Provider",*** the person designated to provide the disposition or funeral services, facilities, or merchandise described in a preneed contract.

- ***"Purchaser",*** the person who is obligated to pay under a preneed contract.

- ***"Seller",*** the person who executes a preneed contract with a purchaser and who is obligated under such preneed contract to remit payment to the provider.

- ***"Trustee",*** the trustee of a preneed trust, including successor trustees.

- ***"Trust-Funded Preneed Contract",***- A preneed contract which provides that payments for the preneed contract shall be deposited and maintained in trust.

WORKING DRAFT

LICENSING / REGISTRATION

The Working Group agreed to the following consensus recommendations:

- A "license" should be required for all preneed providers/sellers. Currently, sellers and providers are "registered" with the Board. A "license" denotes legal obligations and more accurately reflect the authorization being issued by the Board.

- Individuals selling preneed for or on behalf of a preneed seller should be licensed by the Board as a preneed agent. As a condition of licensure, preneed agents should successfully pass the Missouri law examination currently offered by the Board, provided that Missouri licensed funeral directors should not be required to take an additional examination.

> ! ***Comments:*** ***John McCulloch (APS) expressed concerns imposing full licensing, testing or disciplinary requirements on preneed agents.***

- To be eligible for licensure/renewal, preneed agents, providers and sellers must be of good moral character, remit a licensing fee and have a high school diploma or the equivalent. If a corporation, licensure/renewal requirements should be applicable to each officer, director, manager or controlling shareholder.

- All preneed sellers or providers operating as business entities must be properly registered with the Missouri Secretary of State and authorized to conduct business in the state.

- Chapter 436 should be clarified to exempt endowed care cemetery operators governed by Chapter 214 from the provisions of Chapter 436. However, cemetery operators should be subject to Chapter 436 if the contract includes services that may only be lawfully provided by a licensed funeral director or embalmer. ***MFDEA BELIEVES THIS IS AN INCORRECT STATEMENT OF THE GROUP'S POSITION. RATHER IT IS THE OTHER WAY AROUND. THOSE ITEMS GOVERNED EXCLUSIVLY BY 214 SHOULD BE EXEMPT FROM 436 BUT IF A CEMETARY IS SELLING FUNERAL MERCHANDISE ON A PRENEED BASIS, IT SHOULD HAVE TO FOLLOW THE SAME RULES AS SELLERS UNDER 436.***

- Chapter 436 should clearly provide that the provisions of the Chapter are inapplicable to contracts of insurance. However, Chapter 436 should apply to any preneed contract sold in conjunction with insurance. The current statutory language regarding insurance assignments or beneficiary designations is unclear and should be modified in compliance with the recommendation.

- Due to potential costs, preneed licensees should not be required to obtain bonding or any specific insurance. The Working Group suggested that increasing consumer protections and regulatory oversight would adequately address the need for additional insurance/bonding.

WORKING DRAFT

PRENEED CONTRACTS

The Working Group unanimously approved the following recommendations:

- To accommodate the varying forms of preneed, Chapter 436 should define and regulate preneed contracts based on their funding mechanism. Specifically, preneed contracts should be classified as either insurance-funded, trust-funded or joint-account funded. Unique concerns relate to each different type of funding. Chapter 436 could be more effectively regulated if the provisions were modified to accommodate each specific form of funding.

- While minimum preneed contract requirements should be established, as provided below, a standard preneed contract form should not be required.

> ! ***Comments:*** *Although MFDEA supported the vote, representatives stressed that a standard form could be beneficial.*

- Preneed sellers should be required to maintain "adequate records" of preneed contracts for the duration of the contract and for no less than two (2) years after the final disposition of the beneficiary, cancellation of the contract or after the facilities, services or merchandise have been provided. Contracts should be provided to the Board on request.

> ! ***Comments:*** *Funeral Consumer Alliance recommended that sellers should also provide copies of all preneed contracts to the Board. The Board suggested this requirement may be unduly burdensome and that requiring sellers to providing copies upon request would satisfy regulatory concerns.*

- Preneed contracts should only be designated as irrevocable if the contract is being used to qualify for Medicaid (i.e.-for "spend down").

- Preneed contracts should be in writing and should clearly and conspicuously:
  - Include the name, address and phone number of the purchaser, beneficiary, provider and the seller;
  - Detail the disposition or facilities, services or merchandise requested;
  - Clearly identify if the contract is guaranteed or non-guaranteed on the face of the contract in a recognizable type (i.e.- a 12 to 13-point type).
  - Identify terms for cancelling the contract by the purchaser or by the seller for payment default.
  - Identify the funding mechanism including, the trust or financial institution where preneed funds will be held or the insurance company issuing an insurance policy.
  - Identify expenses to be retained by the seller.

- Be signed by the purchaser, the preneed agent and the seller or a representative. ***MFDEA BELIEVES THE CONTRACT SHOULD BE SIGNED BY THE PROVIDER AS WELL.***

- Preneed contracts not in compliance with Chapter 436 should be rendered void [should this be voidable by the purchaser] and unenforceable. If not in compliance, payments may be recoverable by the purchaser or their legal representative plus attorney fees.

> ! ***Comments:*** *This requirement is similar to current law.*

- Sellers/providers should be prohibited from redesignating a preneed contract as a trust-funded, insurance-funded or joint-account funded preneed contract without the consent of the purchaser.

> ! ***Comments:*** *The Funeral Consumer Alliance suggested that purchasers should also be given a written statement identifying the financial consequences of the redesignation (i.e.- reduction in cash surrender value, interest accrual and fees).*

- On the death or legal incapacity of the purchaser, all rights or remedies of the purchaser should accrue to the benefit of the purchaser or his/her successor as designated in the contract. Proceeds payable under a life insurance contract, should be governed by insurance law and the insurance contract.

The Working Group approved the following consensus recommendations:

- Preneed contracts should clearly designate whether the contract is revocable or irrevocable.

> ! ***Comments:*** *Homesteaders Life Insurance Co., suggested the funding for preneed contracts should be made irrevocable and not the contract itself. The commenter remarked that irrevocable contracts may hinder a consumer's freedom of choice.*

> ! ***Comments:*** *The Board also recommended that contracts include notification that complaints regarding preneed sellers/providers may be forwarded to the Board and the current number/address of the Board. Representatives of AARP, the Silver Haired Legislators and the Funeral Consumer Alliance agreed with this suggestion.*

PRENEED PROVIDERS

The Working Group unanimously approved the following recommendations:

- In light of recent concerns raised by the Federal Trade Commission, preneed provider licensing should not be restricted to only funeral establishments or cemetery operators. Private individuals are currently authorized to sell funeral merchandise preneed or at-need. However, it should be clarified that Chapter 436 does not exempt any person from the licensing requirements of Chapter 333 governing funeral directors and establishment.

- Chapter 436 should clearly state that the provider designated in a preneed contract is obligated to provide the disposition, facilities, services or merchandise designated in the preneed contract.

- Providers must have a written agreement with each preneed seller that the provider has authorized to designate the licensee as a provider in a preneed contract.

- Providers should be required to report the name and address of its custodian of records and of all sellers authorized to name the licensee as a provider. The Board should be notified by the provider in writing within 15 days of any amendments or changes.

WORKING DRAFT

PRENEED SELLERS

The Working Group adopted the following unanimous recommendations:

- For purposes of licensure, Chapter 436 should be clarified to provide that a preneed trust is not required if the seller is only selling joint-account or insurance-funded preneed plans.

- Preneed sellers should have the option to sell either trust-funded, joint-account funded or an insurance-funded preneed contract. Sellers should notify the Board of the type of contracts to be sold.

- Sellers should report to the Board the name and address of its custodian of records and of all providers that have authorized the seller to name the licensee as a provider. The Board should be notified by the seller in writing of any amendments or changes.

- The written agreement between the provider and seller should include:
  - Consent from the provider authorizing the seller to designate the licensee as a provider.
  - Procedures for tracking preneed fund payments received by the provider.

- Sellers should maintain "adequate records" of preneed contracts for the duration of the contract and for no less than two (2) years after the final disposition of the beneficiary, cancellation of the contract or after the facilities, services or merchandise have been provided.

WORKING DRAFT

The Working Group unanimously approved the following recommendations:

- Sellers should be required to issue receipts to the purchaser for preneed payments received by the seller. ***THIS SHOULD BE THAT ANY PERSON TAKING CASH FROM A PURCHASER SHOULD PROVIDE FOR A RECIEPT. NO RECEIPT IS PRACTICAL IF THE CONSUMER IS SENDING A CHECK TO A BANK OR IF IT IS AN ELECTRONIC TRANSFER. CHECKS OPERATE AS RECEIPTS. THE DANGER IS WHEN THE CONSUMER PAYS ANYONE CASH AND WHOEVER RECEIVES CASH (SELLER, PROVIDER, OR PRENEED AGENT) SHOULD GIVE A RECEIPT.***

The Working Group approved the following consensus recommendations:

- 100% of all payments for a trust-funded preneed contract should be deposited into trust. Sellers should be authorized to submit a request to the trustee for administrative expenses (see Additional Comments below).

> ! ***Comments:*** *APS and Meierhoffer suggested that requiring sellers to request expenses from the trustee would create additional administrative expenses that may be passed onto the consumer. APS and Meierhoffer strongly recommended retaining the current process of allowing the seller to retain the first 20% of contract payments and to trust the remaining 80%.*

- Payments for trust-funded preneed contracts should be deposited into trust within sixty-days of receipt.

> ! ***Comments:*** *Participants suggested that sixty-days would allow sufficient administrative time for processing and forwarding payments to the seller and for clearing payments made by check. However, other participants suggested that a 30-45 day deposit requirement would increase consumer protection.*

- Seller administrative expenses should be authorized from the initial payments received.

The following Working Group recommendations were unresolved: After considerable discussion and research, the Working Group did not reach a consensus or majority vote on the recommended allowance for seller administrative expenses. However, Participants recommended the following amounts:

- No administrative expense should be allowed.
- Three quarters (¾) of 1% of the face value of the Preneed Contract.
  - Josh Slocum
  - *Note: This provision models New York's preneed legislation.*

- ***Ten percent of face value: The majority of Participants agreed that 10% of the contract's face value would be a reasonable compromise.***
    - AARP
    - Silver Haired Legislature
    - Rep. Meadows
- Ten to fifteen percent
    - DIFP
- Twenty percent of face value
    - Mike Meierhoffer
    - Kutis Funeral Home
    - John McCulloch
    - Mike Winters
    - Austin-Layne

WORKING DRAFT

REGULATION OF TRUSTS & TRUSTEES

The Working Group unanimously approved the following recommendations:

GENERAL REQUIREMENTS:

> ! ***Comments:*** *Bill Stalter recommended that regulation of the trust and trustee functions activities would be better served if oversight of the trust was transferred to the Division of Finance.*

- Trustees of a preneed trust must be a state or federally chartered institution authorized to exercise trust powers in Missouri.
- Provisions of the Uniform Trust Act under Chapter 469 and Chapter 456 should not be wholly incorporated into Chapter 436.

> ! ***Comments:*** *Participants commented that Chapters 469 and 456 contain provisions that are not suited for preneed. For example, Chapters 469 and 456 allow the trustee and grantor to modify the statutory requirements by agreement. It was also suggested that the definition of income would be inappropriate for Chapter 436.*

- A preneed trust should terminate when trust principal no longer includes any payments made under any preneed contract. On termination the trustee should distribute all trust property, including principal and undistributed income, to the seller which established the trust.

The Working Group approved the following consensus recommendations:

- Expenses of the trust, including trustee's fees, legal and accounting fees, investment expenses and taxes should be paid from the trust.

> ! ***Comments:*** *Several participants recommended that expenses of the trust should continue to be paid by the seller directly. Concerns were raised that allowing payment from the trust could reduce trust principal.*

The Working Group approved the following majority recommendations:

- Income of the trust should accrue and should generally not be distributed until the contract is fulfilled or otherwise cancelled.

> ! ***Comments:*** *Several participants recommended that the current income distribution rules should be maintained and income distributions allowed as earned.*

TRUSTEE DUTIES:

The Working Group unanimously approved the following recommendations:

- The prudent investor rule should be adopted for trustees. Specifically, trustees should invest and manage trust assets as a prudent investor would, by considering the purposes, terms, distribution requirements, and other circumstances of the trust. In satisfying this standard, the trustee should exercise reasonable care, skill, and caution.

- Trustees who have special skills or expertise, or who are named trustee in reliance upon the trustee's representation that the trustee has special skills or expertise, should have a duty to use those special skills or expertise when investing and managing trust assets.

- Within a reasonable time after accepting a trusteeship or receiving trust assets, a trustee should review the trust assets and make and implement decisions concerning the retention and disposition of assets in order to bring the trust portfolio into compliance with the purposes, terms, distribution requirements, and other circumstances of the trust, and with the requirements of Missouri law.

- The trustee should maintain "adequate books and records" of all transactions administered through the trust and pertaining to the trust generally.

CONFLICTS OF INTEREST: The Working Group unanimously agreed that conflicts of interest between trustees and investment advisors should be prohibited. Specifically, the following recommendations were made:

- The financial institution and investment advisor should not be controlled by or under common control with the seller.

- "Control", "controlled by" and "under common control" with should be defined as the possession, direct or indirect, of the power to direct or cause the direction of the management and polices of a person, whether through the ownership of voting securities, by contact other than the power is the result of an official position with or corporate office held otherwise, unless the power is the result of an official position with or corporate office held by the person.

- Control should be presumed to exist if any person, directly or indirectly, owns, controls, holds with the power to vote, or holds proxies representing, ten percent or more of the voting securities of any other person. This presumption may be rebutted by a showing to the board that control does not in fact exist to determine within its sole discretion that control does not in fact exist.

- Trustees should be prohibited from selling, investing or authorizing any transaction involving the investment or management of trust property with:
  - The spouse of the trustee;
  - Descendants, siblings, parents, or spouses of a preneed seller or an officer, manager, director or employee of a preneed seller, provider or counselor;
  - Agents or attorneys of the trustee, preneed seller or provider; or
  - A corporation or other person or enterprise in which the trustee, preneed seller, preneed provider, or a preneed provider owns a significant interest or has an interest that might affect the trustee's best judgment.

! ***Comments:*** *Bill Stalter recommended that a seller should be allowed to have a relationship with the advisor so long as the fiduciary remains responsible for the trust's compliance with the prudent investor rule and retains title of the assets.*

INVESTMENT OF FUNDS:

The Working Group unanimously approved the following recommendations:

- Investment of trust funds should be limited to investments that have reasonable potential for growth or producing income.

- Trustees should be specifically restricted from investing trust funds in any insurance product. ***MFDEA DOES NOT BELIEVE WE VOTED THIS. NO TERM LIFE YES, BUT NOT ON ANY INSURANCE PRODUCT.***

- Diversification of trust assets should be mandatory unless the trustee reasonably determines that, because of special circumstances, the purposes of the trust are better serviced without diversifying.

- In investing trust assets, a trustee should be required to consider:
  - General economic conditions;
  - The possible effect of inflation or deflation;
  - The expected tax consequences of investment decisions or strategies;
  - The role that each investment or course of action plays within the overall trust portfolio;
  - The expected total return from income and the appreciation of capital;
  - Other resources of the beneficiaries known to the trustee;
  - Needs for liquidity, regularity of income, and preservation or appreciation of capital;
  - An asset's special relationship or special value, if any, to the purposes of the trust or to one or more of the beneficiaries; and
  - The size of the portfolio, nature and estimated duration of the fiduciary relationship and distribution requirements under the governing instrument.

- Trustees and preneed licensees should be prohibited from procuring or accepting a loan against any investment or asset of the trust.

- Commingling of trust funds should be only be allowed if the trustee maintains adequate records that individually and separately identify the payments, income and distribution for each preneed contract. Commingling should be limited to payments received for Missouri preneed contracts.

SELECTIONS OF AGENTS/INDEPENDENT INVESTMENT ADVISORS:

- Trustees should only delegate duties and powers to an agent that a prudent trustee of comparable skills could properly delegate under the circumstances.

- If an agent is selected, the trustee should exercise reasonable care, skill, and caution in:
  - Selecting an agent;
  - Establishing the scope and terms of the delegation, consistent with the purposes and terms of the trust; and
  - Periodically reviewing the agent's actions and monitoring the agent's performance and compliance with the terms of the delegation.

- In performing a delegated function, an agent should owe a duty to the trust to exercise reasonable care to comply with the terms of the delegation.

- Agents that accept a delegation of powers or duties from a trustee should be deemed to have consented to the jurisdiction of Missouri courts.

- By selecting an agent, a trustee should not be relieved of any duty or responsibility imposed on the trustee by Missouri law.

The Working Group approved the following recommendations by majority vote:

- Sellers should be allowed to approve the investment advisor selected.

! ***Comments:*** *The Department of Insurance, Division of Finance, State Board and the Missouri Attorney General's Office unanimously agree that seller approval of the investment advisor would hinder the independence of the investment advisor and threaten consumer protection. The suggestion proposed would allow the NPS concerns to occur again. Consumers should not, and cannot, be placed at continued risk of unscrupulous business practices. A trustee of a financial institution should be more than capable of selecting an investment advisor that would be adequate for the trust. Seller "approval" is not and should not be required.*

INSURANCE-FUNDED PRENEED PLANS

The Working Group adopted the following unanimous recommendations:

- Currently, Chapter 436 does not clearly allow/regulate insurance-funded plans. Insurance funded preneed plans are a safe and necessary option. ***MFDEA QUESTIONS WHY THIS SENTENCE IS HERE. INSURANCE MAY BE A CONSUMER'S OPTION DEPENDING ON THE CIRCUMSTANCES. AND WE SUPPORT IT BEING CLEARLY PERMITTED. BUT IT IS CLEARLY NOT "NECESSARY" AS THERE ARE OTHER OPTIONS AND, INDEED, OTHER STATES PROHIBIT INSURANCE USED IN THIS WAY AND BECAUSE INSURANCE MAY OR MAY NOT BE "SAFE."*** Accordingly, Chapter 436 should clearly authorize insurance-funded contracts.

- Insurance law should not apply to preneed contracts but should apply to any insurance sold with a preneed contract.

- Sellers should not charge, assess or collect any administrative fees for an insurance-funded preneed plan. Instead, sellers should only be allowed to receive/collect from a purchaser the amount required to pay insurance premiums as established by the insurer.

- In no instance, should a term life insurance product be used to fund a preneed contract. However, consumers should be allowed to assign proceeds from a term-life insurance product to a provider, or to designate a provider as a beneficiary under a preneed contract, provided that the assignment is not related to, or done in contemplate of, executing the sale of a preneed contract.

> ! ***Comments:*** *MFDEA recommended that a blanket prohibition may be overreaching and that consumers should still be allowed to assign proceeds from a pre-existing term-life product to a provider or to designate a funeral establishment as the beneficiary. MFDEA remarked that term life insurance may be the only affordable option for some consumers or the only insurance option that consumers who are older or have significant health problems may qualify for.*

The Working Group adopted the following consensus recommendations:

- Payments received by the seller/provider for insurance-funded preneed contracts should be forwarded to the insurer within thirty (30) days of receipt.

> ! ***Comments:*** *Homesteaders remarked that sellers/providers should only be authorized to collect the initial premium payment. All subsequent premium payments should be made directly to the insurer.*

- Preneed contracts funded by a life insurance policy should include:
  - Terms for cancellation by the purchaser or seller;
  - Notice that cancellation of the preneed contract will not cancel the life insurance policy funding the preneed contract.
  - Notice that insurance cancellation must be made in writing to the insurer.
  - Notice that the purchaser will only receive the cash surrender value of the policy, which may be less than the amount paid in, if cancelled after a designated time;
  - Notice that the purchaser has the right to reassign/transfer the beneficiary designation or assignment to another funeral home.

! ***Comments:*** *To avoid confusion and potential misconstructions, concerns were raised that the majority of this information should be provided by the insurer and included in the insurance contract since it would require the seller to summarize the insurance contract. Additionally, Homesteaders suggested use of the National Association of Insurance Commissioner's model for insurance funded disclosures. Funeral Consumer Alliance also suggested that the amount of commission should also be disclosed in an insurance-funded contract.* MFDEA IS CONCERNED THAT CONSUMERS DO NOT KNOW HOW MUCH THEY WILL RECEIVE FROM AN INSURANCE CONTRACT IN THE EVENT IT IS CANCELLED OR HOW MUCH THEIR TOTAL PAYMENTS WILL BE FOR THEIR FUNERAL IF FUNDED THROUGH AN INSURANCE POLICY. THIS SHOULD CLEARLY BE DISCLOSED SEPERATLY FROM THE INSURANCE CONTRACT ITSELF

! ***Comments:*** *Funeral Consumer Alliance suggested that licensees should disclose to the purchaser if the licensee is an insurance agent/producer and if the licensee will receive any commission, payment or other consideration for the sale of an insurance product.*

JOINT ACCOUNT-FUNDED PRENEED CONTRACTS

The Working Group unanimously recommended that the current provisions for joint-account funded preneed plans are adequate and should be maintained. However, the Working Group suggested the following minor changes:

- Chapter 436 should be clarified to provide that a preneed seller may sell joint-account funded contracts. Currently, Chapter 436 only authorizes joint accounts for providers.

- Sellers only utilizing joint-account funded preneed contracts should not be required to have a trust.

MFDEA MADE THE POINT THAT JOINT-ACCOUNTS SHOULD BE TREATED THE SAME WAY AS TRUST FUNDED ACCOUNTS REGARDING THE AMOUNT RETAINED AND HOW CANCELLATION AND PORTABILITY IS HANDLED. THERE IS NO BASIS FOR TREATING THESE METHODS OF FUNDING DIFFERENTLY

WORKING DRAFT

PAYMENTS TO PROVIDERS

The Working Group unanimously recommended the following:

- To request payment, providers should be required to submit a certificate of performance certifying that the provider has rendered services to the preneed beneficiary. The certificate of performance should be signed by the provider and the person authorized to make arrangements on behalf of the preneed beneficiary.

- Sellers should remit payment to providers within thirty (30) days after receiving a certificate of performance. Sellers should not be prohibited from also requiring submission of a certified death certificate.

MFDEA HAS A CONCERN THAT A SELLER COULD USE THE FACT THAT A DEATH CERTIFICATE IS DELAYED FOR REASONS BEYOND THE FUNERAL DIRECTORS CONTROL (I.E. BY THE DOCTOR/ME/CORONER) TO DELAY RIGHTFULL PAYMENT TO A PROVIDER. ALTHOUGH A SELLER MAY REQUIRE A DEATH CERTIFICATE, THIS SHOULD NOT BE USED AS AN EXCUSE TO DELAY PAYMENT.

WORKING DRAFT

CANCELLATION/PORTABILITY OF PRENEED CONTRACTS

MFDEA BELIVES THAT CANCELLATION AND PORTABLILYT CANNOT BE DISCUSSED IN A MEANINGFULL MANNER UNTIL AFTER THE ISSUE OF HOW MUCH MUST BE TRUSTED (100%,90%,80%) IS DECIDED. AS THERE WAS NO CONSENSUS ON THAT ISSUE, THERE CAN BE NO REAL ANALYSIS OF HOW CANCELLATION MIGHT BE HANDLED.

MFDEA NOTES THAT THE WORKING GROUP DID VOTE ON THE FOLLOWING: THAT UPON CANCELLATION THE CONSUMER WOULD RECEIVE THE FUNDS IN TRUST (WOULD VARY DEPENDING ON 80% OR 90% TRUSTING WHEN WE VOTED ON THIS THE SLIGHT MAJORITY WAS STILL FOR 80% BUT LATER A MAJORITY VOTED FOR 90%) PLUS 10% OF THE INCOME THAT HAD BEEN EARNED. THIS WAS, WE BELIEVE, CLOSE TO A UNANIMOUS VOTE.

The Working Group considered four distinct scenarios that generally arise over the life of a preneed contract:

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.

A. Contract Fulfillment:

The Working Group approved the following unanimous recommendations:

- On fulfillment, sellers should be entitled to payment as provided in the contract and the related income.

B. Transfer of Providers:

The Working Group approved the following unanimous recommendations:

- Chapter 436 should allow for 100% portability. Purchasers should have complete and unrestricted freedom to select an alternative provider. Purchasers should not be penalized nor should any additional fee or costs be assessed to the purchasers for a transfer.

- The new provider designated by the purchaser should be accepted by the seller if the provider agrees to accept the remaining payment owed the original provider as designated in the contract. Here, the newly designated provider would simply "step into the shoes" of the original provider for purposes of payment and fulfilling the contract.

! ***Comments:*** *While MFDEA generally supported this recommendation, concerns were raised that the seller should be able to reject a designated provider if the seller does not have a contract with the provider or if legitimate business reasons exist for the seller not accepting the designation (i.e.- the provider has failed to comply with the contract in other instances or has misappropriated funds from the seller).* MFDEA'S CONCERNS ARE THAT: 1) A SELLER COULD BE FORCED TO BE IN A LEGAL RELATIONSHIP WITH A PARTY THEY DO NOT HAVE A CONTRACT WITH AND WITH WHOM THEY DO NOT WISH TO BE IN BUSINESS WITH AND 2) A SELLER/PROVIDER COULD WIND UP HAVING TO INVEST FUNDS ON BEHALF OF AND FOR THE BENEFIT OF A COMPETITOR. THE SIMPLEST SOLUTION IS THAT, WHEN THE CONSUMER WISHES TO TRANSFER, THAT (ASSUMING THE NEW FUNERAL HOME ACCEPTS THE ARRANGMENT) THE FUNDS CURRENTLY IN THE TRUST (INCLUDING NET INCOME/INTEREST/GROWTH) BE TRANSFERRED TO THE NEW FUNERAL HOME. IN OTHER WORDS "CUT A CHECK" TO THE NEW FUNERAL HOME AND LET THEM INVEST THE FUNDS FOR THEIR OWN BENEFIT.

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. The refund amount should be designated by statute (however, see below).

Additional Recommendations: 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, the following recommendations were suggested by Working Group Participants:

- 100% of all funds paid and held in trust should be refunded to the purchaser (including income).
- 100% of all funds held in trust should be refunded.
- 80% of all funds held in trust should be refunded.
- 80% of all funds paid by the purchaser should be refunded.
- 80% of all funds paid should be refunded plus a portion of the income earned.

D. Cancellation By Seller For Non-Payment:

The Working Group approved the following unanimous recommendations:

- Sellers should be allowed to cancel the contract unilaterally if the purchaser is in default of payment.

- If cancelled by the seller, preneed purchasers should be refunded 80% of all amounts paid for the contract.

- Prior to cancellation, purchasers should be provided written notification from the seller of the seller's intent to cancel. The notice should be provided forty-five days prior to cancellation and should allow the purchaser thirty days to remit the payment in arrears to avoid cancellation.

- If the seller does not cancel 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, 100% of all funds paid and held in trust should be refunded to the purchaser (including income).
- Eighty percent of all funds paid and held in trust should be refunded to purchasers.

> ! ***Comments:*** *Bill Stalter recommended that issues regarding trust expenses and income/expense allocations would be better addressed in rulemaking.*

REPORTING REQUIREMENTS

To assist the Board in regulation, the Working Group unanimously recommended expanding the information submitted to the Board by preneed licensees.

ANNUAL REPORT
REQUIREMENTS FOR ALL PRENEED SELLERS

The Working Group approved the following unanimous recommendations: Annual reports filed with the Board by the seller should include:

- The purchaser's name and address and preneed contract number, if any. Contract numbers should not be required but should be provided if available..
- The total number and face value of outstanding preneed contracts sold since the last report was filed.
- The contract amount for each preneed contract sold since the last annual report
- The name, address and contract number of all preneed agents authorized to sell preneed for the seller.
- The number of contracts fulfilled by the seller since the last report.
- The name and address of each provider contracted with the seller.
- The name and address of a custodian of preneed records.
- Authorization for the Board to conduct an audit and/or an examination of books and records.
- Any other information deemed necessary by the Board by rule.

ANNUAL REPORT REQUIREMENTS
FOR TRUST-FUNDED PRENEED CONTRACT SELLERS

The Working Group approved the following unanimous recommendations: Annual reports filed with the Board by the seller should include:

(The following should be certified as true and accurate by a corporate office of the trustee.)

- The name and address of the financial institution where the trust is held and the account number;
- The trust fund balance as reported in the previous year's report and the current trust fund balance.
- Principal contributions received since the last report.
- Total trust earnings and total distributions to the seller since the last report.
- A statement of assets and investments of the trust listing cash, real or personal property, stocks, bonds, and other assets. The listing should show cost, acquisition date and current market value of each asset and investment.
- Total expenses since the last report, excluding distributions to the seller.

ANNUAL REPORT REQUIREMENTS
FOR JOINT-ACCOUNT FUNDED PRENEED CONTRACT SELLERS

The Working Group approved the following unanimous recommendations: Annual reports filed with the Board by the seller should include:

(The following should be certified as true and accurate by a corporate office of the financial institution.)

- The number and address of the Missouri financial institution where the joint account is held and the account number.
- The amount on deposit in each joint account.
- The joint account balance reported the previous year.
- Principal contributions placed into each joint account since the last report.
- Total earnings since the previous report.
- Total distributions to the seller from each joint account since the previous year.
- Total expenses deducted from the joint account since the last report, excluding distributions to the seller.

ANNUAL REPORT REQUIREMENTS FOR INSURER FUNDED PRENEED CONTRACT SELLERS

The Working Group approved the following unanimous recommendations:

- The name and address of each insurer issuing insurance to fund a preneed contract during the preceding year.
- The status and total death benefit and cash surrender value of each policy in force at the time of the report. ***(This should be certified as true and accurate by the insurer.)***

WORKING DRAFT

CONSUMER REPORTING / NOTIFICATIONS

The Working Group unanimously approved the following recommendations:

- Purchasers should be entitled to an annual report from the seller indicating the amount of funds paid by the purchaser during the reporting year and the name and address of the trustee.
- Sellers should inform purchasers of a change in trustee within thirty (30) days after the change. Notification should include the name, address and phone number of the trustee.

The Working Group approved the following majority recommendations:

- Purchasers should be notified by the trustee each time a deposit is made into trust for the contract. ***MFDEA DOES NOT BELIEVE WE VOTED ON THIS. THIS WOULD BE EXTREMLY BURDENSOM AND IMPRACTICAL. THINK ABOUT A BANK SENDING YOU A SEPARATE NOTICE IN THE MAIL EACH TIME YOU HAVE MADE A DEPOSIT INTO YOUR ACCOUNT.***

> ! ***Comments:*** *Participants expressed concerns that an annual report would create an unnecessary burden on preneed sellers and increase administrative expenses that would eventually be passed on to the consumer.*

- Purchasers should be provided a receipt for each payment made by or on behalf of the purchaser. The receipt should be provided by the initial person receiving the payment (i.e.- the seller, provider or the agent).

WORKING DRAFT

TERMINATION OF BUSINESS

The Board has experienced significant regulatory difficulty with ensuring that Missouri consumers are adequately protected when preneed providers and sellers cease doing business either voluntarily or involuntarily. As a result, the Working Group unanimously recommended the following:

PRENEED SELLERS:

- The Working Group approved the following unanimous recommendations: The following notification/reporting requirements should be mandated for preneed sellers:
  - Notice to the Board at least thirty (30) days prior to a seller ceasing business or transferring a majority of its stock/assets.
  - A final annual report filed with the Board which includes a detailed plan indicating how outstanding preneed contracts will be filled and/or satisfied and how assets will be allocated for preneed obligations.
  - Notice to all providers that the seller has ceased doing business thirty (30) days prior to the seller ceasing business or transferring a majority of stock/assets.
  - Notice to consumers that the seller will cease doing business and indicate a contact number for questions regarding preneed contracts, consumer refunds or how arrangements will be satisfied. Purchaser notification should be required at least thirty (30) days prior to ceasing business or, in instances of a sale/transfer, within thirty (30) days after completion of the sale/transfer.
  - Submission of any additional information designated by the Board.
- Upon notification, the Board should have the continuing ability to inspect, examine and/or audit the books and records of the preneed provider/seller to ensure contractual obligations are met.
- The Attorney General should be granted authority to enter the premises and access/take possession of the books and records any preneed seller who ceases business without notification to the Board.

PRENEED PROVIDERS:

- The following notification/reporting requirements should be mandated for preneed providers:
  - Notice to the Board at least thirty (30) days prior to the provider ceasing business or transferring a majority of its stock/assets.
  - A final annual report filed with the Board.
  - Notice of the provider's intent to all sellers with whom the provider has outstanding preneed contracts within thirty (30) days prior to the provider ceasing business or transferring/disposing of a majority of stock/assets.
  - Upon notification from the providers, sellers should be required to notify all purchasers that the provider has ceased doing business or has transferred ownership. Notification should include provisions for

selecting an alternative provider and should be provided within thirty (30) days after the provider ceasing business or transferring ownership/assets. ***MFDEA DOES NOT BELIEVE WE VOTED ON THIS FOR A CHANGE IN OWNERSHIP ONLY FOR WHEN A PROVIDER CEASED TO DO BUSINESS. THIS MAKES SENSE TO DO WHEN A FUNERAL HOME GOES OUT OF BUSINESS AS THE CONSUMER WILL NEED TO KNOW WHAT TO DO WITH THEIR PREPAID PLANS BUT WITH A TRANSFER OF OWNERSHIP THE NEW OWNER IS STILL OBLIGATED TO SERVICE THE PLANS. SUCH NOTIFICATIONS COULD ALSO SERIOIUSLY CAUSE HARM TO THE NEW PURCHASER OF THE BUSINESS.***

  - Submission of any additional information designated by the Board.
- Upon notification, the Board should have the continuing ability to inspect, examine and/or audit the books and records of the preneed provider to ensure contractual obligations are met.
- The Attorney General should be granted authority to enter the premises and access/take possession of the books and records any preneed provider who ceases business without notification to the Board.

WORKING DRAFT

AUDITS, INVESTIGATIONS AND EXAMINATIONS

The Working Group unanimously agreed that effective regulation of the preneed industry may only be accomplished by strengthening, clarifying and expanding the current investigation, examination and audit authority of the Board.

The Working Group unanimously recommended the following:

- The Board should be granted clear authority to:
  - Issue subpoenas to compel the production of books and records of any licensee or trustee.
  - Enter the premises or establishment where preneed business is conducted, or is advertised to be conducted, for the purposes of accessing books and records.
  - Conduct random or targeted inspections, with or without cause and at the discretion of the Board.
  - Investigate complaints and to investigate licensees to determine compliance with Chapter 436.
  - Conduct random or targeted examinations of books and records, at the discretion of the Board. The Board should be authorized to conduct an examination of each preneed seller at least once every five years.

> ! ***Comments:*** *Although the Working Group initially recommended every three years, the Board expressed concerns regarding cost and the financial feasibility of conducting such examinations.*

  - Sellers selling joint-account funded plans only should be exempt from the examinations conducted by the Board every five years. However, the Board should retain authority to audit or examine the seller, if deemed necessary.
  - Audit a preneed seller with cause if the Board has reasonable grounds for verifying the proper handling of preneed funds.
- Inspections, investigations, audits and examinations should be authorized with or without a complaint.
- The Board may request DIFP, the attorney general or the division of finance, to designate investigator(s) or financial examiner(s) to assist the Board with any inspection, investigation, examination or audit.
- Preneed licensees should clearly be required to cooperate with any inspection, investigation, examination or audit conducted by the Board, DIFP, the attorney general or the division of finance.
- Books and records of licensees should be made available to the Board by the licensees upon request.
- Costs of an inspection, investigation, examination or audit should be funded through licensing fees ***AND/OR FEES ON PRENEED CONTRACTS AS*** established by the Board by rule.

! ***Comments:*** *The Working Group unanimously agreed that examination/audit costs should not be charged to the licensee. Depending on the scope of the audit/examination, costs may be excessive and would be difficult to determine prior to the audit/exam. As a result, charging costs to licensees may have an overwhelming impact and could potentially result in licensee bankruptcies.*

ATTORNEY GENERAL AUTHORITY

The Working Group unanimously recommended the following:

If a violation of Chapter 436 is found after an investigation, audit or examination, the Attorney General should be authorized to initiate a judicial proceeding to:

- Declare rights.
- Approve a nonjudicial settlement.
- Appoint or remove a trustee.
- Interpret or construe the terms of the trust.
- Determine the validity of a trust or its terms.
- Compel a trustee to report or make an accounting.
- Enjoin a trustee from performing a particular act or to grant the trustee any necessary or desirable power.
- Review the actions of the trustee, including the exercise of any discretionary power.
- Determine trustee liability and to grant any available remedy for breach of a trust.
- Approve employment and compensation of agents.
- Determine the propriety of investments.
- Determine the timing and quantity of distributions and disposition of assets.
- Utilize any other power vested in the attorney general.

IT NEEDS TO BE CLEAR THAT IT IS THE COURT AND NOT THE AG THAT DETERMINES LIABILITY, GRANT REMEDIES, ISSUE INJUCTIONS, ETC. THIS IS NOT CLEAR FROM THIS SECTION

DISCIPLINARY AUTHORITY

The Working Group unanimously agreed that to effectively regulate Chapter 436, the Board's disciplinary process must be streamlined to allow for a more efficient and effective remedy. This would necessarily include, expanding the current grounds for discipline as well as the disciplinary tools available to the Board.

The Working Group unanimously recommended the following legislative change:

Section A.1. The board may refuse to issue any certificate of registration or authority, permit or license required under this chapter for one or any combination of causes stated in subsection 2 of this section. The board shall notify the applicant in writing of the reasons for the refusal and shall advise the applicant of his or her right to file a complaint with the administrative hearing commission as provided by chapter 621, RSMo.

2. The board may cause a complaint to be filed with the administrative hearing commission as provided by chapter 621, RSMo, against any holder of any certificate of registration or authority, permit or license required by this chapter or any person who has failed to renew or has surrendered his or her certificate of registration or authority, permit or license for any one or any combination of the following causes:

(1) Use of any controlled substance, as defined in chapter 195, RSMo, or alcoholic beverage to an extent that such use impairs a person's ability to perform the work of any profession licensed or regulated by this chapter;

(2) The person has been finally adjudicated and found guilty, or entered a plea of guilty or nolo contendere, in a criminal prosecution under the laws of any state or of the United States, for any offense reasonably related to the qualifications, functions or duties of any profession licensed or regulated under this chapter, for any offense involving a controlled substance, or for any offense an essential element of which is fraud, dishonesty or an act of violence, or for any offense involving moral turpitude, whether or not sentence is imposed;

(3) Use of fraud, deception, misrepresentation or bribery in securing any certificate of registration or authority, permit or license issued under this chapter or in obtaining permission to take any examination given or required under this chapter;

(4) Obtaining or attempting to obtain any fee, charge, tuition or other compensation by fraud, deception or misrepresentation;

(5) Incompetency, misconduct, gross negligence, fraud, misrepresentation or dishonesty in the performance of the functions or duties of any profession licensed or regulated by this chapter;

(6) Violation of, or assisting or enabling any person to violate, any provision of [sections 436 regulating preneed], or of any lawful rule or regulation adopted pursuant thereto;

(7) Impersonation of any person holding a certificate of registration or authority, permit or license or allowing any person061 to use his or her certificate of registration or authority, permit, license or diploma from any school;

(8) Disciplinary action against the holder of a license or other right to practice any profession regulated by this chapter granted by another state, territory, federal agency or country upon grounds for which revocation or suspension is authorized in this state;

(9) A person is finally adjudged insane or incompetent by a court of competent jurisdiction;

(10) Misappropriation or theft of preneed funds;

(11) Assisting or enabling any person to practice or offer to practice any profession licensed or regulated by [the provisions of Chapter 436 regulating preneed] who is not registered and currently eligible to practice thereunder;

(12) Issuance of a certificate of registration or authority, permit or license based upon a material mistake of fact;

(13) Failure to display a valid certificate or license if so required by this [the provisions of Chapter 436 regulating preneed] or any rule promulgated thereunder;

(14) Violation of any professional trust or confidence;

(15) Making or filing any report required by [the provisions of Chapter 436 regulating preneed] which the licensee knows to be false or knowingly failing to make or file a report required by [the provisions of Chapter 436 regulating preneed];

(16) Use of any advertisement or solicitation which is false, misleading or deceptive to the general public or persons to whom the advertisement or solicitation is primarily directed, or;

(19) Willfully and through undue influence selling a preneed contract.

3. After the filing of such complaint, the proceedings shall be conducted in accordance with the provisions of chapter 621, RSMo. Upon a finding by the administrative hearing commission that the grounds, provided in subsection 2 of this section, for disciplinary action are met, the board may, singly or in combination, censure or place the person named in the complaint on probation on such terms and conditions as the board deems appropriate for a period not to exceed five years, or may suspend, for a period not to exceed three years, or revoke the license, certificate, or permit.

4. Notwithstanding any other provision of this section, the board may automatically suspend a license if the Board finds, after an inspection, examination, investigation or audit, a shortage in any preneed trust or joint account which exceeds 20% of the total amount required to be held or deposited in the trust or account pursuant to [the provisions of Chapter 436 regulating preneed].

5. Any person whose license is suspended under subsection 4 of this section may appeal such suspension to the administrative hearing commission. Notice of such appeal must be received by the administrative hearing commission within ninety days of mailing, by certified mail, the notice of suspension. Failure of a person whose license was suspended to notify the administrative hearing commission of his or her intent to appeal waives all rights to appeal the suspension. Upon notice of such person's intent to appeal, a hearing shall be held before the administrative hearing commission pursuant to Chapter 621.

6. Use of the procedures set out in this section shall not preclude the application of the provisions of subsection 2 of section 333.061.

WORKING DRAFT

ENFORCEMENT AUTHORITY

INJUNCTIVE/CIVIL AUTHORITY

The Working Group unanimously recommended the following:

- Similar to current law, the Board should have authority to seek injunctive relief or any other civil authority necessary to enjoin/restrain an entity from:
  - Unlicensed activity.
  - Engaging in any activity that would pose a substantial probability of danger to the public health, safety or welfare.
  - Engaging in any activity that presents a substantial probability of serious danger to the solvency of any preneed seller.
- The authority granted to the Board should be in addition to any other remedies authorized by law.
- Proper venue for any such action should be amended to include Cole County.
- Violation of Chapter 436 should be deemed violations of Chapter 407, under the jurisdiction of the Attorney General. In actions brought under Chapter 407, the court should be authorized to impose any penalty/remedy authorized under Chapter 436 or 407. Additionally remedies should include revocation/suspension of the preneed license.

CRIMINAL AUTHORITY

The Working Group unanimously recommended the following:

- Knowing and willful violations of Chapter 436 by incompetence, misconduct, gross negligence, fraud, misrepresentation or dishonesty should be deemed Class C felonies. *Comment: Violations are currently Class D felonies.*

FINES & CIVIL PENALTIES

The Working Group unanimously recommended the following:

- The Board should be authorized to impose civil penalties and fines as a form of discipline.
- Fines/Civil Penalties should be assessed in light of the seriousness of the violation found.
- Fines/civil penalties should be consistent with the fines/penalties currently authorized for other professions within the Division. Specifically, the legislature has approved civil penalties for the Real Estate Commission and Architects, Professional Engineers, Professional Land Surveyors and Landscape Architects in the amount of two thousand five hundred dollars for each offense.
- In considering a fine/civil penalty, the Board should be required to consider, among other factors,:

  (1) If the violations are likely to continue or reoccur;

  (2) Whether actual financial loss was sustained by consumers and if restitution has been made;

  (3) If the violation was detected as part of a self-audit or internal compliance program and immediately reported to the Board; and

(4) In the violation had previously been detected, but inadequate policies and procedures were implemented to prevent reoccurrence.

! ***Comments:*** *Currently, the Attorney General also has authority to assess/request fines and penalties under Chapter 407. A concern was raised by MFDEA that preneed licensees may be subjected to double penalties if an action is initiated by the Board as well as through the Attorney General's Office. MFDEA and Meierhoffer suggested that if accepted, language should be developed to prevent duplicate imposition of fines/penalties by the Board and the Attorney General's Office for the same conduct.*

Response: As litigation counsel for the Board, the Attorney General's Office traditionally represents and coordinates with the Board in pursuing any remedy. Additionally, the remedies imposed by the Board and by the Attorney General's Office are distinctly different. The remedies imposed by the Board would be limited to licensing violations only. The remedies authorized under Chapter 407 are to redress/remedy a harm inflicted on the public at large. A concern was raised that if a licensee's conduct violates the licensing law as well as harms the public, expanded remedies would be appropriate.

WORKING DRAFT

FEES

The proposed recommendations would require additional funding for the Board to regulate the proposed provisions and to fulfill all statutory obligations.

The Working Group unanimously approved the following recommendations:

- Licensing and renewal fees for preneed seller, providers and agents as established by the Board by rule. If both the preneed sellers/providers are required to pay fees, the preneed agent licensing fees should be minimal and proportionately lower than preneed seller/providers.
- Preneed sellers should continue to be assessed a two-dollar fee per preneed contract sold during the annual reporting year as currently required. ***INCORRECT. WE DID NOT VOTE TO KEEP THE FEE AT $2. INDEED MFDEA BELIEVES THAT THE CONSESUS OF THE GROUP IS THAT THIS FEE SHOULD BE INCREASED AND THAT IT IS FROM THIS FEE THAT THE COSTS OF INVESTIGATIONS AND AUDITS SHOULD BE PAID.***

WORKING DRAFT

CONCLUSION

WORKING DRAFT

CONCLUSION

Nationally, the preneed industry has experienced significant and sustained growth as consumers focus more attention on their final needs. Preneed arrangements can provide a valuable option to purchasers desiring to ensure their arrangements. Chapter 436 regulating preneed is in need of significant legislative changes. As reflected in the present crisis impacting Missouri, Chapter 436 must be enhanced and amended to ensure consumer protection and the continued viability of Missouri's preneed industry.

The Working Group appreciates the opportunity to share its recommendations. We look forward to providing any further assistance you may need.

WORKING DRAFT

Recommendations – Meierhoffer

STATE BOARD OF EMBALMERS AND FUNERAL DIRECTORS

WORKING DRAFT

CHAPTER 436 WORKING GROUP RECOMMENDATIONS

Submitted: September 1, 2008

September 1, 2008

Dear Joint Committee Members:

Over the last year, the nation has witnessed an unprecedented crisis in the preneed industry. Estimates of the financial impact on Missouri consumers and the funeral industry are alarming. While recent concerns relate to a single entity, the crisis has focused much needed attention on the regulation of preneed funeral contracts in the state of Missouri and Chapter 436, RSMo, governing preneed sales.

The State Board of Embalmers and Funeral Directors (the "Board"), under the auspices of the Missouri Division of Professional Registration (the "Division"), regulates embalmers, funeral directors, funeral establishments, preneed sellers and preneed providers licensed in this state. As part of its statutory duties, the Board annually reviews legislation to identify potential recommendations of the Board. In recent years, this process has included a review of Chapter 436.

Senate Bill 780, enacted by the General Assembly 2008, which created the Joint Committee on Preneed Funeral Contracts. As part of its annual legislative review, the Board was invited to gather a working group of representatives from across the preneed industry to collectively identify suggested preneed recommendations for the Joint Committee's review. The Working Group consisted of a diverse representation from all aspects of the preneed industry, including, liaisons from various consumer groups, members of the State Board and representatives from the funeral, preneed and insurance industries.

The Working Group respectfully submits the attached recommendations to the Joint Committee for review. While diverse interests were represented, the Working Group unanimously agreed that revisions to Chapter 436 are desperately needed to better protect Missouri consumers and those funeral directors, funeral establishments, preneed providers and preneed sellers who truly dedicate themselves to serving the public.

We commend the General Assembly in convening the Joint Committee and in dedicating the time and resources to this important task.

Sincerely,

To be determined

OVERVIEW

WORKING DRAFT

I. GENERAL OVERVIEW:

During the 2008-2009 legislative session, various Chapter 436 proposals were introduced. Although not enacted, the proposals sparked intense discussion among regulators, consumers and professional groups. While a consensus was not reached, industry and regulatory groups were able to identify several common areas of agreement.

At the close of the legislative session, various representatives met with Senator Delbert Scott and Representative Jay Wasson to discuss Chapter 436 concerns. The Board was subsequently asked to formulate a working group to help identify agreed areas for legislative recommendations.

The Board hosted five (5) open meetings for the Working Group in Jefferson City, Missouri.[1] All meetings of the Working Group were conducted as open meetings in accordance with Chapter 610, RSMo. Notice of meetings and the proposed agenda were made available to the public and published on the Board's website.

II. PARTICIPANTS:

The Working Group consisted of representatives from consumer groups, funeral directors, preneed providers, preneed sellers, third-party preneed sellers, the Missouri Funeral Directors and Embalmers Association, related insurance companies and representatives from small, large and minority funeral establishments. Participants were chosen from prior legislative involvement and from recommendations made by legislators, Board members and related consumer groups. Members of the public were also invited to attend and given an opportunity to provide both oral and written comments.

The Working Group included:

REGULATORS:

Linda Bohrer	Acting Director- Department of Insurance, Financial Institutions and Professional Registration ("DIFP")
David Broeker	Division Director, Division of Professional Registration*
Sharon Euler	Office of the Attorney General
Mary Erickson	Senior Enforcement Counsel- DIFP
Larry McCord	General Counsel- DIFP
Mark Stahlhuth	Senior Counsel- Financial Section, DIFP
Rich Weaver	Director, Division of Finance

[1] Open meetings were hosted on July 8th. July 15th, July 24th, July 29th and August 12th.
* Did not participate as a voting member of the Working Group.

ADDITIONAL PARTICIPANTS:

James Reinhard,	Chair, State Board of Embalmers and Funeral Directors
Gary Fraker	Board Member
Joy Gerstein	Board Member
Todd Mahn	Board Member
Martin Vernon	Board Member
John McCulloch	Board Member/American Prearranged Services
Bob Baker	Wright Baker Hill Funeral Home
Barbara Brown	Layne Renaissance Chapel, LLC
Norma Collins	AARP
George Kutis/ George Kline	Kutis Funeral Home, Inc.
Jim Moody	Lobbyist, SCI
Rep. Timothy Meadows	
Michael Meierhoffer	Meierhoffer Funeral Home & Crematory, Inc.
Barbara Newman	Rep. Meadows' Office
Darlene Russell	Charter Life Insurance Co.
Josh Slocum	Executive Director, Funeral Consumer Alliance
Bill Stalter	Stalter Legal Services
Bill Trimm/ Jo Walker	Silver Haired Legislators
Don Otto	Executive Director, Missouri Funeral Director and Embalmers Association/Missouri Funeral Trust
Mark Warren	Inglish & Monaco- Representing Homesteaders Life Insurance, etc.
Mike Winters	Lobbyist, American Prearranged Services

COMMITTEE SUPPORT STAFF:

Connie Clarkston	Director of Budget & Legislation, Division of Professional Registration
Becky Dunn	Executive Director, State Board*
Jeana Groose	Administrative Assistant to Director of Budget & Legislation, Division of Professional Registration*
Kimberly Grinston	Legal Counsel, Division of Professional Registration*
Lori Hayes	Inspector, State Board*

III. REVIEW PROCESS:

To guide the review, the Board circulated a survey with a listing by topic area of Chapter 436 proposals submitted to the Board in prior years. Participants were asked to rank the priority of topic areas listed for purposes of discussion. Surveys were made publicly available and were posted on the Board's website. The Division subsequently compiled the rankings and utilized results to structure the Working Group. [See Appendix 1- Bd. Survey].

The surveyed topics were ranked as follows:

[INCLUDE SURVEY RESULTS HERE]

WORKING DRAFT

RECOMMENDATIONS

WORKING DRAFT

Working Group recommendations have been compiled as follows:

Unanimous Recommendations:	Recommended by a unanimous vote of all Working Group Participants.
Consensus Recommendations:	Recommended by an overwhelming majority of Participants, generally with less than 15% of Participants dissenting.
Majority Recommendations:	Recommended by a simple majority vote of Working Group Participants.
Unresolved:	Majority vote not reached. Suggestions from Participants have been provided.

For purposes of this Report, recommendations have been categorized as follows:

I. General Regulatory Authority 10

II. Definitions 11-12

III. Licensing/Registration 13

IV. Preneed Contracts 14-15

V. Preneed Providers 16

VI. Trust-Funded Preneed Plans 18-19

VII. Regulation of Trusts & Trustees 20-23

VIII. Insurance-Funded Preneed Plans 24-25

IX. Joint Account-Funded Preneed Contracts 26

X. Payments to Providers 27

XI. Cancellation/Portability of Preneed Contracts 28-30

XII. Reporting Requirements 31-32
XIII. Consumer Reporting/Notifications 33
XIV. Termination of Business 34-35
XV. Audits, Investigations and Examinations 36-37
XVI. Disciplinary Authority 38-40
XVII. Enforcement Authority 41-42
XVIII. Fees 43
XIX. Conclusion 45

WORKING DRAFT

GENERAL REGULATORY AUTHORITY

The Working Group unanimously agreed to the following recommendations:

- Regulatory authority over Chapter 436 and preneed licensing should remain with the Board. Regulatory authority should not be transferred to another agency.

> ! ***Comments:*** *The Division and Board support this proposal but would also support transferring authority if another regulatory agency is deemed more appropriate.*

- The Missouri Attorney General should be granted concurrent jurisdiction with local prosecutors to prosecute violations of Chapter 436.

- The Board should be granted general rulemaking authority to administer Chapter 436 and to establish necessary fees.

> ! ***Comments:*** *Funeral Consumer Alliance suggested that the current licensee confidentiality restrictions should be revised to allow the dissemination of more information to the public. Division staff indicated that the current confidentiality restrictions apply to all regulated boards/commissions within the Division and would require a statutory change specific to the Board.*

- The Board should be authorized to hire legal counsel to assist in the enforcement of Chapter 436.

> ! ***Comments:*** *Board staff indicated this proposal would allow them to utilize both the Attorney General's Office and outside counsel, if needed. Representatives from the Attorney General's Office refrained from the vote.*

WORKING DRAFT

DEFINITIONS

Several of Chapter 436's current definitions are insufficiently defined. Accordingly, the Working Group approved the following unanimous recommendations:

- ***"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.

- ***"Board,"*** the Missouri State Board of Embalmers and Funeral Directors.

- ***"Division",*** the division of professional registration of the department of insurance, financial institutions and professional registration.

"Funeral merchandise", caskets, grave vaults, or receptacles, and other personal property incidental to a funeral or burial service. (Items deleted are currently governed by Chapter 214 and under the purview of the Office of Endowed Cemeteries.) (Meierhoffer 8/25/2008)

Deleted: , and such term shall also include grave lots, grave space, grave markers, monuments, tombstones, crypts, niches or mausoleums.

Deleted: ¶

- ***"Guaranteed Contract",*** A preneed contract in which the future costs for the disposition, facilities, services or merchandise identified in the preneed contract are definitively designated and guaranteed/assured in the contract.

- ***"Insurance-Funded Preneed Contract",*** A preneed contract which is designated to be funded by payments or proceeds from an insurance policy.

- ***"Joint-Account Funded Preneed Contract",*** - A preneed contract which designates that payments for the preneed contract made by or on behalf of the purchaser will be deposited and maintained in a joint account.

- ***"Market Value",*** A fair market value,
  (a) As to cash, the amount 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 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.

- ***"Non-Guaranteed Contract",*** A preneed contract in which the costs for the disposition, facilities, services or merchandise are not guaranteed/assured in the contract.

- ***"Person",*** any individual, partnership, corporation, cooperative, association, or other entity.

- ***"Preneed contract",*** any contract or other arrangement which provides for the final disposition of a dead human body, or for funeral or burial services or facilities, or for funeral merchandise, where such disposition, services, facilities or merchandise are not immediately required, including, but not limited to, an agreement providing for a membership fee or any other fee having as its purpose the furnishing of burial or funeral services or merchandise at a discount.

- ***"Preneed Agent,"*** any person authorized to sell a preneed contract for or on behalf of a preneed seller.

- ***"Preneed trust",*** a trust established by a seller, as grantor, to receive deposits of, administer, and disburse payments received under preneed contracts by such seller, together with income thereon.

- ***"Provider",*** the person designated to provide the disposition or funeral services, facilities, or merchandise described in a preneed contract.

- ***"Purchaser",*** the person who is obligated to pay under a preneed contract.

- ***"Seller",*** the person who executes a preneed contract with a purchaser and who is obligated under such preneed contract to remit payment to the provider.

- ***"Trustee",*** the trustee of a preneed trust, including successor trustees.

- ***"Trust-Funded Preneed Contract",*** - A preneed contract which provides that payments for the preneed contract shall be deposited and maintained in trust.

WORKING DRAFT

LICENSING / REGISTRATION

The Working Group agreed to the following consensus recommendations:

- A "license" should be required for all preneed providers/sellers. Currently, sellers and providers are "registered" with the Board. A "license" denotes legal obligations and more accurately reflect the authorization being issued by the Board.

- Individuals selling preneed for or on behalf of a preneed seller should be licensed by the Board as a preneed agent. As a condition of licensure, preneed agents should successfully pass the Missouri law examination currently offered by the Board, provided that Missouri licensed funeral directors, Missouri registered apprentice funeral directors and Missouri licensed insurance producers (Meierhoffer 8/25/2008) should not be required to take an additional examination.

> ! ***Comments:*** ***John McCulloch (APS) expressed concerns imposing full licensing, testing or disciplinary requirements on preneed agents.***

- To be eligible for licensure/renewal, preneed agents, providers and sellers must be of good moral character, remit a licensing fee and have a high school diploma or the equivalent. If a corporation, licensure/renewal requirements should be applicable to each officer, director, manager or controlling shareholder.

- All preneed sellers or providers operating as business entities must be properly registered with the Missouri Secretary of State and authorized to conduct business in the state.

- Chapter 436 should be clarified to exempt endowed care cemetery operators governed by Chapter 214 from the provisions of Chapter 436. However, cemetery operators should be subject to Chapter 436 if the contract includes services that may only be lawfully provided by a licensed funeral director or embalmer.

- Chapter 436 should clearly provide that the provisions of the Chapter are inapplicable to contracts of insurance. However, Chapter 436 should apply to any preneed contract sold in conjunction with insurance. The current statutory language regarding insurance assignments or beneficiary designations is unclear and should be modified in compliance with the recommendation.

- Due to potential costs, preneed licensees should not be required to obtain bonding or any specific insurance. The Working Group suggested that increasing consumer protections and regulatory oversight would adequately address the need for additional insurance/bonding.

WORKING DRAFT

PRENEED CONTRACTS

The Working Group unanimously approved the following recommendations:

- To accommodate the varying forms of preneed, Chapter 436 should define and regulate preneed contracts based on their funding mechanism. Specifically, preneed contracts should be classified as either insurance-funded, trust-funded or joint-account funded. Unique concerns relate to each different type of funding. Chapter 436 could be more effectively regulated if the provisions were modified to accommodate each specific form of funding.

- While minimum preneed contract requirements should be established, as provided below, a standard preneed contract form should not be required.

> ! ***Comments:*** *Although MFDEA supported the vote, representatives stressed that a standard form could be beneficial.*

A standard form may be promulgated by the Board for the ease of licensees, but should not be required by statute or rule. (Meierhoffer 8/25/2008)

- Preneed sellers should be required to maintain "adequate records" of preneed contracts for the duration of the contract and for no less than two (2) years after the final disposition of the beneficiary, cancellation of the contract or after the facilities, services or merchandise have been provided. Contracts should be provided to the Board on request.

> ! ***Comments:*** *Funeral Consumer Alliance recommended that sellers should also provide copies of all preneed contracts to the Board. The Board suggested this requirement may be unduly burdensome and that requiring sellers to providing copies upon request would satisfy regulatory concerns.*

- Preneed contracts should only be designated as irrevocable if the contract is being used to qualify for Medicaid (i.e.-for "spend down").

- Preneed contracts should be in writing and should clearly and conspicuously:
  - Include the name, address and phone number of the purchaser, beneficiary, provider and the seller;
  - Detail the disposition or facilities, services or merchandise requested;
  - Clearly identify if the contract is guaranteed or non-guaranteed on the face of the contract in a recognizable type (i.e.- a 12 to 13-point type).
  - Identify terms for cancelling the contract by the purchaser or by the seller for payment default.
  - Identify the funding mechanism including, the trust or financial institution where preneed funds will be held or the insurance company issuing an insurance policy.
  - (Meierhoffer 8/25/2008)Be signed by the purchaser, the preneed agent and the seller or a representative.

Deleted: Identify expenses to be retained by the seller.

Deleted: ¶

- Preneed contracts not in compliance with Chapter 436 should be rendered void [should this be voidable by the purchaser] and unenforceable. If not in compliance, payments may be recoverable by the purchaser or their legal representative plus attorney fees.

> ! ***Comments:*** *This requirement is similar to current law.*

- Sellers/providers should be prohibited from redesignating a preneed contract as a trust-funded, insurance-funded or joint-account funded preneed contract without the consent of the purchaser.

> ! ***Comments:*** *The Funeral Consumer Alliance suggested that purchasers should also be given a written statement identifying the financial consequences of the redesignation (i.e.- reduction in cash surrender value, interest accrual and fees).*

- On the death or legal incapacity of the purchaser, all rights or remedies of the purchaser should accrue to the benefit of the purchaser or his/her successor as designated in the contract. Proceeds payable under a life insurance contract, should be governed by insurance law and the insurance contract.

The Working Group approved the following consensus recommendations:

- Preneed contracts should clearly designate whether the contract is revocable or irrevocable.

> ! ***Comments:*** *Homesteaders Life Insurance Co., suggested the funding for preneed contracts should be made irrevocable and not the contract itself. The commenter remarked that irrevocable contracts may hinder a consumer's freedom of choice.*

> ! ***Comments:*** *The Board also recommended that contracts include notification that complaints regarding preneed sellers/providers may be forwarded to the Board and the current number/address of the Board. Representatives of AARP, the Silver Haired Legislators and the Funeral Consumer Alliance agreed with this suggestion.*

Do not require the above comment. The Board would then become the de facto arbiter for all contract issues that arise. Allow the two parties of the contract to settle any discrepancies prior to the Board becoming involved. This will lead to the Board hearing too many issues that could be resolved earlier (Meierhoffer 8/25/2008)

PRENEED PROVIDERS

The Working Group unanimously approved the following recommendations:

- In light of recent concerns raised by the Federal Trade Commission, preneed provider licensing should not be restricted to only funeral establishments or cemetery operators. Private individuals are currently authorized to sell funeral merchandise preneed or at-need. However, it should be clarified that Chapter 436 does not exempt any person from the licensing requirements of Chapter 333 governing funeral directors and establishment. What can be drafted to include persons not licensed by the State in any way who are actively engaged in pre-need sales/providing? Currently, an operator without a license may do so because the Board has no authority to govern such a person. (Meierhoffer 8/25/2008)

- Chapter 436 should clearly state that the provider designated in a preneed contract is obligated to provide the disposition, facilities, services or merchandise designated in the preneed contract.

- Providers must have a written agreement with each preneed seller that the provider has authorized to designate the licensee as a provider in a preneed contract.

- Providers should be required to report the name and address of its custodian of records and of all sellers authorized to name the licensee as a provider. The Board should be notified by the provider in writing within 15 days of any amendments or changes.

WORKING DRAFT

PRENEED SELLERS

The Working Group adopted the following unanimous recommendations:

- For purposes of licensure, Chapter 436 should be clarified to provide that a preneed trust is not required if the seller is only selling joint-account or insurance-funded preneed plans.

- Preneed sellers should have the option to sell either trust-funded, joint-account funded or an insurance-funded preneed contract. Sellers should notify the Board of the type of contracts to be sold.

- Sellers should report to the Board the name and address of its custodian of records and of all providers that have authorized the seller to name the licensee as a provider. The Board should be notified by the seller in writing of any amendments or changes.

- The written agreement between the provider and seller should include:
  - Consent from the provider authorizing the seller to designate the licensee as a provider.
  - Procedures for tracking preneed fund payments received by the provider. Homesteader's draft includes a provision that all payments be made to the insurer. We would like to see the initial payment be exempt from this provision. The initial payment is collected by the pre-need agent to be delivered with the signed contract to the insurer. (Meierhoffer 8/25/2008)

- Sellers should maintain "adequate records" of preneed contracts for the duration of the contract and for no less than two (2) years after the final disposition of the beneficiary, cancellation of the contract or after the facilities, services or merchandise have been provided.

WORKING DRAFT

The Working Group unanimously approved the following recommendations:

- Sellers should be required to issue receipts to the purchaser for preneed payments received by the seller.

The Working Group approved the following consensus recommendations:

- 100% of all payments for a trust-funded preneed contract should be deposited into trust. Sellers should be authorized to submit a request to the trustee for administrative expenses (see Additional Comments below).

> ! ***Comments:*** *APS and Meierhoffer suggested that requiring sellers to request expenses from the trustee would create additional administrative expenses that may be passed onto the consumer. APS and Meierhoffer strongly recommended retaining the current process of allowing the seller to retain the first 20% of contract payments and to trust the remaining 80%.*

Meierhoffer and APS were joined by Kutis Funeral Home, Mike Winters and Austin-Layne in this concern, as indicated on the following page. This concern is founded on the fact that to operate and maintain an active pre-need staff for the consumer, there are substantial costs involved to operate such a business. (Meierhoffer 8/25/2008)

- Payments for trust-funded preneed contracts should be deposited into trust within sixty-days of receipt.

> ! ***Comments:*** *Participants suggested that sixty-days would allow sufficient administrative time for processing and forwarding payments to the seller and for clearing payments made by check. However, other participants suggested that a 30-45 day deposit requirement would increase consumer protection.*

- Seller administrative expenses should be authorized from the initial payments received.

The following Working Group recommendations were unresolved: After considerable discussion and research, the Working Group did not reach a consensus or majority vote on the recommended allowance for seller administrative expenses. However, Participants recommended the following amounts:

- No administrative expense should be allowed.
- Three quarters (¾) of 1% of the face value of the Preneed Contract.
  - Josh Slocum
  - *Note: This provision models New York's preneed legislation.*
- ***Ten percent of face value: The majority of Participants agreed that 10% of the contract's face value would be a reasonable compromise.***
  - AARP
  - Silver Haired Legislature

    - Rep. Meadows
- Ten to fifteen percent
    - DIFP
- Twenty percent of face value
    - Mike Meierhoffer
    - Kutis Funeral Home
    - John McCulloch
    - Mike Winters
    - Austin-Layne

WORKING DRAFT

REGULATION OF TRUSTS & TRUSTEES

The Working Group unanimously approved the following recommendations:

GENERAL REQUIREMENTS:

> ! ***Comments:*** *Bill Stalter recommended that regulation of the trust and trustee functions activities would be better served if oversight of the trust was transferred to the Division of Finance.*

- Trustees of a preneed trust must be a state or federally chartered institution authorized to exercise trust powers in Missouri.

- Provisions of the Uniform Trust Act under Chapter 469 and Chapter 456 should not be wholly incorporated into Chapter 436.

> ! ***Comments:*** *Participants commented that Chapters 469 and 456 contain provisions that are not suited for preneed. For example, Chapters 469 and 456 allow the trustee and grantor to modify the statutory requirements by agreement. It was also suggested that the definition of income would be inappropriate for Chapter 436.*

- A preneed trust should terminate when trust principal no longer includes any payments made under any preneed contract. On termination the trustee should distribute all trust property, including principal and undistributed income, to the seller which established the trust. Should this be clarified to say that a pre-need trust terminates when all contracts covered by the trust have been fulfilled? (Meierhoffer 8/25/2008)

The Working Group approved the following consensus recommendations:

- Expenses of the trust, including trustee's fees, legal and accounting fees, investment expenses and taxes should be paid from the trust.

> ! ***Comments:*** *Several participants recommended that expenses of the trust should continue to be paid by the seller directly. Concerns were raised that allowing payment from the trust could reduce trust principal.*

The Working Group approved the following majority recommendations:

- Income of the trust should accrue and should generally not be distributed until the contract is fulfilled or otherwise cancelled.

> ! ***Comments:*** *Several participants recommended that the current income distribution rules should be maintained and income distributions allowed as earned.*

TRUSTEE DUTIES:

The Working Group unanimously approved the following recommendations:

- The prudent investor rule should be adopted for trustees. Specifically, trustees should invest and manage trust assets as a prudent investor would, by considering the purposes, terms, distribution requirements, and other circumstances of the trust. In satisfying this standard, the trustee should exercise reasonable care, skill, and caution.

- Trustees who have special skills or expertise, or who are named trustee in reliance upon the trustee's representation that the trustee has special skills or expertise, should have a duty to use those special skills or expertise when investing and managing trust assets.

- Within a reasonable time after accepting a trusteeship or receiving trust assets, a trustee should review the trust assets and make and implement decisions concerning the retention and disposition of assets in order to bring the trust portfolio into compliance with the purposes, terms, distribution requirements, and other circumstances of the trust, and with the requirements of Missouri law.

- The trustee should maintain "adequate books and records" of all transactions administered through the trust and pertaining to the trust generally.

CONFLICTS OF INTEREST: The Working Group unanimously agreed that conflicts of interest between trustees and investment advisors should be prohibited. Specifically, the following recommendations were made:

- The financial institution and investment advisor should not be controlled by or under common control with the seller.

- "Control", "controlled by" and "under common control" with should be defined as the possession, direct or indirect, of the power to direct or cause the direction of the management and polices of a person, whether through the ownership of voting securities, by contact other than the power is the result of an official position with or corporate office held otherwise, unless the power is the result of an official position with or corporate office held by the person.

- Control should be presumed to exist if any person, directly or indirectly, owns, controls, holds with the power to vote, or holds proxies representing, ten percent or more of the voting securities of any other person. This presumption may be

rebutted by a showing to the board that control does not in fact exist to determine within its sole discretion that control does not in fact exist.

- Trustees should be prohibited from selling, investing or authorizing any transaction involving the investment or management of trust property with:
  - The spouse of the trustee;
  - Descendants, siblings, parents, or spouses of a preneed seller or an officer, manager, director or employee of a preneed seller, provider or counselor;
  - Agents or attorneys of the trustee, preneed seller or provider; or
  - A corporation or other person or enterprise in which the trustee, preneed seller, preneed provider, or a preneed provider owns a significant interest or has an interest that might affect the trustee's best judgment.

! ***Comments:*** *Bill Stalter recommended that a seller should be allowed to have a relationship with the advisor so long as the fiduciary remains responsible for the trust's compliance with the prudent investor rule and retains title of the assets.*

INVESTMENT OF FUNDS:

The Working Group unanimously approved the following recommendations:

- Investment of trust funds should be limited to investments that have reasonable potential for growth or producing income.

- Trustees should be specifically restricted from investing trust funds in any insurance product. Homesteaders points out in their recommendation a ban on term insurance alone. We agree with their comments as submitted. (Meierhoffer 8/25/2008)

- Diversification of trust assets should be mandatory unless the trustee reasonably determines that, because of special circumstances, the purposes of the trust are better serviced without diversifying.

- In investing trust assets, a trustee should be required to consider:
  - General economic conditions;
  - The possible effect of inflation or deflation;
  - The expected tax consequences of investment decisions or strategies;
  - The role that each investment or course of action plays within the overall trust portfolio;
  - The expected total return from income and the appreciation of capital;
  - Other resources of the beneficiaries known to the trustee;
  - Needs for liquidity, regularity of income, and preservation or appreciation of capital;

- An asset's special relationship or special value, if any, to the purposes of the trust or to one or more of the beneficiaries; and
- The size of the portfolio, nature and estimated duration of the fiduciary relationship and distribution requirements under the governing instrument.

- Trustees and preneed licensees should be prohibited from procuring or accepting a loan against any investment or asset of the trust.

- Commingling of trust funds should be only be allowed if the trustee maintains adequate records that individually and separately identify the payments, income and distribution for each preneed contract. Commingling should be limited to payments received for Missouri preneed contracts.

SELECTIONS OF AGENTS/INDEPENDENT INVESTMENT ADVISORS:

- Trustees should only delegate duties and powers to an agent that a prudent trustee of comparable skills could properly delegate under the circumstances.

- If an agent is selected, the trustee should exercise reasonable care, skill, and caution in:
  - Selecting an agent;
  - Establishing the scope and terms of the delegation, consistent with the purposes and terms of the trust; and
  - Periodically reviewing the agent's actions and monitoring the agent's performance and compliance with the terms of the delegation.

- In performing a delegated function, an agent should owe a duty to the trust to exercise reasonable care to comply with the terms of the delegation.

- Agents that accept a delegation of powers or duties from a trustee should be deemed to have consented to the jurisdiction of Missouri courts.

- By selecting an agent, a trustee should not be relieved of any duty or responsibility imposed on the trustee by Missouri law.

The Working Group approved the following recommendations by majority vote:

- Sellers should be allowed to approve the investment advisor selected.

! ***Comments:*** *The Department of Insurance, Division of Finance, State Board and the Missouri Attorney General's Office unanimously agree that seller approval of the investment advisor would hinder the independence of the investment advisor and threaten consumer protection. The suggestion proposed would allow the NPS concerns to occur again. Consumers should not, and cannot, be placed at continued risk of unscrupulous business practices. A trustee of a financial institution should be more than capable of selecting an investment advisor that would be adequate for the trust. Seller "approval" is not and should not be required.*

INSURANCE-FUNDED PRENEED PLANS

The Working Group adopted the following unanimous recommendations:

- Currently, Chapter 436 does not clearly allow/regulate insurance-funded plans. Insurance funded preneed plans are a safe and necessary option. Accordingly, Chapter 436 should clearly authorize insurance-funded contracts.

- Insurance law should not apply to preneed contracts but should apply to any insurance sold with a preneed contract.

- Sellers should not charge, assess or collect any administrative fees for an insurance-funded preneed plan. Instead, sellers should only be allowed to receive/collect from a purchaser the amount required to pay insurance premiums as established by the insurer.

- In no instance, should a term life insurance product be used to fund a preneed contract. However, consumers should be allowed to assign proceeds from a term-life insurance product to a provider, or to designate a provider as a beneficiary under a preneed contract, provided that the assignment is not related to, or done in contemplate of, executing the sale of a preneed contract.

> ! ***Comments:*** *MFDEA recommended that a blanket prohibition may be overreaching and that consumers should still be allowed to assign proceeds from a pre-existing term-life product to a provider or to designate a funeral establishment as the beneficiary. MFDEA remarked that term life insurance may be the only affordable option for some consumers or the only insurance option that consumers who are older or have significant health problems may qualify for.*

To add to MFDEA's comment, this may be required during a Medicaid spend-down situation as well. (Meierhoffer 8/25/2008)

The Working Group adopted the following consensus recommendations:

- Payments received by the seller/provider for insurance-funded preneed contracts should be forwarded to the insurer within thirty (30) days of receipt.

> ! ***Comments:*** *Homesteaders remarked that sellers/providers should only be authorized to collect the initial premium payment. All subsequent premium payments should be made directly to the insurer.*

- Preneed contracts funded by a life insurance policy should include:
  - Terms for cancellation by the purchaser or seller;

- Notice that cancellation of the preneed contract will not cancel the life insurance policy funding the preneed contract.
- Notice that insurance cancellation must be made in writing to the insurer.
- Notice that the purchaser will only receive the cash surrender value of the policy, which may be less than the amount paid in, if cancelled after a designated time;
- Notice that the purchaser has the right to reassign/transfer the beneficiary designation or assignment to another funeral home.

! ***Comments:*** *To avoid confusion and potential misconstructions, concerns were raised that the majority of this information should be provided by the insurer and included in the insurance contract since it would require the seller to summarize the insurance contract. Additionally, Homesteaders suggested use of the National Association of Insurance Commissioner's model for insurance funded disclosures. Funeral Consumer Alliance also suggested that the amount of commission should also be disclosed in an insurance-funded contract.*

! ***Comments:*** *Funeral Consumer Alliance suggested that licensees should disclose to the purchaser if the licensee is an insurance agent/producer and if the licensee will receive any commission, payment or other consideration for the sale of an insurance product.*

We disagree with Funeral Consumer Alliance's comment above. What other regulated professions have such disclosures? (Meierhoffer 8/25/2008)

WORKING DRAFT

JOINT ACCOUNT-FUNDED PRENEED CONTRACTS

The Working Group unanimously recommended that the current provisions for joint-account funded preneed plans are adequate and should be maintained. However, the Working Group suggested the following minor changes:

- Chapter 436 should be clarified to provide that a preneed seller may sell joint-account funded contracts. Currently, Chapter 436 only authorizes joint accounts for providers.

- Sellers only utilizing joint-account funded preneed contracts should not be required to have a trust.

WORKING DRAFT

PAYMENTS TO PROVIDERS

The Working Group unanimously recommended the following:

- To request payment, providers should be required to submit a certificate of performance certifying that the provider has rendered services to the preneed beneficiary. The certificate of performance should be signed by the provider and the person authorized to make arrangements on behalf of the preneed beneficiary.

- Sellers should remit payment to providers within thirty (30) days after receiving a certificate of performance. Sellers should not be prohibited from also requiring submission of a certified death certificate.

WORKING DRAFT

CANCELLATION/PORTABILITY OF PRENEED CONTRACTS

The Working Group considered four distinct scenarios that generally arise over the life of a preneed contract:

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.

A. Contract Fulfillment:

The Working Group approved the following unanimous recommendations:

- On fulfillment, sellers should be entitled to payment as provided in the contract and the related income.

B. Transfer of Providers:

The Working Group approved the following unanimous recommendations:

- Chapter 436 should allow for 80% (Meierhoffer 8/25/2008) portability. Purchasers should have complete and unrestricted freedom to select an alternative provider. Purchasers should not be penalized nor should any additional fee or costs be assessed to the purchasers for a transfer.

  Deleted: 100%

- The new provider designated by the purchaser should be accepted by the seller if the provider agrees to accept the remaining payment owed the original provider as designated in the contract. Here, the newly designated provider would simply

"step into the shoes" of the original provider for purposes of payment and fulfilling the contract.

! ***Comments:*** *While MFDEA generally supported this recommendation, concerns were raised that the seller should be able to reject a designated provider if the seller does not have a contract with the provider or if legitimate business reasons exist for the seller not accepting the designation (i.e.- the provider has failed to comply with the contract in other instances or has misappropriated funds from the seller).*

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. The refund amount should be designated by statute (however, see below).

Additional Recommendations: 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, the following recommendations were suggested by Working Group Participants:

- 100% of all funds paid and held in trust should be refunded to the purchaser (including income).
- 100% of all funds held in trust should be refunded.
- 80% of all funds held in trust should be refunded. Meierhoffer agrees with this recommendation. (8/25/2008)
- 80% of all funds paid by the purchaser should be refunded.
- 80% of all funds paid should be refunded plus a portion of the income earned.

D. Cancellation By Seller For Non-Payment:

The Working Group approved the following unanimous recommendations:

- Sellers should be allowed to cancel the contract unilaterally if the purchaser is in default of payment.

- If cancelled by the seller, preneed purchasers should be refunded 80% of all amounts paid for the contract.

- Prior to cancellation, purchasers should be provided written notification from the seller of the seller's intent to cancel. The notice should be provided forty-five

days prior to cancellation and should allow the purchaser thirty days to remit the payment in arrears to avoid cancellation.

- If the seller does not cancel 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, 100% of all funds paid and held in trust should be refunded to the purchaser (including income).
- Eighty percent of all funds paid and held in trust should be refunded to purchasers. Meierhoffer agrees with this recommendation. (8/25/2008)

! ***Comments:*** *Bill Stalter recommended that issues regarding trust expenses and income/expense allocations would be better addressed in rulemaking.*

WORKING DRAFT

REPORTING REQUIREMENTS

To assist the Board in regulation, the Working Group unanimously recommended expanding the information submitted to the Board by preneed licensees.

ANNUAL REPORT
REQUIREMENTS FOR ALL PRENEED SELLERS

The Working Group approved the following unanimous recommendations: Annual reports filed with the Board by the seller should include:

- The purchaser's name and address and preneed contract number, if any for any contract sold since the last report (Meierhoffer 8/25/2008). Contract numbers should not be required but should be provided if available.
- The total number and face value of outstanding preneed contracts sold since the last report was filed.
- The contract amount for each preneed contract sold since the last annual report
- The name, address and contract number of all preneed agents authorized to sell preneed for the seller.
- The number of contracts fulfilled by the seller since the last report.
- The name and address of each provider contracted with the seller.
- The name and address of a custodian of preneed records.
- Authorization for the Board to conduct an audit and/or an examination of books and records.
- Any other information deemed necessary by the Board by rule.

Allow for the submission of data electronically to the Board for specific contract information as requested (i.e. names, addresses, contract numbers, etc.) (Meierhoffer 8/25/2008)

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ANNUAL REPORT REQUIREMENTS
FOR TRUST-FUNDED PRENEED CONTRACT SELLERS

The Working Group approved the following unanimous recommendations: Annual reports filed with the Board by the seller should include:

(The following should be certified as true and accurate by a corporate office of the trustee.)

- The name and address of the financial institution where the trust is held and the account number;
- The trust fund balance as reported in the previous year's report and the current trust fund balance.
- Principal contributions received since the last report.
- Total trust earnings and total distributions to the seller since the last report.
- A statement of assets and investments of the trust listing cash, real or personal property, stocks, bonds, and other assets. The listing should show cost, acquisition date and current market value of each asset and investment.
- Total expenses since the last report, excluding distributions to the seller.

ANNUAL REPORT REQUIREMENTS
FOR JOINT-ACCOUNT FUNDED PRENEED CONTRACT SELLERS

The Working Group approved the following unanimous recommendations: Annual reports filed with the Board by the seller should include:

(The following should be certified as true and accurate by a corporate office of the financial institution.)

- The number and address of the Missouri financial institution where the joint account is held and the account number.
- The amount on deposit in each joint account.
- The joint account balance reported the previous year.
- Principal contributions placed into each joint account since the last report.
- Total earnings since the previous report.
- Total distributions to the seller from each joint account since the previous year.
- Total expenses deducted from the joint account since the last report, excluding distributions to the seller.

ANNUAL REPORT REQUIREMENTS
FOR INSURER FUNDED PRENEED CONTRACT SELLERS

The Working Group approved the following unanimous recommendations:

- The name and address of each insurer issuing insurance to fund a preneed contract during the preceding year.
- The status and total death benefit and cash surrender value of each policy in force at the time of the report. ***(This should be certified as true and accurate by the insurer.)*** Homesteaders suggests in their draft requiring the only pertinent status that needs to be reported is in-force. Meierhoffer agrees with their suggestion as written. (Meierhoffer 8/25/2008)

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WORKING DRAFT

CONSUMER REPORTING / NOTIFICATIONS

The Working Group unanimously approved the following recommendations:

- Purchasers should be entitled to an annual report from the seller indicating the amount of funds paid by the purchaser during the reporting year and the name and address of the trustee.
- Sellers should inform purchasers of a change in trustee within thirty (30) days after the change. Notification should include the name, address and phone number of the trustee.

The Working Group approved the following majority recommendations:

(Meierhoffer 8/25/2008)

! ***Comments:*** *Participants expressed concerns that an annual report would create an unnecessary burden on preneed sellers and increase administrative expenses that would eventually be passed on to the consumer.*

Deleted: Purchasers should be notified by the trustee each time a deposit is made into trust for the contract.

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- Purchasers should be provided a receipt for each payment made by or on behalf of the purchaser. The receipt should be provided by the initial person receiving the payment (i.e.- the seller, provider or the agent). This provision should be waived for cases where payments are made directly to the trustee. These transactions are governed by banking law.(Meierhoffer 8/25/2008)

WORKING DRAFT

TERMINATION OF BUSINESS

The Board has experienced significant regulatory difficulty with ensuring that Missouri consumers are adequately protected when preneed providers and sellers cease doing business either voluntarily or involuntarily. As a result, the Working Group unanimously recommended the following:

PRENEED SELLERS:

- The Working Group approved the following unanimous recommendations: The following notification/reporting requirements should be mandated for preneed sellers:
  - Notice to the Board at least thirty (30) days prior to a seller ceasing business or transferring a majority of its stock/assets.
  - A final annual report filed with the Board which includes a detailed plan indicating how outstanding preneed contracts will be filled and/or satisfied and how assets will be allocated for preneed obligations.
  - Notice to all providers that the seller has ceased doing business thirty (30) days prior to the seller ceasing business or transferring a majority of stock/assets.
  - Notice to consumers that the seller will cease doing business and indicate a contact number for questions regarding preneed contracts, consumer refunds or how arrangements will be satisfied. Purchaser notification should be required at least thirty (30) days prior to ceasing business or, in instances of a sale/transfer, within thirty (30) days after completion of the sale/transfer.
  - Submission of any additional information designated by the Board.
- Upon notification, the Board should have the continuing ability to inspect, examine and/or audit the books and records of the preneed provider/seller to ensure contractual obligations are met.
- The Attorney General should be granted authority to enter the premises and access/take possession of the books and records any preneed seller who ceases business without notification to the Board.

PRENEED PROVIDERS:

- The following notification/reporting requirements should be mandated for preneed providers:
  - Notice to the Board at least thirty (30) days prior to the provider ceasing business or transferring a majority of its stock/assets.
  - A final annual report filed with the Board.
  - Notice of the provider's intent to all sellers with whom the provider has outstanding preneed contracts within thirty (30) days prior to the provider ceasing business or transferring/disposing of a majority of stock/assets.
  - Upon notification from the providers, sellers should be required to notify all purchasers that the provider has ceased doing business or has transferred ownership. Meierhoffer 8/25/2008)
  - Submission of any additional information designated by the Board.

Deleted: Notification should include provisions for selecting an alternative provider and should be provided within thirty (30) days after the provider ceasing business or transferring ownership/assets.

- Upon notification, the Board should have the continuing ability to inspect, examine and/or audit the books and records of the preneed provider to ensure contractual obligations are met.
- The Attorney General should be granted authority to enter the premises and access/take possession of the books and records any preneed provider who ceases business without notification to the Board.

WORKING DRAFT

AUDITS, INVESTIGATIONS AND EXAMINATIONS

The Working Group unanimously agreed that effective regulation of the preneed industry may only be accomplished by strengthening, clarifying and expanding the current investigation, examination and audit authority of the Board.

The Working Group unanimously recommended the following:

- The Board should be granted clear authority to:
  - Issue subpoenas to compel the production of books and records of any licensee or trustee.
  - Enter the premises or establishment where preneed business is conducted, or is advertised to be conducted, for the purposes of accessing books and records.
  - Conduct random or targeted inspections, with or without cause and at the discretion of the Board.
  - Investigate complaints and to investigate licensees to determine compliance with Chapter 436.
  - Conduct random or targeted examinations of books and records, at the discretion of the Board. The Board should be authorized to conduct an examination of each preneed seller at least once every five years.

> ! ***Comments:*** *Although the Working Group initially recommended every three years, the Board expressed concerns regarding cost and the financial feasibility of conducting such examinations.*

  - Sellers selling joint-account funded plans only should be exempt from the examinations conducted by the Board every five years. However, the Board should retain authority to audit or examine the seller, if deemed necessary.
  - Audit a preneed seller with cause if the Board has reasonable grounds for verifying the proper handling of preneed funds.
- Inspections, investigations, audits and examinations should be authorized with or without a complaint.
- The Board may request DIFP, the attorney general or the division of finance, to designate investigator(s) or financial examiner(s) to assist the Board with any inspection, investigation, examination or audit.
- Preneed licensees should clearly be required to cooperate with any inspection, investigation, examination or audit conducted by the Board, DIFP, the attorney general or the division of finance.
- Books and records of licensees should be made available to the Board by the licensees upon request.
- Costs of an inspection, investigation, examination or audit should be funded through licensing fees established by the Board by rule.

! ***Comments:*** *The Working Group unanimously agreed that examination/audit costs should not be charged to the licensee. Depending on the scope of the audit/examination, costs may be excessive and would be difficult to determine prior to the audit/exam. As a result, charging costs to licensees may have an overwhelming impact and could potentially result in licensee bankruptcies.*

ATTORNEY GENERAL AUTHORITY

The Working Group unanimously recommended the following:

If a violation of Chapter 436 is found after an investigation, audit or examination, the Attorney General should be authorized to initiate a judicial proceeding to:

- Declare rights.
- Approve a nonjudicial settlement.
- Appoint or remove a trustee.
- Interpret or construe the terms of the trust.
- Determine the validity of a trust or its terms.
- Compel a trustee to report or make an accounting.
- Enjoin a trustee from performing a particular act or to grant the trustee any necessary or desirable power.
- Review the actions of the trustee, including the exercise of any discretionary power.
- Determine trustee liability and to grant any available remedy for breach of a trust.
- Approve employment and compensation of agents.
- Determine the propriety of investments.
- Determine the timing and quantity of distributions and disposition of assets.
- Utilize any other power vested in the attorney general.

DISCIPLINARY AUTHORITY

The Working Group unanimously agreed that to effectively regulate Chapter 436, the Board's disciplinary process must be streamlined to allow for a more efficient and effective remedy. This would necessarily include, expanding the current grounds for discipline as well as the disciplinary tools available to the Board.

The Working Group unanimously recommended the following legislative change:

Section A.1. The board may refuse to issue any certificate of registration or authority, permit or license required under this chapter for one or any combination of causes stated in subsection 2 of this section. The board shall notify the applicant in writing of the reasons for the refusal and shall advise the applicant of his or her right to file a complaint with the administrative hearing commission as provided by chapter 621, RSMo.

2. The board may cause a complaint to be filed with the administrative hearing commission as provided by chapter 621, RSMo, against any holder of any certificate of registration or authority, permit or license required by this chapter or any person who has failed to renew or has surrendered his or her certificate of registration or authority, permit or license for any one or any combination of the following causes:

(1) Use of any controlled substance, as defined in chapter 195, RSMo, or alcoholic beverage to an extent that such use impairs a person's ability to perform the work of any profession licensed or regulated by this chapter;

(2) The person has been finally adjudicated and found guilty, or entered a plea of guilty or nolo contendere, in a criminal prosecution under the laws of any state or of the United States, for any offense reasonably related to the qualifications, functions or duties of any profession licensed or regulated under this chapter, for any offense involving a controlled substance, or for any offense an essential element of which is fraud, dishonesty or an act of violence, or for any offense involving moral turpitude, whether or not sentence is imposed;

(3) Use of fraud, deception, misrepresentation or bribery in securing any certificate of registration or authority, permit or license issued under this chapter or in obtaining permission to take any examination given or required under this chapter;

(4) Obtaining or attempting to obtain any fee, charge, tuition or other compensation by fraud, deception or misrepresentation;

(5) Incompetency, misconduct, gross negligence, fraud, misrepresentation or dishonesty in the performance of the functions or duties of any profession licensed or regulated by this chapter;

(6) Violation of, or assisting or enabling any person to violate, any provision of [sections 436 regulating preneed], or of any lawful rule or regulation adopted pursuant thereto;

(7) Impersonation of any person holding a certificate of registration or authority, permit or license or allowing any person061 to use his or her certificate of registration or authority, permit, license or diploma from any school;

(8) Disciplinary action against the holder of a license or other right to practice any profession regulated by this chapter granted by another state, territory, federal agency or country upon grounds for which revocation or suspension is authorized in this state;

(9) A person is finally adjudged insane or incompetent by a court of competent jurisdiction;

(10) Misappropriation or theft of preneed funds;

(11) Assisting or enabling any person to practice or offer to practice any profession licensed or regulated by [the provisions of Chapter 436 regulating preneed] who is not registered and currently eligible to practice thereunder;

(12) Issuance of a certificate of registration or authority, permit or license based upon a material mistake of fact;

(13) Failure to display a valid certificate or license if so required by this [the provisions of Chapter 436 regulating preneed] or any rule promulgated thereunder;

(14) Violation of any professional trust or confidence;

(15) Making or filing any report required by [the provisions of Chapter 436 regulating preneed] which the licensee knows to be false or knowingly failing to make or file a report required by [the provisions of Chapter 436 regulating preneed];

(16) Use of any advertisement or solicitation which is false, misleading or deceptive to the general public or persons to whom the advertisement or solicitation is primarily directed, or;

(19) Willfully and through undue influence selling a preneed contract.

3. After the filing of such complaint, the proceedings shall be conducted in accordance with the provisions of chapter 621, RSMo. Upon a finding by the administrative hearing commission that the grounds, provided in subsection 2 of this section, for disciplinary action are met, the board may, singly or in combination, censure or place the person named in the complaint on probation on such terms and conditions as the board deems appropriate for a period not to exceed five years, or may suspend, for a period not to exceed three years, or revoke the license, certificate, or permit.

4. Notwithstanding any other provision of this section, the board may automatically suspend a license if the Board finds, after an inspection, examination, investigation or audit, a shortage in any preneed trust or joint account which exceeds 20% of the total amount required to be held or deposited in the trust or account pursuant to [the provisions of Chapter 436 regulating preneed].

5. Any person whose license is suspended under subsection 4 of this section may appeal such suspension to the administrative hearing commission. Notice of such appeal must be received by the administrative hearing commission within ninety days of mailing, by certified mail, the notice of suspension. Failure of a person whose license was suspended to notify the administrative hearing commission of his or her intent to appeal waives all rights to appeal the suspension. Upon notice of such person's intent to appeal, a hearing shall be held before the administrative hearing commission pursuant to Chapter 621.

6. Use of the procedures set out in this section shall not preclude the application of the provisions of subsection 2 of section 333.061.

WORKING DRAFT

INJUNCTIVE/CIVIL AUTHORITY

The Working Group unanimously recommended the following:

- Similar to current law, the Board should have authority to seek injunctive relief or any other civil authority necessary to enjoin/restrain an entity from:
  - Unlicensed activity.
  - Engaging in any activity that would pose a substantial probability of danger to the public health, safety or welfare.
  - Engaging in any activity that presents a substantial probability of serious danger to the solvency of any preneed seller.
- The authority granted to the Board should be in addition to any other remedies authorized by law.
- Proper venue for any such action should be amended to include Cole County.
- Violation of Chapter 436 should be deemed violations of Chapter 407, under the jurisdiction of the Attorney General. In actions brought under Chapter 407, the court should be authorized to impose any penalty/remedy authorized under Chapter 436 or 407. Additionally remedies should include revocation/suspension of the preneed license.

CRIMINAL AUTHORITY

The Working Group unanimously recommended the following:

- Knowing and willful violations of Chapter 436 by incompetence, misconduct, gross negligence, fraud, misrepresentation or dishonesty should be deemed Class C felonies. *Comment: Violations are currently Class D felonies.*

FINES & CIVIL PENALTIES

The Working Group unanimously recommended the following:

- The Board should be authorized to impose civil penalties and fines as a form of discipline.
- Fines/Civil Penalties should be assessed in light of the seriousness of the violation found.
- Fines/civil penalties should be consistent with the fines/penalties currently authorized for other professions within the Division. Specifically, the legislature has approved civil penalties for the Real Estate Commission and Architects, Professional Engineers, Professional Land Surveyors and Landscape Architects in the amount of two thousand five hundred dollars for each offense.
- In considering a fine/civil penalty, the Board should be required to consider, among other factors,:

(1) If the violations are likely to continue or reoccur;

(2) Whether actual financial loss was sustained by consumers and if restitution has been made;

(3) If the violation was detected as part of a self-audit or internal compliance program and immediately reported to the Board; and

(4) In the violation had previously been detected, but inadequate policies and procedures were implemented to prevent reoccurrence.

! ***Comments:*** *Currently, the Attorney General also has authority to assess/request fines and penalties under Chapter 407. A concern was raised by MFDEA that preneed licensees may be subjected to double penalties if an action is initiated by the Board as well as through the Attorney General's Office. MFDEA and Meierhoffer suggested that if accepted, language should be developed to prevent duplicate imposition of fines/penalties by the Board and the Attorney General's Office for the same conduct.*

Response: As litigation counsel for the Board, the Attorney General's Office traditionally represents and coordinates with the Board in pursuing any remedy. Additionally, the remedies imposed by the Board and by the Attorney General's Office are distinctly different. The remedies imposed by the Board would be limited to licensing violations only. The remedies authorized under Chapter 407 are to redress/remedy a harm inflicted on the public at large. A concern was raised that if a licensee's conduct violates the licensing law as well as harms the public, expanded remedies would be appropriate.

WORKING DRAFT

FEES

The proposed recommendations would require additional funding for the Board to regulate the proposed provisions and to fulfill all statutory obligations.

The Working Group unanimously approved the following recommendations:

- Licensing and renewal fees for preneed seller, providers and agents as established by the Board by rule. If both the preneed sellers/providers are required to pay fees, the preneed agent licensing fees should be minimal and proportionately lower than preneed seller/providers.
- Preneed sellers should continue to be assessed a two-dollar fee per preneed contract sold during the annual reporting year as currently required.

WORKING DRAFT

CONCLUSION

WORKING DRAFT

CONCLUSION

Nationally, the preneed industry has experienced significant and sustained growth as consumers focus more attention on their final needs. Preneed arrangements can provide a valuable option to purchasers desiring to ensure their arrangements. Chapter 436 regulating preneed is in need of significant legislative changes. As reflected in the present crisis impacting Missouri, Chapter 436 must be enhanced and amended to ensure consumer protection and the continued viability of Missouri's preneed industry.

The Working Group appreciates the opportunity to share its recommendations. We look forward to providing any further assistance you may need.

WORKING DRAFT

Recommendations – Kutis

STATE BOARD OF EMBALMERS AND FUNERAL DIRECTORS

WORKING DRAFT

CHAPTER 436 WORKING GROUP RECOMMENDATIONS

Submitted: September 1, 2008

September 1, 2008

Dear Joint Committee Members:

Over the last year, the nation has witnessed an unprecedented crisis in the preneed industry. Estimates of the financial impact on Missouri consumers and the funeral industry are alarming. While recent concerns relate to a single entity, the crisis has focused much needed attention on the regulation of preneed funeral contracts in the state of Missouri and Chapter 436, RSMo, governing preneed sales.

The State Board of Embalmers and Funeral Directors (the "Board"), under the auspices of the Missouri Division of Professional Registration (the "Division"), regulates embalmers, funeral directors, funeral establishments, preneed sellers and preneed providers licensed in this state. As part of its statutory duties, the Board annually reviews legislation to identify potential recommendations of the Board. In recent years, this process has included a review of Chapter 436.

Senate Bill 780, enacted by the General Assembly 2008, which created the Joint Committee on Preneed Funeral Contracts. As part of its annual legislative review, the Board was invited to gather a working group of representatives from across the preneed industry to collectively identify suggested preneed recommendations for the Joint Committee's review. The Working Group consisted of a diverse representation from all aspects of the preneed industry, including, liaisons from various consumer groups, members of the State Board and representatives from the funeral, preneed and insurance industries.

The Working Group respectfully submits the attached recommendations to the Joint Committee for review. While diverse interests were represented, the Working Group unanimously agreed that revisions to Chapter 436 are desperately needed to better protect Missouri consumers and those funeral directors, funeral establishments, preneed providers and preneed sellers who truly dedicate themselves to serving the public.

We commend the General Assembly in convening the Joint Committee and in dedicating the time and resources to this important task.

Sincerely,

To be determined

OVERVIEW

WORKING DRAFT

I. GENERAL OVERVIEW:

During the 2008-2009 legislative session, various Chapter 436 proposals were introduced. Although not enacted, the proposals sparked intense discussion among regulators, consumers and professional groups. While a consensus was not reached, industry and regulatory groups were able to identify several common areas of agreement.

At the close of the legislative session, various representatives met with Senator Delbert Scott and Representative Jay Wasson to discuss Chapter 436 concerns. The Board was subsequently asked to formulate a working group to help identify agreed areas for legislative recommendations.

The Board hosted five (5) open meetings for the Working Group in Jefferson City, Missouri.[1] All meetings of the Working Group were conducted as open meetings in accordance with Chapter 610, RSMo. Notice of meetings and the proposed agenda were made available to the public and published on the Board's website.

II. PARTICIPANTS:

The Working Group consisted of representatives from consumer groups, funeral directors, preneed providers, preneed sellers, third-party preneed sellers, the Missouri Funeral Directors and Embalmers Association, related insurance companies and representatives from small, large and minority funeral establishments. Participants were chosen from prior legislative involvement and from recommendations made by legislators, Board members and related consumer groups. Members of the public were also invited to attend and given an opportunity to provide both oral and written comments.

The Working Group included:

REGULATORS:

Linda Bohrer	Acting Director- Department of Insurance, Financial Institutions and Professional Registration ("DIFP")
David Broeker	Division Director, Division of Professional Registration*
Sharon Euler	Office of the Attorney General
Mary Erickson	Senior Enforcement Counsel- DIFP
Larry McCord	General Counsel- DIFP
Mark Stahlhuth	Senior Counsel- Financial Section, DIFP
Rich Weaver	Director, Division of Finance

[1] Open meetings were hosted on July 8th. July 15th, July 24th, July 29th and August 12th.

* Did not participate as a voting member of the Working Group.

ADDITIONAL PARTICIPANTS:

James Reinhard,	Chair, State Board of Embalmers and Funeral Directors
Gary Fraker	Board Member
Joy Gerstein	Board Member
Todd Mahn	Board Member
Martin Vernon	Board Member
John McCulloch	Board Member/American Prearranged Services
Bob Baker	Wright Baker Hill Funeral Home
Barbara Brown	Layne Renaissance Chapel, LLC
Norma Collins	AARP
George Cline/ Tom Kutis	Kutis Funeral Home, Inc.
Jim Moody	Lobbyist, SCI
Rep. Timothy Meadows	
Michael Meierhoffer	Meierhoffer Funeral Home & Crematory, Inc.
Barbara Newman	Rep. Meadows' Office
Darlene Russell	Charter Life Insurance Co.
Josh Slocum	Executive Director, Funeral Consumer Alliance
Bill Stalter	Stalter Legal Services
Bill Trimm/ Jo Walker	Silver Haired Legislators
Don Otto	Executive Director, Missouri Funeral Director and Embalmers Association/Missouri Funeral Trust
Mark Warren	Inglish & Monaco- Representing Homesteaders Life Insurance, etc.
Mike Winters	Lobbyist, American Prearranged Services

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COMMITTEE SUPPORT STAFF:

Connie Clarkston	Director of Budget & Legislation, Division of Professional Registration'
Becky Dunn	Executive Director, State Board*
Jeana Groose	Administrative Assistant to Director of Budget & Legislation, Division of Professional Registration*
Kimberly Grinston	Legal Counsel, Division of Professional Registration*
Lori Hayes	Inspector, State Board*

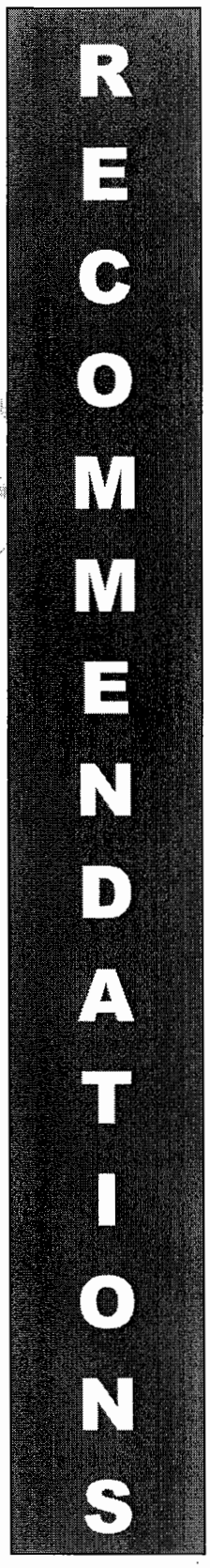
III. REVIEW PROCESS:

To guide the review, the Board circulated a survey with a listing by topic area of Chapter 436 proposals submitted to the Board in prior years. Participants were asked to rank the priority of topic areas listed for purposes of discussion. Surveys were made publicly available and were posted on the Board's website. The Division subsequently compiled the rankings and utilized results to structure the Working Group. [See Appendix 1- Bd. Survey].

The surveyed topics were ranked as follows:

[INCLUDE SURVEY RESULTS HERE]

WORKING DRAFT



RECOMMENDATIONS

WORKING DRA

Working Group recommendations have been compiled as follows:

Unanimous Recommendations:	Recommended by a unanimous vote of all Working Group Participants.
Consensus Recommendations:	Recommended by an overwhelming majority of Participants, generally with less than 15% of Participants dissenting.
Majority Recommendations:	Recommended by a simple majority vote of Working Group Participants.
Unresolved:	Majority vote not reached. Suggestions from Participants have been provided.

For purposes of this Report, recommendations have been categorized as follows:

I. General Regulatory Authority 10

II. Definitions 11-12

III. Licensing/Registration 13

IV. Preneed Contracts 14-15

V. Preneed Providers 16

VI. Trust-Funded Preneed Plans 18-19

VII. Regulation of Trusts & Trustees 20-23

VIII. Insurance-Funded Preneed Plans 24-25

IX. Joint Account-Funded Preneed Contracts 26

X. Payments to Providers 27

XI. Cancellation/Portability of Preneed Contracts 28-30

XII. Reporting Requirements 31-32
XIII. Consumer Reporting/Notifications 33
XIV. Termination of Business 34-35
XV. Audits, Investigations and Examinations 36-37
XVI. Disciplinary Authority 38-40
XVII. Enforcement Authority 41-42
XVIII. Fees 43
XIX. Conclusion 45

WORKING DRAFT

GENERAL REGULATORY AUTHORITY

The Working Group unanimously agreed to the following recommendations:

- Regulatory authority over Chapter 436 and preneed licensing should remain with the Board. Regulatory authority should not be transferred to another agency.

> ! ***Comments:*** *The Division and Board support this proposal but would also support transferring authority if another regulatory agency is deemed more appropriate.*

- The Missouri Attorney General should be granted concurrent jurisdiction with local prosecutors to prosecute violations of Chapter 436.

- The Board should be granted general rulemaking authority to administer Chapter 436 and to establish necessary fees.

> ! ***Comments:*** *Funeral Consumer Alliance suggested that the current licensee confidentiality restrictions should be revised to allow the dissemination of more information to the public. Division staff indicated that the current confidentiality restrictions apply to all regulated boards/commissions within the Division and would require a statutory change specific to the Board.*

Leave confidentiality restrictions in place, no need for specific statutory change for 436 –Kutis

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- The Board should be authorized to hire legal counsel to assist in the enforcement of Chapter 436.

> ! ***Comments:*** *Board staff indicated this proposal would allow them to utilize both the Attorney General's Office and outside counsel, if needed. Representatives from the Attorney General's Office refrained from the vote.*

DEFINITIONS

Several of Chapter 436's current definitions are insufficiently defined. Accordingly, the Working Group approved the following unanimous recommendations:

- ***"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.

- ***"Board,"*** the Missouri State Board of Embalmers and Funeral Directors.

- ***"Division",*** the division of professional registration of the department of insurance, financial institutions and professional registration.

- ***"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.

- ***"Guaranteed Contract",*** A preneed contract in which the future costs for the disposition, facilities, services or merchandise identified in the preneed contract are definitively designated and guaranteed/assured in the contract.

- ***"Insurance-Funded Preneed Contract",*** - A preneed contract which is designated to be funded by payments or proceeds from an insurance policy.

- ***"Joint-Account Funded Preneed Contract",*** - A preneed contract which designates that payments for the preneed contract made by or on behalf of the purchaser will be deposited and maintained in a joint account.

- ***"Market Value",*** - A fair market value,
  (a) As to cash, the amount 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 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.

- ***"Non-Guaranteed Contract",*** - A preneed contract in which the costs for the disposition, facilities, services or merchandise are not guaranteed/assured in the contract.

- ***"Person",*** any individual, partnership, corporation, cooperative, association, or other entity.

- ***"Preneed contract",*** any contract or other arrangement which provides for the final disposition of a dead human body, or for funeral or burial services or facilities, or for funeral merchandise, where such disposition, services, facilities or merchandise are not immediately required, including, but not limited to, an agreement providing for a membership fee or any other fee having as its purpose the furnishing of burial or funeral services or merchandise at a discount.

- ***"Preneed Agent,"*** any person authorized to sell a preneed contract for or on behalf of a preneed seller.

- Licensed Missouri Funeral Directors or apprentices need not be licensed separately as pre-need licensee - Kutis

- ***"Preneed trust",*** a trust established by a seller, as grantor, to receive deposits of, administer, and disburse payments received under preneed contracts by such seller, together with income thereon.

- ***"Provider",*** the person designated to provide the disposition or funeral services, facilities, or merchandise described in a preneed contract.

- ***"Purchaser",*** the person who is obligated to pay under a preneed contract.

- ***"Seller",*** the person who executes a preneed contract with a purchaser and who is obligated under such preneed contract to remit payment to the provider.

- ***"Trustee",*** the trustee of a preneed trust, including successor trustees.

- ***"Trust-Funded Preneed Contract",***- A preneed contract which provides that payments for the preneed contract shall be deposited and maintained in trust.

WORKING DRAFT

LICENSING / REGISTRATION

The Working Group agreed to the following consensus recommendations:

- A "license" should be required for all preneed providers/sellers. Currently, sellers and providers are "registered" with the Board. A "license" denotes legal obligations and more accurately reflect the authorization being issued by the Board.

- Individuals selling preneed for or on behalf of a preneed seller should be licensed by the Board as a preneed agent. As a condition of licensure, preneed agents should successfully pass the Missouri law examination currently offered by the Board, provided that Missouri licensed funeral directors should not be required to take an additional examination.

> ! ***Comments:*** ***John McCulloch (APS) expressed concerns imposing full licensing, testing or disciplinary requirements on preneed agents.***

- To be eligible for licensure/renewal, preneed agents, providers and sellers must be of good moral character, remit a licensing fee and have a high school diploma or the equivalent. If a corporation, licensure/renewal requirements should be applicable to each officer, director, manager or controlling shareholder.

- All preneed sellers or providers operating as business entities must be properly registered with the Missouri Secretary of State and authorized to conduct business in the state.

- Chapter 436 should be clarified to exempt endowed care cemetery operators governed by Chapter 214 from the provisions of Chapter 436. However, cemetery operators should be subject to Chapter 436 if the contract includes services that may only be lawfully provided by a licensed funeral director or embalmer.

- Chapter 436 should clearly provide that the provisions of the Chapter are inapplicable to contracts of insurance. However, Chapter 436 should apply to any preneed contract sold in conjunction with insurance. The current statutory language regarding insurance assignments or beneficiary designations is unclear and should be modified in compliance with the recommendation.

Kutis agrees

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- Due to potential costs, preneed licensees should not be required to obtain bonding or any specific insurance. The Working Group suggested that increasing consumer protections and regulatory oversight would adequately address the need for additional insurance/bonding.

PRENEED CONTRACTS

The Working Group unanimously approved the following recommendations:

- To accommodate the varying forms of preneed, Chapter 436 should define and regulate preneed contracts based on their funding mechanism. Specifically, preneed contracts should be classified as either insurance-funded, trust-funded or joint-account funded. Unique concerns relate to each different type of funding. Chapter 436 could be more effectively regulated if the provisions were modified to accommodate each specific form of funding.

- While minimum preneed contract requirements should be established, as provided below, a standard preneed contract form should not be required.

> ! ***Comments:*** *Although MFDEA supported the vote, representatives stressed that a standard form could be beneficial.*

- Preneed sellers should be required to maintain "adequate records" of preneed contracts for the duration of the contract and for no less than two (2) years after the final disposition of the beneficiary, cancellation of the contract or after the facilities, services or merchandise have been provided. Contracts should be provided to the Board on request.

> ! ***Comments:*** *Funeral Consumer Alliance recommended that sellers should also provide copies of all preneed contracts to the Board. The Board suggested this requirement may be unduly burdensome and that requiring sellers to providing copies upon request would satisfy regulatory concerns.*

Kutis agrees with the Board – unduly burdensome

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- Preneed contracts should only be designated as irrevocable if the contract is being used to qualify for Medicaid (i.e.-for "spend down").

Kutis disagrees- Contracts should be able to be made irrevocable in accordance with purchaser's wishes or for Medicaid spend down. This would keep pre-need funds unavailable to others (perhaps family members – this has happened) who want to use the funds for their own purposes rather than for the purchaser's final expenses.

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- Preneed contracts should be in writing and should clearly and conspicuously:
  - Include the name, address and phone number of the purchaser, beneficiary, provider and the seller;
  - Detail the disposition or facilities, services or merchandise requested;
  - Clearly identify if the contract is guaranteed or non-guaranteed on the face of the contract in a recognizable type (i.e.- a 12 to 13-point type).
  - Identify terms for cancelling the contract by the purchaser or by the seller for payment default.
  - Identify the funding mechanism including, the trust or financial institution where preneed funds will be held or the insurance company issuing an insurance policy.

- Identify expenses to be retained by the seller.
- Kutis- Remove this item. There's no need, nor precedent, for any business to reveal its expenses when someone purchases something from them.
- Be signed by the purchaser, the preneed agent and the seller or a representative.

- Preneed contracts not in compliance with Chapter 436 should be rendered void [should this be voidable by the purchaser] and unenforceable. If not in compliance, payments may be recoverable by the purchaser or their legal representative plus attorney fees.

> ! ***Comments:*** *This requirement is similar to current law.*

- Sellers/providers should be prohibited from redesignating a preneed contract as a trust-funded, insurance-funded or joint-account funded preneed contract without the consent of the purchaser.
- Kutis agrees redesignating prohibited

> ! ***Comments:*** *The Funeral Consumer Alliance suggested that purchasers should also be given a written statement identifying the financial consequences of the redesignation (i.e.- reduction in cash surrender value, interest accrual and fees).*

- On the death or legal incapacity of the purchaser, all rights or remedies of the purchaser should accrue to the benefit of the purchaser or his/her successor as designated in the contract. Proceeds payable under a life insurance contract, should be governed by insurance law and the insurance contract.

The Working Group approved the following consensus recommendations:

- Preneed contracts should clearly designate whether the contract is revocable or irrevocable.

> ! ***Comments:*** *Homesteaders Life Insurance Co., suggested the funding for preneed contracts should be made irrevocable and not the contract itself. The commenter remarked that irrevocable contracts may hinder a consumer's freedom of choice.*

Kutis disagrees – funding and contract both should be revocable, to protect right of consumer to cancel, unless made irrevocable by purchaser

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> ! ***Comments:*** *The Board also recommended that contracts include notification that complaints regarding preneed sellers/providers may be forwarded to the Board and the current number/address of the Board. Representatives of AARP, the Silver Haired Legislators and the Funeral Consumer Alliance agreed with this suggestion.*

PRENEED PROVIDERS

The Working Group unanimously approved the following recommendations:

- In light of recent concerns raised by the Federal Trade Commission, preneed provider licensing should not be restricted to only funeral establishments or cemetery operators. Private individuals are currently authorized to sell funeral merchandise preneed or at-need. However, it should be clarified that Chapter 436 does not exempt any person from the licensing requirements of Chapter 333 governing funeral directors and establishment.

- Chapter 436 should clearly state that the provider designated in a preneed contract is obligated to provide the disposition, facilities, services or merchandise designated in the preneed contract.

- Providers must have a written agreement with each preneed seller that the provider has authorized to designate the licensee as a provider in a preneed contract.

- Providers should be required to report the name and address of its custodian of records and of all sellers authorized to name the licensee as a provider. The Board should be notified by the provider in writing within 15 days of any amendments or changes.

WORKING DRAFT

PRENEED SELLERS

The Working Group adopted the following unanimous recommendations:

- For purposes of licensure, Chapter 436 should be clarified to provide that a preneed trust is not required if the seller is only selling joint-account or insurance-funded preneed plans.

- Preneed sellers should have the option to sell either trust-funded, joint-account funded or an insurance-funded preneed contract. Sellers should notify the Board of the type of contracts to be sold.

- Sellers should report to the Board the name and address of its custodian of records and of all providers that have authorized the seller to name the licensee as a provider. The Board should be notified by the seller in writing of any amendments or changes.

- The written agreement between the provider and seller should include:
  - Consent from the provider authorizing the seller to designate the licensee as a provider.
  - Procedures for tracking preneed fund payments received by the provider.

- Sellers should maintain "adequate records" of preneed contracts for the duration of the contract and for no less than two (2) years after the final disposition of the beneficiary, cancellation of the contract or after the facilities, services or merchandise have been provided.

WORKING DRAFT

The Working Group unanimously approved the following recommendations:

- Sellers should be required to issue receipts to the purchaser for preneed payments received by the seller.

The Working Group approved the following consensus recommendations:

- 100% of all payments for a trust-funded preneed contract should be deposited into trust. Sellers should be authorized to submit a request to the trustee for administrative expenses (see Additional Comments below).

> ! ***Comments:*** *APS and Meierhoffer suggested that requiring sellers to request expenses from the trustee would create additional administrative expenses that may be passed onto the consumer. APS and Meierhoffer strongly recommended retaining the current process of allowing the seller to retain the first 20% of contract payments and to trust the remaining 80%.*

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Kutis agrees with maintaining current process. 80% into trust. 20% remains available under current regulation, interest remains with the seller, and seller has right to use of that interest at any time. purchaser has right to cancel and receive 80% minimum, sellers discretion to return 100% (most funeral homes in this area do this already). Putting 100% in and then getting expenses back from the bank is unduly burdensome on the bank and the funeral home as well as cost ineffective. Fees would be passed on to the consumer.

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- Payments for trust-funded preneed contracts should be deposited into trust within sixty-days of receipt.

> ! ***Comments:*** *Participants suggested that sixty-days would allow sufficient administrative time for processing and forwarding payments to the seller and for clearing payments made by check. However, other participants suggested that a 30-45 day deposit requirement would increase consumer protection.*

- Seller administrative expenses should be authorized from the initial payments received.

The following Working Group recommendations were unresolved: After considerable discussion and research, the Working Group did not reach a consensus or majority vote on the recommended allowance for seller administrative expenses. However, Participants recommended the following amounts:

- No administrative expense should be allowed.
- Three quarters (¾) of 1% of the face value of the Preneed Contract.
  - Josh Slocum
  - *Note: This provision models New York's preneed legislation.*

- ***Ten percent of face value: The majority of Participants agreed that 10% of the contract's face value would be a reasonable compromise.***
  - AARP
  - Silver Haired Legislature
  - Rep. Meadows
- Ten to fifteen percent
  - DIFP
- Twenty percent of face value
  - Mike Meierhoffer
  - Kutis Funeral Home
  - John McCulloch
  - Mike Winters
  - Austin-Layne

WORKING DRAFT

REGULATION OF TRUSTS & TRUSTEES

The Working Group unanimously approved the following recommendations:

GENERAL REQUIREMENTS:

> ! ***Comments:*** *Bill Stalter recommended that regulation of the trust and trustee functions activities would be better served if oversight of the trust was transferred to the Division of Finance.*

- Trustees of a preneed trust must be a state or federally chartered institution authorized to exercise trust powers in Missouri.

- Provisions of the Uniform Trust Act under Chapter 469 and Chapter 456 should not be wholly incorporated into Chapter 436.

> ! ***Comments:*** *Participants commented that Chapters 469 and 456 contain provisions that are not suited for preneed. For example, Chapters 469 and 456 allow the trustee and grantor to modify the statutory requirements by agreement. It was also suggested that the definition of income would be inappropriate for Chapter 436.*

- A preneed trust should terminate when trust principal no longer includes any payments made under any preneed contract. On termination the trustee should distribute all trust property, including principal and undistributed income, to the seller which established the trust.

The Working Group approved the following consensus recommendations:

- Expenses of the trust, including trustee's fees, legal and accounting fees, investment expenses and taxes should be paid from the trust.

> ! ***Comments:*** *Several participants recommended that expenses of the trust should continue to be paid by the seller directly. Concerns were raised that allowing payment from the trust could reduce trust principal.*

Kutis agrees to continue to have seller pay fees

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The Working Group approved the following majority recommendations:

- Income of the trust should accrue and should generally not be distributed until the contract is fulfilled or otherwise cancelled.

Kutis- Current distribution rules should continue to apply. No changes required.

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! ***Comments:*** *Several participants recommended that the current income distribution rules should be maintained and income distributions allowed as earned.*

TRUSTEE DUTIES:

The Working Group unanimously approved the following recommendations:

- The prudent investor rule should be adopted for trustees. Specifically, trustees should invest and manage trust assets as a prudent investor would, by considering the purposes, terms, distribution requirements, and other circumstances of the trust. In satisfying this standard, the trustee should exercise reasonable care, skill, and caution.

- Trustees who have special skills or expertise, or who are named trustee in reliance upon the trustee's representation that the trustee has special skills or expertise, should have a duty to use those special skills or expertise when investing and managing trust assets.

- Within a reasonable time after accepting a trusteeship or receiving trust assets, a trustee should review the trust assets and make and implement decisions concerning the retention and disposition of assets in order to bring the trust portfolio into compliance with the purposes, terms, distribution requirements, and other circumstances of the trust, and with the requirements of Missouri law.

- The trustee should maintain "adequate books and records" of all transactions administered through the trust and pertaining to the trust generally.

CONFLICTS OF INTEREST: The Working Group unanimously agreed that conflicts of interest between trustees and investment advisors should be prohibited. Specifically, the following recommendations were made:

- The financial institution and investment advisor should not be controlled by or under common control with the seller.

- "Control", "controlled by" and "under common control" with should be defined as the possession, direct or indirect, of the power to direct or cause the direction of the management and polices of a person, whether through the ownership of voting securities, by contact other than the power is the result of an official position with or corporate office held otherwise, unless the power is the result of an official position with or corporate office held by the person.

- Control should be presumed to exist if any person, directly or indirectly, owns, controls, holds with the power to vote, or holds proxies representing, ten percent

or more of the voting securities of any other person. This presumption may be rebutted by a showing to the board that control does not in fact exist to determine within its sole discretion that control does not in fact exist.

- Trustees should be prohibited from selling, investing or authorizing any transaction involving the investment or management of trust property with:
  - The spouse of the trustee;
  - Descendants, siblings, parents, or spouses of a preneed seller or an officer, manager, director or employee of a preneed seller, provider or counselor;
  - Agents or attorneys of the trustee, preneed seller or provider; or
  - A corporation or other person or enterprise in which the trustee, preneed seller, preneed provider, or a preneed provider owns a significant interest or has an interest that might affect the trustee's best judgment.

! ***Comments:*** *Bill Stalter recommended that a seller should be allowed to have a relationship with the advisor so long as the fiduciary remains responsible for the trust's compliance with the prudent investor rule and retains title of the assets.*

INVESTMENT OF FUNDS:

The Working Group unanimously approved the following recommendations:

- Investment of trust funds should be limited to investments that have reasonable potential for growth or producing income.

- Trustees should be specifically restricted from investing trust funds in any insurance product.

- Diversification of trust assets should be mandatory unless the trustee reasonably determines that, because of special circumstances, the purposes of the trust are better serviced without diversifying.

- In investing trust assets, a trustee should be required to consider:
  - General economic conditions;
  - The possible effect of inflation or deflation;
  - The expected tax consequences of investment decisions or strategies;
  - The role that each investment or course of action plays within the overall trust portfolio;
  - The expected total return from income and the appreciation of capital;
  - Other resources of the beneficiaries known to the trustee;
  - Needs for liquidity, regularity of income, and preservation or appreciation of capital;
  - An asset's special relationship or special value, if any, to the purposes of the trust or to one or more of the beneficiaries; and

- The size of the portfolio, nature and estimated duration of the fiduciary relationship and distribution requirements under the governing instrument.

- Trustees and preneed licensees should be prohibited from procuring or accepting a loan against any investment or asset of the trust.

- Commingling of trust funds should be only be allowed if the trustee maintains adequate records that individually and separately identify the payments, income and distribution for each preneed contract. Commingling should be limited to payments received for Missouri preneed contracts.

SELECTIONS OF AGENTS/INDEPENDENT INVESTMENT ADVISORS:

- Trustees should only delegate duties and powers to an agent that a prudent trustee of comparable skills could properly delegate under the circumstances.

- If an agent is selected, the trustee should exercise reasonable care, skill, and caution in:
  - Selecting an agent;
  - Establishing the scope and terms of the delegation, consistent with the purposes and terms of the trust; and
  - Periodically reviewing the agent's actions and monitoring the agent's performance and compliance with the terms of the delegation.

- In performing a delegated function, an agent should owe a duty to the trust to exercise reasonable care to comply with the terms of the delegation.

- Agents that accept a delegation of powers or duties from a trustee should be deemed to have consented to the jurisdiction of Missouri courts.

- By selecting an agent, a trustee should not be relieved of any duty or responsibility imposed on the trustee by Missouri law.

The Working Group approved the following recommendations by majority vote:

- Sellers should be allowed to approve the investment advisor selected.

! ***Comments:*** *The Department of Insurance, Division of Finance, State Board and the Missouri Attorney General's Office unanimously agree that seller approval of the investment advisor would hinder the independence of the investment advisor and threaten consumer protection. The suggestion proposed would allow the NPS concerns to occur again. Consumers should not, and cannot, be placed at continued risk of unscrupulous business practices. A trustee of a financial institution should be more than capable of selecting an investment advisor that would be adequate for the trust. Seller "approval" is not and should not be required.*

INSURANCE-FUNDED PRENEED PLANS

The Working Group adopted the following unanimous recommendations:

- Currently, Chapter 436 does not clearly allow/regulate insurance-funded plans. Insurance funded preneed plans are a safe and necessary option. Accordingly, Chapter 436 should clearly authorize insurance-funded contracts.

- Insurance law should not apply to preneed contracts but should apply to any insurance sold with a preneed contract.

- Sellers should not charge, assess or collect any administrative fees for an insurance-funded preneed plan. Instead, sellers should only be allowed to receive/collect from a purchaser the amount required to pay insurance premiums as established by the insurer.

- In no instance, should a term life insurance product be used to fund a preneed contract. However, consumers should be allowed to assign proceeds from a term-life insurance product to a provider, or to designate a provider as a beneficiary under a preneed contract, provided that the assignment is not related to, or done in contemplate of, executing the sale of a preneed contract.

> ! ***Comments:*** *MFDEA recommended that a blanket prohibition may be overreaching and that consumers should still be allowed to assign proceeds from a pre-existing term-life product to a provider or to designate a funeral establishment as the beneficiary. MFDEA remarked that term life insurance may be the only affordable option for some consumers or the only insurance option that consumers who are older or have significant health problems may qualify for.*

The Working Group adopted the following consensus recommendations:

- Payments received by the seller/provider for insurance-funded preneed contracts should be forwarded to the insurer within thirty (30) days of receipt.

> ! ***Comments:*** *Homesteaders remarked that sellers/providers should only be authorized to collect the initial premium payment. All subsequent premium payments should be made directly to the insurer.*

- Preneed contracts funded by a life insurance policy should include:
  - Terms for cancellation by the purchaser or seller;
  - Notice that cancellation of the preneed contract will not cancel the life insurance policy funding the preneed contract.

- Notice that insurance cancellation must be made in writing to the insurer.
- Notice that the purchaser will only receive the cash surrender value of the policy, which may be less than the amount paid in, if cancelled after a designated time;
- Notice that the purchaser has the right to reassign/transfer the beneficiary designation or assignment to another funeral home.

! ***Comments:*** *To avoid confusion and potential misconstructions, concerns were raised that the majority of this information should be provided by the insurer and included in the insurance contract since it would require the seller to summarize the insurance contract. Additionally, Homesteaders suggested use of the National Association of Insurance Commissioner's model for insurance funded disclosures. Funeral Consumer Alliance also suggested that the amount of commission should also be disclosed in an insurance-funded contract.*

! ***Comments:*** *Funeral Consumer Alliance suggested that licensees should disclose to the purchaser if the licensee is an insurance agent/producer and if the licensee will receive any commission, payment or other consideration for the sale of an insurance product.*

WORKING DRAFT

JOINT ACCOUNT-FUNDED PRENEED CONTRACTS

The Working Group unanimously recommended that the current provisions for joint-account funded preneed plans are adequate and should be maintained. However, the Working Group suggested the following minor changes:

- Chapter 436 should be clarified to provide that a preneed seller may sell joint-account funded contracts. Currently, Chapter 436 only authorizes joint accounts for providers.

- Sellers only utilizing joint-account funded preneed contracts should not be required to have a trust.

WORKING DRAFT

PAYMENTS TO PROVIDERS

The Working Group unanimously recommended the following:

- To request payment, providers should be required to submit a certificate of performance certifying that the provider has rendered services to the preneed beneficiary. The certificate of performance should be signed by the provider and the person authorized to make arrangements on behalf of the preneed beneficiary.

- Sellers should remit payment to providers within thirty (30) days after receiving a certificate of performance. Sellers should not be prohibited from also requiring submission of a certified death certificate.

WORKING DRAFT

CANCELLATION/PORTABILITY OF PRENEED CONTRACTS

The Working Group considered four distinct scenarios that generally arise over the life of a preneed contract:

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.

A. Contract Fulfillment:

The Working Group approved the following unanimous recommendations:

- On fulfillment, sellers should be entitled to payment as provided in the contract and the related income.

B. Transfer of Providers:

The Working Group approved the following unanimous recommendations:

- Chapter 436 should allow for 100% portability. Purchasers should have complete and unrestricted freedom to select an alternative provider. Purchasers should not be penalized nor should any additional fee or costs be assessed to the purchasers for a transfer.

- The new provider designated by the purchaser should be accepted by the seller if the provider agrees to accept the remaining payment owed the original provider as designated in the contract. Here, the newly designated provider would simply

"step into the shoes" of the original provider for purposes of payment and fulfilling the contract.

! ***Comments:*** *While MFDEA generally supported this recommendation, concerns were raised that the seller should be able to reject a designated provider if the seller does not have a contract with the provider or if legitimate business reasons exist for the seller not accepting the designation (i.e.- the provider has failed to comply with the contract in other instances or has misappropriated funds from the seller).*

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. The refund amount should be designated by statute (however, see below).

Additional Recommendations: 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, the following recommendations were suggested by Working Group Participants:

- 100% of all funds paid and held in trust should be refunded to the purchaser (including income).
- 100% of all funds held in trust should be refunded.
- 80% of all funds held in trust should be refunded.
- 80% of all funds paid by the purchaser should be refunded.
- 80% of all funds paid should be refunded plus a portion of the income earned.

Kuits – income earned retained by seller

Deleted: ¶

D. Cancellation By Seller For Non-Payment:

The Working Group approved the following unanimous recommendations:

- Sellers should be allowed to cancel the contract unilaterally if the purchaser is in default of payment.

- If cancelled by the seller, preneed purchasers should be refunded 80% of all amounts paid for the contract.

- Prior to cancellation, purchasers should be provided written notification from the seller of the seller's intent to cancel. The notice should be provided forty-five

days prior to cancellation and should allow the purchaser thirty days to remit the payment in arrears to avoid cancellation.

- If the seller does not cancel 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, 100% of all funds paid and held in trust should be refunded to the purchaser (including income).
- Kutis- not the income
- Eighty percent of all funds paid and held in trust should be refunded to purchasers.

! ***Comments:*** *Bill Stalter recommended that issues regarding trust expenses and income/expense allocations would be better addressed in rulemaking.*

WORKING DRAFT

REPORTING REQUIREMENTS

To assist the Board in regulation, the Working Group unanimously recommended expanding the information submitted to the Board by preneed licensees.

ANNUAL REPORT
REQUIREMENTS FOR ALL PRENEED SELLERS

The Working Group approved the following unanimous recommendations: Annual reports filed with the Board by the seller should include:

- The purchaser's name and address and preneed contract number, if any. Contract numbers should not be required but should be provided if available..
- The total number and face value of outstanding preneed contracts sold since the last report was filed.
- The contract amount for each preneed contract sold since the last annual report
- The name, address and contract number of all preneed agents authorized to sell preneed for the seller.
- The number of contracts fulfilled by the seller since the last report.
- The name and address of each provider contracted with the seller.
- The name and address of a custodian of preneed records.
- Authorization for the Board to conduct an audit and/or an examination of books and records.
- Any other information deemed necessary by the Board by rule.

ANNUAL REPORT REQUIREMENTS
FOR TRUST-FUNDED PRENEED CONTRACT SELLERS

The Working Group approved the following unanimous recommendations: Annual reports filed with the Board by the seller should include:

(The following should be certified as true and accurate by a corporate office of the trustee.)

- The name and address of the financial institution where the trust is held and the account number;
- The trust fund balance as reported in the previous year's report and the current trust fund balance.
- Principal contributions received since the last report.
- Total trust earnings and total distributions to the seller since the last report.
- A statement of assets and investments of the trust listing cash, real or personal property, stocks, bonds, and other assets. The listing should show cost, acquisition date and current market value of each asset and investment.
- Total expenses since the last report, excluding distributions to the seller.

ANNUAL REPORT REQUIREMENTS
FOR JOINT-ACCOUNT FUNDED PRENEED CONTRACT SELLERS

The Working Group approved the following unanimous recommendations: Annual reports filed with the Board by the seller should include:

(The following should be certified as true and accurate by a corporate office of the financial institution.)

- The number and address of the Missouri financial institution where the joint account is held and the account number.
- The amount on deposit in each joint account.
- The joint account balance reported the previous year.
- Principal contributions placed into each joint account since the last report.
- Total earnings since the previous report.
- Total distributions to the seller from each joint account since the previous year.
- Total expenses deducted from the joint account since the last report, excluding distributions to the seller.

ANNUAL REPORT REQUIREMENTS
FOR INSURER FUNDED PRENEED CONTRACT SELLERS

The Working Group approved the following unanimous recommendations:

- The name and address of each insurer issuing insurance to fund a preneed contract during the preceding year.
- The status and total death benefit and cash surrender value of each policy in force at the time of the report. ***(This should be certified as true and accurate by the insurer.)***

WORKING DRAFT

CONSUMER REPORTING / NOTIFICATIONS

The Working Group unanimously approved the following recommendations:

- Purchasers should be entitled to an annual report from the seller indicating the amount of funds paid by the purchaser during the reporting year and the name and address of the trustee.
- Sellers should inform purchasers of a change in trustee within thirty (30) days after the change. Notification should include the name, address and phone number of the trustee.

The Working Group approved the following majority recommendations:

- Purchasers should be notified by the trustee each time a deposit is made into trust for the contract.

> ! ***Comments:*** *Participants expressed concerns that an annual report would create an unnecessary burden on preneed sellers and increase administrative expenses that would eventually be passed on to the consumer.*

Kutis – record of payments available to purchaser, but no need to notify each time a payment is made, agree annual report burdensome and costly, present reporting rules are satisfactory.

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- Purchasers should be provided a receipt for each payment made by or on behalf of the purchaser. The receipt should be provided by the initial person receiving the payment (i.e.- the seller, provider or the agent).

WORKING DRAFT

TERMINATION OF BUSINESS

The Board has experienced significant regulatory difficulty with ensuring that Missouri consumers are adequately protected when preneed providers and sellers cease doing business either voluntarily or involuntarily. As a result, the Working Group unanimously recommended the following:

PRENEED SELLERS:

- The Working Group approved the following unanimous recommendations: The following notification/reporting requirements should be mandated for preneed sellers:
  - Notice to the Board at least thirty (30) days prior to a seller ceasing business or transferring a majority of its stock/assets.
  - A final annual report filed with the Board which includes a detailed plan indicating how outstanding preneed contracts will be filled and/or satisfied and how assets will be allocated for preneed obligations.
  - Notice to all providers that the seller has ceased doing business thirty (30) days prior to the seller ceasing business or transferring a majority of stock/assets.
  - Notice to consumers that the seller will cease doing business and indicate a contact number for questions regarding preneed contracts, consumer refunds or how arrangements will be satisfied. Purchaser notification should be required at least thirty (30) days prior to ceasing business or, in instances of a sale/transfer, within thirty (30) days after completion of the sale/transfer.
  - Submission of any additional information designated by the Board.
- Upon notification, the Board should have the continuing ability to inspect, examine and/or audit the books and records of the preneed provider/seller to ensure contractual obligations are met.
- The Attorney General should be granted authority to enter the premises and access/take possession of the books and records any preneed seller who ceases business without notification to the Board.

PRENEED PROVIDERS:

- The following notification/reporting requirements should be mandated for preneed providers:
  - Notice to the Board at least thirty (30) days prior to the provider ceasing business or transferring a majority of its stock/assets.
  - A final annual report filed with the Board.
  - Notice of the provider's intent to all sellers with whom the provider has outstanding preneed contracts within thirty (30) days prior to the provider ceasing business or transferring/disposing of a majority of stock/assets.
  - Upon notification from the providers, sellers should be required to notify all purchasers that the provider has ceased doing business or has transferred ownership. Notification should include provisions for

selecting an alternative provider and should be provided within thirty (30) days after the provider ceasing business or transferring ownership/assets.
    - Submission of any additional information designated by the Board.
- Upon notification, the Board should have the continuing ability to inspect, examine and/or audit the books and records of the preneed provider to ensure contractual obligations are met.
- The Attorney General should be granted authority to enter the premises and access/take possession of the books and records any preneed provider who ceases business without notification to the Board.

WORKING DRAFT

AUDITS, INVESTIGATIONS AND EXAMINATIONS

The Working Group unanimously agreed that effective regulation of the preneed industry may only be accomplished by strengthening, clarifying and expanding the current investigation, examination and audit authority of the Board.

The Working Group unanimously recommended the following:

- The Board should be granted clear authority to:
  - Issue subpoenas to compel the production of books and records of any licensee or trustee.
  - Enter the premises or establishment where preneed business is conducted, or is advertised to be conducted, for the purposes of accessing books and records.
  - Conduct random or targeted inspections, with or without cause and at the discretion of the Board.
  - Investigate complaints and to investigate licensees to determine compliance with Chapter 436.
  - Conduct random or targeted examinations of books and records, at the discretion of the Board. The Board should be authorized to conduct an examination of each preneed seller at least once every five years.

> ! ***Comments:*** *Although the Working Group initially recommended every three years, the Board expressed concerns regarding cost and the financial feasibility of conducting such examinations.*

Kutis- agrees with concerns of cost and feasibility

Deleted: ¶

  - Sellers selling joint-account funded plans only should be exempt from the examinations conducted by the Board every five years. However, the Board should retain authority to audit or examine the seller, if deemed necessary.
  - Audit a preneed seller with cause if the Board has reasonable grounds for verifying the proper handling of preneed funds.
- Inspections, investigations, audits and examinations should be authorized with or without a complaint.
- The Board may request DIFP, the attorney general or the division of finance, to designate investigator(s) or financial examiner(s) to assist the Board with any inspection, investigation, examination or audit.
- Preneed licensees should clearly be required to cooperate with any inspection, investigation, examination or audit conducted by the Board, DIFP, the attorney general or the division of finance.
- Books and records of licensees should be made available to the Board by the licensees upon request.
- Costs of an inspection, investigation, examination or audit should be funded through licensing fees established by the Board by rule.

! ***Comments:*** *The Working Group unanimously agreed that examination/audit costs should not be charged to the licensee. Depending on the scope of the audit/examination, costs may be excessive and would be difficult to determine prior to the audit/exam. As a result, charging costs to licensees may have an overwhelming impact and could potentially result in licensee bankruptcies.*

ATTORNEY GENERAL AUTHORITY

The Working Group unanimously recommended the following:

If a violation of Chapter 436 is found after an investigation, audit or examination, the Attorney General should be authorized to initiate a judicial proceeding to:

- Declare rights.
- Approve a nonjudicial settlement.
- Appoint or remove a trustee.
- Interpret or construe the terms of the trust.
- Determine the validity of a trust or its terms.
- Compel a trustee to report or make an accounting.
- Enjoin a trustee from performing a particular act or to grant the trustee any necessary or desirable power.
- Review the actions of the trustee, including the exercise of any discretionary power.
- Determine trustee liability and to grant any available remedy for breach of a trust.
- Approve employment and compensation of agents.
- Determine the propriety of investments.
- Determine the timing and quantity of distributions and disposition of assets.
- Utilize any other power vested in the attorney general.

DISCIPLINARY AUTHORITY

The Working Group unanimously agreed that to effectively regulate Chapter 436, the Board's disciplinary process must be streamlined to allow for a more efficient and effective remedy. This would necessarily include, expanding the current grounds for discipline as well as the disciplinary tools available to the Board.

The Working Group unanimously recommended the following legislative change:

Section A.1. The board may refuse to issue any certificate of registration or authority, permit or license required under this chapter for one or any combination of causes stated in subsection 2 of this section. The board shall notify the applicant in writing of the reasons for the refusal and shall advise the applicant of his or her right to file a complaint with the administrative hearing commission as provided by chapter 621, RSMo.

2. The board may cause a complaint to be filed with the administrative hearing commission as provided by chapter 621, RSMo, against any holder of any certificate of registration or authority, permit or license required by this chapter or any person who has failed to renew or has surrendered his or her certificate of registration or authority, permit or license for any one or any combination of the following causes:

(1) Use of any controlled substance, as defined in chapter 195, RSMo, or alcoholic beverage to an extent that such use impairs a person's ability to perform the work of any profession licensed or regulated by this chapter;

(2) The person has been finally adjudicated and found guilty, or entered a plea of guilty or nolo contendere, in a criminal prosecution under the laws of any state or of the United States, for any offense reasonably related to the qualifications, functions or duties of any profession licensed or regulated under this chapter, for any offense involving a controlled substance, or for any offense an essential element of which is fraud, dishonesty or an act of violence, or for any offense involving moral turpitude, whether or not sentence is imposed;

(3) Use of fraud, deception, misrepresentation or bribery in securing any certificate of registration or authority, permit or license issued under this chapter or in obtaining permission to take any examination given or required under this chapter;

(4) Obtaining or attempting to obtain any fee, charge, tuition or other compensation by fraud, deception or misrepresentation;

(5) Incompetency, misconduct, gross negligence, fraud, misrepresentation or dishonesty in the performance of the functions or duties of any profession licensed or regulated by this chapter;

(6) Violation of, or assisting or enabling any person to violate, any provision of [sections 436 regulating preneed], or of any lawful rule or regulation adopted pursuant thereto;

(7) Impersonation of any person holding a certificate of registration or authority, permit or license or allowing any person061 to use his or her certificate of registration or authority, permit, license or diploma from any school;

(8) Disciplinary action against the holder of a license or other right to practice any profession regulated by this chapter granted by another state, territory, federal agency or country upon grounds for which revocation or suspension is authorized in this state;

(9) A person is finally adjudged insane or incompetent by a court of competent jurisdiction;

(10) Misappropriation or theft of preneed funds;

(11) Assisting or enabling any person to practice or offer to practice any profession licensed or regulated by [the provisions of Chapter 436 regulating preneed] who is not registered and currently eligible to practice thereunder;

(12) Issuance of a certificate of registration or authority, permit or license based upon a material mistake of fact;

(13) Failure to display a valid certificate or license if so required by this [the provisions of Chapter 436 regulating preneed] or any rule promulgated thereunder;

(14) Violation of any professional trust or confidence;

(15) Making or filing any report required by [the provisions of Chapter 436 regulating preneed] which the licensee knows to be false or knowingly failing to make or file a report required by [the provisions of Chapter 436 regulating preneed];

(16) Use of any advertisement or solicitation which is false, misleading or deceptive to the general public or persons to whom the advertisement or solicitation is primarily directed, or;

(19) Willfully and through undue influence selling a preneed contract.

3. After the filing of such complaint, the proceedings shall be conducted in accordance with the provisions of chapter 621, RSMo. Upon a finding by the administrative hearing commission that the grounds, provided in subsection 2 of this section, for disciplinary action are met, the board may, singly or in combination, censure or place the person named in the complaint on probation on such terms and conditions as the board deems appropriate for a period not to exceed five years, or may suspend, for a period not to exceed three years, or revoke the license, certificate, or permit.

4. Notwithstanding any other provision of this section, the board may automatically suspend a license if the Board finds, after an inspection, examination, investigation or audit, a shortage in any preneed trust or joint account which exceeds 20% of the total amount required to be held or deposited in the trust or account pursuant to [the provisions of Chapter 436 regulating preneed].

5. Any person whose license is suspended under subsection 4 of this section may appeal such suspension to the administrative hearing commission. Notice of such appeal must be received by the administrative hearing commission within ninety days of mailing, by certified mail, the notice of suspension. Failure of a person whose license was suspended to notify the administrative hearing commission of his or her intent to appeal waives all rights to appeal the suspension. Upon notice of such person's intent to appeal, a hearing shall be held before the administrative hearing commission pursuant to Chapter 621.

6. Use of the procedures set out in this section shall not preclude the application of the provisions of subsection 2 of section 333.061.

WORKING DRAFT

ENFORCEMENT AUTHORITY

INJUNCTIVE/CIVIL AUTHORITY

The Working Group unanimously recommended the following:

- Similar to current law, the Board should have authority to seek injunctive relief or any other civil authority necessary to enjoin/restrain an entity from:
  - Unlicensed activity.
  - Engaging in any activity that would pose a substantial probability of danger to the public health, safety or welfare.
  - Engaging in any activity that presents a substantial probability of serious danger to the solvency of any preneed seller.
- The authority granted to the Board should be in addition to any other remedies authorized by law.
- Proper venue for any such action should be amended to include Cole County.
- Violation of Chapter 436 should be deemed violations of Chapter 407, under the jurisdiction of the Attorney General. In actions brought under Chapter 407, the court should be authorized to impose any penalty/remedy authorized under Chapter 436 or 407. Additionally remedies should include revocation/suspension of the preneed license.

CRIMINAL AUTHORITY

The Working Group unanimously recommended the following:

- Knowing and willful violations of Chapter 436 by incompetence, misconduct, gross negligence, fraud, misrepresentation or dishonesty should be deemed Class C felonies. *Comment: Violations are currently Class D felonies.*

FINES & CIVIL PENALTIES

The Working Group unanimously recommended the following:

- The Board should be authorized to impose civil penalties and fines as a form of discipline.
- Fines/Civil Penalties should be assessed in light of the seriousness of the violation found.
- Fines/civil penalties should be consistent with the fines/penalties currently authorized for other professions within the Division. Specifically, the legislature has approved civil penalties for the Real Estate Commission and Architects, Professional Engineers, Professional Land Surveyors and Landscape Architects in the amount of two thousand five hundred dollars for each offense.
- In considering a fine/civil penalty, the Board should be required to consider, among other factors,:

(1) If the violations are likely to continue or reoccur;

(2) Whether actual financial loss was sustained by consumers and if restitution has been made;

(3) If the violation was detected as part of a self-audit or internal compliance program and immediately reported to the Board; and

(4) In the violation had previously been detected, but inadequate policies and procedures were implemented to prevent reoccurrence.

! ***Comments:*** *Currently, the Attorney General also has authority to assess/request fines and penalties under Chapter 407. A concern was raised by MFDEA that preneed licensees may be subjected to double penalties if an action is initiated by the Board as well as through the Attorney General's Office. MFDEA and Meierhoffer suggested that if accepted, language should be developed to prevent duplicate imposition of fines/penalties by the Board and the Attorney General's Office for the same conduct.*

Response: As litigation counsel for the Board, the Attorney General's Office traditionally represents and coordinates with the Board in pursuing any remedy. Additionally, the remedies imposed by the Board and by the Attorney General's Office are distinctly different. The remedies imposed by the Board would be limited to licensing violations only. The remedies authorized under Chapter 407 are to redress/remedy a harm inflicted on the public at large. A concern was raised that if a licensee's conduct violates the licensing law as well as harms the public, expanded remedies would be appropriate.

WORKING DRAFT

FEES

The proposed recommendations would require additional funding for the Board to regulate the proposed provisions and to fulfill all statutory obligations.

The Working Group unanimously approved the following recommendations:

- Licensing and renewal fees for preneed seller, providers and agents as established by the Board by rule. If both the preneed sellers/providers are required to pay fees, the preneed agent licensing fees should be minimal and proportionately lower than preneed seller/providers.
- Preneed sellers should continue to be assessed a two-dollar fee per preneed contract sold during the annual reporting year as currently required.

WORKING DRAFT

CONCLUSION

WORKING DRAFT

CONCLUSION

Nationally, the preneed industry has experienced significant and sustained growth as consumers focus more attention on their final needs. Preneed arrangements can provide a valuable option to purchasers desiring to ensure their arrangements. Chapter 436 regulating preneed is in need of significant legislative changes. As reflected in the present crisis impacting Missouri, Chapter 436 must be enhanced and amended to ensure consumer protection and the continued viability of Missouri's preneed industry.

The Working Group appreciates the opportunity to share its recommendations. We look forward to providing any further assistance you may need.

WORKING DRAFT

Recommendations – Finance

STATE BOARD OF EMBALMERS AND FUNERAL DIRECTORS

WORKING DRAFT

CHAPTER 436 WORKING GROUP RECOMMENDATIONS

Submitted: September 1, 2008

September 1, 2008

Dear Joint Committee Members:

Over the last year, the nation has witnessed an unprecedented crisis in the preneed industry. Estimates of the financial impact on Missouri consumers and the funeral industry are alarming. While recent concerns relate to a single entity, the crisis has focused much needed attention on the regulation of preneed funeral contracts in the state of Missouri and Chapter 436, RSMo, governing preneed sales.

The State Board of Embalmers and Funeral Directors (the "Board"), under the auspices of the Missouri Division of Professional Registration (the "Division"), regulates embalmers, funeral directors, funeral establishments, preneed sellers and preneed providers licensed in this state. As part of its statutory duties, the Board annually reviews legislation to identify potential recommendations of the Board. In recent years, this process has included a review of Chapter 436.

Senate Bill 780, enacted by the General Assembly 2008, which created the Joint Committee on Preneed Funeral Contracts. As part of its annual legislative review, the Board was invited to gather a working group of representatives from across the preneed industry to collectively identify suggested preneed recommendations for the Joint Committee's review. The Working Group consisted of a diverse representation from all aspects of the preneed industry, including, liaisons from various consumer groups, members of the State Board and representatives from the funeral, preneed and insurance industries.

The Working Group respectfully submits the attached recommendations to the Joint Committee for review. While diverse interests were represented, the Working Group unanimously agreed that revisions to Chapter 436 are desperately needed to better protect Missouri consumers and those funeral directors, funeral establishments, preneed providers and preneed sellers who truly dedicate themselves to serving the public.

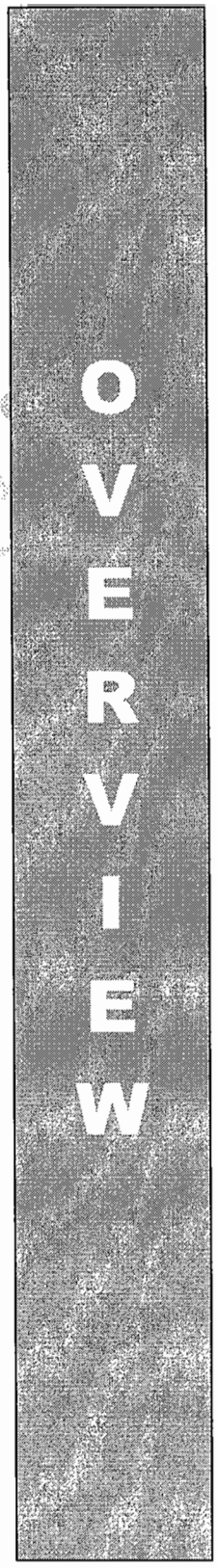
We commend the General Assembly in convening the Joint Committee and in dedicating the time and resources to this important task.

Sincerely,

To be determined

WORKING DRAFT
Dated August 17, 2008 at 5:00 p.m.

WORKING DRAFT



I. GENERAL OVERVIEW:

During the 2008-2009 legislative session, various Chapter 436 proposals were introduced. Although not enacted, the proposals sparked intense discussion among regulators, consumers and professional groups. While a consensus was not reached, industry and regulatory groups were able to identify several common areas of agreement.

At the close of the legislative session, various representatives met with Senator Delbert Scott and Representative Jay Wasson to discuss Chapter 436 concerns. The Board was subsequently asked to formulate a working group to help identify agreed areas for legislative recommendations.

The Board hosted five (5) open meetings for the Working Group in Jefferson City, Missouri.[1] All meetings of the Working Group were conducted as open meetings in accordance with Chapter 610, RSMo. Notice of meetings and the proposed agenda were made available to the public and published on the Board's website.

II. PARTICIPANTS:

The Working Group consisted of representatives from consumer groups, funeral directors, preneed providers, preneed sellers, third-party preneed sellers, the Missouri Funeral Directors and Embalmers Association, related insurance companies and representatives from small, large and minority funeral establishments. Participants were chosen from prior legislative involvement and from recommendations made by legislators, Board members and related consumer groups. Members of the public were also invited to attend and given an opportunity to provide both oral and written comments.

The Working Group included:

	REGULATORS:
Linda Bohrer	Acting Director- Department of Insurance, Financial Institutions and Professional Registration ("DIFP")
David Broeker	Division Director, Division of Professional Registration*
Sharon Euler	Office of the Attorney General
Mary Erickson	Senior Enforcement Counsel- DIFP
Larry McCord	General Counsel- DIFP
Mark Stahlhuth	Senior Counsel- Financial Section, DIFP
Rich Weaver	Deputy Commissioner, Division of Finance

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[1] Open meetings were hosted on July 8th. July 15th, July 24th, July 29th and August 12th.
* Did not participate as a voting member of the Working Group.

ADDITIONAL PARTICIPANTS:

James Reinhard,	Chair, State Board of Embalmers and Funeral Directors
Gary Fraker	Board Member
Joy Gerstein	Board Member
Todd Mahn	Board Member
Martin Vernon	Board Member
John McCulloch	Board Member/American Prearranged Services
Bob Baker	Wright Baker Hill Funeral Home
Barbara Brown	Layne Renaissance Chapel, LLC
Norma Collins	AARP
George Kutis/ George Kline	Kutis Funeral Home, Inc.
Jim Moody	Lobbyist, SCI
Rep. Timothy Meadows	
Michael Meierhoffer	Meierhoffer Funeral Home & Crematory, Inc.
Barbara Newman	Rep. Meadows' Office
Darlene Russell	Charter Life Insurance Co.
Josh Slocum	Executive Director, Funeral Consumer Alliance
Bill Stalter	Stalter Legal Services
Bill Trimm/ Jo Walker	Silver Haired Legislators
Don Otto	Executive Director, Missouri Funeral Director and Embalmers Association/Missouri Funeral Trust
Mark Warren	Inglish & Monaco- Representing Homesteaders Life Insurance, etc.
Mike Winters	Lobbyist, American Prearranged Services

COMMITTEE SUPPORT STAFF:

Connie Clarkston	Director of Budget & Legislation, Division of Professional Registration
Becky Dunn	Executive Director, State Board*
Jeana Groose	Administrative Assistant to Director of Budget & Legislation, Division of Professional Registration*
Kimberly Grinston	Legal Counsel, Division of Professional Registration*
Lori Hayes	Inspector, State Board*

III. REVIEW PROCESS:

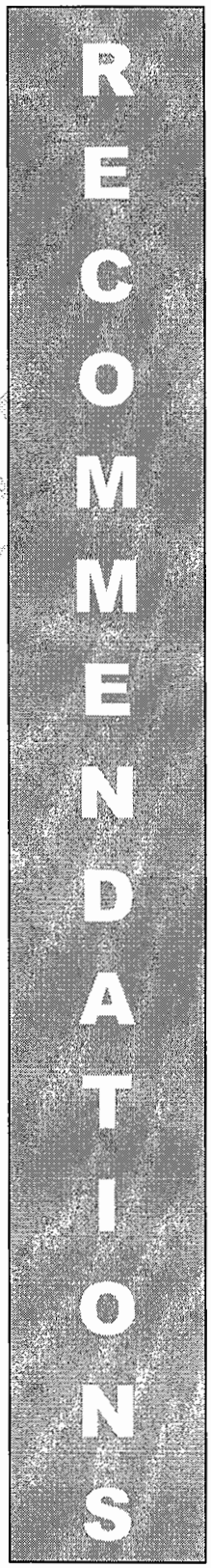
To guide the review, the Board circulated a survey with a listing by topic area of Chapter 436 proposals submitted to the Board in prior years. Participants were asked to rank the priority of topic areas listed for purposes of discussion. Surveys were made publicly available and were posted on the Board's website. The Division subsequently compiled the rankings and utilized results to structure the Working Group. [See Appendix 1- Bd. Survey].

WORKING DRAFT

The surveyed topics were ranked as follows:

[INCLUDE SURVEY RESULTS HERE]

WORKING DRAFT



WORKING DRAFT

Working Group recommendations have been compiled as follows:

Unanimous Recommendations:	Recommended by a unanimous vote of all Working Group Participants.
Consensus Recommendations:	Recommended by an overwhelming majority of Participants, generally with less than 15% of Participants dissenting.
Majority Recommendations:	Recommended by a simple majority vote of Working Group Participants.
Unresolved:	Majority vote not reached. Suggestions from Participants have been provided.

For purposes of this Report, recommendations have been categorized as follows:

I. General Regulatory Authority 10

II. Definitions 11-12

III. Licensing/Registration 13

IV. Preneed Contracts 14-15

V. Preneed Providers 16

VI. Trust-Funded Preneed Plans 18-19

VII. Regulation of Trusts & Trustees 20-23

VIII. Insurance-Funded Preneed Plans 24-25

IX. Joint Account-Funded Preneed Contracts 26

X. Payments to Providers 27

XI. Cancellation/Portability of Preneed Contracts 28-30

XII. Reporting Requirements 31-32
XIII. Consumer Reporting/Notifications 33
XIV. Termination of Business 34-35
XV. Audits, Investigations and Examinations 36-37
XVI. Disciplinary Authority 38-40
XVII. Enforcement Authority 41-42
XVIII. Fees 43
XIX. Conclusion 45

WORKING DRAFT

GENERAL REGULATORY AUTHORITY

The Working Group unanimously agreed to the following recommendations:

- Regulatory authority over Chapter 436 and preneed licensing should remain with the Board. Regulatory authority should not be transferred to another agency.

> ! ***Comments:*** *The Division and Board support this proposal but would also support transferring authority if another regulatory agency is deemed more appropriate.*

- The Missouri Attorney General should be granted concurrent jurisdiction with local prosecutors to prosecute violations of Chapter 436. (This needs careful vetting with prosecutors and legal scholars.)

- The Board should be granted general rulemaking authority to administer Chapter 436 and to establish necessary fees.

> ! ***Comments:*** *Funeral Consumer Alliance suggested that the current licensee confidentiality restrictions should be revised to allow the dissemination of more information to the public. Division staff indicated that the current confidentiality restrictions apply to all regulated boards/commissions within the Division and would require a statutory change specific to the Board.*

- The Board should be authorized to hire legal counsel to assist in the enforcement of Chapter 436.

> ! ***Comments:*** *Board staff indicated this proposal would allow them to utilize both the Attorney General's Office and outside counsel, if needed. Representatives from the Attorney General's Office refrained from the vote.*

WORKING DRAFT

DEFINITIONS

Several of Chapter 436's current definitions are insufficiently defined. Accordingly, the Working Group approved the following unanimous recommendations:

- ***"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.

- ***"Board,"*** the Missouri State Board of Embalmers and Funeral Directors.

- ***"Division",*** the division of professional registration of the department of insurance, financial institutions and professional registration.

- ***"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.

- ***"Guaranteed Contract",*** A preneed contract in which the future costs for the disposition, facilities, services or merchandise identified in the preneed contract are definitively designated and guaranteed/assured in the contract.

- ***"Insurance-Funded Preneed Contract",***- A preneed contract which is designated to be funded by payments or proceeds from an insurance policy.

- ***"Joint-Account Funded Preneed Contract",*** - A preneed contract which designates that payments for the preneed contract made by or on behalf of the purchaser will be deposited and maintained in a joint account.

- ***"Market Value",***- A fair market value,
  (a) As to cash, the amount 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 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.

- ***"Non-Guaranteed Contract",***- A preneed contract in which the costs for the disposition, facilities, services or merchandise are not guaranteed/assured in the contract.

- ***"Person",*** any individual, partnership, corporation, cooperative, association, or other entity.

- ***"Preneed contract",*** any contract or other arrangement which provides for the final disposition of a dead human body, or for funeral or burial services or facilities, or for funeral merchandise, where such disposition, services, facilities or merchandise are not immediately required, including, but not limited to, an agreement providing for a membership fee or any other fee having as its purpose the furnishing of burial or funeral services or merchandise at a discount.

- ***"Preneed Agent,"*** any person authorized to sell a preneed contract for or on behalf of a preneed seller.

- ***"Preneed trust",*** a trust established by a seller, as grantor, to receive deposits of, administer, and disburse payments received under preneed contracts by such seller, together with income thereon.

- ***"Provider",*** the person designated to provide the disposition or funeral services, facilities, or merchandise described in a preneed contract.

- ***"Purchaser",*** the person who is obligated to pay under a preneed contract.

- ***"Seller",*** the person who executes a preneed contract with a purchaser and who is obligated under such preneed contract to remit payment to the provider.

- ***"Trustee",*** the trustee of a preneed trust, including successor trustees.

- ***"Trust-Funded Preneed Contract",*** - A preneed contract which provides that payments for the preneed contract shall be deposited and maintained in trust.

WORKING DRAFT

LICENSING / REGISTRATION

The Working Group agreed to the following consensus recommendations:

- A "license" should be required for all preneed providers/sellers. Currently, sellers and providers are "registered" with the Board. A "license" denotes legal obligations and more accurately reflect the authorization being issued by the Board.

- Individuals selling preneed for or on behalf of a preneed seller should be licensed by the Board as a preneed agent. As a condition of licensure, preneed agents should successfully pass the Missouri law examination currently offered by the Board, provided that Missouri licensed funeral directors should not be required to take an additional examination.

> ! ***Comments:*** ***John McCulloch (APS) expressed concerns imposing full licensing, testing or disciplinary requirements on preneed agents.***

- To be eligible for licensure/renewal, preneed agents, providers and sellers must be of good moral character, remit a licensing fee and have a high school diploma or the equivalent. If a corporation, licensure/renewal requirements should be applicable to each officer, director, manager or controlling shareholder.

- All preneed sellers or providers operating as business entities must be properly registered with the Missouri Secretary of State and authorized to conduct business in the state.

- Chapter 436 should be clarified to exempt endowed care cemetery operators governed by Chapter 214 from the provisions of Chapter 436. However, cemetery operators should be subject to Chapter 436 if the contract includes services that may only be lawfully provided by a licensed funeral director or embalmer.

- Chapter 436 should clearly provide that the provisions of the Chapter are inapplicable to contracts of insurance. However, Chapter 436 should apply to any preneed contract sold in conjunction with insurance. The current statutory language regarding insurance assignments or beneficiary designations is unclear and should be modified in compliance with the recommendation.

- Due to potential costs, preneed licensees should not be required to obtain bonding or any specific insurance. The Working Group suggested that increasing consumer protections and regulatory oversight would adequately address the need for additional insurance/bonding.

PRENEED CONTRACTS

The Working Group unanimously approved the following recommendations:

- To accommodate the varying forms of preneed, Chapter 436 should define and regulate preneed contracts based on their funding mechanism. Specifically, preneed contracts should be classified as either insurance-funded, trust-funded or joint-account funded. Unique concerns relate to each different type of funding. Chapter 436 could be more effectively regulated if the provisions were modified to accommodate each specific form of funding.

- While minimum preneed contract requirements should be established, as provided below, a standard preneed contract form should not be required.

> ! ***Comments:*** *Although MFDEA supported the vote, representatives stressed that a standard form could be beneficial.*

- Preneed sellers should be required to maintain "adequate records" of preneed contracts for the duration of the contract and for no less than two (2) years after the final disposition of the beneficiary, cancellation of the contract or after the facilities, services or merchandise have been provided. Contracts should be provided to the Board on request.

> ! ***Comments:*** *Funeral Consumer Alliance recommended that sellers should also provide copies of all preneed contracts to the Board. The Board suggested this requirement may be unduly burdensome and that requiring sellers to provide copies upon request would satisfy regulatory concerns.*

Deleted: *providing*

- Preneed contracts should only be designated as irrevocable if the contract is being used to qualify for Medicaid (i.e.-for "spend down").

- Preneed contracts should be in writing and should clearly and conspicuously:
  - Include the name, address and phone number of the purchaser, beneficiary, provider and the seller;
  - Detail the disposition or facilities, services or merchandise requested;
  - Clearly identify if the contract is guaranteed or non-guaranteed on the face of the contract in a recognizable type (i.e.- a 12 to 13-point type).
  - Identify terms for cancelling the contract by the purchaser or by the seller for payment default.
  - Identify the funding mechanism including, the trust or financial institution where preneed funds will be held or the insurance company issuing an insurance policy.
  - Identify expenses to be retained by the seller.
  - Be signed by the purchaser, the preneed agent and the seller or a representative.

- Preneed contracts not in compliance with Chapter 436 should be rendered void [should this be voidable by the purchaser] and unenforceable. If not in compliance, payments may be recoverable by the purchaser or their legal representative plus attorney fees.

> ! ***Comments:*** *This requirement is similar to current law.*

- Sellers/providers should be prohibited from redesignating a preneed contract as a trust-funded, insurance-funded or joint-account funded preneed contract without the consent of the purchaser.

> ! ***Comments:*** *The Funeral Consumer Alliance suggested that purchasers should also be given a written statement identifying the financial consequences of the redesignation (i.e.- reduction in cash surrender value, interest accrual and fees).*

- On the death or legal incapacity of the purchaser, all rights or remedies of the purchaser should accrue to the benefit of the purchaser or his/her successor as designated in the contract. Proceeds payable under a life insurance contract, should be governed by insurance law and the insurance contract.

The Working Group approved the following consensus recommendations:

- Preneed contracts should clearly designate whether the contract is revocable or irrevocable.

> ! ***Comments:*** *Homesteaders Life Insurance Co., suggested the funding for preneed contracts should be made irrevocable and not the contract itself. The commenter remarked that irrevocable contracts may hinder a consumer's freedom of choice.*

> ! ***Comments:*** *The Board also recommended that contracts include notification that complaints regarding preneed sellers/providers may be forwarded to the Board and the current number/address of the Board. Representatives of AARP, the Silver Haired Legislators and the Funeral Consumer Alliance agreed with this suggestion.*

PRENEED PROVIDERS

The Working Group unanimously approved the following recommendations:

- In light of recent concerns raised by the Federal Trade Commission, preneed provider licensing should not be restricted to only funeral establishments or cemetery operators. Private individuals are currently authorized to sell funeral merchandise preneed or at-need. However, it should be clarified that Chapter 436 does not exempt any person from the licensing requirements of Chapter 333 governing funeral directors and establishment.

- Chapter 436 should clearly state that the provider designated in a preneed contract is obligated to provide the disposition, facilities, services or merchandise designated in the preneed contract.

- Providers must have a written agreement with each preneed seller that the provider has authorized to designate the licensee as a provider in a preneed contract.

- Providers should be required to report the name and address of its custodian of records and of all sellers authorized to name the licensee as a provider. The Board should be notified by the provider in writing within 15 days of any amendments or changes. (already addressed in 436.015.2(1) and (2)(c))

WORKING DRAFT

PRENEED SELLERS

The Working Group adopted the following unanimous recommendations:

- For purposes of licensure, Chapter 436 should be clarified to provide that a preneed trust is not required if the seller is only selling joint-account or insurance-funded preneed plans.

- Preneed sellers should have the option to sell either trust-funded, joint-account funded or an insurance-funded preneed contract. Sellers should notify the Board of the type of contracts to be sold.

- Sellers should report to the Board the name and address of its custodian of records and of all providers that have authorized the seller to name the licensee as a provider. The Board should be notified by the seller in writing of any amendments or changes.

- The written agreement between the provider and seller should include:
  - Consent from the provider authorizing the seller to designate the licensee as a provider.
  - Procedures for tracking preneed fund payments received by the provider.

- Sellers should maintain "adequate records" of preneed contracts for the duration of the contract and for no less than two (2) years after the final disposition of the beneficiary, cancellation of the contract or after the facilities, services or merchandise have been provided.

WORKING DRAFT

The Working Group unanimously approved the following recommendations:

- Sellers should be required to issue receipts to the purchaser for preneed payments received by the seller.

The Working Group approved the following consensus recommendations:

- 100% of all payments for a trust-funded preneed contract should be deposited into trust. Sellers should be authorized to submit a request to the trustee for administrative expenses (see Additional Comments below).

> ! *Comments: APS and Meierhoffer suggested that requiring sellers to request expenses from the trustee would create additional administrative expenses that may be passed onto the consumer. APS and Meierhoffer strongly recommended retaining the current process of allowing the seller to retain the first 20% of contract payments and to trust the remaining 80%.*

- Payments for trust-funded preneed contracts should be deposited into trust within sixty-days of receipt.

> ! *Comments: Participants suggested that sixty-days would allow sufficient administrative time for processing and forwarding payments to the seller and for clearing payments made by check. However, other participants suggested that a 30-45 day deposit requirement would increase consumer protection.*

- Seller administrative expenses should be authorized from the initial payments received.

The following Working Group recommendations were unresolved: After considerable discussion and research, the Working Group did not reach a consensus or majority vote on the recommended allowance for seller administrative expenses. However, Participants recommended the following amounts:

- No administrative expense should be allowed.
- Three quarters (¾) of 1% of the face value of the Preneed Contract.
  - Josh Slocum
  - *Note: This provision models New York's preneed legislation.*
- ***Ten percent of face value: The majority of Participants agreed that 10% of the contract's face value would be a reasonable compromise.***
  - AARP
  - Silver Haired Legislature
  - Rep. Meadows
- Ten to fifteen percent
  - DIFP

- Twenty percent of face value
  - Mike Meierhoffer
  - Kutis Funeral Home
  - John McCulloch
  - Mike Winters
  - Austin-Layne

WORKING DRAFT

REGULATION OF TRUSTS & TRUSTEES

The Working Group unanimously approved the following recommendations:

GENERAL REQUIREMENTS:

> ! ***Comments:*** *Bill Stalter recommended that regulation of the trust and trustee functions activities would be better served if oversight of the trust was transferred to the Division of Finance.*

- Trustees of a preneed trust must be a state or federally chartered institution authorized to exercise trust powers in Missouri. (included in current law)

- Provisions of the Uniform Trust Act under Chapter 469 and Chapter 456 should not be wholly incorporated into Chapter 436.

> ! ***Comments:*** *Participants commented that Chapters 469 and 456 contain provisions that are not suited for preneed. For example, Chapters 469 and 456 allow the trustee and grantor to modify the statutory requirements by agreement. It was also suggested that the definition of income would be inappropriate for Chapter 436.*

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- A preneed trust should terminate when trust principal no longer includes any payments made under any preneed contract. On termination the trustee should distribute all trust property, including principal and undistributed income, to the seller which established the trust.

The Working Group approved the following consensus recommendations:

- Expenses of the trust, including trustee's fees, legal and accounting fees, investment expenses and taxes should be paid from the trust.

> ! ***Comments:*** *Several participants recommended that expenses of the trust should continue to be paid by the seller directly. Concerns were raised that allowing payment from the trust could reduce trust principal.*

The Working Group approved the following majority recommendations:

- Income of the trust should accrue and should generally not be distributed until the contract is fulfilled or otherwise cancelled.

> ! ***Comments:*** *Several participants recommended that the current income distribution rules should be maintained and income distributions allowed as earned.*

TRUSTEE DUTIES:

The Working Group unanimously approved the following recommendations:

- The prudent investor rule should be adopted for trustees. Specifically, trustees should invest and manage trust assets as a prudent investor would, by considering the purposes, terms, distribution requirements, and other circumstances of the trust. In satisfying this standard, the trustee should exercise reasonable care, skill, and caution.

- Trustees who have special skills or expertise, or who are named trustee in reliance upon the trustee's representation that the trustee has special skills or expertise, should have a duty to use those special skills or expertise when investing and managing trust assets.

- Within a reasonable time after accepting a trusteeship or receiving trust assets, a trustee should review the trust assets and make and implement decisions concerning the retention and disposition of assets in order to bring the trust portfolio into compliance with the purposes, terms, distribution requirements, and other circumstances of the trust, and with the requirements of Missouri law.

- The trustee should maintain "adequate books and records" of all transactions administered through the trust and pertaining to the trust generally.

CONFLICTS OF INTEREST: The Working Group unanimously agreed that conflicts of interest between trustees and investment advisors should be prohibited. Specifically, the following recommendations were made:

- The financial institution and investment advisor should not be controlled by or under common control with the seller.

- "Control", "controlled by" and "under common control" with should be defined as the possession, direct or indirect, of the power to direct or cause the direction of the management and polices of a person, whether through the ownership of voting securities, by contact other than the power is the result of an official position with or corporate office held otherwise, unless the power is the result of an official position with or corporate office held by the person.

- Control should be presumed to exist if any person, directly or indirectly, owns, controls, holds with the power to vote, or holds proxies representing, ten percent or more of the voting securities of any other person. This presumption may be rebutted by a showing to the board that control does not in fact exist to determine within its sole discretion that control does not in fact exist.

- Trustees should be prohibited from selling, investing or authorizing any transaction involving the investment or management of trust property with:
  - The spouse of the trustee;
  - Descendants, siblings, parents, or spouses of a preneed seller or an officer, manager, director or employee of a preneed seller, provider or counselor;
  - Agents or attorneys of the trustee, preneed seller or provider; or
  - A corporation or other person or enterprise in which the trustee, preneed seller, preneed provider, or a preneed provider owns a significant interest or has an interest that might affect the trustee's best judgment.

> ! ***Comments:*** *Bill Stalter recommended that a seller should be allowed to have a relationship with the advisor so long as the fiduciary remains responsible for the trust's compliance with the prudent investor rule and retains title of the assets.*

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(Any and all conflicts of interest affecting a trustee or investment advisor should be strictly prohibited. In addition, sellers and providers should not be involved in the selection of investment advisors. If trust and 436 authorize use of investment advisor the trustee should select the investment advisor).

INVESTMENT OF FUNDS:

The Working Group unanimously approved the following recommendations:

- Investment of trust funds should be limited to investments that have reasonable potential for growth or producing income. (vague?)
- Trustees should be specifically restricted from investing trust funds in any insurance product.
- Diversification of trust assets should be mandatory unless the trustee reasonably determines that, because of special circumstances, the purposes of the trust are better serviced without diversifying. (already part of prudent investor act – restatement not needed)
- In investing trust assets, a trustee should be required to consider:
  - General economic conditions;
  - The possible effect of inflation or deflation;
  - The expected tax consequences of investment decisions or strategies;
  - The role that each investment or course of action plays within the overall trust portfolio;
  - The expected total return from income and the appreciation of capital;
  - Other resources of the beneficiaries known to the trustee;
  - Needs for liquidity, regularity of income, and preservation or appreciation of capital;

- An asset's special relationship or special value, if any, to the purposes of the trust or to one or more of the beneficiaries; and
- The size of the portfolio, nature and estimated duration of the fiduciary relationship and distribution requirements under the governing instrument. (already part of prudent investor act – restatement not needed)

- Trustees and preneed licensees should be prohibited from procuring or accepting a loan against any investment or asset of the trust.

- Commingling of trust funds should only be allowed if the trustee maintains adequate records that individually and separately identify the payments, income and distribution for each preneed contract. Commingling should be limited to payments received for Missouri preneed contracts.

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SELECTIONS OF AGENTS/INDEPENDENT INVESTMENT ADVISORS:

- Trustees should only delegate duties and powers to an agent that a prudent trustee of comparable skills could properly delegate under the circumstances.

- If an agent is selected, the trustee should exercise reasonable care, skill, and caution in:
  - Selecting an agent;
  - Establishing the scope and terms of the delegation, consistent with the purposes and terms of the trust; and
  - Periodically reviewing the agent's actions and monitoring the agent's performance and compliance with the terms of the delegation.
  - (restating 469.909 when you said earlier to exclude)

- In performing a delegated function, an agent should owe a duty to the trust to exercise reasonable care to comply with the terms of the delegation.

- Agents that accept a delegation of powers or duties from a trustee should be deemed to have consented to the jurisdiction of Missouri courts.

- By selecting an agent, a trustee should not be relieved of any duty or responsibility imposed on the trustee by Missouri law.

The Working Group approved the following recommendations by majority vote:

- Sellers should be allowed to approve the investment advisor selected.

! ***Comments:*** *The Department of Insurance, Division of Finance, State Board and the Missouri Attorney General's Office unanimously agree that seller approval of the investment advisor would hinder the independence of the investment advisor and threaten consumer protection. The suggestion proposed would allow the NPS concerns to occur again. Consumers should not, and cannot, be placed at continued risk of unscrupulous business practices. A trustee of a financial institution should be more than capable of selecting an investment advisor that would be adequate for the trust. Seller "approval" is not and should not be required.*

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WORKING DRAFT

INSURANCE-FUNDED PRENEED PLANS

The Working Group adopted the following unanimous recommendations:

- Currently, Chapter 436 does not clearly allow/regulate insurance-funded plans. Insurance funded preneed plans are a safe and necessary option. Accordingly, Chapter 436 should clearly authorize insurance-funded contracts.

- Insurance law should not apply to preneed contracts but should apply to any insurance sold with a preneed contract.

- Sellers should not charge, assess or collect any administrative fees for an insurance-funded preneed plan. Instead, sellers should only be allowed to receive/collect from a purchaser the amount required to pay insurance premiums as established by the insurer.

- In no instance, should a term life insurance product be used to fund a preneed contract. However, consumers should be allowed to assign proceeds from a term-life insurance product to a provider, or to designate a provider as a beneficiary under a preneed contract, provided that the assignment is not related to, or done in contemplate of, executing the sale of a preneed contract.

> ! ***Comments:*** *MFDEA recommended that a blanket prohibition may be overreaching and that consumers should still be allowed to assign proceeds from a pre-existing term-life product to a provider or to designate a funeral establishment as the beneficiary. MFDEA remarked that term life insurance may be the only affordable option for some consumers or the only insurance option that consumers who are older or have significant health problems may qualify for.*

The Working Group adopted the following consensus recommendations:

- Payments received by the seller/provider for insurance-funded preneed contracts should be forwarded to the insurer within thirty (30) days of receipt.

> ! ***Comments:*** *Homesteaders remarked that sellers/providers should only be authorized to collect the initial premium payment. All subsequent premium payments should be made directly to the insurer.*

- Preneed contracts funded by a life insurance policy should include:
  - Terms for cancellation by the purchaser or seller;
  - Notice that cancellation of the preneed contract will not cancel the life insurance policy funding the preneed contract.

- Notice that insurance cancellation must be made in writing to the insurer.
- Notice that the purchaser will only receive the cash surrender value of the policy, which may be less than the amount paid in, if cancelled after a designated time;
- Notice that the purchaser has the right to reassign/transfer the beneficiary designation or assignment to another funeral home.

! ***Comments:*** *To avoid confusion and potential misconstructions, concerns were raised that the majority of this information should be provided by the insurer and included in the insurance contract since it would require the seller to summarize the insurance contract. Additionally, Homesteaders suggested use of the National Association of Insurance Commissioner's model for insurance funded disclosures. Funeral Consumer Alliance also suggested that the amount of commission should also be disclosed in an insurance-funded contract.*

! ***Comments:*** *Funeral Consumer Alliance suggested that licensees should disclose to the purchaser if the licensee is an insurance agent/producer and if the licensee will receive any commission, payment or other consideration for the sale of an insurance product.*

WORKING DRAFT

JOINT ACCOUNT-FUNDED PRENEED CONTRACTS

The Working Group unanimously recommended that the current provisions for joint-account funded preneed plans are adequate and should be maintained. However, the Working Group suggested the following minor changes:

- Chapter 436 should be clarified to provide that a preneed seller may sell joint-account funded contracts. Currently, Chapter 436 only authorizes joint accounts for providers.

- Sellers only utilizing joint-account funded preneed contracts should not be required to have a trust.

(Sellers should be required to register their joint account bank with the Board so that financial institution regulators and purchasers of contracts can clearly ID and maintain current information regarding the ban or banks designated.)

WORKING DRAFT

PAYMENTS TO PROVIDERS

The Working Group unanimously recommended the following:

- To request payment, providers should be required to submit a certificate of performance certifying that the provider has rendered services to the preneed beneficiary. The certificate of performance should be signed by the provider and the person authorized to make arrangements on behalf of the preneed beneficiary.

- Sellers should remit payment to providers within thirty (30) days after receiving a certificate of performance. Sellers should not be prohibited from also requiring submission of a certified death certificate.

WORKING DRAFT

CANCELLATION/PORTABILITY OF PRENEED CONTRACTS

The Working Group considered four distinct scenarios that generally arise over the life of a preneed contract:

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.

A. Contract Fulfillment:

The Working Group approved the following unanimous recommendations:

- On fulfillment, sellers should be entitled to payment as provided in the contract and the related income.

B. Transfer of Providers:

The Working Group approved the following unanimous recommendations:

- Chapter 436 should allow for 100% portability. Purchasers should have complete and unrestricted freedom to select an alternative provider. Purchasers should not be penalized nor should any additional fee or costs be assessed to the purchasers for a transfer.

- The new provider designated by the purchaser should be accepted by the seller if the provider agrees to accept the remaining payment owed the original provider as designated in the contract. Here, the newly designated provider would simply

"step into the shoes" of the original provider for purposes of payment and fulfilling the contract.

> ! ***Comments:*** *While MFDEA generally supported this recommendation, concerns were raised that the seller should be able to reject a designated provider if the seller does not have a contract with the provider or if legitimate business reasons exist for the seller not accepting the designation (i.e.- the provider has failed to comply with the contract in other instances or has misappropriated funds from the seller).*

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. The refund amount should be designated by statute (however, see below).

Additional Recommendations: 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, the following recommendations were suggested by Working Group Participants:

- 100% of all funds paid and held in trust should be refunded to the purchaser (including income).
- 100% of all funds held in trust should be refunded.
- 80% of all funds held in trust should be refunded.
- 80% of all funds paid by the purchaser should be refunded.
- 80% of all funds paid should be refunded plus a portion of the income earned.

D. Cancellation By Seller For Non-Payment:

The Working Group approved the following unanimous recommendations:

- Sellers should be allowed to cancel the contract unilaterally if the purchaser is in default of payment.

- If cancelled by the seller, preneed purchasers should be refunded 80% of all amounts paid for the contract.

- Prior to cancellation, purchasers should be provided written notification from the seller of the seller's intent to cancel. The notice should be provided forty-five

days prior to cancellation and should allow the purchaser thirty days to remit the payment in arrears to avoid cancellation.

- If the seller does not cancel 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, 100% of all funds paid and held in trust should be refunded to the purchaser (including income).
- Eighty percent of all funds paid and held in trust should be refunded to purchasers.

! ***Comments:*** *Bill Stalter recommended that issues regarding trust expenses and income/expense allocations would be better addressed in rulemaking.*

WORKING DRAFT

REPORTING REQUIREMENTS

To assist the Board in regulation, the Working Group unanimously recommended expanding the information submitted to the Board by preneed licensees.

ANNUAL REPORT
REQUIREMENTS FOR ALL PRENEED SELLERS

The Working Group approved the following unanimous recommendations: Annual reports filed with the Board by the seller should include:

- The purchaser's name and address and preneed contract number, if any. Contract numbers should not be required but should be provided if available..
- The total number and face value of outstanding preneed contracts sold since the last report was filed.
- The contract amount for each preneed contract sold since the last annual report
- The name, address and contract number of all preneed agents authorized to sell preneed for the seller.
- The number of contracts fulfilled by the seller since the last report.
- The name and address of each provider contracted with the seller.
- The name and address of a custodian of preneed records.
- Authorization for the Board to conduct an audit and/or an examination of books and records.
- Any other information deemed necessary by the Board by rule.

ANNUAL REPORT REQUIREMENTS
FOR TRUST-FUNDED PRENEED CONTRACT SELLERS

The Working Group approved the following unanimous recommendations: Annual reports filed with the Board by the seller should include:

(The following should be certified as true and accurate by a corporate office of the trustee.)

- The name and address of the financial institution where the trust is held and the account number;
- The trust fund balance as reported in the previous year's report and the current trust fund balance.
- Principal contributions received since the last report.
- Total trust earnings and total distributions to the seller since the last report.
- A statement of assets and investments of the trust listing cash, real or personal property, stocks, bonds, and other assets. The listing should show cost, acquisition date and current market value of each asset and investment.
- Total expenses since the last report, excluding distributions to the seller.

ANNUAL REPORT REQUIREMENTS
FOR JOINT-ACCOUNT FUNDED PRENEED CONTRACT SELLERS

The Working Group approved the following unanimous recommendations: Annual reports filed with the Board by the seller should include:

(The following should be certified as true and accurate by a corporate office of the financial institution.)

- The number and address of the Missouri financial institution where the joint account is held and the account number.
- The amount on deposit in each joint account.
- The joint account balance reported the previous year.
- Principal contributions placed into each joint account since the last report.
- Total earnings since the previous report.
- Total distributions to the seller from each joint account since the previous year.
- Total expenses deducted from the joint account since the last report, excluding distributions to the seller.

ANNUAL REPORT REQUIREMENTS
FOR INSURER FUNDED PRENEED CONTRACT SELLERS

The Working Group approved the following unanimous recommendations:

- The name and address of each insurer issuing insurance to fund a preneed contract during the preceding year.
- The status and total death benefit and cash surrender value of each policy in force at the time of the report. ***(This should be certified as true and accurate by the insurer.)***

WORKING DRAFT

CONSUMER REPORTING / NOTIFICATIONS

The Working Group unanimously approved the following recommendations:

- Purchasers should be entitled to an annual report from the seller indicating the amount of funds paid by the purchaser during the reporting year and the name and address of the trustee.
- Sellers should inform purchasers of a change in trustee within thirty (30) days after the change. Notification should include the name, address and phone number of the trustee.

The Working Group approved the following majority recommendations:

- Purchasers should be notified by the trustee each time a deposit is made into trust for the contract.

> ! ***Comments:*** *Participants expressed concerns that an annual report would create an unnecessary burden on preneed sellers and increase administrative expenses that would eventually be passed on to the consumer.*

- Purchasers should be provided a receipt for each payment made by or on behalf of the purchaser. The receipt should be provided by the initial person receiving the payment (i.e.- the seller, provider or the agent).

WORKING DRAFT

TERMINATION OF BUSINESS

The Board has experienced significant regulatory difficulty with ensuring that Missouri consumers are adequately protected when preneed providers and sellers cease doing business either voluntarily or involuntarily. As a result, the Working Group unanimously recommended the following:

PRENEED SELLERS:

- The Working Group approved the following unanimous recommendations: The following notification/reporting requirements should be mandated for preneed sellers:
  - Notice to the Board at least thirty (30) days prior to a seller ceasing business or transferring a majority of its stock/assets.
  - A final annual report filed with the Board which includes a detailed plan indicating how outstanding preneed contracts will be filled and/or satisfied and how assets will be allocated for preneed obligations.
  - Notice to all providers that the seller has ceased doing business thirty (30) days prior to the seller ceasing business or transferring a majority of stock/assets.
  - Notice to consumers that the seller will cease doing business and indicate a contact number for questions regarding preneed contracts, consumer refunds or how arrangements will be satisfied. Purchaser notification should be required at least thirty (30) days prior to ceasing business or, in instances of a sale/transfer, within thirty (30) days after completion of the sale/transfer.
  - Submission of any additional information designated by the Board.
- Upon notification, the Board should have the continuing ability to inspect, examine and/or audit the books and records of the preneed provider/seller to ensure contractual obligations are met.
- The Attorney General should be granted authority to enter the premises and access/take possession of the books and records any preneed seller who ceases business without notification to the Board.

PRENEED PROVIDERS:

- The following notification/reporting requirements should be mandated for preneed providers:
  - Notice to the Board at least thirty (30) days prior to the provider ceasing business or transferring a majority of its stock/assets.
  - A final annual report filed with the Board.
  - Notice of the provider's intent to all sellers with whom the provider has outstanding preneed contracts within thirty (30) days prior to the provider ceasing business or transferring/disposing of a majority of stock/assets.
  - Upon notification from the providers, sellers should be required to notify all purchasers that the provider has ceased doing business or has transferred ownership. Notification should include provisions for

selecting an alternative provider and should be provided within thirty (30) days after the provider ceasing business or transferring ownership/assets.
    - Submission of any additional information designated by the Board.
- Upon notification, the Board should have the continuing ability to inspect, examine and/or audit the books and records of the preneed provider to ensure contractual obligations are met.
- The Attorney General should be granted authority to enter the premises and access/take possession of the books and records any preneed provider who ceases business without notification to the Board.

WORKING DRAFT

AUDITS, INVESTIGATIONS AND EXAMINATIONS

The Working Group unanimously agreed that effective regulation of the preneed industry may only be accomplished by strengthening, clarifying and expanding the current investigation, examination and audit authority of the Board.

The Working Group unanimously recommended the following:

- The Board should be granted clear authority to:
  - Issue subpoenas to compel the production of books and records of any licensee or trustee. (I am concerned whether the Board should have subpoena power of trustees. If this is the case it needs to be limited to pre-need trust records only).
  - Enter the premises or establishment where preneed business is conducted, or is advertised to be conducted, for the purposes of accessing books and records.
  - Conduct random or targeted inspections, with or without cause and at the discretion of the Board.
  - Investigate complaints and to investigate licensees to determine compliance with Chapter 436.
  - Conduct random or targeted examinations of books and records, at the discretion of the Board. The Board should be authorized to conduct an examination of each preneed seller at least once every five years.

> ! ***Comments:*** *Although the Working Group initially recommended every three years, the Board expressed concerns regarding cost and the financial feasibility of conducting such examinations.*

  - Sellers selling joint-account funded plans only should be exempt from the examinations conducted by the Board every five years. However, the Board should retain authority to audit or examine the seller, if deemed necessary.
  - Audit a preneed seller with cause if the Board has reasonable grounds for verifying the proper handling of preneed funds.
- Inspections, investigations, audits and examinations should be authorized with or without a complaint.
- The Board may request DIFP, the attorney general or the division of finance, to designate investigator(s) or financial examiner(s) to assist the Board with any inspection, investigation, examination or audit.
- Preneed licensees should clearly be required to cooperate with any inspection, investigation, examination or audit conducted by the Board, DIFP, the attorney general or the division of finance.
- Books and records of licensees should be made available to the Board by the licensees upon request.
- Costs of an inspection, investigation, examination or audit should be funded through licensing fees established by the Board by rule.

! ***Comments:*** *The Working Group unanimously agreed that examination/audit costs should not be charged to the licensee. Depending on the scope of the audit/examination, costs may be excessive and would be difficult to determine prior to the audit/exam. As a result, charging costs to licensees may have an overwhelming impact and could potentially result in licensee bankruptcies.*

ATTORNEY GENERAL AUTHORITY

The Working Group unanimously recommended the following:

If a violation of Chapter 436 is found after an investigation, audit or examination, the Attorney General should be authorized to initiate a judicial proceeding to:

- Declare rights.
- Approve a nonjudicial settlement.
- Appoint or remove a trustee.
- Interpret or construe the terms of the trust.
- Determine the validity of a trust or its terms.
- Compel a trustee to report or make an accounting.
- Enjoin a trustee from performing a particular act or to grant the trustee any necessary or desirable power.
- Review the actions of the trustee, including the exercise of any discretionary power.
- Determine trustee liability and to grant any available remedy for breach of a trust.
- Approve employment and compensation of agents.
- Determine the propriety of investments.
- Determine the timing and quantity of distributions and disposition of assets.
- Utilize any other power vested in the attorney general.

(AG authority to pursue judicial remedies against trustees. This appears to be full bore including 407 powers. And, includes AG initiating actions to review the discretionary acts of the trustee. This pretty much makes the AG a bank regulator with respect to pre-need trusts on par with the DOF, OCC and FDIC. This raises federal pre-emption issues with federally chartered institutions and probably at some point will interfere with discretion and duties of DOF. If this provision is included– litigation risk and reputation risk for banks considering accepting such an account will be higher. The statutory implementation of this needs to be reviewed very carefully.

DISCIPLINARY AUTHORITY

The Working Group unanimously agreed that to effectively regulate Chapter 436, the Board's disciplinary process must be streamlined to allow for a more efficient and effective remedy. This would necessarily include, expanding the current grounds for discipline as well as the disciplinary tools available to the Board.

The Working Group unanimously recommended the following legislative change:

Section A.1. The board may refuse to issue any certificate of registration or authority, permit or license required under this chapter for one or any combination of causes stated in subsection 2 of this section. The board shall notify the applicant in writing of the reasons for the refusal and shall advise the applicant of his or her right to file a complaint with the administrative hearing commission as provided by chapter 621, RSMo.

2. The board may cause a complaint to be filed with the administrative hearing commission as provided by chapter 621, RSMo, against any holder of any certificate of registration or authority, permit or license required by this chapter or any person who has failed to renew or has surrendered his or her certificate of registration or authority, permit or license for any one or any combination of the following causes:

(1) Use of any controlled substance, as defined in chapter 195, RSMo, or alcoholic beverage to an extent that such use impairs a person's ability to perform the work of any profession licensed or regulated by this chapter;

(2) The person has been finally adjudicated and found guilty, or entered a plea of guilty or nolo contendere, in a criminal prosecution under the laws of any state or of the United States, for any offense reasonably related to the qualifications, functions or duties of any profession licensed or regulated under this chapter, for any offense involving a controlled substance, or for any offense an essential element of which is fraud, dishonesty or an act of violence, or for any offense involving moral turpitude, whether or not sentence is imposed;

(3) Use of fraud, deception, misrepresentation or bribery in securing any certificate of registration or authority, permit or license issued under this chapter or in obtaining permission to take any examination given or required under this chapter;

(4) Obtaining or attempting to obtain any fee, charge, tuition or other compensation by fraud, deception or misrepresentation;

(5) Incompetency, misconduct, gross negligence, fraud, misrepresentation or dishonesty in the performance of the functions or duties of any profession licensed or regulated by this chapter;

(6) Violation of, or assisting or enabling any person to violate, any provision of [sections 436 regulating preneed], or of any lawful rule or regulation adopted pursuant thereto;

(7) Impersonation of any person holding a certificate of registration or authority, permit or license or allowing any person061 to use his or her certificate of registration or authority, permit, license or diploma from any school;

(8) Disciplinary action against the holder of a license or other right to practice any profession regulated by this chapter granted by another state, territory, federal agency or country upon grounds for which revocation or suspension is authorized in this state;

(9) A person is finally adjudged insane or incompetent by a court of competent jurisdiction;

(10) Misappropriation or theft of preneed funds;

(11) Assisting or enabling any person to practice or offer to practice any profession licensed or regulated by [the provisions of Chapter 436 regulating preneed] who is not registered and currently eligible to practice thereunder;

(12) Issuance of a certificate of registration or authority, permit or license based upon a material mistake of fact;

(13) Failure to display a valid certificate or license if so required by this [the provisions of Chapter 436 regulating preneed] or any rule promulgated thereunder;

(14) Violation of any professional trust or confidence;

(15) Making or filing any report required by [the provisions of Chapter 436 regulating preneed] which the licensee knows to be false or knowingly failing to make or file a report required by [the provisions of Chapter 436 regulating preneed];

(16) Use of any advertisement or solicitation which is false, misleading or deceptive to the general public or persons to whom the advertisement or solicitation is primarily directed, or;

(19) Willfully and through undue influence selling a preneed contract.

3. After the filing of such complaint, the proceedings shall be conducted in accordance with the provisions of chapter 621, RSMo. Upon a finding by the administrative hearing commission that the grounds, provided in subsection 2 of this section, for disciplinary action are met, the board may, singly or in combination, censure or place the person named in the complaint on probation on such terms and conditions as the board deems appropriate for a period not to exceed five years, or may suspend, for a period not to exceed three years, or revoke the license, certificate, or permit.

4. Notwithstanding any other provision of this section, the board may automatically suspend a license if the Board finds, after an inspection, examination, investigation or audit, a shortage in any preneed trust or joint account which exceeds 20% of the total amount required to be held or deposited in the trust or account pursuant to [the provisions of Chapter 436 regulating preneed].

5. Any person whose license is suspended under subsection 4 of this section may appeal such suspension to the administrative hearing commission. Notice of such appeal must be received by the administrative hearing commission within ninety days of mailing, by certified mail, the notice of suspension. Failure of a person whose license was suspended to notify the administrative hearing commission of his or her intent to appeal waives all rights to appeal the suspension. Upon notice of such person's intent to appeal, a hearing shall be held before the administrative hearing commission pursuant to Chapter 621.

6. Use of the procedures set out in this section shall not preclude the application of the provisions of subsection 2 of section 333.061.

WORKING DRAFT

ENFORCEMENT AUTHORITY

INJUNCTIVE/CIVIL AUTHORITY

The Working Group unanimously recommended the following:

- Similar to current law, the Board should have authority to seek injunctive relief or any other civil authority necessary to enjoin/restrain an entity from:
  - Unlicensed activity.
  - Engaging in any activity that would pose a substantial probability of danger to the public health, safety or welfare.
  - Engaging in any activity that presents a substantial probability of serious danger to the solvency of any preneed seller.
- The authority granted to the Board should be in addition to any other remedies authorized by law.
- Proper venue for any such action should be amended to include Cole County.
- Violation of Chapter 436 should be deemed violations of Chapter 407, under the jurisdiction of the Attorney General. In actions brought under Chapter 407, the court should be authorized to impose any penalty/remedy authorized under Chapter 436 or 407. Additionally remedies should include revocation/suspension of the preneed license.

CRIMINAL AUTHORITY

The Working Group unanimously recommended the following:

- Knowing and willful violations of Chapter 436 by incompetence, misconduct, gross negligence, fraud, misrepresentation or dishonesty should be deemed Class C felonies. *Comment: Violations are currently Class D felonies.*

FINES & CIVIL PENALTIES

The Working Group unanimously recommended the following:

- The Board should be authorized to impose civil penalties and fines as a form of discipline.
- Fines/Civil Penalties should be assessed in light of the seriousness of the violation found.
- Fines/civil penalties should be consistent with the fines/penalties currently authorized for other professions within the Division. Specifically, the legislature has approved civil penalties for the Real Estate Commission and Architects, Professional Engineers, Professional Land Surveyors and Landscape Architects in the amount of two thousand five hundred dollars for each offense.
- In considering a fine/civil penalty, the Board should be required to consider, among other factors,:

  (1) If the violations are likely to continue or reoccur;

  (2) Whether actual financial loss was sustained by consumers and if restitution has been made;

  (3) If the violation was detected as part of a self-audit or internal compliance program and immediately reported to the Board; and

(4) In the violation had previously been detected, but inadequate policies and procedures were implemented to prevent reoccurrence.

! ***Comments:*** *Currently, the Attorney General also has authority to assess/request fines and penalties under Chapter 407. A concern was raised by MFDEA that preneed licensees may be subjected to double penalties if an action is initiated by the Board as well as through the Attorney General's Office. MFDEA and Meierhoffer suggested that if accepted, language should be developed to prevent duplicate imposition of fines/penalties by the Board and the Attorney General's Office for the same conduct.*

Response: As litigation counsel for the Board, the Attorney General's Office traditionally represents and coordinates with the Board in pursuing any remedy. Additionally, the remedies imposed by the Board and by the Attorney General's Office are distinctly different. The remedies imposed by the Board would be limited to licensing violations only. The remedies authorized under Chapter 407 are to redress/remedy a harm inflicted on the public at large. A concern was raised that if a licensee's conduct violates the licensing law as well as harms the public, expanded remedies would be appropriate.

WORKING DRAFT

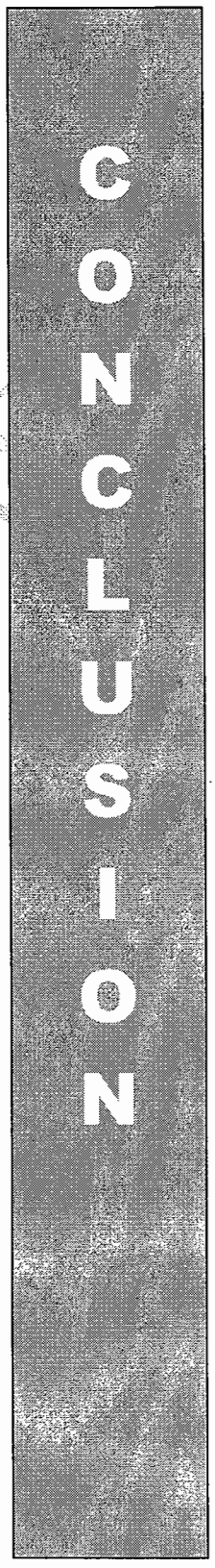
FEES

The proposed recommendations would require additional funding for the Board to regulate the proposed provisions and to fulfill all statutory obligations.

The Working Group unanimously approved the following recommendations:

- Licensing and renewal fees for preneed seller, providers and agents as established by the Board by rule. If both the preneed sellers/providers are required to pay fees, the preneed agent licensing fees should be minimal and proportionately lower than preneed seller/providers.
- Preneed sellers should continue to be assessed a two-dollar fee per preneed contract sold during the annual reporting year as currently required.

WORKING DRAFT



WORKING DRAFT

CONCLUSION

Nationally, the preneed industry has experienced significant and sustained growth as consumers focus more attention on their final needs. Preneed arrangements can provide a valuable option to purchasers desiring to ensure their arrangements. Chapter 436 regulating preneed is in need of significant legislative changes. As reflected in the present crisis impacting Missouri, Chapter 436 must be enhanced and amended to ensure consumer protection and the continued viability of Missouri's preneed industry.

The Working Group appreciates the opportunity to share its recommendations. We look forward to providing any further assistance you may need.

WORKING DRAFT

Recommendations – APS

Comments by: American Prearranged Services, Inc. ("APS")

STATE BOARD OF EMBALMERS AND FUNERAL DIRECTORS

WORKING DRAFT

CHAPTER 436 WORKING GROUP RECOMMENDATIONS

Submitted: September 1, 2008

September 1, 2008

Dear Joint Committee Members:

Over the last year, the nation has witnessed an unprecedented crisis in the preneed industry. Estimates of the financial impact on Missouri consumers and the funeral industry are alarming. While recent concerns relate to a single entity, the crisis has focused much needed attention on the regulation of preneed funeral contracts in the state of Missouri and Chapter 436, RSMo, governing preneed sales.

The State Board of Embalmers and Funeral Directors (the "Board"), under the auspices of the Missouri Division of Professional Registration (the "Division"), regulates embalmers, funeral directors, funeral establishments, preneed sellers and preneed providers licensed in this state. As part of its statutory duties, the Board annually reviews legislation to identify potential recommendations of the Board. In recent years, this process has included a review of Chapter 436.

Senate Bill 780, enacted by the General Assembly 2008, which created the Joint Committee on Preneed Funeral Contracts. As part of its annual legislative review, the Board was invited to gather a working group of representatives from across the preneed industry to collectively identify suggested preneed recommendations for the Joint Committee's review. The Working Group consisted of a diverse representation from all aspects of the preneed industry, including, liaisons from various consumer groups, members of the State Board and representatives from the funeral, preneed and insurance industries.

The Working Group respectfully submits the attached recommendations to the Joint Committee for review. While diverse interests were represented, the Working Group unanimously agreed that revisions to Chapter 436 are desperately needed to better protect Missouri consumers and those funeral directors, funeral establishments, preneed providers and preneed sellers who truly dedicate themselves to serving the public.

We commend the General Assembly in convening the Joint Committee and in dedicating the time and resources to this important task.

Sincerely,

To be determined

WORKING DRAFT
Dated August 17, 2008 at 5:00 p.m.

WORKING DRAFT

OVERVIEW

I. GENERAL OVERVIEW:

During the 2008-2009 legislative session, various Chapter 436 proposals were introduced. Although not enacted, the proposals sparked intense discussion among regulators, consumers and professional groups. While a consensus was not reached, industry and regulatory groups were able to identify several common areas of agreement.

At the close of the legislative session, various representatives met with Senator Delbert Scott and Representative Jay Wasson to discuss Chapter 436 concerns. The Board was subsequently asked to formulate a working group to help identify agreed areas for legislative recommendations.

The Board hosted five (5) open meetings for the Working Group in Jefferson City, Missouri.[1] All meetings of the Working Group were conducted as open meetings in accordance with Chapter 610, RSMo. Notice of meetings and the proposed agenda were made available to the public and published on the Board's website.

II. PARTICIPANTS:

The Working Group consisted of representatives from consumer groups, funeral directors, preneed providers, preneed sellers, third-party preneed sellers, the Missouri Funeral Directors and Embalmers Association, related insurance companies and representatives from small, large and minority funeral establishments. Participants were chosen from prior legislative involvement and from recommendations made by legislators, Board members and related consumer groups. Members of the public were also invited to attend and given an opportunity to provide both oral and written comments.

The Working Group included:

	REGULATORS:
Linda Bohrer	Acting Director- Department of Insurance, Financial Institutions and Professional Registration ("DIFP")
David Broeker	Division Director, Division of Professional Registration*
Sharon Euler	Office of the Attorney General
Mary Erickson	Senior Enforcement Counsel- DIFP
Larry McCord	General Counsel- DIFP
Mark Stahlhuth	Senior Counsel- Financial Section, DIFP
Rich Weaver	Director, Division of Finance

[1] Open meetings were hosted on July 8th. July 15th, July 24th, July 29th and August 12th.
* Did not participate as a voting member of the Working Group.

ADDITIONAL PARTICIPANTS:

James Reinhard,	Chair, State Board of Embalmers and Funeral Directors
Gary Fraker	Board Member
Joy Gerstein	Board Member
Todd Mahn	Board Member
Martin Vernon	Board Member
John McCulloch	Board Member/American Prearranged Services
Bob Baker	Wright Baker Hill Funeral Home
Barbara Brown	Layne Renaissance Chapel, LLC
Norma Collins	AARP
George Kutis/ George Kline	Kutis Funeral Home, Inc.
Jim Moody	Lobbyist, SCI
Rep. Timothy Meadows	
Michael Meierhoffer	Meierhoffer Funeral Home & Crematory, Inc.
Barbara Newman	Rep. Meadows' Office
Darlene Russell	Charter Life Insurance Co.
Josh Slocum	Executive Director, Funeral Consumer Alliance
Bill Stalter	Stalter Legal Services
Bill Trimm/ Jo Walker	Silver Haired Legislators
Don Otto	Executive Director, Missouri Funeral Director and Embalmers Association/Missouri Funeral Trust
Mark Warren	Inglish & Monaco- Representing Homesteaders Life Insurance, etc.
Mike Winters	Lobbyist, American Prearranged Services

COMMITTEE SUPPORT STAFF:

Connie Clarkston	Director of Budget & Legislation, Division of Professional Registration
Becky Dunn	Executive Director, State Board*
Jeana Groose	Administrative Assistant to Director of Budget & Legislation, Division of Professional Registration*
Kimberly Grinston	Legal Counsel, Division of Professional Registration*
Lori Hayes	Inspector, State Board*

III. REVIEW PROCESS:

To guide the review, the Board circulated a survey with a listing by topic area of Chapter 436 proposals submitted to the Board in prior years. Participants were asked to rank the priority of topic areas listed for purposes of discussion. Surveys were made publicly available and were posted on the Board's website. The Division subsequently compiled the rankings and utilized results to structure the Working Group. [See Appendix 1- Bd. Survey].

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The surveyed topics were ranked as follows:

[INCLUDE SURVEY RESULTS HERE]

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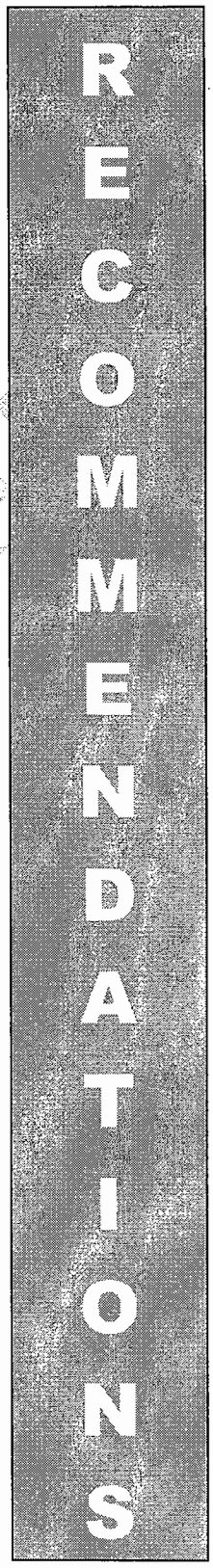

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Working Group recommendations have been compiled as follows:

Unanimous Recommendations:	Recommended by a unanimous vote of all Working Group Participants.
Consensus Recommendations:	Recommended by an overwhelming majority of Participants, generally with less than 15% of Participants dissenting.
Majority Recommendations:	Recommended by a simple majority vote of Working Group Participants.
Unresolved:	Majority vote not reached. Suggestions from Participants have been provided.

For purposes of this Report, recommendations have been categorized as follows:

I. General Regulatory Authority 10

II. Definitions 11-12

III. Licensing/Registration 13

IV. Preneed Contracts 14-15

V. Preneed Providers 16

VI. Trust-Funded Preneed Plans 18-19

VII. Regulation of Trusts & Trustees 20-23

VIII. Insurance-Funded Preneed Plans 24-25

IX. Joint Account-Funded Preneed Contracts 26

X. Payments to Providers 27

XI. Cancellation/Portability of Preneed Contracts 28-30

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XII. Reporting Requirements 31-32
XIII. Consumer Reporting/Notifications 33
XIV. Termination of Business 34-35
XV. Audits, Investigations and Examinations 36-37
XVI. Disciplinary Authority 38-40
XVII. Enforcement Authority 41-42
XVIII. Fees 43
XIX. Conclusion 45

WORKING DRAFT

GENERAL REGULATORY AUTHORITY

The Working Group unanimously agreed to the following recommendations:

- Regulatory authority over Chapter 436 and preneed licensing should remain with the Board. Regulatory authority should not be transferred to another agency.

> ! ***Comments:*** *The Division and Board support this proposal but would also support transferring authority if another regulatory agency is deemed more appropriate.*

- The Missouri Attorney General should be granted concurrent jurisdiction with local prosecutors to prosecute violations of Chapter 436.

- The Board should be granted general rulemaking authority to administer Chapter 436 and to establish necessary fees.

> ! ***Comments:*** *Funeral Consumer Alliance suggested that the current licensee confidentiality restrictions should be revised to allow the dissemination of more information to the public. Division staff indicated that the current confidentiality restrictions apply to all regulated boards/commissions within the Division and would require a statutory change specific to the Board.*

- The Board should be authorized to hire legal counsel to assist in the enforcement of Chapter 436.

> ! ***Comments:*** *Board staff indicated this proposal would allow them to utilize both the Attorney General's Office and outside counsel, if needed. Representatives from the Attorney General's Office refrained from the vote.*

WORKING DRAFT

DEFINITIONS

Several of Chapter 436's current definitions are insufficiently defined. Accordingly, the Working Group approved the following unanimous recommendations:

- ***"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.

- ***"Board,"*** the Missouri State Board of Embalmers and Funeral Directors.

- ***"Division",*** the division of professional registration of the department of insurance, financial institutions and professional registration.

- ***"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.

- ***"Guaranteed Contract",*** A preneed contract in which the future costs for the disposition, facilities, services or merchandise identified in the preneed contract are definitively designated and guaranteed by contract.

- ***"Insurance-Funded Preneed Contract",*** A preneed contract which is designated to be funded by payments or proceeds from an insurance policy.

- ***"Joint-Account Funded Preneed Contract",*** - A preneed contract which designates that payments for the preneed contract made by or on behalf of the purchaser will be deposited and maintained in a joint account.

- ***"Market Value",*** A fair market value,
  (a) As to cash, the amount thereof;
  (b) As to a security as of any date, the price for the security on that date obtained from a generally recognized 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.

- ***"Non-Guaranteed Contract",*** A preneed contract in which the costs for the disposition, facilities, services or merchandise are not guaranteed by contract.

- ***"Person",*** any individual, partnership, corporation, cooperative, association, or other entity.

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- ***"Preneed contract",*** any contract or other arrangement which provides for the final disposition of a dead human body, or for funeral or burial services or facilities, or for funeral merchandise, where such disposition, services, facilities or merchandise are not immediately required, including, but not limited to, an agreement providing for a membership fee or any other fee having as its purpose the furnishing of burial or funeral services or merchandise at a future date.

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- ***"Preneed Agent,"*** any person authorized to sell a preneed contract for or on behalf of a preneed seller.

- ***"Preneed trust",*** a trust established by a seller, as grantor, to receive deposits of, administer, and disburse payments received under preneed contracts by such seller.

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- ***"Provider",*** the person designated to provide the disposition or funeral services, facilities, or merchandise described in a preneed contract.

- ***"Purchaser",*** the person who is obligated to pay under a preneed contract.

- ***"Seller",*** the person who executes a preneed contract with a purchaser and who is obligated under such preneed contract to remit payment to the provider.

- ***"Trustee",*** the trustee of a preneed trust, including successor trustees.

- ***"Trust-Funded Preneed Contract",*** A preneed contract which provides that payments for the preneed contract shall be deposited and maintained in trust.

WORKING DRAFT

LICENSING / REGISTRATION

The Working Group agreed to the following consensus recommendations:

- A "license" should be required for all preneed providers/sellers. Currently, sellers and providers are "registered" with the Board. A "license" denotes legal obligations and more accurately reflects the authorization being issued by the Board.

- Individuals selling preneed for or on behalf of a registered preneed seller should be licensed by the Board.

  ! *Comments: John McCulloch (APS) expressed concerns imposing full licensing, testing or disciplinary requirements on preneed agents.*

- To be eligible for licensure/renewal, providers and sellers must be of good moral character, remit a licensing fee and have a high school diploma or the equivalent. If a corporation, licensure/renewal requirements should be applicable to each officer, director, manager or controlling shareholder.

- All preneed sellers or providers operating as business entities must be properly registered with the Missouri Secretary of State and authorized to conduct business in the state.

- Chapter 436 should be clarified to exempt endowed care cemetery operators governed by Chapter 214 from the provisions of Chapter 436. However, cemetery operators should be subject to Chapter 436 if the contract includes services that may only be lawfully provided by a licensed funeral director or embalmer.

- Chapter 436 should clearly provide that the provisions of the Chapter are inapplicable to contracts of insurance. However, Chapter 436 should apply to any preneed contract sold in conjunction with insurance. The current statutory language regarding insurance assignments or beneficiary designations is unclear and should be modified in compliance with the recommendation.

- Due to potential costs, preneed licensees should not be required to obtain bonding or any specific insurance. The Working Group suggested that increasing consumer protections and regulatory oversight would adequately address the need for additional insurance/bonding.

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PRENEED CONTRACTS

The Working Group unanimously approved the following recommendations:

- To accommodate the varying forms of preneed, Chapter 436 should define and regulate preneed contracts based on their funding mechanism. Specifically, preneed contracts should be classified as either insurance-funded, trust-funded or joint-account funded. Unique concerns relate to each different type of funding. Chapter 436 could be more effectively regulated if the provisions were modified to accommodate each specific form of funding.

- While minimum preneed contract requirements should be established, as provided below, a standard preneed contract form should not be required.

> ! ***Comments:*** *Although MFDEA supported the vote, representatives stressed that a standard form could be beneficial.*

- Preneed sellers should be required to maintain "adequate records" of preneed contracts for the duration of the contract and for no less than two (2) years after the final disposition of the beneficiary, cancellation of the contract or after the facilities, services or merchandise have been provided. Contracts should be provided to the Board on request.

> ! ***Comments:*** *Funeral Consumer Alliance recommended that sellers should also provide copies of all preneed contracts to the Board. The Board suggested this requirement may be unduly burdensome and that requiring sellers to provid[ing] copies upon request would satisfy regulatory concerns.*

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- Preneed contracts should only be designated as irrevocable if the contract is being used to qualify for Medicaid (i.e.-for "spend down").

- Preneed contracts should be in writing and should clearly and conspicuously:
  - Include the name, address and phone number of the purchaser, beneficiary (if different), provider and the seller;
  - Detail the disposition or facilities, services or merchandise requested;
  - Clearly identify if the contract is guaranteed or non-guaranteed on the face of the contract in a recognizable type (i.e.- a 10-point type).

    [Note: The 12- to 13-point font type seems excessive, as Truth-in-Lending considers an 8-point font type to be the minimum size considered recognizable and acceptable.]

  - Identify terms for cancelling the contract by the purchaser or by the seller for payment default.
  - Identify the funding mechanism, including the trust or financial institution where preneed funds will be held or the insurance company issuing an insurance policy.

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- Identify expenses to be retained by the seller.
- Be signed by the purchaser, the preneed agent and the seller or a representative.

- Preneed contracts not in compliance with Chapter 436 should be rendered void [should this be voidable by the purchaser] and unenforceable. If not in compliance, payments may be recoverable by the purchaser or their legal representative plus attorney fees.

! ***Comments:*** *This requirement is similar to current law.*

- Sellers/providers should be prohibited from redesignating a preneed contract as a [illegible] ntract

! ***Comments:*** *The Funeral Consumer Alliance suggested that purchasers should also be given a written statement identifying the financial consequences of the redesignation (i.e.- reduction in cash surrender value, interest accrual and fees).*

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- On the death or legal incapacity of the purchaser, all rights or remedies of the purchaser should accrue to the benefit of the purchaser or his/her successor as designated in the contract. Proceeds payable under a life insurance contract, should be governed by insurance law and the insurance contract.

The Working Group approved the following consensus recommendations:

- Preneed contracts should clearly designate whether the contract is revocable or irrevocable.

! ***Comments:*** *Homesteaders Life Insurance Co., suggested the funding for preneed contracts should be made irrevocable and not the contract itself. The commenter remarked that irrevocable contracts may hinder a consumer's freedom of choice.*

! ***Comments:*** *The Board also recommended that contracts include notification that complaints regarding preneed sellers/providers may be forwarded to the Board and the current number/address of the Board. Representatives of AARP, the Silver Haired Legislators and the Funeral Consumer Alliance agreed with this suggestion.*

PRENEED PROVIDERS

The Working Group unanimously approved the following recommendations:

- In light of recent concerns raised by the Federal Trade Commission, preneed provider licensing should not be restricted to only funeral establishments or cemetery operators. Private individuals are currently authorized to sell funeral merchandise preneed or at-need. However, it should be clarified that Chapter 436 does not exempt any person from the licensing requirements of Chapter 333 governing funeral directors and establishment.

- Chapter 436 should clearly state that the provider designated in a preneed contract is obligated to provide the disposition, facilities, services or merchandise designated in the preneed contract.

- Providers must have a written agreement with each preneed seller that the provider has authorized to designate the licensee as a provider in a preneed contract.

- Providers should be required to report the name and address of its custodian of records and of all sellers authorized to name the licensee as a provider. The Board should be notified by the provider in writing within 15 days of any amendments or changes.

WORKING DRAFT

PRENEED SELLERS

The Working Group adopted the following unanimous recommendations:

- For purposes of licensure, Chapter 436 should be clarified to provide that a preneed trust is not required if the seller is only selling joint-account or insurance-funded preneed plans.

- Preneed sellers should have the option to sell either trust-funded, joint-account funded or an insurance-funded preneed contract. Sellers should notify the Board of the type of contracts to be sold.

- Sellers should report to the Board the name and address of its custodian of records and of all providers that have authorized the seller to name the licensee as a provider. The Board should be notified by the seller in writing of any amendments or changes.

- The written agreement between the provider and seller should include:
  - Consent from the provider authorizing the seller to designate the licensee as a provider.
  - Procedures for tracking preneed fund payments received by the provider.

- Sellers should maintain "adequate records" of preneed contracts for the duration of the contract and for no less than two (2) years after the final disposition of the beneficiary, cancellation of the contract or after the facilities, services or merchandise have been provided.

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- WRONG! The Working Group absolutely did not approve this language! This would create a huge burden on preneed sellers and be extremely cost prohibitive! It would require a huge amount of extra staffing hours, supplies, and postage to issue receipts for all preneed payments received. Purchasers have their cancelled checks as receipts and can always call to request documentation and verification of all payments made at anytime. Other vendors, banks, credit card companies, utility companies, etc., are not required to issue receipts for every payment received! You could always add language requiring preneed sellers to provide written documentation of all payments received when requested by purchasers ...[We certainly provide written receipts immediately upon request and I would assume that all sellers do the same; however, it would be extremely difficult to send out thousands of receipts each month for every single payment received ...]

Deleted: <sp>The Working Group unanimously approved the following recommendations:¶
<#>Sellers should be required to issue receipts to the purchaser for preneed payments received by the seller.¶

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The Working Group approved the following consensus recommendations:

- 100% of all payments for a trust-funded preneed contract should be deposited into trust. Sellers should be authorized to submit a request to the trustee for administrative expenses (see Additional Comments below).

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NOTE: Please use the language finalized by the State Board in our last meeting ... depositing 100% but allowing sellers to request up to 20% back from the trust for administrative expenses.

> ! ***Comments:*** *APS and Meierhoffer suggested that requiring sellers to request expenses from the trustee would create additional administrative expenses that may be passed onto the consumer. APS and Meierhoffer strongly recommended retaining the current process of allowing the seller to retain the first 20% of contract payments and to trust the remaining 80%.*

- Payments for trust-funded preneed contracts should be deposited into trust within sixty-days of receipt.

> ! ***Comments:*** *Participants suggested that sixty-days would allow sufficient administrative time for processing and forwarding payments to the seller and for clearing payments made by check. However, other participants suggested that a 30-45 day deposit requirement would increase consumer protection.*

- Seller administrative expenses should be authorized from the initial payments received.

The following Working Group recommendations were unresolved: After considerable discussion and research, the Working Group did not reach a consensus or majority vote

on the recommended allowance for seller administrative expenses. However, Participants recommended the following amounts:

- No administrative expense should be allowed.
- Three quarters (¾) of 1% of the face value of the Preneed Contract.
  - Josh Slocum
  - *Note: This provision models New York's preneed legislation.*
- ***Ten percent of face value: The majority of Participants agreed that 10% of the contract's face value would be a reasonable compromise.***
  - AARP
  - Silver Haired Legislature
  - Rep. Meadows
- Ten to fifteen percent
  - DIFP
- Twenty percent of face value
  - Mike Meierhoffer
  - Kutis Funeral Home
  - John McCulloch
  - Mike Winters
  - Austin-Layne

WORKING DRAFT

REGULATION OF TRUSTS & TRUSTEES

The Working Group unanimously approved the following recommendations:

GENERAL REQUIREMENTS:

> ! ***Comments:*** *Bill Stalter recommended that regulation of the trust and trustee functions activities would be better served if oversight of the trust was transferred to the Division of Finance.*

- Trustees of a preneed trust must be a state or federally chartered institution authorized to exercise trust powers in Missouri.
- Provisions of the Uniform Trust Act under Chapter 469 and Chapter 456 should not be wholly incorporated into Chapter 436.

> ! ***Comments:*** *Participants commented that Chapters 469 and 456 contain provisions that are not suited for preneed. For example, Chapters 469 and 456 allow the trustee and grantor to modify the statutory requirements by agreement. It was also suggested that the definition of income would be inappropriate for Chapter 436.*

- A preneed trust should terminate when trust principal no longer includes any payments made under any preneed contract. On termination the trustee should distribute all trust property, including principal and undistributed income, to the seller which established the trust.

The Working Group approved the following consensus recommendations:

- Expenses of the trust, including trustee's fees, legal and accounting fees, investment expenses and taxes should be paid from the trust. (APS agrees.)

> ! ***Comments:*** *Several participants recommended that expenses of the trust should continue to be paid by the seller directly. Concerns were raised that allowing payment from the trust could reduce trust principal.*

The Working Group approved the following majority recommendations:

- Income of the trust should accrue and should generally not be distributed until the contract is fulfilled or otherwise cancelled.

> ! ***Comments:*** *Several participants recommended that the current income distribution rules should be maintained and income distributions allowed as earned. [APS agrees.]*

TRUSTEE DUTIES:

The Working Group unanimously approved the following recommendations:

- The prudent investor rule should be adopted for trustees. Specifically, trustees should invest and manage trust assets as a prudent investor would, by considering the purposes, terms, distribution requirements, and other circumstances of the trust. In satisfying this standard, the trustee should exercise reasonable care, skill, and caution.

- Trustees who have special skills or expertise, or who are named trustee in reliance upon the trustee's representation that the trustee has special skills or expertise, should have a duty to use those special skills or expertise when investing and managing trust assets.

- Within a reasonable time after accepting a trusteeship or receiving trust assets, a trustee should review the trust assets and make and implement decisions concerning the retention and disposition of assets in order to bring the trust portfolio into compliance with the purposes, terms, distribution requirements, and other circumstances of the trust, and with the requirements of Missouri law.

- The trustee should maintain "adequate books and records" of all transactions administered through the trust and pertaining to the trust generally.

CONFLICTS OF INTEREST: The Working Group unanimously agreed that conflicts of interest between trustees and investment advisors should be prohibited. Specifically, the following recommendations were made:

- The financial institution and investment advisor should not be controlled by or under common control with the seller.

- "Control", "controlled by" and "under common control" with should be defined as the possession, direct or indirect, of the power to direct or cause the direction of the management and polices of a person, whether through the ownership of voting securities, by contact other than the power is the result of an official position with or corporate office held otherwise, unless the power is the result of an official position with or corporate office held by the person.

- Control should be presumed to exist if any person, directly or indirectly, owns, controls, holds with the power to vote, or holds proxies representing, ten percent or more of the voting securities of any other person. This presumption may be rebutted by a showing to the board that control does not in fact exist to determine within its sole discretion that control does not in fact exist.

- Trustees should be prohibited from selling, investing or authorizing any transaction involving the investment or management of trust property with:
  - The spouse of the trustee;
  - Descendants, siblings, parents, or spouses of a preneed seller or an officer, manager, director or employee of a preneed seller, provider or counselor;
  - Agents or attorneys of the trustee, preneed seller or provider; or
  - A corporation or other person or enterprise in which the trustee, preneed seller, preneed provider, or a preneed provider owns a significant interest or has an interest that might affect the trustee's best judgment.

! ***Comments:*** *Bill Stalter recommended that a seller should be allowed to have a relationship with the advisor so long as the fiduciary remains responsible for the trust's compliance with the prudent investor rule and retains title of the assets.*

INVESTMENT OF FUNDS:

The Working Group unanimously approved the following recommendations:

- Investment of trust funds should be limited to investments that have reasonable potential for growth or producing income.

[This was not agreed to by the Working Group. See page 24, first paragraph, which supports investing trust funds into insurance products and recognizes such investments as safe and necessary.]

Deleted: Trustees should be specifically restricted from investing trust funds in any insurance product.

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- Diversification of trust assets should be mandatory unless the trustee reasonably determines that, because of special circumstances, the purposes of the trust are better serviced without diversifying.

- In investing trust assets, a trustee should be required to consider:
  - General economic conditions;
  - The possible effect of inflation or deflation;
  - The expected tax consequences of investment decisions or strategies;
  - The role that each investment or course of action plays within the overall trust portfolio;
  - The expected total return from income and the appreciation of capital;
  - Other resources of the beneficiaries known to the trustee;
  - Needs for liquidity, regularity of income, and preservation or appreciation of capital;
  - An asset's special relationship or special value, if any, to the purposes of the trust or to one or more of the beneficiaries; and
  - The size of the portfolio, nature and estimated duration of the fiduciary relationship and distribution requirements under the governing instrument.

- Trustees and preneed licensees should be prohibited from procuring or accepting a loan against any investment or asset of the trust.

- Commingling of trust funds should be only be allowed if the trustee maintains adequate records that individually and separately identify the payments and distribution for each preneed contract. Commingling should be limited to payments received for Missouri preneed contracts.

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NOTE: It is not possible to exactly identify the income individually by preneed contract when trust funds are commingled. You could equate the estimated income earned by dividing the total income earned among the preneed contracts based on the percentage of the total trust. However, since interest is paid at the time of death based on the percentage contractually agreed to, the actual amount of income earned on each individual preneed contract will not necessarily be the amount paid out at distribution.

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SELECTIONS OF AGENTS/INDEPENDENT INVESTMENT ADVISORS:

- Trustees should only delegate duties and powers to an agent that a prudent trustee of comparable skills could properly delegate under the circumstances.

- If an agent is selected, the trustee should exercise reasonable care, skill, and caution in:
  - Selecting an agent;
  - Establishing the scope and terms of the delegation, consistent with the purposes and terms of the trust; and
  - Periodically reviewing the agent's actions and monitoring the agent's performance and compliance with the terms of the delegation.

- In performing a delegated function, an agent should owe a duty to the trust to exercise reasonable care to comply with the terms of the delegation.

- Agents that accept a delegation of powers or duties from a trustee should be deemed to have consented to the jurisdiction of Missouri courts.

- By selecting an agent, a trustee should not be relieved of any duty or responsibility imposed on the trustee by Missouri law.

The Working Group approved the following recommendations by majority vote:

- Sellers should be allowed to approve the investment advisor selected.

?? Comment by APS: Would investment advisors be required or allowed? We typically invest in GNMA's and other guaranteed funds and it would not be feasible to pay investment advisor fees on the entire trust balance.

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! ***Comments:*** *The Department of Insurance, Division of Finance, State Board and the Missouri Attorney General's Office unanimously agree that seller approval of the investment advisor would hinder the independence of the investment advisor and threaten consumer protection. The suggestion proposed would allow the NPS concerns to occur again. Consumers should not, and cannot, be placed at continued risk of unscrupulous business practices. A trustee of a financial institution should be more than capable of selecting an investment advisor that would be adequate for the trust. Seller "approval" is not and should not be required.*

WORKING DRAFT

INSURANCE-FUNDED PRENEED PLANS

The Working Group adopted the following unanimous recommendations:

- Currently, Chapter 436 does not clearly allow/regulate insurance-funded plans. Insurance funded preneed plans are a safe and necessary option. Accordingly, Chapter 436 should clearly authorize insurance-funded contracts.

- Insurance law should not apply to preneed contracts but should apply to any insurance sold with a preneed contract.

- Sellers should not charge, assess or collect any administrative fees for an insurance-funded preneed plan. Instead, sellers should only be allowed to receive/collect from a purchaser the amount required to pay insurance premiums as established by the insurer.

- In no instance, should a term life insurance product be used to fund a preneed contract. However, consumers should be allowed to assign proceeds from a term-life insurance product to a provider, or to designate a provider as a beneficiary under a preneed contract, provided that the assignment is not related to, or done in contemplate of, executing the sale of a preneed contract.

> ! ***Comments:*** *MFDEA recommended that a blanket prohibition may be overreaching and that consumers should still be allowed to assign proceeds from a pre-existing term-life product to a provider or to designate a funeral establishment as the beneficiary. MFDEA remarked that term life insurance may be the only affordable option for some consumers or the only insurance option that consumers who are older or have significant health problems may qualify for.*

The Working Group adopted the following consensus recommendations:

- Payments received by the seller/provider for insurance-funded preneed contracts should be forwarded to the insurer within thirty (30) days of receipt.

> ! ***Comments:*** *Homesteaders remarked that sellers/providers should only be authorized to collect the initial premium payment. All subsequent premium payments should be made directly to the insurer.*

- Preneed contracts funded by a life insurance policy should include:
  - Terms for cancellation by the purchaser or seller;
  - Notice that cancellation of the preneed contract will not cancel the life insurance policy funding the preneed contract.

- Notice that insurance cancellation must be made in writing to the insurer.
- Notice that the purchaser will only receive the cash surrender value of the policy, which may be less than the amount paid in, if cancelled after a designated time;
- Notice that the purchaser has the right to reassign/transfer the beneficiary designation or assignment to another funeral home.

! ***Comments:*** *To avoid confusion and potential misconstructions, concerns were raised that the majority of this information should be provided by the insurer and included in the insurance contract since it would require the seller to summarize the insurance contract. Additionally, Homesteaders suggested use of the National Association of Insurance Commissioner's model for insurance funded disclosures. Funeral Consumer Alliance also suggested that the amount of commission should also be disclosed in an insurance-funded contract.*

! ***Comments:*** *Funeral Consumer Alliance suggested that licensees should disclose to the purchaser if the licensee is an insurance agent/producer and if the licensee will receive any commission, payment or other consideration for the sale of an insurance product.*

WORKING DRAFT

JOINT ACCOUNT-FUNDED PRENEED CONTRACTS

The Working Group unanimously recommended that the current provisions for joint-account funded preneed plans are adequate and should be maintained. However, the Working Group suggested the following minor changes:

- Chapter 436 should be clarified to provide that a preneed seller may sell joint-account funded contracts. Currently, Chapter 436 only authorizes joint accounts for providers.

- Sellers only utilizing joint-account funded preneed contracts should not be required to have a trust.

WORKING DRAFT

PAYMENTS TO PROVIDERS

The Working Group unanimously recommended the following:

- To request payment, providers should be required to submit a certificate of performance certifying that the provider has rendered services to the preneed beneficiary. The certificate of performance should be signed by the provider and the person authorized to make arrangements on behalf of the preneed beneficiary.

- Sellers should remit payment to providers within thirty (30) days after receiving a certificate of performance. Sellers should not be prohibited from also requiring submission of a certified death certificate.

WORKING DRAFT

CANCELLATION/PORTABILITY OF PRENEED CONTRACTS

The Working Group considered four distinct scenarios that generally arise over the life of a preneed contract:

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.

A. Contract Fulfillment:

The Working Group approved the following unanimous recommendations:

- On fulfillment, sellers should be entitled to payment as provided in the contract and the related income.

B. Transfer of Providers:

The Working Group approved the following unanimous recommendations:

- Chapter 436 should allow for 100% portability. Purchasers should have complete and unrestricted freedom to select an alternative provider. Purchasers should not be penalized nor should any additional fee or costs be assessed to the purchasers for a transfer.

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Comment by APS: The State Board approved 100% portability with 1% interest on preneed transfers. However, we believe this would create problems, as some trusts may not earn 1% and some sellers will have used the initial 20% for commissions and overhead and this language would then allow transfers to other funeral homes and

require the funeral home that wrote the business to pay back 100% of the face amount of the preneed contract plus interest when they have already spent a portion of the funds to obtain the business (i.e., paid commissions to preneed agents, paid taxes on the income earned on the preneed funds, etc.).

- The new provider designated by the purchaser should be accepted by the seller if the provider agrees to accept the remaining payment owed the original provider as designated in the contract. Here, the newly designated provider would simply "step into the shoes" of the original provider for purposes of payment and fulfilling the contract.

> ! ***Comments:*** *While MFDEA generally supported this recommendation, concerns were raised that the seller should be able to reject a designated provider if the seller does not have a contract with the provider or if legitimate business reasons exist for the seller not accepting the designation (i.e.- the provider has failed to comply with the contract in other instances or has misappropriated funds from the seller).*

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. The refund amount should be designated by statute (however, see below).

Additional Recommendations: 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, the following recommendations were suggested by Working Group Participants:

APS agrees with the Board's recommendation that only 80% should be paid back on cancellations. However, if the statute is changed to require 100% of the monies to be initially paid into trust, then this cancellation language should be written to clearly state that cancellations would require a refund of all monies in trust less 20% of the face amount of the contract.

- 100% of all funds paid and held in trust should be refunded to the purchaser (including income).
- 100% of all funds held in trust should be refunded.
- 80% of all funds held in trust should be refunded.

- 80% of all funds paid by the purchaser should be refunded.
- 80% of all funds paid should be refunded plus a portion of the income earned.

D. Cancellation By Seller For Non-Payment:

The Working Group approved the following unanimous recommendations:

- Sellers should be allowed to cancel the contract unilaterally if the purchaser is in default of payment.

If cancelled by the seller, preneed purchasers should be refunded all monies in trust less 20% of the face amount of the contract, which is the amount allowed to be retained by the seller for administrative expenses.

NOTE: Refunding 80% really won't work. What if the purchaser had only paid in 20%, then the seller would only be allowed to retain 4% (20% of the 20% paid in). That would be significantly less than the commissions paid to obtain the business.

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- Prior to cancellation, purchasers should be provided written notification from the seller of the seller's intent to cancel. The notice should be provided forty-five days prior to cancellation and should allow the purchaser thirty days to remit the payment in arrears to avoid cancellation.

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APS believes the current law which allows sellers to cancel contracts in arrears for 90 days is more fair to all parties. If purchasers are allowed 30 days to remit payments in arrears to avoid cancellation and contracts sometimes allow payments over a period of 120 months, just think how hard it would be to collect payments from purchasers who consistently pay late!

NOTE: If this portion of the statute is changed, then it should be clearly written that these changes only apply to contracts written after the date that these changes become effective. Since contracts written in the past clearly allow cancellation when payments are 90 days in arrears without the requirement that parties be given 30 days to remit payments in arrears to avoid cancellation.

- If the seller does not cancel 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:

This was not approved by the Working Group and should be removed! This also directly contradicts the prior paragraph. Additionally, as stated earlier, it would

Deleted: <#>On seller cancellation, 100% of all funds paid and held in trust should be refunded to the purchaser (including income).¶

be unfair to require sellers to refund 100% of the funds paid in plus interest, as commissions would have been paid out to obtain the business and income taxes would have been paid on the income earned.

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- Eighty percent of all funds paid and held in trust should be refunded to purchasers.

! ***Comments:*** *Bill Stalter recommended that issues regarding trust expenses and income/expense allocations would be better addressed in rulemaking. Untrue!!!*

WORKING DRAFT

REPORTING REQUIREMENTS

To assist the Board in regulation, the Working Group unanimously recommended expanding the information submitted to the Board by preneed licensees.

ANNUAL REPORT
REQUIREMENTS FOR ALL PRENEED SELLERS

Would these reports be available for public viewing? This information should be maintained as strictly CONFIDENTIAL. Information relative to purchasers should not be seen by the Board Members or the public, as funeral homes certainly would not want their competition to have access to this information. This would especially be true since proposed changes would allow people to freely change funeral homes and transfer 100% of their trust plus interest to competing funeral homes!

Purchaser names, addresses, preneed contract numbers, etc., would be available during Board reviews and audits if necessary. Therefore, we do not believe it would be prudent or fair to require preneed sellers to file this much information on annual reports.

The Working Group approved the following unanimous recommendations: Annual reports filed with the Board by the seller should include:

- The purchaser's name and address and preneed contract number, if any. Contract numbers should not be required but should be provided if available..
- The total number and face value of outstanding preneed contracts sold since the last report was filed.
- The contract amount for each preneed contract sold since the last annual report
- The name, address and contract number of all preneed agents authorized to sell preneed for the seller.
- The number of contracts fulfilled by the seller since the last report.
- The name and address of each provider contracted with the seller.
- The name and address of a custodian of preneed records.
- Authorization for the Board to conduct an audit and/or an examination of books and records.
- Any other information deemed necessary by the Board by rule.

ANNUAL REPORT REQUIREMENTS
FOR TRUST-FUNDED PRENEED CONTRACT SELLERS

The Working Group approved the following unanimous recommendations: Annual reports filed with the Board by the seller should include:

(The following should be certified as true and accurate by a corporate officer of the trustee.)

- The name and address of the financial institution where the trust is held and the account number;

- The trust fund balance as reported in the previous year's report and the current trust fund balance.
- Principal contributions received since the last report.

Company profits should not have to be reported. Other businesses do not disclose this confidential information.

- Total expenses since the last report, excluding distributions to the seller.

Deleted: <#>Total trust earnings and total distributions to the seller since the last report.¶
<#>A statement of assets and investments of the trust listing cash, real or personal property, stocks, bonds, and other assets. The listing should show cost, acquisition date and current market value of each asset and investment.¶

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ANNUAL REPORT REQUIREMENTS FOR JOINT-ACCOUNT FUNDED PRENEED CONTRACT SELLERS

The Working Group approved the following unanimous recommendations: Annual reports filed with the Board by the seller should include:

(The following should be certified as true and accurate by a corporate office of the financial institution.)

- The number and address of the Missouri financial institution where the joint account is held and the account number.
- The amount on deposit in each joint account.
- The joint account balance reported the previous year.
- Principal contributions placed into each joint account since the last report.
- Total earnings since the previous report.
- Total distributions to the seller from each joint account since the previous year.

You cannot deduct any expenses from joint accounts. Income taxes would likely be paid by the seller, unless the purchaser's social security number was used for income tax reporting purposes on the joint account by the written agreement of the parties. We do not believe there would be any bank fees involved; however, if there were, they would be paid by the seller.

Deleted: Total expenses deducted from the joint account since the last report, excluding distributions to the seller.

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ANNUAL REPORT REQUIREMENTS FOR INSURER FUNDED PRENEED CONTRACT SELLERS

The Working Group approved the following unanimous recommendations:

- The name and address of each insurer issuing insurance to fund a preneed contract during the preceding year.
- The status and total death benefit and cash surrender value of each policy in force at the time of the report. ***(This should be certified as true and accurate by the insurer.)***

This information is regulated by the Department of Insurance and should not be required. Also, as stated earlier, this information would be available for review or audit by the Board, if necessary.

The Working Group absolutely did not approve this language! It would be extremely burdensome and cost prohibitive for preneed sellers to provide receipts to every single purchaser for every single payment received. Preneed sellers receive thousands of payments each month, sometimes as little as $5 each! It would require a huge amount of extra staffing hours, supplies, and postage to issue receipts for all preneed payments received. Purchasers have their cancelled checks as receipts and can always call to request documentation and verification of all payments made at anytime. Other vendors, banks, credit card companies, utility companies, etc., are not required to issue receipts for every payment received! You could always add language requiring preneed sellers to provide written documentation of all payments received when requested by purchasers ....[We certainly provide written receipts immediately upon request and would assume that all sellers do the same.]

Deleted: <sp>The Working Group unanimously approved the following recommendations:¶
<#>Purchasers should be entitled to an annual report from the seller indicating the amount of funds paid by the purchaser during the reporting year and the name and address of the trustee.¶
<#>Sellers should inform purchasers of a change in trustee within thirty (30) days after the change. Notification should include the name, address and phone number of the trustee.¶
¶
The Working Group approved the following majority recommendations:¶
<#>Purchasers should be notified by the trustee each time a deposit is made into trust for the contract.¶
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<#>Purchasers should be provided a receipt for each payment made by or on behalf of the purchaser. The receipt should be provided by the initial person receiving the payment (i.e.- the seller, provider or the agent). ¶
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WORKING DRAFT

TERMINATION OF BUSINESS

The Board has experienced significant regulatory difficulty with ensuring that Missouri consumers are adequately protected when preneed providers and sellers cease doing business either voluntarily or involuntarily. As a result, the Working Group unanimously recommended the following:

PRENEED SELLERS:

- The Working Group approved the following unanimous recommendations: The following notification/reporting requirements should be mandated for preneed sellers:
  - Notice to the Board at least thirty (30) days prior to a seller ceasing business or transferring a majority of its stock/assets.
  - A final annual report filed with the Board which includes a detailed plan indicating how outstanding preneed contracts will be filled and/or satisfied and how assets will be allocated for preneed obligations.
  - Notice to all providers that the seller has ceased doing business thirty (30) days prior to the seller ceasing business or transferring a majority of stock/assets.
  - Notice to consumers that the seller will cease doing business and indicate a contact number for questions regarding preneed contracts, consumer refunds or how arrangements will be satisfied. Purchaser notification should be required at least thirty (30) days prior to ceasing business or, in instances of a sale/transfer, within thirty (30) days after completion of the sale/transfer.
  - Submission of any additional information designated by the Board.
- Upon notification, the Board should have the continuing ability to inspect, examine and/or audit the books and records of the preneed provider/seller to ensure contractual obligations are met.
- The Attorney General should be granted authority to enter the premises and access/take possession of the books and records any preneed seller who ceases business without notification to the Board.

PRENEED PROVIDERS:

- The following notification/reporting requirements should be mandated for preneed providers:
  - Notice to the Board at least thirty (30) days prior to the provider ceasing business or transferring a majority of its stock/assets.
  - A final annual report filed with the Board.
  - Notice of the provider's intent to all sellers with whom the provider has outstanding preneed contracts within thirty (30) days prior to the provider ceasing business or transferring/disposing of a majority of stock/assets.
  - Upon notification from the providers, should be required to notify all purchasers that the provider has ceased doing business or has transferred ownership. Notification should include provisions for selecting an

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alternative provider and should be provided within thirty (30) days after the provider ceasing business or transferring ownership/assets.

It would be extremely unfair and burdensome to expect the seller to notify purchasers. This should be a joint effort between the provider who is going out of business and the State Board, since the State Board would have the information available and would also have more resources to handle this.

- Submission of any additional information designated by the Board.

- Upon notification, the Board should have the continuing ability to inspect, examine and/or audit the books and records of the preneed provider to ensure contractual obligations are met.
- The Attorney General should be granted authority to enter the premises and access/take possession of the books and records any preneed provider who ceases business without notification to the Board.

WORKING DRAFT

AUDITS, INVESTIGATIONS AND EXAMINATIONS

The Working Group unanimously agreed that effective regulation of the preneed industry may only be accomplished by strengthening, clarifying and expanding the current investigation, examination and audit authority of the Board.

The Working Group unanimously recommended the following:

- The Board should be granted clear authority to:
  - Issue subpoenas to compel the production of books and records of any licensee or trustee.
  - Enter the premises or establishment where preneed business is conducted, or is advertised to be conducted, for the purposes of accessing books and records.
  - Conduct random or targeted inspections, with or without cause and at the discretion of the Board.
  - Investigate complaints and to investigate licensees to determine compliance with Chapter 436.
  - Conduct random or targeted examinations of books and records, at the discretion of the Board. The Board should be authorized to conduct an examination of each preneed seller at least once every five years.

> ! ***Comments:*** *Although the Working Group initially recommended every three years, the Board expressed concerns regarding cost and the financial feasibility of conducting such examinations.*

  - Sellers selling joint-account funded plans only should be exempt from the examinations conducted by the Board every five years. However, the Board should retain authority to audit or examine the seller, if deemed necessary.
  - Audit a preneed seller with cause if the Board has reasonable grounds for verifying the proper handling of preneed funds.
- Inspections, investigations, audits and examinations should be authorized with or without a complaint.
- The Board may request DIFP, the attorney general or the division of finance, to designate investigator(s) or financial examiner(s) to assist the Board with any inspection, investigation, examination or audit.
- Preneed licensees should clearly be required to cooperate with any inspection, investigation, examination or audit conducted by the Board, DIFP, the attorney general or the division of finance.
- Books and records of licensees should be made available to the Board by the licensees upon request.
- Costs of an inspection, investigation, examination or audit should be funded through licensing fees established by the Board by rule.

! ***Comments:*** *The Working Group unanimously agreed that examination/audit costs should not be charged to the licensee. Depending on the scope of the audit/examination, costs may be excessive and would be difficult to determine prior to the audit/exam. As a result, charging costs to licensees may have an overwhelming impact and could potentially result in licensee bankruptcies.*

ATTORNEY GENERAL AUTHORITY

The Working Group unanimously recommended the following:

If a violation of Chapter 436 is found after an investigation, audit or examination, the Attorney General should be authorized to initiate a judicial proceeding to:

- Declare rights.
- Approve a nonjudicial settlement.
- Appoint or remove a trustee.
- Interpret or construe the terms of the trust.
- Determine the validity of a trust or its terms.
- Compel a trustee to report or make an accounting.
- Enjoin a trustee from performing a particular act or to grant the trustee any necessary or desirable power.
- Review the actions of the trustee, including the exercise of any discretionary power.
- Determine trustee liability and to grant any available remedy for breach of a trust.
- Approve employment and compensation of agents.
- Determine the propriety of investments.
- Determine the timing and quantity of distributions and disposition of assets.
- Utilize any other power vested in the attorney general.

WORKING DRAFT

DISCIPLINARY AUTHORITY

The Working Group unanimously agreed that to effectively regulate Chapter 436, the Board's disciplinary process must be streamlined to allow for a more efficient and effective remedy. This would necessarily include, expanding the current grounds for discipline as well as the disciplinary tools available to the Board.

The Working Group unanimously recommended the following legislative change:

Section A.1. The board may refuse to issue any certificate of registration or authority, permit or license required under this chapter for one or any combination of causes stated in subsection 2 of this section. The board shall notify the applicant in writing of the reasons for the refusal and shall advise the applicant of his or her right to file a complaint with the administrative hearing commission as provided by chapter 621, RSMo.

2. The board may cause a complaint to be filed with the administrative hearing commission as provided by chapter 621, RSMo, against any holder of any certificate of registration or authority, permit or license required by this chapter or any person who has failed to renew or has surrendered his or her certificate of registration or authority, permit or license for any one or any combination of the following causes:

(1) Use of any controlled substance, as defined in chapter 195, RSMo, or alcoholic beverage to an extent that such use impairs a person's ability to perform the work of any profession licensed or regulated by this chapter;

(2) The person has been finally adjudicated and found guilty, or entered a plea of guilty or nolo contendere, in a criminal prosecution under the laws of any state or of the United States, for any offense reasonably related to the qualifications, functions or duties of any profession licensed or regulated under this chapter, for any offense involving a controlled substance, or for any offense an essential element of which is fraud, dishonesty or an act of violence, or for any offense involving moral turpitude, whether or not sentence is imposed;

(3) Use of fraud, deception, misrepresentation or bribery in securing any certificate of registration or authority, permit or license issued under this chapter or in obtaining permission to take any examination given or required under this chapter;

(4) Obtaining or attempting to obtain any fee, charge, tuition or other compensation by fraud, deception or misrepresentation;

(5) Incompetency, misconduct, gross negligence, fraud, misrepresentation or dishonesty in the performance of the functions or duties of any profession licensed or regulated by this chapter;

(6) Violation of, or assisting or enabling any person to violate, any provision of [sections 436 regulating preneed], or of any lawful rule or regulation adopted pursuant thereto;

(7) Impersonation of any person holding a certificate of registration or authority, permit or license or allowing any person to use his or her certificate of registration or authority, permit, license or diploma from any school;

(8) Disciplinary action against the holder of a license or other right to practice any profession regulated by this chapter granted by another state, territory, federal agency or country upon grounds for which revocation or suspension is authorized in this state;

(9) A person is finally adjudged insane or incompetent by a court of competent jurisdiction;

(10) Misappropriation or theft of preneed funds;

(11) Assisting or enabling any person to practice or offer to practice any profession licensed or regulated by [the provisions of Chapter 436 regulating preneed] who is not registered and currently eligible to practice thereunder;

(12) Issuance of a certificate of registration or authority, permit or license based upon a material mistake of fact;

(13) Failure to display a valid certificate or license if so required by this [the provisions of Chapter 436 regulating preneed] or any rule promulgated thereunder;

(14) Violation of any professional trust or confidence;

(15) Making or filing any report required by [the provisions of Chapter 436 regulating preneed] which the licensee knows to be false or knowingly failing to make or file a report required by [the provisions of Chapter 436 regulating preneed];

(16) Use of any advertisement or solicitation which is false, misleading or deceptive to the general public or persons to whom the advertisement or solicitation is primarily directed, or;

(19) Willfully and through undue influence selling a preneed contract.

3. After the filing of such complaint, the proceedings shall be conducted in accordance with the provisions of chapter 621, RSMo. Upon a finding by the administrative hearing commission that the grounds, provided in subsection 2 of this section, for disciplinary action are met, the board may, singly or in combination, censure or place the person named in the complaint on probation on such terms and conditions as the board deems appropriate for a period not to exceed five years, or may suspend, for a period not to exceed three years, or revoke the license, certificate, or permit.

Deleted: 061

4. Notwithstanding any other provision of this section, the board may automatically suspend a license if the Board finds, after an inspection, examination, investigation or audit, a shortage in any preneed trust or joint account which exceeds 20% of the total amount required to be held or deposited in the trust or account pursuant to [the provisions of Chapter 436 regulating preneed].

5. Any person whose license is suspended under subsection 4 of this section may appeal such suspension to the administrative hearing commission. Notice of such appeal must be received by the administrative hearing commission within ninety days of mailing, by certified mail, the notice of suspension. Failure of a person whose license was suspended to notify the administrative hearing commission of his or her intent to appeal waives all rights to appeal the suspension. Upon notice of such person's intent to appeal, a hearing shall be held before the administrative hearing commission pursuant to Chapter 621.

6. Use of the procedures set out in this section shall not preclude the application of the provisions of subsection 2 of section 333.061.

WORKING DRAFT

ENFORCEMENT AUTHORITY

INJUNCTIVE/CIVIL AUTHORITY

The Working Group unanimously recommended the following:

- Similar to current law, the Board should have authority to seek injunctive relief or any other civil authority necessary to enjoin/restrain an entity from:
  - Unlicensed activity.
  - Engaging in any activity that would pose a substantial probability of danger to the public health, safety or welfare.
  - Engaging in any activity that presents a substantial probability of serious danger to the solvency of any preneed seller.
- The authority granted to the Board should be in addition to any other remedies authorized by law.
- Proper venue for any such action should be amended to include Cole County.
- Violation of Chapter 436 should be deemed violations of Chapter 407, under the jurisdiction of the Attorney General. In actions brought under Chapter 407, the court should be authorized to impose any penalty/remedy authorized under Chapter 436 or 407. Additionally remedies should include revocation/suspension of the preneed license.

CRIMINAL AUTHORITY

The Working Group unanimously recommended the following:

- Knowing and willful violations of Chapter 436 by incompetence, misconduct, gross negligence, fraud, misrepresentation or dishonesty should be deemed Class C felonies. *Comment: Violations are currently Class D felonies.*

FINES & CIVIL PENALTIES

The Working Group unanimously recommended the following:

- The Board should be authorized to impose civil penalties and fines as a form of discipline.
- Fines/Civil Penalties should be assessed in light of the seriousness of the violation found.
- Fines/civil penalties should be consistent with the fines/penalties currently authorized for other professions within the Division. Specifically, the legislature has approved civil penalties for the Real Estate Commission and Architects, Professional Engineers, Professional Land Surveyors and Landscape Architects in the amount of two thousand five hundred dollars for each offense.
- In considering a fine/civil penalty, the Board should be required to consider, among other factors,:

(1) If the violations are likely to continue or reoccur;

(2) Whether actual financial loss was sustained by consumers and if restitution has been made;

(3) If the violation was detected as part of a self-audit or internal compliance program and immediately reported to the Board; and

(4) If the violation had previously been detected, but inadequate policies and procedures were implemented to prevent reoccurrence.

Deleted: n

! ***Comments:*** *Currently, the Attorney General also has authority to assess/request fines and penalties under Chapter 407. A concern was raised by MFDEA that preneed licensees may be subjected to double penalties if an action is initiated by the Board as well as through the Attorney General's Office. MFDEA and Meierhoffer suggested that if accepted, language should be developed to prevent duplicate imposition of fines/penalties by the Board and the Attorney General's Office for the same conduct.*

Response: As litigation counsel for the Board, the Attorney General's Office traditionally represents and coordinates with the Board in pursuing any remedy. Additionally, the remedies imposed by the Board and by the Attorney General's Office are distinctly different. The remedies imposed by the Board would be limited to licensing violations only. The remedies authorized under Chapter 407 are to redress/remedy a harm inflicted on the public at large. A concern was raised that if a licensee's conduct violates the licensing law as well as harms the public, expanded remedies would be appropriate.

WORKING DRAFT

FEES

The proposed recommendations would require additional funding for the Board to regulate the proposed provisions and to fulfill all statutory obligations.

The Working Group unanimously approved the following recommendations:

- Licensing and renewal fees for preneed seller, providers and agents as established by the Board by rule. If both the preneed sellers/providers are required to pay fees, the preneed agent licensing fees should be minimal and proportionately lower than preneed seller/providers.
- Preneed sellers should continue to be assessed a two-dollar fee per preneed contract sold during the annual reporting year as currently required.

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CONCLUSION

CONCLUSION

Nationally, the preneed industry has experienced significant and sustained growth as consumers focus more attention on their final needs. Preneed arrangements can provide a valuable option to purchasers desiring to ensure their arrangements. Chapter 436 regulating preneed is in need of significant legislative changes. As reflected in the present crisis impacting Missouri, Chapter 436 must be enhanced and amended to ensure consumer protection and the continued viability of Missouri's preneed industry.

The Working Group appreciates the opportunity to share its recommendations. We look forward to providing any further assistance you may need.

WORKING DRAFT

Comments – Moore Funeral Home

Moore Funeral Homes

JOHN H. MOORE-PRESIDENT
THOMAS A. WORTHEN - DIRECTOR

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Dear Don Otto,

In regards to 436, it is my opinion to put in place a fund to assist if the "N.P.S." corporate Class was to ever come to light again. I offer the following:

Addition to 436:

A) Every seller of a preneed contract, be it by insurance, trust, joint CD or another type of investment shall be charged a Sellers Security fee of $100.00 to be paid at the day of the contract to the Missouri State board of embalmers and funeral directors.

B) The fee shall be collected on each and every contract wrote in the State of Missouri.

C) The seller must send in the funds within five days of the sale of the contract.

D) The funds shall be deposited into an interest bearing account with an Institution with a backing of FDIC for excess of the $100,00.00 limits.

E) This fund shall be governed by the Missouri State Board of Embalmers and Funeral Directors and can only be accessed with the proof and failure of a Preneed Company or Funeral Home with a Corporate Headquarters in Missouri. Use of funds can only be accessed when the Board holds an open meeting and an open vote for approval.

It is my thoughts that with the above we can help save firms when this occurs again. This funding would help make up the loss by the Funeral Homes with the difference in the contract and inflation amount. Please consider this as an addition to the current 436 revisions.

Thank You,

S/John H. Moore

John H. Moore
Moore Funeral Homes, Potosi, Irondale, Missouri

Cc: Missouri State Board of Embalmers and Funeral Directors
Cc: Rep. Belinda Harris
Cc: Rep. J C Kuessner
Cc: Senator Kevin Engler