MISSOURI STATE BOARD OF EMBALMERS
AND FUNERAL DIRECTORS

CHAPTER 436 LEGISLATION MEETING

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

JULY 29, 2008
10:10 A.M. - 4:15 P.M.
CHAIRMAN: I apologize for the late start. It's like being in the doctor's office; you never get in on time. So, we're going to start -- this is going to be very informal today. We're not going to go around and introduce -- or I'm not going to. We're going to start with Tom Kutis and we're going to go around the room. We're going to introduce the public and we're going to get right down to business. So, go ahead, Tom. Tell them where you're from and who you represent.

(The committee members and public introduce themselves.)

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

MS. GRINSTON: Good morning. I thought we'd start off with something that was a follow-up to what you all asked to look at
last meeting. On the table, you should have a
handout, and there are lots of handouts and
we'll explain them as we go along because we
have a lot of paper today. But there is a
handout of Section 374.049 on your desks. I
believe -- I forget who asked me for this
information, but when we were talking about
civil penalties and fines as a disciplinary
avenue for the Board, you all asked to look at
insurance's structure for their civil
penalties and/or violations. And so, I'd like
to start here with this language, if we could,
because this is a copy of how insurance ranks
their disciplinary violations and how the civil
penalties/fines/forfeitures are assessed with
the general structure. I, of course, will
derfer to the department director for any
additional comments on this, but you all
wanted to discuss imposing if you, number one,
would allow civil penalties, and, number two,
if we could come to an agreement on a
structure that would be meaningful in the
preneed market, so the floor is open.

CHAIRMAN: I don't see a lot of red
cards going up. Oh, Mary?
MS. ERICKSON: Just a clarification for the group. In many of our statutes in the last few years that have been amended regarding particular requirements of either an insurer or a licensee, the statute itself, separate from this 374.049, sets forth what type or what level of violation it is. So, it's an option for you to consider. According to .049, there is a default. If there -- no classification has been denoted in another legislative section, then it is a classification 1. Obviously, there are some areas that are more serious and egregious, and we have taken the time and the energy to put in what classification -- it might be a 2, 3, or a 4, depending on the severity and the type of consumer fraud, perhaps, that's involved. But for a full disclosure, I thought you all should be aware of that.

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

MS. ERICKSON: Yes and yes.

CHAIRMAN: Don?

MR. OTTO: Just -- I voiced this
concern last time, but I think everybody was
going tired. My only concern with it, I
think having civil penalties is a good idea
and have it graduated like this seems to be
the best way to do it. It's better than
taking away somebody's livelihood completely,
particularly, if it's the first time. But my
only concern still is that unlike insurance,
if we did this under 333 or the combined
333/436, you could get it up with civil
penalties under this and then, again, under
407. That can't happen in insurance because
407 doesn't apply to insurance, but this would
set you up for a double whammy if we just do
that. So, I mean, that's a concern I have is
where you could get up hit up by two different
-- and this has happened, you know, in the
past, you know, where -- you know, who should
I -- who do I need to make happy. Do I need
to make the State Board happy or do I make
the attorney general's office happy if they
both have powers to come against me?

CHAIRMAN: Linda?

MS. BOHRER: Couldn't the AG's office
propose language that would be an offset? I
mean, I know you don't want to eliminate 407 enforcement, but where it overlaps with 407, 407 would prevail. I mean, couldn't there be language introduced that would make it one or the other with --

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

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

MR. OTTO: But my concern is, like, when you have two different separate agencies that each have authority over you, who is it that you should try to make happy? If the State Board says, well, if you do this, we'll
only hit you up with a $1,000 fine, but the
attorney general's office wants you to do
something else --

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

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

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

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

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

MS. GRINSTON: So, Don, would your
concern be remedied if we had language that
said that, you know, that any amounts imposed
by the Board would be credited toward any
amount assessed under 407 or --

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

CHAIRMAN: Mary?

MS. ERICKSON: In terms of actually how it works out, the -- and this is my opinion, not necessarily the opinion of the department -- and having come from consumer protection at the AGO for four years, the penalties that are envisioned in a licensing scheme is strictly for the bad acts committed in violation of the law and this is a penalty against your license as you, as a licensee. The penalties under Chapter 407 are not envisioned as a target towards a licensee, but rather as a public redress for harms done to the public through consumer fraud. They can stand separately. Perhaps legislation can be drafted, but the other consideration is
penalties assessed by this Board would be
through a hearing, et cetera, with full
opportunity for due process. Within 407's
structure, a lawsuit is brought within circuit
court and it's the circuit judge that
determines civil penalties, so you have very
different tribunals reaching those
conclusions, and perhaps legislation can
address that. I do not know. I have not
seen that elsewhere in our regulatory system,
but just so you understand that it's very
different in its purpose and in its -- how
it's affected.

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

MS. EULER: Uh-huh.

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

(Kumerous people answer no.)

MS. GRINSTON: It doesn't. Oh, I'm
sorry. You're right. Not insurance, but
other --

MS. ERICKSON: Only by referral.

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

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

MS. GRINSTON: -- people -- yeah.

Like health and senior services and everything
else. How does that work now? Does the AG's
office initiate an independent proceeding, or
would the Board have to request civil
penalties through the disciplinary process and
civil penalties through the 407 process?

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

MS. GRINSTON: So, would a crediting
satisfy your concern, Don, so that you're not
being hit twice? If you get hit under 407,
that whatever amount you have already paid
from the Board -- and I'm assuming, based on your prior conversation, that those amounts from the Board wouldn't be anywhere as high as a 407 action might be. And would a cap and/or a crediting satisfy some of your concerns?

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

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

MS. EULER: The problem would be with the timing because I can envision a situation where a 407 action would get before the court before the administrative process would get before the court for civil penalties. And it would seem to me that that would be a defense, for lack of a better word, something for the licensee to bring up at whatever proceeding to say, you know, I've already paid -- been
assessed civil penalties through the AG's office or I've already been assessed civil penalties through the Board process. And maybe we would draft that the court or the administrative process can consider civil penalties paid as a mitigating factor in determining the award. I don't think there should be an offset because I can see situations where that will backfire. But I think allowing the payment of civil penalties to the other party could be seen as a mitigating factor in the determination of award of penalties.

CHAIRMAN: Joy?

MS. GERSTEIN: As we spoke in the last meeting, this Board, as we all see it now, and with things that are taking place, needs the ability to be able to apply some type of penalties now rather than having to go through -- totally through the attorney general's office. We talked about at one point working together to rewrite this so that it would work for the Board, but still could refer to you all. But they need some type of statute or ability to apply penalties so that we're not
having to wait three months or go through the whole process of where we send it to the attorney general's office, it comes back to us, turn around and send it again, and, you know, four months have gone by, six months have gone by before we can do anything.

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

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

MS. DUNN: Yeah.

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

CHAIRMAN: Bill?

MR. STALTER: You know, we still have this issue about whether we license individuals or license the preneed sellers, an entity. But let's say that we decide that we're going to license the entity and allow the individual sellers -- or the salesmen to be registered. And as a preneed seller, I've got policies for these people to follow, but
let's say that, you know, one has just been a bad actor. And, you know, he's broken every rule we had, and we -- you know, we didn't know about it. And let's say that he has quit or he's gone. I think if we have a civil penalty under the new 436 or 333 -- okay -- we, as the entity, did everything we could. I mean, we didn't -- we're not culpable for this, but if you've got '07, I think, basically, you don't have to come through the licensure, but you can still go after that individual, and we would prefer, and instead of coming after us, have a separate avenue to go after the individual who is the bad actor.

CHAIRMAN: Sharon?

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

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

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

MR. STALTER: Yeah.
MS. EULER: -- a prime example of why we need licensing for the salespeople.

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

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

MS. GRINSTON: Yes, please.

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

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

(Numerous people answer yes.)

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

MS. GRINSTON: When we talk about civil penalties, if it's given to the Board, would
you like there to be a crediting function if fines or a penalty is assessed under 407, as well?

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

MS. GRINSTON: And maybe -- that's a very good point, Mr. Meierhofer, because when we talk about 407 violations, the standard and burden of proof and what they have to do is a little bit different. And, Sharon, maybe you can speak to this. Under a 407 action, we've just got a licensing violation, you know. You're indicating a provider, you have no contract with them. It's a licensing violation. Under 407, that standard of proof,
my understanding is that you have to show
conduct that exceeds much greater than I just
violated a disciplinary rule, that you've
actually done something that is in the public
harm, and I may be oversimplifying that.

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

CHAIRMAN: Does that sound good? Mike?

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

MS. EULER: Right.

MR. MEIERHOFFER: That's the only
thing I ask of this group, that we make it
very understandable as to who's in jeopardy
and who reports to who.

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

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

MS. GRINSTON: I'm going to play
devil's advocate here. 407, you just have a licensing violation, but if you've done something to harm the public, should you not have a separate penalty for the harm you've caused the public under 407?

MR. MEIERHOPPER: I won't disagree. I can't disagree.

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

MS. GERSTEIN: Yes.

MS. ERICKSON: You properly articulated.

MR. OTTO: Again, just back -- I mean, because I have personal experience with this. Arguably, a requirement in ABC violates State Board rules and regulations or Chapter 436. It says here is what the attorney general's
office says you need to do in an ABC, and, arguably, that's different than what the State Board says you should do or how you should handle something. That's really my one concern when we've had the double -- and, again, I'm not saying it doesn't exist under current law right now, but we're just compounding it with the civil-penalty structure.

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

MS. ERICKSON: Just a practical response to Don's point regarding the AGO wants this, the Board wants that. When an action is brought under 407, it's not operated in a vacuum. I myself worked on 407 funeral issues, Don, and we worked closely with Sharon Euler and the Board's counsel to make sure there was not anything overreaching, overstepping, or contrary to the Board's laws. And any -- there's certainly, in the theoretical, Don, that it could happen, but in my experience, in viewing the history at the AGO, they always worked with the State Boards
or whatever other entity has licensure or registration over that person or entity. So, it is a possibility, but I feel, in my experience, is remote. Thank you.

CHAIRMAN: All right. Yes, Martin?

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

MS. GRINSTON: And I'm going to echo that on behalf of the licensing boards. I think with all the licensing boards that don't have civil-penalty authority, sometimes you do have boards that are in a position where they have something that is more serious than suspension, but they don't feel that this is something that you lose your livelihood over.
But they're caught between of making a choice. Suspension is too light, so I've got to revoke because I have no other options. And so, I just want to echo, you know, what Mike said, that that is something that we do here at the Division.

CHAIRMAN: Barbara?

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

MS. EULER: Not in my tenure here.

MS. NEUMANN: So, I don't know what the problem is as far as a double whammy. If they're working together, and I'm assuming they should be working together, you wouldn't have a double whammy. The Board is going to say this person is guilty, pays $10,000 fine, that's what the AG will go with. I think
what's a little bit serious, but they could negotiate. If he wants $20,000, they want $10,000, make it $15,000. So, I don't know why there would be a double-whammy problem.

CHAIRMAN: Bill?

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

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

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

MS. GRINSTON: Well, if we can, we can come back with information from Sharon later.
on today, and maybe just revisit this issue a
little bit later on in line with some of the
concerns that have been raised. Okay. Let's
go from the pan into the fire. One of the
issues that -- the issue that we still have to
discuss, we have still yet to come to any
decision or make a final declaration of an
impasse on the funding, trusting, portability
issues that surround 436. What I'd like us to
do, and I know that there were people who had
homework from the chairman -- or, I'm sorry --
a review -- a special task force who had some
information that they were going to report
out. So, Mr. Chairman, I would suggest that
we probably start and talk with those people
who did some information fact gathering before
we try to tackle this mountain again.

CHAIRMAN: Bill, we'll start with you.

MR. STALTER: Oh, good. Well, I fired
off those e-mails, and, basically, asked, you
know, feedback on kind of two issues. What do
you pay on commissions, basically, how much
you pay individuals companywide. And let's
talk about hard, firm costs in marketing,
legal, and so forth. Basically, the responses
I got back from the big guys was, "We'll get back to you," and, you know, they're still trying to gather that type of data. So, I had to start talking to the smaller funeral homes. And, basically, you know, what we see in terms of commission, you know, that 5 percent is pretty much the buck in the low individual. You will see something like up to 7 or 10 percent. Then if there's a portion of that, the commission goes to the funeral home, and you really can pretty easily exceed 10 percent, but that doesn't give any kind of spread of what we call -- you know, or what they pay legal, what they pay me, or what they have in marketing. I was kind of surprised at how much goes into marketing, and, basically, it's kind of a general marketing, just to get people in the door. And with one of the funeral homes, they didn't have fairly hard numbers. And we just took the hard costs and divided them by the number of contracts and came up to about $150 per contract, and that was their hard cost just to put the contract on the books. And you divide that out, and, you know, basically, where there's a $5,000
contract or a $3,000 contract, but, you know, it's kind of hard to, you know, to pin it down. So, basically, what I heard is, you know, 10 percent isn't enough. And if you really get into that ballpark, it's somewhere between 10 and 15 percent, and still you're not sure whether you really covered your hard costs or not.

CHAIRMAN: All right. Thank you, Bill. George, do you want to address the -- Mr.

KUTIS: I'm not trying to jump over you, but --

MR. KUTIS: That's fine.

MR. CLIVE: I'll just be brief here. And actually wrote something down this time. Okay. All right. In here, I wrote, "There is no business that I know of that is required to place 100 percent of its income in a trust. Every business has a cost of doing business -- it's operating expenses. The good folks who thought long and hard about this and wrote the present 1982 Chapter 436, they examined the preneed business and decided 20 percent was a fair figure to cover expenses at that time. At that time, costs were lower in 1982, and, today, they are rising very quickly. That, I
believe, has proven to be true. Any other business out there would be glad to have a 27-percent operating cost. For example, in the restaurant industry, the average of 30 percent of your income goes to your food costs alone. Now, preneed business has its costs, too. The preneed industry is a service industry. In simple economics, there are two types of businesses; either you can make something or you can provide a service. And to say that preneed customers aren't receiving anything for their money, like we discussed last week, is completely false. They are receiving a service in the present, guaranteeing a service and products in the future at today's prices. Any caps in fees imposed by law and government regulation always leads to higher consumer prices later by imposing restriction on a free market economy. The current 20 percent allowed to be retained by the seller and a provider allows the preneed seller to not only provide a valuable service to the individual consumer and their families, but also serves the community by offering employment. Employees
are paid by salary or commission. For example, real estate agents receive 6-percent commission. Some real estate agents receive 15-percent commission. So, let's suppose you have a preneed counselor paid at 6 percent or more, a manager might cost you 8 percent, an office staff, and even if it's only one person, your payroll expense right there is already at 8 and a half to 9 percent. Add on to that that the employer must not only be competitive with the wages to retain quality people, they must also pay Social Security taxes, 7.65 percent, probably a 401(k), which is variable, but it could be up to 15 percent, Workmen's Comp, unemployment insurance, health and dental insurance, easily 4 percent or more. There is office space and utilities which keep rising, advertising, printing, postage, and office supplies, and depending on your budget and your location and the type of media you have to use, you know, in one market, you might use one newspaper, in another market, you might use four newspapers. You might have to do direct mailing. You might have to do radio advertising. Add to
this taxes, licensing, and accounting and
legal fees, and anyone can see that this
easily adds up to the 20-percent that we're
presently allowed to keep. Because of our
history, our experience, and our conservative
management, we're able to keep presently our
expenses in line with current regulations.
Other funeral homes or preneed sellers may
have to use all the 20 percent to continue to
provide for families and stay in business.
And the interest on the trust, by the way, is
not skimmed. It is used to cover the
inflationary increase that is inevitable and
capital improvements and things of that
nature. All of the above costs I mentioned
are variable. To expect that preneed sellers
can operate with less than 20 percent
allowable expenses is just not realistic. It
will force some out of business and, in the
end, result in raising consumer prices, less
competition in the market place, and less
jobs. And, in conclusion, I just think that
the forethought of our predecessors in 1982
and the creation of the 80-20 rule was
accurate. It's worked well, and the actions
of one bad apple should not tarnish the good
work and reputation of the Missouri funeral
industry, and we were not, I don't think,
asked here, if I'm not mistaken, to convene
just because there was problems with the trust
funds. The trust funds here in Missouri are
fine, they're safe, and they're acting in
accordance with the laws." And that's what I
had as far as expenses are concerned.

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

MR. OTTO: Yeah. I also got the same
response as Bill did from. I would say, the
big players; they'll get back to me. Talking
with a number of individual funeral homes that
do commissions, I didn't see 5 percent. The
range I got was 6 to 12 percent. The problem
I have is I'm not sure the smaller funeral
homes that answered that question are fully
contemplating and capturing all of their
costs. For example, yeah, they say, well, it
costs me 8 percent because that's what I pay.
Well, what about other things, you know,
401(k)s, you know, what about the utilities, what about the contracts. You know, who printed those up, you know. So, my concern is, is that some of our funeral homes don't fully do full-cost accounting and fully distributed costs where everything is actually captured the way it should be. On another level, and take this for what it's worth because I have no hard data to back this up. This is just purely anecdotal from other state executives that I've talked with the last couple days on this issue. The magic number seems to be about somewhere around 10 percent. If it's above 10 percent, the states have an active -- what we called proactive last time -- preneed program going out to the public to do that. If it's much under 10 percent, they don't. It's a passive preneed program where people are coming into the funeral home or they're referred there by an estate planner or somebody like that. They don't have a significant outside sales force that does that. If you're right at 10 percent, it can go either way. Some do a little bit, some don't, but that -- it seems -- that seems to
be kind of a break point. If you're at 12 or
13 percent, you can have presold sellers that
are out there actively in the marketplace
because other states apparently do. If you're
much below 10 percent, you don't.

CHAIRMAN: Mike?

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

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

MR. MEIERHOFFER: They were there
somewhere. But the point is, it was a great
plan, but the cost of administering the plan became so egregious, we had to shut it down. I've got an article here out of the "Wall Street Journal" I cut out the other day, and it's about SOX. Does anybody know what SOX is the acronym for?

MS. GRINSTON: Sarbanes-Oxley.

MR. MEIERHÖFFER: Sarbanes-Oxley. Sarbanes-Oxley is a law that was created by our friends in Washington to make people comply on the same things we're talking about here, all with the greatest intentions in the world, but now it's costing our companies, our firms that are public, anywhere from $3 to $5 million a year just to comply with this nonsense. And as a matter of fact, now, our government is going back to the auditors and saying that they're charging too much for the audits that they have requested. I just want you to keep this stuff in mind because there aren't a lot of us around the table or in this room that really run businesses, but we've got to fight this battle all the time in trying to balance what is fair and equitable and should be done into those things that
become just a burden. And I don't want to pile up a bunch of documents and send them down here if they're going to sit on the desk and not be really scrutinized or looked at.

So, as we go through this process and we get into the audits and this kind of stuff, keep in mind that to run this business, whether it's the preneed part or it's the other part, we constantly are being squeezed -- constantly. Anybody in any business is finding that. Just take the gas part alone.

So, just try to keep it simple and keep people honest, yes, but let's not make it egregious to the point we're causing the problems like these monsters that have been created. So, that's my only thought to you all as we go through this. I think there's nobody in this room that doesn't try to run and operate a good business, operate it profitably, if they can, and if they can't, they're not going to stay in business, but they've got be aware of their consumer. But please don't layer this stuff on to the point where it's just totally impractical to comply. Thank you.

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

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

MR. KUTIS: I just would like to say that we do operate and we actually trust 83 percent, but that's a personal decision. I don't think any of us are here because it's 80-20, 90-10, or 100 percent. We all know why we're here. There's problems with people who have taken the money and maybe if everybody's grandson or granddaughter got a new Hummer, or somebody bought themselves a nice yacht off of Chesapeake Bay because they used money that wasn't theirs, and I think that's the problem. And we have to make sure to protect the consumer that the money they give us is trusted, that is somebody moves or goes out of town or has to move into a nursing home or whatever, that they get all their money back.
And I think that's fair, if you run a
reputable company, and even if it costs you a
few bucks, that's your reputation. I think
you need to do that. Again, all I want to
say is that the problem isn't whether it's
80-20 or 90-10. The problem is people who
don't do what they're supposed to do with the
money, and it's that simple. Thank you.

MR. STALTER: I'd like to go into that
a little bit. And I talked to Dennis Britson,
and Iowa is 80-20, and, basically, you know,
his -- I'd say Dennis is a very, what,
forthright, honest about giving an opinion
about things work within the industry there,
and really don't perceive that the NPS problem
is an 80-, 90-, or 100-percent issues, but
whether somebody is doing the right thing.
But I asked him, I said, "I mean, do you
think, you know, should it be raised to 85
percent or 90 percent," and he said, really,
they think that 80-20 works for Iowa. But he
believes that there are some other issues that
have to be done to offset that 20 percent, and
that being the per-payment trusting and the
accrual of income. He said, "But, frankly,
you know, we're unsure of whether 20 percent
is enough to offset," so even though we
require accrual of income, we still allow a
10-percent penalty if there is a cancellation
or if they move away. Still, there is a
substantial accrual of income in that trust to
provide for portability.

CHAIRMAN: Linda?

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

MR. STALTER: The trust is supposed to
be out there to service those contracts. And,
always, the issue is, you know, I think at
first when we started into this in the '80s,
you didn't think those contracts were going to
be on the books that long, but we're finding
out, I mean, that they're on there for quite a
while. Some of those are out there for 20 or
25 years.

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

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

MS. BOHRER: Okay.

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

MS. BOHRER: Right.

MR. STALTER: So, then it becomes --
the issue is how much do we approve, and you
see other states doing it, and all I did for
a while was accrue a portion of the income
each year that would pass, by regulation,
whether it be cost-of-living or some
percentage based on that, but Iowa went to
full accrual of income in the past year. In
Nebraska, they still do it by regulation, but
they have 85-percent trusting. So, I mean, I
kind of fall in this, you know, it's hard to
pin down whether 20 percent -- you know, 20
percent should be enough, I mean, at least to
get the business on the books, but beyond
that, then it is a matter of, you know, income
or accrual staying in the trust to service the
people if the family goes somewhere else.

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

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

MS. GRINSTON: I'm probably going to
tag-team this with Sharon because Sharon has a
little bit more historical perspective than I
do. But I can tell you that what we're
dealing with now is that the Board really
doesn't have authority when someone ceases
business or goes out of business. When they
go out of business, they're supposed to file a
report with us and tell us where the assets
are, tell us that the, you know, assets are
going to be set aside to be used, but we have
no authority, really, to technically do
anything if they don't file the report. We
can't go after them if they're not there. If
they just shut the doors -- and that has
happened, where we've had someone shut the
doors, and Becky has come in and said, "Where
are the preneeds?" And, technically, we don't
even have authority to go in and ask the
questions, you know, what's going on and
what's happening. And so, our authority is
very limited in that situation, and we have --
there is nothing we can do to even go in and
say, you know, "Are you taking care of these
contracts," because once they cease doing
business, the Board loses all regulatory
jurisdiction right now. So, technically --
and no one has any regulatory jurisdiction of
them once they close their doors. So -- and
some people -- and I hate to say this publicly
-- the unscrupulous have gotten smart in what
they'll do and threaten us with this, "I'll
just close my doors," because they know the
Board has no authority to even negotiate or
figure out if these plans are being taken care
of, which will go back to another issue in
annual reporting. That's one of the reasons
why this Board has requested more information
on the annual reporting so that we know what's
out there, so that when this happens, someone,
somewhere can track it. The AG's office has
helped us in other areas -- not us, but they
have stepped in with other trust-funding
situations, not necessarily preneed. The
situation I'm thinking about is cemetery and
endowed-care fund, and they have helped
negotiate, you know, a sale to someone else,
and they have negotiated a plan, but they've
really done that -- I hate to say as a
gratuity -- but they've really done that in
the interest of consumers and the Board -- you
know, the office stayed just involved in the
process. But, really, when someone goes out
of business, the Board really has no authority
to do anything, and so, we just hope the
preneeds are somewhere.

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

MS. GRINSTON: Correct.

MS. BOHRER: That problem is sort of
independent.

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

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

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

CHAIRMAN: Sharon?

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

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

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

MS. EULER: There is no money.

MS. DUNN: No.

MS. EULER: There is no money. A funeral home up in Maryville that closed its doors, there was no money in trust because that's what people will do, they'll raid their trust fund and there will be nothing there. MPS agreed to pick those up because they were sold under their name, and we've had that happen with other providers, that they were sold under a third-party seller's name. I know John has had some experience with it and Don has, too, where the third-party seller has said, you know, that was our agent and they've agreed to pick those up. But there have been
funeral homes that have just gone out of
business. There is no money, and I know other
funeral homes have honored those.

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

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

**CHAIRMAN:** Linda, do you have any more
questions?

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

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

**MR. OTTO:** This kind of answers that a
little bit more even, Linda. The one funeral
home that went out of business, just shut
their doors in the last year, it was an 80-20.
They took the 20, but the interest had been
left in to accumulate. And as it turned out,
for those contracts that I'm aware of where
that happened, there was more than enough
money in the account to cover the funerals, so
it was no problem. To some extent, you have
to separate your question out whether you're
talking about third-party seller or the
funeral home being the seller. I know of no
consumers that have not gotten their funeral
that they paid for that was trusted with a
third-party seller. I don't -- I mean, I'm
not saying it hasn't happened, but I don't
know of any. Of course, we've got the NPS
situation out here that we don't know how
that's going to shake out completely. So,
it's a little bit different situation where
you've got a third-party seller where even if
the funeral home goes out of business, the
third-party seller is still there. It's a
little bit more complicated when the funeral
home is its own seller and, like you said,
sometimes if -- you know, and could raid their
own account, and that has nothing to do with
the 80-20. If it was 100-percent trusting and
they raided their own account, then you've got
the problem.

MS. BOHRER: Right.

MR. OTTO: But we've already voted, I
think. Although we haven't dealt with what
happens when it's cancellation or they're
changing funeral homes, I think we've already
voted on the money should accumulate. I think
we already voted on that, and we've already
voted that regardless of what this percentage
is, that 100 percent of it goes into the trust
first and then it -- or the money goes in the
trust first and then it gets paid out. That
solves two of the big problems right there,
you know. I mean, nothing solves all the
problems, but those are two big helps right
there.

MS. EULER: Yeah.

CHAIRMAN: Mike, do you have a comment?

MR. MEIERHOFER: Yeah. I was just
going to say, Linda, practically, this
happened in our community and the Board --
State Board came to me and said, "We have a
funeral home that is out of business. What
will you do to help us? What will you do to
take these contracts?" And I said, "Well, let
me take a look at them," and we did, and we
ended up taking the contracts, and that's been
24 years ago, and still a few of them come
through, but that's typically what happens.

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

CHAIRMAN: All right. Kim, I --

MS. EULER: May I make one other
comment?

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

MS. EULER: In further answer to
Linda's question, the biggest problem is not
so much with the 80-20, but it's with the
seller having control over the trust assets
because in smaller funeral homes that have
their own trusts, they just walk through the
bank and take all the money out. If they
weren't allowed to do that, then if the
funeral home went out of business, that money
would still be in trust, and any funeral home
that provided those services could make claim
against the trust to receive the money that
was due.

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

MS. EULER: Yeah.

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

MS. EULER: The situation that we --

MR. OTTO: That you did -- yeah.

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

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

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

CHAIRMAN: All right. Kim has got an
example she would like to discuss with you.
MS. GRINSTON: I would, and just on that question, I just wanted to say that, you know, a lot of times when someone does close their doors, a lot of, you know, the work is done. Becky gets on the phone and starts calling people and saying, "Does anybody know where this goes? Where are the preneed contracts?" We try to find records. We hope they call us back. They have situations where they don't call Becky back, and we don't even know -- have a good contact phone number for them now, and these preneeds are just floating around in the air. But Becky does -- even, you know, recently, Becky does a lot of that work just trying to really, you know, get the information in so that if anybody has authority to do something, they can do it if the preneeds are out there. This is what I'd like to do. Upside down by your nameplates -- your name tags, it's not a test. I thought that was probably bad placement, but I thought that as we talked about this and as we were trying to work through our minds last night from the Division staff, it helped us -- I'm a visual person. It helped me to see something
on paper or something charted out so that we can see what we're talking about because I realize that from our previous discussions, that when we've talked about the amount to be funded, we had sort of mixed issues. We have mixed issues as to where does the money go if the contract is fully fulfilled? Where does the money go if the contract is canceled by the purchaser? Where does the money go if it's canceled because of default by the seller -- or by the purchaser for nonpayment, I should say? And what happens on a transfer? All right. I'm sure there are other situations, but I think that these are the four major situations that we keep coming back to. So, what I'd like to do is, if possible, to help guide our discussion, I'd like to start and see if we can separate out these four issues so that while we're talking about trusting, we're not talking portability at the same time because, again, I think it sort of convolutes things and leaves us -- and maybe -- I really think we are closer than we are apart on certain issues, and it may help us identify that. So, what I'd like to do is
I'd like to start with the first little box
for fulfilled, and I'd like to talk about what
-- again, I understand -- I think everyone
understands what the current law is. Let's
talk about where we would like to go for a
contract that is fulfilled. Let's say I go
into my local funeral home or I go through
John or APS -- I'm sorry, John -- and I
bought a preneed. I've designated my
provider. My money has been invested.
Everything is there. It is now time at-need,
we are now ready for the services. The
provider stands ready to perform, the seller
stands ready to perform, and the services have
been provided. Let's look at that scenario.
Let's leave portability, transfers,
cancellations, and everything else alone, and
let's just look at that scenario. And I'd
like us to start, if we can -- you guys have
got to help me because I'm a visual person;
it's the only way I can think. Instead of
throwing out numbers, let's see if we can walk
through the boxes to see what the consensus is
on certain areas. So, again, Bill, did you
have a question?
MR. STALTER: You need to make a
distinction. Are we going to talk about where
the seller and the provider are the same
entity, the funeral home who sells for
himself, or John's, because, I mean, it's a
different economic situation.

MS. GRINSTON: There is a different
economic situation. I guess that's something
that this group has to decide. Should there
be or would you like -- should there be
different trusting rules if you're a
third-party seller versus seller-provider.
Because if we're going to treat them all the
same, a seller's license is a seller's license
because while I am my own provider, nothing
prohibits me as my own seller-provider entity
from allowing -- you know, stretching my
seller or my plan out to other entities
outside of just my funeral home, if I decide
to do a little bit of third-party sales as
well as my own sales together. So, I think
-- Bill, I think it's a good question whether
we should be addressing those two things
differently, or is the thought that with
trusting that we keep them the same?
MR. STALTER: The trusting should be the same, but let's just talk about -- I mean, say, Todd is the seller and he services his own contracts, so how does the money flow through the trust, you know, through each of your scenarios.

MS. GRINSTON: Okay.

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

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

MR. OTTO: Was this a guaranteed
contract or a nonguaranteed contract?

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

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

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

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

MS. GRINSTON: I think that's a good idea. I think it's a good idea. Let's start
with guaranteed and, hopefully, everybody
understands what we're talking about with
guaranteed services, you know. You have
locked in a price for the consumer. We
understand that there are some issues or some
prices that cannot be locked in simply because
they vary at death, and they can change, like
opening and closing costs and obituaries and
things of that nature. But let's just say the
core services have been guaranteed in this
contract. Because I am mathematically
challenged, can we use the number $10,000
because anything else, I can't do without a
calculator. So, if we start with a $10,000
contract. I've walked in, this was a $10,000
contract. From that $10,000, how much of that
$10,000 fee -- again, we're not talking
portability or anything else. How much do you
believe should be trusted? Now, when I say
trusted or placed in -- I'm going to say --
let's just say trusted right now. We'll deal
with joint accounts in just a second. But how
much should be trusted from that $10,000? We
are not going to talk about right now whether
there's administrative expense allowed or
anything else, just how much of the consumer's payments, what percentage of that needs to be placed in trust?

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

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

MR. MAY: Okay. Okay.

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

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

MS. GRINSTON: I think that that was the vote last time, but I wanted to make sure --
MR. OTTO: I'm not saying we don't change it, but that was our vote last time.

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

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

MS. GRINSTON: Yes, both. Everything goes in and then you take out an expense fee, if anything, if the group provides it. What I
am thinking -- and this is the concept in my 
mind, this is not a suggestion, but the way 
I'm posing the question -- 100 percent hits 
the trust, you then submit a bill to your 
trustee that says the law says I'm entitled to 
X amount. Pay me that, you know, as the 
payments come in or however it's worked out 
with the trustee.

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

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

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

MR. STALTER: I think that's the 
question, John. Basically, is if you put 
$10,000 in and, you know, how much does the 
trustee pay back for --
MR. McCULLOCH: But it's not paid in full.

MS. GRINSTON: Yeah.

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

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

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

MS. GRINSTON: Okay.

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

MR. STALTER: Per payment.

MR. OTTO: -- per payment?

MS. GRINSTON: Okay. Can we do that per payment, per trust issue after we figure out if you're going to get anything out of it at all, because if we -- if the expense -- if the vote is, you know, limiting expenses, then can we do that in the miscellaneous box, per trust versus per payment; is that okay?
MR. STALTER: Well, no. Now, you're mixing things. What we're talking about is the retainage, the commission, 20 percent or 10 percent.

MS. GRINSTON: Yeah.

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

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

MR. MAY: Yeah.

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

MS. RULER: I think it's a great idea.

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

MS. GRINSTON: Bad idea?

MR. MEIERHOPPER: Yeah. It won't work in terms of a business model. That's the
problem.

MS. GRINSTON: Why, Mr. Meierhoffer?

If you submit a bill to the trustee, like on
a piece of letterhead, the policy is $10,000.
I'm entitled to -- I'm picking 20 percent just
because that's what it is -- $2,000. I submit
it to them. As payments come into the trust,
you've got to pay me first before -- until I
hit my $2,000 amount. And I'm not saying that
that will be your final vote. The difference
is just who -- what source is it coming from.
You submit a bill to the trustee, I'm owed
$2,000, you pay me like you would any other
expense.

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

MS. GRINSTON: Yeah. Yeah, we did.
And that was the last -- I just want to make
sure that that is still the vote, and that's
what I'm asking now. Are you still at 100
percent comes in and hits the trust. If
everyone is there, maybe we could take a
consensus vote on that. If everyone is there
with the 100 percent that gets paid goes into
trust, if that is still the vote of this
working group, then you could just say aye.
Nay?
(Numerous people answer both aye and
nay.)
MS. GRINSTON: Can we do a show of
hands?
MR. OTTO: I can just tell you -- I
mean, I don't know if this addresses Mike's
problem or not. I can tell you how the
Missouri Funeral Trust prefers to do this.
Not that we can require it under the current
law or our current contracts, but this is how
we prefer to do it. We prefer if 100 percent
of the money comes in. Then the funeral home
has said -- of course, under the current law,
it's the first 20 percent. But 100 percent of
the money comes into the trust, which is
Regions Bank in St. Louis. Regions Bank then
has a separate money-market account for that
funeral home, and if the funeral home has
elected to take their 20 percent, it goes into
the trust, psst, then goes over to their
money-market account until the 20 -- so it's
electronic. The funeral home has a debit card
or a checkbook where they can access that 20
percent at any time they want.

MS. GRIFSTON: Yeah.

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

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

MS. GRINSTON: No. Not extra money
necessarily.

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

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

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

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

MS. GRINSTON: Okay.

MR. STALTER: I mean, in some states, I mean, they are forced to do it this way, and they could accommodate. But, frankly, when you get down to some of the smaller accounts, I mean, my administrative company already does it with U.S. Bank, but I don't think that's the norm at all.
MS. GRINSTON: Okay. And I'm going to do two things. I'm going to add in the consumer-protection standpoint. When you talk about missing funds and you talk about, you know, protecting consumers, putting on a regulator's hat now, I have no idea how much this person has paid you. I have no idea what's come through your door. I have no idea what you've taken as your first 20 percent. You could tell me it was 20 percent, and it really could be 60 because I have no way of accounting for what came in your door or what you actually paid yourself. You could have paid yourself 45 percent, I just don't know because nobody knows how much has actually come through the door. But that's just from the consumer-protection standpoint. I hear Don and Norma saying that we've already voted this out at 100 percent goes into the deposit. I'm going to just ask this again because I think the discussion is on that issue. Is it still the consensus of this group that 100 percent comes into deposit, and it may be best if we do a show of hands on that issue.

CHAIRMAN: All in favor, raise your
hand.

MS. GRINSTON: Is anybody keeping
track of that?

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

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

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

CHAIRMAN: Facilitator?

MS. GRINSTON: Yeah. I think that
this is outside of the purposes of this
exercise. We are really asking what is the
consensus of the group here. Because what we
heard last week, again, with 100 percent, when
everyone said 100 percent gets deposited, I
left there and there were still questions
about what that vote was. So, I just wanted
to confirm the vote, to make sure that we are
not taking -- and everyone said -- I thought
that was the vote, as well. And so, what
we're doing is polling the table to make sure
that it's still your vote or that was your
vote. Now, to the extent that you all don't
want to clarify that vote, because I have --
there were a lot of questions after the
meeting on, now, what did we -- what was that,
again? I just need to make sure that we are
reflecting accurately what you voted on
because that was one issue that we did not
have a clear record on.

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

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

CHAIRMAN: Okay. Mike?

MR. MEIERHOFFER: I think I was the
one that flushed the vote out through a couple
of motions. If you remember, the first motion
was nothing, and the last motion was
everything. And to my surprise and chagrin,
that's what we took. But the dilemma is, I think, and the thing that was added by Kim later is there still could be fees or administration, things of that nature come out. We really didn't identify that piece of it.

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

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

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

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

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

MR. MEIERHOFFER: It seems to be.

MS. GRINSTON: I just wanted to do a confirmation that we were last week where we are this week, to make sure I understood what the vote was. But the vote today was 100
percent by majority, the vote last week was at
100 percent by majority.

MS. COLLINS: I don't think so.
MR. McCULLOCH: I thought it was a tie.
MS. GRINSTON: it was 9-8.
MR. McCULLOCH: I thought you said --
CHAIRMAN: Nine-eight today.
MR. McCULLOCH: Oh.
MS. DUNN: Do we need to record the
votes? Because if we need to record the votes
for the record, we need to go around the room
and have everyone say yea or nay.
MS. GRINSTON: Yes, ma'am. But --
CHAIRMAN: Go ahead. Let her finish.
Don, go ahead.
MR. OTTO: Well, my concern is -- and
I'm not sure that this body was formed to be
a democracy and have an 8-9. I mean, I voted
-- I'm arguing against -- you know, you made a
motion last week that you voted against.
MR. MEIERHOFFER: Yes. Exactly.
MR. OTTO: And so, I just voted for
something and I'm going to, basically, go the
other way. our charge was to come up with a
consensus that everybody would support, or as
much as -- and an 8-9 vote, like
Representative Meadows says, if eight of us
are over there saying this is no good, we
can't live with that, the whole thing will
fall.

MR. MEIERHOFER: We don't move a
church on that kind of a vote.

MR. OTTO: Yeah. So --

MR. MEIERHOFER: Here was where --
where I was going with that -- those motions
the other day was really to try to get us to
some type of a middle ground, which we never
really had a chance to get to. I think
you're trying to get us to that right here in
terms of calling something something else,
meaning we were talking about 80-20 and I
don't have -- where that was going to go.

So, then you were saying put 100 percent into
trust and then come back and maybe take out
the fees that you need to after running it
through the trust. And the truth of the
matter is, from my standpoint, that's a
compromise I could probably live with. But I
think in order -- if we're going to make a
decision to put people out of business and
stop selling prearrangements, then we can do
that by making it 100 percent -- just that
simple. It'll stop it. They'll come in and
take them from you and then it's done. It
will not still eliminate the problem of
somebody putting the money in their pocket and
not getting it to the trust. That's still
going to happen. It'll always happen. So,
that's my consensus.

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

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

MS. GRINSTON: Let me move on because
I hope everyone understands. We are still at
100 percent as we were last week. I just --
I'm sorry. I just thought I needed to clarify
to make sure that I was correct and accurate
because if I started off with the wrong
assumption, today and everything else we do
after this will be wrong, and then we'd have
to come back and say, "I read the transcript.
Let's start all over again." I wanted to make
sure I could confirm that for today so that we
could go forward. Let's say -- and we're
going to go with the majority vote, and we'll
look at this whole structure once this is
done. If you guys would just follow with me
for just a little bit. Let's say we have 100
percent deposited into the trust. Now, let's
talk about administrative expenses. Should
there be an administrative expense, and Bill
talked about expenses versus commission. I
don't know if those two things should be
separated because they're not separated right
now in 436. Your commissions come out of that
20-percent administrative expense. And so,
let me first pose this question to the group,
which we didn't vote on last week: Should we
separate expenses and commissions, or should
we merge it all under one umbrella of just
expenses?

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

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

MS. GRIESE: Oh, God. Okay. Now,
I'm going to seek the vote now. Let's talk.
about what that administrative expense should
be or should be allowed back to the seller.

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

MS. NEUMANN: Can I ask a question?

We're talking 20 percent. That's per
contract. Are you saying it takes 20 percent
per person for that prepaid funeral or funeral?

(Numerous people answer yes.)

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

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

MR. MCCULLOCH: Yes. Yes.
MS. NEUMANN: Twenty percent of your electricity, 20 percent of your rent per person?

MR. MCCULLOCH: Yes. Yes. Yes.

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

MR. MCCULLOCH: Yes.

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

CHAIRMAN: Linda?

MS. BOHRER: And, Barbara, that's now
the law is now. I mean, the law right now
allows the funding 20 percent immediately to
be used for other purposes.

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

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

MR. McCULLOCH: Yes.

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

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

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

MS. GRINSTON: No.

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

MS. GRINSTON: Okay. Go ahead.

That's fine.

CHAIRMAN: How about 90-10? Anybody
live with that?

MS. COLLINS: Kind of.

CHAIRMAN: Well, vote.

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

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

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

CHAIRMAN: She's saying 10-percent expenses.

MS. GRINSTON: Norma Collins for that.

CHAIRMAN: Okay. Let's do 15 percent. How many people think you can live with that?

Is that Don want to speak, or Don want to vote?

MR. OTTO: Oh, yeah. I'm just saying, here -- yeah. No. Both. Both. And this has nothing to do with what's best for the consumer, this is what's going to happen at the Capitol. There's going to be extreme pressure to come off of 80 percent just because, like it or not, that's perceived to be a bad thing. Also, I know for a fact 100
percent is not going to happen. That's a
physical impossibility, in my opinion. So,
100 percent is not going to happen, I don't
think the current 80-20 is likely to stay the
same.

MR. McCULLOCH: I disagree with you,
Don, that that's the consensus over there.
MR. OTTO: No, I'm not --
MR. McCULLOCH: That may be your
opinion, but that's not what everybody else
thinks.

MR. OTTO: No. I think you would
agree with me that 100 percent is a no starter?
MR. McCULLOCH: Yes, sir.
MR. OTTO: Yeah. And I'm not saying
it would succeed, but there's going to be
pressure to come off the 80 percent.
MR. McCULLOCH: Not if this group
thinks -- and you've heard all of the people
that are in this business tell you that that's
what it takes. So, if you want preneed to
continue, you're going to have to do something
like this. If you don't want preneed to
continue, and certain groups would like for
that to happen, then, obviously, you'll go a
different direction. But the folks over there
are going to listen to what we have to say.

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

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

CHAIRMAN: Well, we're getting there.

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

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

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

CHAIRMAN: Okay, Todd.

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

CHAIRMAN: Would you like to step to
the podium?

MR. MAHN: No, I can do it from right
here. And you might want to jot this down,
but with trusts, the family comes in at 100
percent. 100 percent goes in the trust, but 20
percent is used for cost or whatever. Now,
that's currently, I know, what we have, but
you have to follow this chain a little bit.
Under a cancellation, the person would only
get their original 80 percent under a
cancellation; okay? On a transfer, mobile,
they would get 90 percent plus a
1-and-a-half-percent cap on interest.

MS. EULER: Minimum.

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

MR. MCCULLOCH: Yes, I think so.

MR. MAHN: Mike?

MR. MEIERHOFFER: Yeah.

MR. MAHN: Tom, what do you think?

MR. KUTIS: Well, the only thing I
don't understand with this is you're still --
you're going to put 100 percent in and then
you're going to take some money out?

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

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

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

MR. MAHN: Right.

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

MS. GRINSTON: In the trust agreement
could you write something in your trust agreement that says I'm entitled to 20 percent based on face value so you don't have to do anything? It's already in your trust agreement. The trustee knows what they have to do and it automatically triggers. On Todd's example, can I do this, Mr. Chairman?

CHAIRMAN: Sure.

MS. GRINSTON: Can you guys just humor me? In your first box, can we just write down these numbers? Just humor me, please.

Money deposited, 100 percent; administrative expenses, 20 percent; interest, seller -- this is not cancellation or anything else. I'm fulfilling the contract, everything is done. Trust account fees come from the trust amount because that's something you guys voted on last week. Looking at that box, for a contract that is fulfilled, tell me what your thoughts are on that box. Mr. Otto?

MR. OTTO: I would say that that appears to be the majority view based on what you were going through. Nobody voted for 100 percent, nobody voted for 5 percent. A couple people voted for 10, and I think I voted for
15. So, just by process of elimination. The one thing we haven't mentioned, thought, on this is does that 20 percent come out of the initial payments or is it on a per-payment basis?

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

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

MS. GRINSTON: Okay. Sorry.

Let's -- on that concept, can we take comments on that concept?

MR. STROUD: Can I just make one comment? I'm not going to stand up there, I'll just -- Larry. A hundred percent is
fine, 20 percent is fine. Interest retained
by the seller is fine. But there, again, now,
you're getting into an area where the trust
fees -- okay -- will be -- (inaudible.)

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

MR. STALTER: We'll get to that.

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

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

MR. STROUD: Because all these
people, I mean, everyone does different. Tom
does things different, Mike does things
different, third party does things different,
MFT does things different. So, you've got to
take in all the factions of these people.
These guys have been in business a long time.
They know what they're doing with their
business. 80-20 doesn't sound that bad to
them. It don't sound that bad to me if it's
administered correctly. And as long as the
State Board or whatever trust they put into
where they've got their own trust, as long as
that's reported to the State Board or whoever
is going to be overlooking this and our rules
and regulations or statutes, that they get a
report on this, and they would know exactly
how many contracts were sold. We number our
contracts and I think that's what the law
calls for. You're supposed to have a number
on your contract; right or wrong?

MS. GRINSTON: No.

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

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

MS. EULER: It will. It will.

MR. STROUD: That way, there's
accountability for every contract, and if you
foul up writing one out, then you've got to
account for that. You put a void on it, but
that contract is kept somewhere and say, yes,
we made a mistake on this contract and we had
to rewrite it. I don't think it's such a
hard thing to get 80-20 or 80-317, but I think
it depends on whether or not you're going to
sweep the interest away. You want to keep the
interest, that's fine; keep it. If you want
to leave it in your fund and let it grow,
which would be the smart thing to do if you
don't need the money, that's even better. I
think there's going to have to be some choices
made here by these businesspeople who are in
this business to do what's right. And these
guys are correct. Everybody does this
differently, and we've got a moral obligation
to our consumer, and not one of these
gentlemen in this room will not treat a
consumer right, and you guys know it. So, 100
percent, 20 percent is good, the interest are
retained by the seller; that's fine. The
trust account fees, we don't have a very big
charge, 1.26. That's darn cheap. That's darn
cheap. So, I don't care how we do it,
basically, speaking on behalf of myself and
MFDEA. I mean, Don may not agree on
everything, and Bob. But I'll tell you one
thing, these guys will do what's right. So,
let's quit dickering around with this thing and
let's just use common sense. And let's put it
together. We can put this thing together
fast; right or wrong?
MS. GRINSTON: I'd like to put that in
the statute, "Thou shalt use common sense."

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

MS. GRINSTON: You did a good job.

We're still not giving you an offering,
though. We're not going to pass the plate,
Larry. Okay. Can we move to canceled by the
purchaser. Just follow with me here now, and
I'm going off of what Todd just mentioned.
The purchaser comes in -- this is a situation
where purchaser comes in. We're going to deal
with outside the service area, John, if we
can, just separately. Let's just say changed
my mind, you know. Now I want a plasma TV,
not a funeral. So -- or I just -- this is
not -- I don't want a preneed anymore. I
want to use this money for insurance costs or
use it in another investment avenue. It can
be legitimate reasons. The purchaser shows up
and says, "I want to cancel." Now, amount
deposited, I think the previous vote was 100
percent -- just hang on with me for a second.
How much, in that situation, if we did
100-percent trusting and we've already done --
we're going to talk about expenses in a
minute. How much of that 100 percent that I
have paid -- I'm not talking about any
interest right now. Just from the amounts
that I paid, I paid you $10,000 -- again, I
can't do the math. How much of that should I
get back if I cancel?

MR. MAHN: $8,000.

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

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

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

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

MS. GRINSTON: Now, that reimbursement
is going to answer the expense question
because if it's 80, that means the seller is keeping that 20 percent as the expense. We're going to get to the interest in just a minute.

CHAIRMAN: Bob?

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

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

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

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

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

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

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

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

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

MS. GRINSTON: Yeah. Got it.

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

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

CHAIRMAN: John?

MR. MCCULLOCH: I mean, I still think
it should be the money in trust because it depends on if it's not paid in full or not, but it's money in trust would get refunded.

MS. GRINSTON: Does that include interest?

MR. MCCULLOCH: No. Just the 80 percent.

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

MR. MCCULLOCH: The money in trust.

Uh-huh.

MS. GRINSTON: Got it.

MR. MCCULLOCH: Less interest.

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

MS. GRINSTON: And, Mr. Kutis, having
heard that, let me back in something because maybe this will help us with the 80-20, 90-10 issue. On a cancellation by purchaser, not talking transfer or anything else, cancellation by purchaser, who should get that interest?

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

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

(Several people answer "seller.")

MS. GRINSTON: I'm going to write "seller" in the interest box -- is the -- yeah, in the interest box. Okay. Hundred percent deposited, the seller gets the interest. The question is: Do we give back 80 percent to the customer or 90 percent?

I've got one vote for 90 on this side of the table. I had an 80 on that side.

MS. COLLINS: Two votes for 90.
MS. GRIKSTON: Two votes for 90.
Three for -- five votes for 90. And we're going to do a voice vote for the court reporter.
CHAIRMAN: Let's hold your hands up on the 90. Let's count them up.
MS. DUNN: Nine.
MS. GRIKSTON: For purposes of the record, can we just get every -- ten.
Everybody who voted on the 30 percent, can you just please go around the table and give your organization, because we probably need to record that for the record.
MR. STALTER: I'm not confused, but we're saying that the refund right -- now, this, we're just talking about cancellation; right?
MR. KAHN: Cancellation only.
MR. STALTER: It's going to be just 90 percent of the face?
MR. KAHN: Right.
MS. GRIKSTON: Ninety percent of what they paid in.
MR. OTTO: I have a question then;
okay? If I may.
MS. GRINSTON: I'm sorry. John?

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

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

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

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

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

MS. GRINSTON: Yeah.

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

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

MR. OTTO: Good.

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

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

MR. MEIERHOFFER: Exactly.
MS. GRINSTON: Interest.

MR. MEIERHOFFER: Somebody else's --

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

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

UNIDENTIFIED: That's right.

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

MR. MEIERHOFFER: Right.

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

MS. GRINSTON: Yeah.

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

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

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

MR. STROUD: No, Don. It's 90 percent
of the 80 percent.

MR. OTTO: No. No.

(Numerous people disagree.)

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

MS. GRINSTON: It's a good point.

It's a good point.


Hold it. You run a trust, don't you?

MR. OTTO: Yes.

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

MR. MCCULLOCH: Yes.

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

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

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

(Seversal people talking simultaneously.)

CHAIRMAN: You get up here and say
something and we're going to start rowing
together here guys. We're going in a circle.
We're not going straight anymore.
MR. MAY: Well, okay. To me, you know, we talked about the 80-20 trusting. And one of the, I think, important observations was that consumers, by and large, that's a very popular item to discuss by legislators and by consumers. 80-20, that's the whole big problem here. That's not the big problem here. The big problem in consumers' minds, to me, should be this whole cancellation thing. They're interested in 80-20 because they're worried, well, if they only put 80 percent in trust, what happens if I want to cancel? I'm only going to get 80 percent back, because if they die, they get the whole funeral provided, so this whole cancellation thing is the whole big hornet's nest, in my mind, behind consumers. They're worried you only put 80 percent in trust. And if I want to cancel in five, ten years, I'm not going to have my money to get back or -- I mean, this cancellation thing, to me, is the big issue. This is what we should really be discussing; okay? I mean, it doesn't matter how much you put in if you're going to provide the funeral because they're going to get the whole funeral
provided. Now, at some point, it's ridiculous for consumers to think that they shouldn't get dinked on their contract after a while. There is no other industry that says that you can give us all your money and then if you want to come back in two to three, four, five years, we're going to give it all back to you plus interest. That's absurd; okay? I mean, they ought to get dinked after a while.

Insurance is that way. I can't buy an insurance contract and after 90 days, a year, you're not going to give me all my money back plus interest. That's absurd. But what I do like about -- and consumers have expectations. I paid for an insurance contract, I pay for something today, it's a promise to get something in the future -- just like a funeral contract. After a while, what I do like about the insurance contracts, we're seeing more of those, is the fact that I can get maybe, like, a 30-day free look. That's pretty contemporary consumer oriented. So, maybe it's you get all your money back in 15 days, 30 days, whatever. Maybe it's 90 percent after 30 days or 60 days, and maybe it's only
80 percent, the amount in trust, after 90 or
120 days. But after that time period, the 120
days, you get 80 percent back. That's all we
got in trust. Or you can give them everything
back if you want, but it comes out of your
own pocket. That could be a business
decision, but I don't think you should be
obligated to do that. But at some point, they
got to jump in with both feet. This is a
transaction.

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

MR. MAY: How do you know they're not
going to -- I'm sorry. Just to be devil's
advocate, how do you know they're not going to
come in 20 years from now and want all their
money back?

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

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

MS. GRINSTON: When we talk about the
life of the contract, because if you talk
about 10 percent -- we're really talking about
a difference of 10 percent. 80-20, 90-10,
this is, again, cancellation by the purchaser,
and I think this is the issue. It would be
-- we're talking about a percentage of the
amount that has been -- that is in that trust.
Oh, I'm sorry. Not that is in the trust, but
that has been paid, not the amount that is in
the trust, so you don't get 20 percent and
then you get to drop it down again when they
show up again because you get another 10
percent of that. You're talking about the
amount that has been paid. From that amount,
the consensus of the group as to what's
workable, 80-20, 90-10? What's workable?
CHAIRMAN: Okay. Hold up. All right.
Todd?

MR. MAHN: What Brian is talking
about, you would almost have to scale it, you
know, and you're not going to be able to do
that, you know. That's going to be too hard.
Did they have it a month, did they have it
two months, did they have it four years or
twenty-five years, like Brian said. And I
think that the numbers all have to -- the
numbers have to match here, you know. If they
deposit in on a $10,000 account, and they've
put 80 percent in, that's eight grand, and
they come back in three months and they want
their money back, or two months -- and that's
when you see a lot of your cancellations.
People kind of get buyer's remorse and it
happens within a certain few months that, you
know, the 80 percent ought to match up with
the other 80 percent. I mean, it can't --
they're not going to be able to cough up that
extra $1,000 because of it being paid out on that one account. And if they were canceling
an insurance policy, they would -- I know this from selling insurance policies -- they're
going to take a much more significant ding than that -- huge; okay? So, by allowing them
to get 80 percent back -- and to be honest with you, it's not in any consumer's interest, you know, really, unless there's just dire
need, to cancel one of these policies because when we get into transferability, you know, you'll see why -- you know, my idea on transferability when we can get the -- you know.

CHAIRMAN: Barbara?

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

MS. EULER: No.

MS. NEUMANN: And I'm hearing --

MS. EULER: The contract price.

MS. NEUMANN: Well, we were on interest, and you said the seller would get
it, but what if you canceled, how much of the interest should they get?

MS. GRINSTON: yeah. No, I'm sorry.

Yeah. That was my original question on interest, and I think that the vote was that the seller gets the interest. And then we come back to from what you've actually paid out. how much of the payments should you be getting back into your pocket. I'm sorry.

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

MS. EULER: Yeah.

MS. NEUMANN: Okay.

CHAIRMAN: Sharon?

MS. EULER: The consumers look at prepaid funeral contracts like a bank. I have seen this in consumer complaints for as long as I've been working with the Board, and I've been talking to a bunch of consumers about NPS. They -- even though it may have been disclosed to them, it's in the statute, they do not understand why funeral homes got their
money for two years, ten years, twenty-five
years, and all they get back is $8,000 of what
they paid in when the funeral home has had the
use of their money for ten years, twenty
years, however long it is. And so, they think
that they should be either entitled to all of
what they paid in and all of the interest
that's accumulated, or they think they ought
to be entitled to some of the interest so that
they can take that money and do whatever they
want with it. So, it seems to me that 90
percent is a compromise to those concerns.

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

CHAIRMAN: Yes.

MS. GRINSTON: If -- and I'm pulling
off of Brian's idea -- Todd, please don't kill
me. But if you -- let's say if you cancel --
would there be a problem if you guys said if
you cancel within a year, a 90-10; after a
year, you're 80-20. So that for those where
your costs are really short, if the 90 day --
and I say that hearing the 90-day window. If
they're coming back in a month or two or three
where they really don't get it or they don't
understand -- or not that they don't get it,
but they just realize they wanted something
else, that this is not their best option.
Within a year, you're 90-10; after a year,
80-20.

CHAIRMAN: Sharon?

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

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

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

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

MR. MEIERHOFER: Well, we're going to
keep it like it is.

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

CHAIRMAN: Linda?

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

CHAIRMAN: Bob?

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

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

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

MS. GRINSTON: And setting the minimums.

CHAIRMAN: Mike?

MR. MEIERHOFFER: You know, I'd like to do what you're saying, Sharon. But I think we don't know what's going to happen five years or fifteen years down the road. There could be a run on the bank for whatever reason. That's the thing that concerns me is
if we're required to come up with more money en masse than is in the trust, that's a problem. That's a huge problem. And we're going to be in worse shape by promising something we can't do. Outside chance, but it can. The 80-20, at least you can promise what's in the bank and can be given back. Any of us can do that today. So, that's the only concern I have from splitting this at this point. It's just -- it's a number that we don't necessarily actuarially have.

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

MR. MEIERHOFFER: Okay.

MS. GRINOST: Sure.

CHAIRMAN: Tom?

MR. KUTIS: Just from the consumer's point of view now, not as a funeral director or a preneed seller, don't you have that backwards? I mean, you're going to keep their money for ten or fifteen years and then you're
only going to give them 80 percent. You have
t heir money for six months, and you're going
to give them 90 percent.

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

MR. KUTIS: Well, certainly.

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

CHAIRMAN: Bill?

MR. STALTER: You know, I go back to
the years of FSP and so forth, and we were
looking at how to structure this arrangement.
And part of what we looked at it was the
prepaid college-tuition plans because,
basically, they were taxed the same way and
they had the same security issues. And the
way those programs involved, now, you have,
what, a 529 plan, and then you also, which is
kind of like our nonguaranteed, you put the
money in, you get to spend it however you
want. On the other side, we've got plans
which aren't guaranteed tuition plans. And
when people put their money in there, you
know, there's a cost when it goes in, but if
they decide they're not going to go to those
universities, they usually get a portion of
the trust earning back. And, often, it's,
like, half or else they have periods of time
where they can't access it for, like, six
months or year. Basically, the SEC wants to
say it's not an investment fund, and there's a
cost of getting into the guaranteed
college-tuition plan. And since it kind of
goes back to this, if we have it for 15 years
and we've managed it well, we should give a
portion of it back, or it should be available
for the portability issue.

MS. GERNSTEN: And we're going --
yeah. Let me separate portability.

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

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

MR. MAHN: The problem I've seen with cancellations is people normally want to cancel and then go spend the money on something that has nothing to do with the funeral, and then their relatives come in later on and they're burdened with the funeral when this person has pulled it out. And I really think that there needs -- they need to have an eye-opening, you know, talk with Jesus thing to really decide whether they want to
cancel this or not.

MS. EULER: Or whoever they --

MR. MAHN: Or whoever, yeah. Maybe

they're, you know, atheists.

CHAIRMAN: Okay. Martin, and then Bob.

MR. VERNON: Just a thought process

that Mike had used last week. Would there be
any advantage here -- we've got a lot of
nit-picking around. That's fine; that's good.

But would there be any advantage here of just
creating the entire saga that Todd created or
started to read off earlier and taking a straw
poll of who could not live with that, and then
fine-tune after that, because it is a general
consensus.

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

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

MR. BAKER: Yes. I think Sharon
really hit it on the head, and I agree with
her 100 percent. It's the money paid in that
the consumer gets back, you know. For the NPS
saga, they could pay on a ten-year contract,
pay on it for five years, and then a little
bit of money has finally started trickling
into the trust. So, I agree with Sharon
wholeheartedly. It's the amount of the money
that the consumer pays versus what's actually
in trust because they --

CHAIRMAN: Okay. Don is saying the
same thing?

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

MS. EULER: Uh-huh.

MR. MEIERHOFFER: That's the problem.

MR. OTTO: Would any bank do that?

That's why, to me --

MS. EULER: But it is not the bank. A
bank gives you back what you have deposited.
The consumer has deposited $100 million with
you. And if you took $100 million and put it
in a bank account and went back ten years later and say, "I'd like the $100 million I deposited back," the bank will say, "Certainly."

MR. MEIERHOFFER: but they don't have a risk because they don't sell --

CHAIRMAN: John?

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

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

CHAIRMAN: Quiet.

MR. OTTO: Yeah. Again, my view is that, both from consumer protection and from an administrative standpoint in trying to do this, that percentage on our first box and the percentage on our second box ought to be the
same. If you deposit 80 percent, you get 80 percent back. If you deposit 90 percent in box #1, you get 90 percent back in box #2, because, otherwise, it is going to be an administrative mess to have to go back. And, like I said, you may have to go -- what -- if the funeral home, if you're going to collect your -- get your commission back from the person that you paid the commission to, if the person cancels after a year, going to go back and say you've got to write me a check for $750 because that person canceled, because unlike -- although some businesses are able to pay 100 percent back and eat it, you know, it comes out of them, not all can.

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

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

MS. GRINSTON: But, Don, can you live with 90-10, because, remember, you're not going to do any services at the end. can you live -- and we're talking about compromise because I think everybody has come off of dead center here, and a lot of people have come a little way. Can you live, if you had to do
90-10 -- and I don't know if we need to
introduce this before one year, after one year
issue again. Can you live with 90-10 in the
long run, just on cancellation alone?

MS. KULER: Or 85-10?


CHAIRMAN: Mike?

MR. MEIERHOFFER: Here's the dilemma.

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

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

MS. GERSTEIN: Where is it?

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

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

CHAIRMAN: Sharon?

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

MS. GRINSTON: Uh-oh. I've got neds.

Hold on.

MR. OTTO: I think that's more doable.

That's easy.

MS. EULER: My concern is that the consumer, the preneed seller got paid 20
percent to administer the trust over the life of the trust. It's not a commission. It's 20 percent to cover the expenses over the life of the trust. And if the life of the trust is cut short, then there shouldn't be paid. So, paying part of the interest, I think, would make consumers happy.

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

CHAIRMAN: Joy?

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

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

MS. GERSTEIN: But the rest of it's
there?

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

MS. GERSTEIN: Where is this money?

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

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

MR. McCULLOCH: It's not there.

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

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

MR. OTTO: I'd like to call for the --
call the question on this compromise.

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

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

Ms. ERICKSON: Brian, what is a charge-back, please?

MR. MAY: I'm sorry?

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

MR. MAY: Oh. Well, you know, we fund with an insurance product right now already some of our funerals, and so, the insurance company is famous, you know. We fund -- you know, the insurance companies, we put a policy in force to fund a funeral right now, and they pay a commission from the insurance carrier, but, certainly, you all charge back commissions to us if they don't live long enough. You guys aren't going to pay a commission to policies that aren't in force, so if they live 30 days, you all charge back the commission that you paid us on the policy. You hold onto their funds for 30 days, you give us the funds back to do the funeral, but you charge back the insurance policy to us as a general agent, so I charge it back to our individual counselors, and they know that.
So, it's quite common when you fund with an insurance --

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

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

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

MR. MAY: Yes.

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

MR. MAY: Yeah.

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

MR. MAY: Yeah. That's right. It happens all the time. It happens all the time. And I can't understand what -- that would just happen on these trust concepts, too. You tell your guy if he sells a trust product, that -- oh, sorry about that. Sold a $10,000 trust product and you got a commission, oh, you got to charge it back. He
died six months into it, you know. For a
cancellation -- we do it for cancellations,
too, if they cancel.

CHAIRMAN: John has got a consent for
you.

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

MR. MAY: We reserve a little bit.

It's not uncomplicated, but --

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

MS. SUMMERSVILLE: Kalene Summerville.

I have entered many, many contracts, and every
contract I've had has been fees and things,
you know. When you buy a house, you know, you're paying your agent. And all this is set out in the contract you sign. We need to put, you know, so the people are educated that where their money is going. Yes, they are giving us money, but there are fees and expenses and they need to be broken down and told to the people, and then if they want to cancel, they'll need to understand that these fees are gone because you've entered this contract with me, because I know if I go to my bank and want to set up a CD and three days later I want to cancel that CD and get my money back and go buy a car, I'm not going to get all my money back. So, why should we -- if we tell everybody what -- up front what's going on, then there shouldn't -- we shouldn't be arguing about this. It needs to be made more simple and everybody needs to be aware of what's going on.

CHAIRMAN: Good point. Okay.

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

CHAIRMAN: Yes, you may.

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

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

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

UNIDENTIFIED: You're opposed to that.

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

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

CHAIRMAN: Tom.

MS. BOHRER: Mike had his hand up.

CHAIRMAN: And Mike had his hand up.

MS. DUNN: Tom and Mike?

(Several people talking simultaneously.)

CHAIRMAN: Okay. All in favor of those?

MR. KUTIS: Can you tell us what we're voting on?
MS. GRINSTON: This is it. I come in to cancel. I come in to cancel. When I come in to cancel, I get 80 percent of what I paid back, plus I get 10 percent of the interest that you've earned on my money.

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

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

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

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

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

MS. GRINSTON: Because we're still preserving 80-20 for you all so you can still live up to 80-20, and you're still getting 90 percent of your interest; so all you're losing is 10 percent of the interest from what you're
doing right now. Again, can we live with that?

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

(Several people talking simultaneously.)

CHAIRMAN: Thirteen to four.

MS. GRINSTON: Got it. Okay.

CHAIRMAN: Okay. Lunch.

(Off the record)

CHAIRMAN: We better get started.

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

MR. BROKER: Thank you, Jim. For
those of you who attended the very first
meeting, I know you were so awed with my
remarks on that day that Jim has asked me to
repeat them. As I had mentioned at that time,
we have been given really quite an excellent
opportunity. Senator Delbert Scott and
Representative Jay Wasson had asked the
Division to put together some plans, some
thoughts on Chapter 436. As all of you know,
in the last session of the general assembly,
there was a bill that passed and was signed by
the governor putting into effect, as of August
28th, a joint legislative committee of senate
and house members, seven, I think, from each
-- from the senate, seven from the house. It
will be jointly chaired by a senator and a
member of the house. We're assuming Delbert
Scott and Jay Wasson will be the joint
chairmen. They asked the Division and the
Board of Embalmers and Funeral Directors to
put together some thoughts and hopefully some
very solid plans that the joint committee
would have an opportunity to take a good solid
look at, to hear testimony, and then,
ultimately, to have a bill to present when the
legislature is back in session in January.
Now, it's my understanding the joint committee
-- and, Kim, correct me if I'm wrong -- but I
think it expires as of January 30th; is that
correct?
MS. GRINSTON: That's correct, sir.
That's correct.
MR. BROEKER: So, they have until
January 30th to hear -- have their hearings,
and by that time, hopefully, or very quickly
thereafter, to present legislation in both of
the houses. It's our hope, of course, and we
were thrilled to be asked to do this. And,
of course, this is something, quite frankly,
the Division has done with the various pieces
of legislation that the Division and the
various boards have recommended over the
years. We haven't been quite this grandiose
in putting this type of thing together, but
this has been one of the most important issues
that we have had to face in some time. But
on the various pieces of legislation that we
look at, we have always tried to bring
together a consensus group that will help and
assist us in presenting the proposed
legislation to both houses and also, of
course, the various associations and what have
you that are involved have been most helpful,
as well as the boards and the executive
directors of those boards. This is no
exception except it's a much larger operation.
Like I say, we've never pulled together a
group like this. We're very pleased for
everybody's participation. It means a lot to
the Division, it means a lot to the Board, and
I guarantee you, once we have a package put together that we're going to present to the joint committee, it'll be greatly appreciated by Senator Scott and Representative Wasson, and we are assuming the two of them will be the joint chairmen of the committee. So, today, I notice we've made some pretty monumental progress, and I think we're getting pretty close to at least having an agreement here that's going to help spur this along. As you know, we only have, I think, one additional day left for us to gather and to discuss this particular situation. And, again, my appreciation. If I may speak on behalf of the Board of Embalmers and Funeral Directors, I know they appreciate, as well, everything that you have done to assist us in this. Your participation here, many of you have been driving in from long distances to participate in this, and it is greatly appreciated. We need to pull together and come up with a consensus that we're all as comfortable with as we can be because that's what the senator and the representative have asked for. Needless to say, there is no
guarantee once it gets to the floor of the senate or the floor of the house. There is
going to be a lot of other involvement by that
time, a lot more give-and-take than what we've
seen here, and, you know, there are just no
guarantees. But if we give them a very solid
foundation to work from, we're about 20 steps
ahead of where we would normally be in this
type of situation. That's why an agreement
that is the best agreement we can come up with
from this group is going to be a monumental
step in the right direction in dealing with
the joint committee when it comes into effect,
and it comes into effect August 28th. Jim.

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

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

Default is only going to happen if it's a
not-paid-in-full contract.

MS. GRINSTON: Right.

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

MS. GRINSTON: Okay.

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

MS. GRINSTON: Sure. Definitely.

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

MS. GRINSTON: We definitely could.

Let's do that. Let's do that and talk about
ideas on transfer on a -- say that again, Don
-- not-paid-in-full contract.

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

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

MR. McCULLOCH: I would like to
suggest, Todd, could you continue on with your
analogy that you were going to give us from earlier, because you never got to finish that.

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

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

MR. MAHN: No, that's it.

CHAIRMAN: That's it. Sharon?

MS. EULER: I just want to clarify what Todd is talking about because I'm not -- there are two kinds. There's where the person doesn't have a problem with the seller necessarily, but just wants to change funeral homes. And in that situation, I don't see why
there should be a problem. The person ought
to be able to change funeral homes, and the
seller and that funeral home ought to be able
to come to an agreement as to what is going
to be paid and, if not, we can provide for
some statutory remedies for that. The second
situation is where there wants to be a change
in the seller where you want to go from
preneed seller A to preneed seller B, which
may or may not involve a change of funeral
homes, and I think you've got two separate
situations there. And you also have a third
situation which would be the rollover
situation where the seller wants to move to a
different trust or the funeral-home provider
wants to move to a different seller. I don't
mean to complicate things there, but I just
wanted to clarify that.

MS. GRINSTEAD: I don't know. If I
can, the last one, rollover, I think, is a
little bit different because we're talking
about transferring trust funds. And I think
that we should probably handle rollovers just
separately outside of reimbursement and
everything else because we're really just
talking about a seller who is the only person
that can transfer, transferring money to a
different entity. But I think your -- because
the provider shouldn't be able to touch money
or have any say on where the money goes --
MS. EULER: Right. The funeral home;
right.
MS. GRINSTON: -- as just a provider.
Right. But on your second issue, that
probably is a very good point to bring up.
Let's talk about if -- let's start with
transferring the seller first and then we'll
get back to transferring the provider because
I think transferring the seller may be just a
little bit easier. If we talk about
transferring the seller, help me understand if
that should just be treated as cancel with
one, rewrite with the other, or -- and you go
through the reimbursement provisions for
cancellation if you are transferring seller.
MS. EULER: It needs to be treated as a
transfer to preserve Medicaid eligibility.
MS. GRINSTON: Okay. And we're going
to have to do something completely different
for Medicaid. But outside of Medicaid
situations, if we're outside of Medicaid, if
we go from seller to seller, should we treat
that as a cancellation of one contract and
just, you know, rewriting with someone else,
or should we treat it as a transfer? Does
anyone understand my question?

MS. EULER: Yes.

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

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

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

MR. MCCULLOCH: Yes, we are.

Revocable.

MR. KUTIS: Revocable.

MS. EULER: I think it's better to just
provide for the assignment of the contract
from one seller to another seller because then
you don't run into any Medicaid issues. You
only have one procedure to change sellers
regardless of whether it's Medicaid or not, whether it's revocable or irrevocable, you've got one procedure, which is easier for everybody.

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

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

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

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

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

MS. EULER: Yes.

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

MS. EULER: Todd is not a registered preneed seller with the trust.
MR. STALTER: Then what do I do with it?

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

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

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

MS. EULER: Right.

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

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

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

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

MS. GRINSTON: And that's what I'm saying. Should we treat that as a
MR. STALTER: Yeah. I don't think there's any other way to do it other than that.

MR. MAHN: They have to cancel it.

MR. STALTER: Yeah.

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

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

MR. MEIERHOFER: Right. Exactly. That's why I don't think this is a problem. It's a nonissue.

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

MR. MCCULLOCH: Yes.

CHAIRMAN: Everybody agree on that?

(Numerous people agree.)

CHAIRMAN: Okay.

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

MR. MAHM: Well, that's why I suggested either 80 percent and all interest or 90 percent and a cap on interest at 1 and
a half percent, and the only reason I used the
two is I think, just from listening to
everybody here this morning, keeping
everything uniform on the 80 seems to keep
things cleaner, 80, 80, 80, 80, instead of
jumping around 80, 90, back to 80, 90. John,
what do you think, or Mike? I mean, you guys
are working on this committee.

MR. MEIERHOFFER: I agree with you.

MR. McCULLOCH: I agree with you.

Yeah.

MR. MEIERHOFFER: I agree with you.

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

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

MR. MAHN: Well, I think the new
funeral home would -- that they would be
moving to, that's what the 20 percent is part
of. And what you're talking about,
expenditures, I think the 80 percent and
interest all has to go, or you do a 90 with a
cap on interest. John seems to think that 80
plus all the interest would work, and he's got
the company, he ought to know.

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

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

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

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

MR. OTTO: Well, under the current
law, it depends whether the interest was left
in the trust or not. But, I mean --
MR. STALTER: I think what we're talking about, there would be an accrual of income, is one issue.

MR. OTTO: Yeah.

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

MR. MAHN: At-need.

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

MR. MAHN: This is the family's choice. If the family wants to use a different funeral home, you can't veto power
all that and everything else.

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

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

MR. OTTO: Oh, yeah. That's better.

Keeping it at 80 is better.

MS. GRINSTON: Can I ask a question --

CHAIRMAN: Go ahead, Kim.

MS. GRINSTON: -- to help educate me?

If you're just going to just transfer
providers and, you know, we take care of the
selection issues with the seller, but if
you're going to transfer providers, why
wouldn't the second funeral home get whatever
the first funeral home was promised unless you
all -- that provider renegotiates the contract
and the seller agrees? Like, whatever you
wrote the contract to pay, you still pay to
whomever steps up a little bit later; you know
what I mean? Like, whatever you're going to --

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

MS. GRINSTON: Okay.

MR. MAHN: Right, Mike?

MR. MEIERHOFFER: Yes.

MR. MAHN: Or Mr. Kutis.

MS. GRINSTON: I get it.

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

MR. MEIERHOFFER: Well, I guess --

CHAIRMAN: Go ahead.

MR. MEIERHOFFER: Well, along that
same line -- and, Tom, I don't know where you
come from in this -- we have presently a
restrictive area that we really penalize the
consumer if they don't use our firm after we
sell the policy or the trust in our area.
And I guess what we're seeing here is maybe we
need to rescind that or something. I guess
where I'm trying to go with this is there's so
many permutations and combinations to this
thing because everybody has got their own
little way of operating. In our -- I think
our area is 15 miles or 25 miles or maybe 50
miles, depending on what we're talking about.
I don't have a problem with competing. In
other words, I feel if I can't maintain my
facility and my people and be the top guy in
my area, then I've got a problem. So, I
don't have any problem with doing away with
that as we go forward. In other words, no
restrictive covenant in terms of if you want
to cancel your contract with me and go to
provider B, be my guest. Be my guest. So, I
wouldn't punish the consumer for that. Tom, I
don't know. What do you do in that respect?

MR. EUTIS: Well, we get transfers
and, again, most of ours are people that are
moving to retirement communities. We refund
100 percent of their money, whatever they --
MR. MEIERHOFFER: Ever if they go next
door?

MR. KUTIS: Yeah. That makes no
difference.

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

MR. MAHN: Right.

MR. OTTO: I mean, I think your
suggestion is workable, what you said, you
know, just from an administrative standpoint.
Again, my one concern is under any current law
or what we've come up with so far, I, as a
seller, owe duties to the funeral home. That
funeral home owes duties to me. If you can
switch funeral homes without the seller saying
yes or no, I see problems. I would not have
wanted my preneed money, you know, as Don
Otto, third-party seller, I'd have concern if
a bunch of people came to me and said one day, "I'm switching it all to Warren Funeral Chapel." I'd say, "Hmm. I'm not sure I want to do business with that company."

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

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

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

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

MR. MEIERHOFER: Yeah. I understand.

MR. OTTO: And so, if you switch to a different funeral home, all of a sudden you're
forcing the seller and the trustee to enter
into a business relationship with a new party
that they may or may not want to be in a
fiduciary and business relationship with.

MR. MEIERHOFFER: Exactly.

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

MR. MEIERHOFFER: Yeah. I can --

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

MR. OTTO: It's constant.

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

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

MR. OTTO: Yeah. But, like, I, as the
trust, am paying the taxes on behalf of this
funeral home. This funeral home, if it's an
installment payment where installments are
coming in, will have duties about sending the
money in to me. Do I trust that funeral home
to be sending the money in to me? If I don't
trust that funeral home to be sending the
money in to me as the family comes in, I
don't want to do business with them. So --
and by the law, I have to have a contract
with every provider. So, that's my only
concern. Your plan on how to do the money,
as long as everybody is -- you know, funeral
home -- I'm happy with funeral home B and
funeral home A, your plan is workable, for
sure.

CHAIRMAN: Sharon?

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

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

CHAIRMAN: Bill?

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

MR. OTTO: There's the report --

MR. MAHN: You might have a
cancellation.

MR. MEIERHOFFER: There's the payments
and all that stuff. It goes on for years.

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

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

MS. EULER: Right.

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

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

MR. OTTO: Because funeral home B, I might not want to do business with because I'm afraid they're going to sue me because they don't like how I'm doing the business. I'm afraid that they're going to not treat -- not give the customer -- I'm not -- I'm concerned
if funeral home B is not going to provide the
goods and services called for in the contract.
And so, the consumer is then going to come
against me upset because funeral home B isn't
a good actor.

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

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

CHAIRMAN: Bill?

MR. STALTER: May I? I mean, really,
the way I approach this is, I mean, I'm a
fiduciary. Now, it's true if I don't want to
be in the situation to determine whether the
preneed contract has been performed pursuant
to its terms. But the way we define this is
if there's a move, basically, all I have to
determine is now I'm going to pay Todd 80
percent plus the accrued income. And,
basically, notices to the consumers that, you
know, we understand -- I mean, you're going to
get a new contract with Todd. But as long as
the fiduciary is -- I know now, I don't have
to do anything other than I have to know how
much I'm going to pay Todd and when it has to
be paid.

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

MS. EULER: Yeah.

MR. MAHN: Yeah.

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

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

MS. NEUMANN: It's my family. It's my
money.
MR. OTTO: But am I, as a seller,
going to get sued?

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

MR. OTTO: I have -- with -- if I'm
the upper level, I'm the seller, I have a
contract with the funeral home. That contract
is many pages long. It spells out what
everybody's rights, duties, and
responsibilities are. Here is what this
funeral home has to do. Here's what I have
to do. If either one of us doesn't do that,
here's the procedure. We file it under
Missouri law, for example. We don't wind up
in Florida law or something like -- there's a
multipage contract that spells out here are my
rights, here are your rights. Now, if you
change funeral homes and I don't have a --
now, if I've already got a provider contract
with funeral home B, it's not a problem. But
if I do not have a seller-provider contract
with funeral home B, I'm now in limbo. What
are my rights and duties in response to this
new person? Now, if the statute says somehow
is that situation, the seller is absolved of all liability with the exception of paying out 80 percent plus the interest accrued, then maybe that solves the problem.

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

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

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

MS. EULER: But it does.

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

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

MS. EULER: But people do it. People
do it all the time.

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

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

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

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

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

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

MS. GRINSTON: That's the law now.

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

MS. GRINSTON: Yeah. The law now says
that if he doesn't have a contract with that
provider, he can't allow you to choose that
provider because he doesn't have a contract.

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

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

MS. NEUMANN: Okay.

CHAIRMAN: Mark?

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

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

CHAIRMAN: What's a -- explain that.

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

CHAIRMAN: Well -- Sharon?
MS. EULER: I have another potential compromise situation because I think we're in a situation here where no portability is really a problem for a lot of people, and complete portability is a problem for Don.

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

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

MR. MARN: Well, we are compromising because we're only -- (inaudible) -- 80 percent.

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

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

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

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

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

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

MR. OTTO: That's a loophole with a
cancellation then.
CHAIRMAN: Well, let's hear an idea from the public. Step on up there.

MR. STROUD: You're making it too complicated again. You're talking about the same thing. Larry Stroud. Transfer and portability. Look, if Tom's customer wants to go to Mike's customer, they're going to call Mike. Let's just say the guy died. They want to use him. They go to him. Mike is going to file a claim with whoever trustee is taking care of that money. If A, American Prearranged Service sold that plan, that family is going to go to file a death certificate to get a death certificate, they're going to -- and that funeral home is going to file a claim against him. It just goes -- it's real quick. Nobody is going to fight. No one fights over transferring a body from A point to B point. This is not an issue. We want to be talking about percentages. If you're going to have 80 percent transfer, make it 80 percent. You keep 80 percent, they get 20 percent plus the -- I mean, you get 20 percent and they get 80 percent plus the interest. Same way with
portability. If John Doe dies 200 miles from
home and they decide to keep him in that town,
the same thing, 80-20, plus that funeral home
is going to get the interest. What's the
difference? What is the difference? He's
going to show a death certificate, that guy
died, he's going to have a statement of goods
and services that he did the services. He
doesn't care. He may have sold him a bronze,
they may have just bought an 18-gauge from
him. He didn't care. That's not his
business. He's got X number of dollars to
work with. Am I wrong or right?

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

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

MS. OKINSTON: Okay.

MR. STROUD: Keep 20. If you want him
to have the interest, no, because maybe
there's where he's making a difference. I did
this in good faith, I get to keep the interest; okay? Let's make this simple.
80-20, and then the interest would be depending on who did the contract. If he does his own contract, he gets the interest. If the contract is transferred over to Mike, Mike gets the interest, but he still gets the original 20 percent.

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

MR. STROUD: John McCulloch could care less who serviced the funeral. He could care less. Am I wrong or right? Because your -- it doesn't make any difference. Sure, he had a contract with Todd. It don't make -- I mean, Tom. It don't make any difference. The family has got a right to change their mind. You cannot walk in and dictate to a family what -- they can't use the other funeral home. Baloney. That's the silliest thing in the world. You talk about making a bad reputation, you'll have one in about 15 seconds. You cannot do that. You transfer
that darn contract to anyone they want to, but
you've got a little penalty. 80-20, whatever.
And if it's before they die, that's what they
get. But John, as a seller, can't tell Larry,
even though I've got a contract with him and
it would behoove me to say to John, "Well, I
don't want you to take that over to Todd,"
John could care less, and I don't expect John
to care about my -- in that particular
situation because everyone is an individual.
I figure I'm going to get 99 percent of them;
wrong or right? You're going to get 99
percent of them. So, just keep things in
mind. 80-20, 80-20, and then however you want
the interest to go. If he's going to do the
service, he gets the interest. If he's going
to do the service, give him the interest.
Let's keep this darn thing simple and quit
worrying about defaults. If you cancel the
darn contract, you cancel the contract. You
haven't paid enough money into it, too bad.
You ain't going to get a dime back. If you
want to go out and gamble, you want to come
in and cash that contract, you get 80 percent.
You're done. You're done.
CHAIRMAN: Todd?

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

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

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

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

MR. MAHN: Yeah.

MR. STROUD: In one of my rants earlier. Percentages don't mean squat to me. Let's just do it, let's make it fair, and transportability -- cancellations, transfers,
and let's get off all this legal mumbo jumbo
and let's just get to the race; okay?

MR. MAHN: I make a motion on that.
CHAIRMAN: Bob has got the next -- do
you want to question Larry?

MR. GROUD: Go Bob. Do you want to
ask me a question?

MR. BAKER: Yeah. Raise your hand
first. Whenever we're talking about sellers,
we're actually talking about three different
types of sellers. Tom and Mike take care of
their own trusts. John McCulloch has a
different situation. I have a contract with
John. He has funeral homes; he has contracts
with his own funeral homes. Then we have
Missouri Funeral Trust who has never sold a
contract. It's a funding vehicle for the
funeral homes that want to participate in it.
So, John McCulloch with his company could care
less who services the funeral. You have Mike
and Tom that have their own trust, that is a
totally different situation, and then you have
the Missouri Funeral Trust just kind of
sitting over here on the side because they do
business a little bit different. The only
reason Missouri Funeral Trust is in existence is for the smaller funeral homes to be able to take advantage of the income, professional management, and every else, so we can't just talk about one seller when we've actually got -- as far as I can tell, we've got three different types of sellers, at least.

CHAIRMAN: Good point, Bob.

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

MR. MAHN: Amen.

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

MS. GRINSTON: Often. All the time.

MR. KUTIS: Well, we're talking about before the funeral; right? I mean, we're not talking leaving one funeral home in the middle of a funeral to go finish it somewhere else.
CHAIRMAN: Yeah. We're talking about, like, when a family -- you know, the death occurs, they've got a contract here, and they're trying to go there, and the families are upset, so it does --

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

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

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

MS. GRINSTON: Right.

MR. MAHN: I mean, Mike don't have a
problem with it; Mr. Kutis don't have a
problem with it; John don't have a problem
with it. But the nonprofit organization that
I belong to has an issue with it.

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

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

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

MR. MAHN: Yeah, I just read those.

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

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

MR. OTTO: My concern is what are my
duties -- I've got to put my lawyer hat on
and protect my client. And my concern is,
what are my duties to funeral home B when I
don't have a contract with funeral home B?

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

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

MR. STALTER: Well, let's go back.

Mark, what was the term, exculpate? I mean,
really, as a fiduciary, I have a contract --
I'm a fiduciary and I have a contract with
Tom. When Tom makes a service, he makes
promises by giving me a request for payment.

Now, I don't have a contract with Tom or with
Todd, but if the law says that, you know, when
somebody transfers over and says this is what
the trustee is going to pay, you know, and I'm
exculpated by just paying whatever that
account balance is, that's fine with me. Just
as long as I'm taken off the hook.

CHAIRMAN: Okay. Sharon. Thank you,
Bill.

MS. EULER: I'd just like to comment,
you know. We've got with the transfer, like
so much of this stuff, we've got two different
scenarios, the at-need transfer and the
preneed transfer. But for the at-need
transfer, from the seller's perspective, if
you've got an MFT contract for Mabel Smith and
Mabel Smith has died, and you've got a written
statement from Todd's funeral home, whom you
don't have a contract with, saying I performed
the services, here's her death certificate,
here was what I paid for the funeral, what
difference does it make whether you've got a
contract with Todd or not if, you know, you're
just paying out of the trust and that the
statute tells you what you pay out? You don't
have any other objections that I see that
makes Todd's funeral home any different from
Bob's funeral home who you've got a contract
with at the at-need situation.
MR. OTTO: Well, after the person died; okay? And I don't know that we've
changed the funeral home, you know. I've got -- I'm dealing with funeral home --

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

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

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

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

MS. EULER: But -- so, what you're saying is you don't have a problem with the after-death transfer? That's what I hear you saying.
MR. OTTO: I don't have near as many, yeah. I don't have near as many problems, yeah, if any.

CHAIRMAN: Joy?

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

MR. OTTO: Funeral home B.

MS. GERSTEIN: Would sue you for --

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

MS. EULER: That's not their right.

MS. GERSTEIN: What I'm saying is -- no. No. I come to you, I have a contract with you, and I go. Okay. I'm moving from Washington, Missouri, to St. Joe, and I want to move to Mike's funeral home. He doesn't deal with you, but I want -- (inaudible) --
from you to give to him. And you're telling
me that whomever you have me with could sue
you?

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

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

MR. OTTO: No. I'm just saying -- all

J'm saying, and I'm not saying it can't be

solved. I'm just saying is --

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

MR. OTTO: The solution is, I think we

mentioned earlier, to spell out that if the

customer changes provider -- okay -- spell out

in the law this is what the seller owes the

provider, and this is the extent of their

responsibility.

MS. EULER: We can do that.

MR. OTTO: That's --

MR. MEIERHOFER: I think we need to

get through that because we're --

CHAIRMAN: Yeah. Mark?

MR. WARREN: I was going to say,

there's a great exculpatory clause on the back

of the standard funeral-purchase contract

which, you know, might solve this problem. I

mean, you could use that language. I haven't

read it lately, but I don't see why any issue

like that -- I mean, looking at the -- I

don't see why any issue like that couldn't be

taken care of language-wise.
CHAIRMAN: John?

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

MR. KUTIS: Can I be Tom to everybody?

Everybody else gets called by their first name. Can I be Tom?

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

MR. KUTIS: I thought it was my age.

MR. McCULLOCH: The first thing I'm going to do is I'm going to call Tom and ask him if he will accept the transfer and we'll do a change of provider. So, we're going to enter into an agreement; okay? And, of course, given we know that they know as much...
as everybody or anyone about preneed, they're
going to ask a few key questions, is: What
do I have to provide, and how much money am I
going to get? So, we're going to have to
negotiate and get to there. But that's going
to be the way we go about it, and we're going
to enter into an agreement with him. If they
would say no, then that's fine, then I have to
go back to the consumer and say, well, we've
got a problem here, and then they'll have to
pick another provider. Does that make sense,
that that's kind of what really happens? And
then I don't think there is any legal problems.

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

MR. MCCULLOCH: Huh?

MS. GERSTEIN: What if they don't want

-- this is --

MR. MCCULLOCH: I thought this

question was about getting a new provider.

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

(Several people talking simultaneously.)

MR. STALTER: It's John's situation

where they pick up -- the consumers picked out

one funeral home and they won't do the deal.
Then what happens? Basically, how do you force it?

MS. GRINSTON: Well, my question is: Are we having a moot discussion? Should we just say that, you know, the new provider either agrees to accept what the original provider was going to get -- and this goes back to my point. And I understand that you guys may have already paid out interest. Well, you get, you know, whatever is left over and whatever is owed under the contract. You're just going to step right into his shoes. And so, the check that I would have cut to Mike, I'm just going to cut it to Todd next month. And so, we don't worry about interest, don't worry about anything else, but you're just going to step into his shoes. We weren't worried about what's already been paid over. You're going to step into his shoes. Now, if you're not willing to accept that, then we just tell the purchaser that the provider is not willing to accept, you know, the payment arrangement. Is there something else you would like to do, and put it back on the purchaser. So, we don't worry about
interest or anything else. We just say you step into their shoes, you get whatever they would have gotten.

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

MS. EULER: And why not?

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

MS. EULER: Yes. That's exactly what I was going to say.
MR. MAHN: That's a good scenario, but I have a question for Mike and Tom. How would you guys pay that out?

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

MS. GRINSTON: Are you feeling okay?

MR. KRAUS: Gerry Kraus, Homesteaders. I have mentioned this before and I'm all in favor of the reverend's arguments on keeping it simple. And I think some very valid points are being made over here for a situation where you've got a seller that has to subcontract with providers for the performance of the funeral. And, on the other hand, you've got a situation where you've got providers that subcontract with marketers to sell their plan. And we talked about Missouri being one of the few states where we will let someone contract with the consumer that can't provide. Because of that, we bifurcate all of these discussions and the arguments and we really complicate it. It may be worth going back to revisit let's do something else with the third-party marketers. And I don't want them all shooting me because I work with a lot of third-party marketers.
But let's say that Mark is a third-party marketer and he has contracts with 50 providers right now. And we'd kind of put him out of business and say, "Mark, you can't go out and sell those funerals anymore on your own and subcontract for their performance with the providers. What we're going to require you to do is work under their contracts. We're going to have you become authorized to sell for them." So, the line of authority goes through the funeral home to the third-party seller, and if they want to change providers, they just change providers and it doesn't matter who sold it. Now, Mark is probably going to, the next day, instead of having 50 contracts with providers, he's going to be hanging under 50 contracts. It's not going to change his life that much, it's just a change in contract, and it really simplifies the discussions, I think, in terms of who keeps what because now if it's sold by a third-party marketer and they wanted to retain, they have the money, the provider can't get it. If they start on the provider side, there's retainage there, the third-party
marketer can't get it. It just complicates it a lot.

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

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

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

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

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

MS. EULER: No.

MS. GRINSTON: No. It would affect
every seller.

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

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

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

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

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

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

(Several people talking simultaneously.)

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

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

CHAIRMAN: Mike?

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

MS. EULER: Yes.

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

MR. MEIERHOFER: That's what you're saying?

MS. GRINSTON: Yeah.

MS. EULER: Yes.
MR. MEIERHOFFER: He can't ask for any more?

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

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

MS. EULER: Yes.

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

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

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

MS. EULER: It's whatever -- so, John has got an agreement with Todd to pay him face
value plus 3 percent, we'll say.

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

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

MR. MAY: Right.

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

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

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

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

(Several people talking simultaneously.)

MR. MAY: Aren't you? I don't think
there's enough money to come up with. If you
asked me on an old -- one of my old
prearrangements, I'm my own seller. And if
you told me that my family is leaving and
going to Todd's funeral home, I would not have
100 percent of the original contract value to give to Todd.

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

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

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

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

(Several people talking simultaneously.)

MR. STROUD: Sharon, I want to make one comment here. Todd has a completely different price list than I do at Adams Funeral Home, Ozark, Missouri. I'll guarantee you Mike dos, too. And I'll guarantee you both guys are probably higher than we are in southwest Missouri. It's none of my business. I don't care what they charge. That's their business. That's their business. If I've got a customer
that's got a preneed in Ozark, Missouri, and
he's got an 18-gauge Wolpert Monticello vault,
full service, embalming, limousine, the whole
gamut, they've got him in St. Louis and they
want that funeral there with Todd, and they
took out a $6,000 preneed.

MS. EULER: Uh-huh.

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

MS. EULER: Uh-huh.

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

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

MR. STROUD: You can't expect him or
him to eat maybe $4,000 that they're higher
than I am. I'm just giving you an example
because I'm stupid and I've got a low price;
you know what I'm saying? Okay. Now, reverse
the opposite way. If I've got -- mine is
$10,000 and theirs is $8,000, and somebody
comes to me, had his is $8,000, I'm going to
charge them $2,000 difference because I'm only
going to -- or whatever it's going to be,
because I'm only going to get 80 percent of
his $8,000.

MS. EULER: Uh-huh.

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

MS. EULER: Uh-huh.

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

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

MR. STROUD: What?

MS. GERSTEIN: Myself as a consumer --
MR. STROUD: Yeah.

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

MR. STROUD: Absolutely.

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

MS. KUHLER: Right.

MS. GRINSTON: Yeah.

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

MS. GRINSTON: So, again, because we've got a lot of ground to cover here.
MR. STALTER: Well, now, wait a
minute. I've got a question for reverend.
Now, I'm the trustee on that contract. I've
got $1,000 of income. Who does it go to?

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

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

MS. RULER: Yeah. The law will tell
you, Bill.

MR. STROUD: The law will tell us.

That's what you've got to decide.

MR. STALTER: (Inaudible.)

(Several people talk simultaneously.)

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

MR. OTTO: If funeral home B accepts
-- yeah, I know. If funeral home B accepts
the contract with the consumer and the terms
of the provider/seller contract, then that's
not a problem.

MS. GRINSTON: Okay. Right. If
funeral home B, if he accepts the contract --

MR. OTTO: Both of them.

MS. GRINSTON: -- then all we do is --
we don't worry about interest or anything
else. All we're going to do is say whatever
you agreed, whatever funeral home A was
supposed to get, funeral home B agrees to
accept, and we're done. We do the deal and
it's nice and clean.

CHAIRMAN: Everybody happy with it?
Well, you're not?

MR. MOODY: Question: That's preneed
and at-need are treated the same?

MS. GRINSTON: At-need, do you guys do
a transfer at-need, or do you just pay out as
the provider who did the final service?

MR. MOODY: I'm the lobbyist. I'm not
-- incapable of answering that question.

MS. GRINSTON: Oh, I'm sorry. I'm
sorry.

MS. RULER: You don't pay anybody.
MS. GRINSTON: Well, I'm asking the
question because I really don't know.

MR. OTTO: At-need, you pay after
death -- if the person died outside the area
serviced by the original funeral home, which
isn't, of course, defined in the law, the
seller has the option to either pay the new
funeral home of the consumer's choice the
amount that's in the trust, or to return the
purchaser their funds back, but no interest.


So, transfer, again. New funeral home B, if
they accept the contract -- all the terms of
the contract, they step into the shoes. If
they don't, you just tell the purchaser they
won't accept the contract, you know, what else
would you like me to do. Anybody have an
objection to that? Is that livable and doable?

MS. EULER: Yes.

MS. GRINSTON: Can we take a vote on
that?

CHAIRMAN: All right. All in favor?
(Unanimous voice vote for approval.)

MS. GRINSTON: Making progress. Okay.

Let's move on to default.
CHAIRMAN: Do you all want to take a
break for a minute?

(Off the record)

CHAIRMAN: Todd, would you like to
make a -- okay. We've got to wait a minute
here. Charles Bentley is going to be here at
3:30 and he's going to address what Sharon?

MS. EULER: Medicaid eligibility and
how -- what kind of restrictions need to be on
accounts for somebody to maintain their
exemption for Medicaid for preneed contracts.

CHAIRMAN: So, that ought to be worth
sticking around for.

MR. KUTIS: Do we have any
jurisdiction over that?

MS. EULER: Yes. Because we've been
talking about joint accounts and what
restrictions need to be on them to make them
eligible for spend-down, and when preneed
contracts are canceled, how to keep --
maintain people's eligibility for Medicaid.

MR. KUTIS: Well, the ones that -- and
I may be mistaken, but the ones that are
eligible, they sign the waiver, and once it's
in an irrevocable trust, it's not --
MS. EULER: Right. For a trust, but
for joint accounts, there are some other
issues.

MR. KUTIS: Well, can I say one more
thing while -- you know, I speak only for
myself and as a body infirm, and what's good
for us is not good for everybody else. And
there's other people and third-party sellers
and banking interests and that. You people
have, I'm sure, done a lot of work, and
there's going to be no thanks for this. I'm
sure you're all aware of that.

MS. GRINSTON: We've got cookies.

MR. KUTIS: I would say personally, I
don't know everything, and what's good for me
isn't necessarily good for you, and I hope you
don't think I'm too opinionated because a lot
of people think I'm opinionated and that I'm
around most of the time, and I'm married to
her.

CHAIRMAN: All right. Todd, do you
want to --

MR. MANN: Yeah. I just -- it seems
like for days, we've really argued about the
trust and had differences on it. And there
was a lot of comments I've heard made where
the trust being compared to insurance and
things like that. And I guess the question,
you know, I want to ask and pose here a
little bit, and this is just a question. But
are we serving the public correctly by
allowing them to put money in trust -- I'm
just asking a question -- as opposed to
insurance, and I'll say it for this reason, is
an insurance policy on -- wherever they go
pays out 100 percent plus the interest
accrued, not 80. And that 20 percent is a
big lump sum of money. There's no portable
issues with the insurance; they can go
anywhere they want with it. And, you know, if
a family walks into funeral home A and their
investment tool is insurance, investment B is
trust, you know, but they're paying out
$10,000 to whichever one they use, aren't they
-- you know, are they getting more bang for
their dollar -- and I was talking to Norma
about it. And then, also, the second part is,
I talked to Rick. On a trust -- you know,
with insurance, you've got the guarantee
association guaranteeing insurance. There's
regulators over insurance, you can look up the
grade of an insurance company anytime you
want. And with trust, that's not really the
case. There is nowhere for families to look
up the grade. There is no backup to it if
there is a default on it. And even with
Rick, I said is there issues to where there
may be a $2- or $3-million trust, and it's
only covered by FDIC for $100,000.

MS. EULER: Yes.

MR. MAHN: So, I'm just asking these
questions. I mean, I know we're really, you
know, talking about this and debating these
issues right now, and even to some degree --
(inaudible) -- over it, but I think it's
disbarring it just comes from the standpoint
of some folks are more sensitive to public and
their issues and some folks are sensitive to
their clients, and I respect that because they
have contracts with those clients. So,
anyway, I know we all want to get out of
here. I'd like to get Norma's -- you know,
she would like to say -- I'd get her opinion
and see what everybody thinks about that.

CHAIRMAN: Norma?
MS. COLLINS: Thanks so much. This discussion, as I was telling some people in the hallway, each week that I've come, this has been some of the most interesting discussions or dialogue that I've ever heard. But while we were talking this afternoon about this issue about trust, you all know the position that AARP had. In fact, we expressed that last week that we wanted to see 100 percent of trust. I realize -- I'm not stupid -- so I realize that that's probably not going to fly here in Missouri. Therefore, I'm going to talk with our policy analysts about is maybe putting support behind the insurance-policy issue because we're here on behalf of consumers and all 809,000 AARP members here in the state of Missouri, and I just think that this might be a more reasonable way to go in terms of the insurance versus trust because I just don't know if we're ever going to reach a happy medium here or a consensus or whatever you want to call it, or whether this is Kumbaya moment or touchy-feely, I'm not really sure that we're going to get there, but I am definitely going to talk with our policy
people when I get back about whether or not we
could just put our support behind the issue
with the insurance in terms of the preneed.
So, that's where AARP is, and I'm speaking on
behalf of AARP and not Norma Collins.
MR. KUTIS: Didn't NFS have a lot of
their money in insurance?
MS. COLLINS: Well, they would --
MS. EULER: That was a different --
that was different.
MS. BORRER: Right. Because they were
selling for the cash and --
MS. EULER: They were purportedly
trusting the money and then they used the
trust assets to buy insurance unbeknownst to
the consumer.
MR. KUTIS: So, insurance companies
were broke, too; right?
MS. EULER: Well, the insurance
company was owned by the same people, by the
Cassidys. And the guarantee associations, we
think, will be providing some relief from
that. If they had not had insurance, they
would have just gone belly-up --
MR. MAHN: Zero.
MS. EULER: -- and everybody would be
on the hook with the funerals with zero return.

MR. MAHN: And that's a very good point
because if they hadn't had insurance, every
one of these $100 million that is in the state
would be zero to every funeral home. Zero.
I hope everybody understands what that impact
means, you know. If you had a couple million
with them or $5 million, zero.

CHAIRMAN: Mike?

MR. NEIERHOFER: My only comment to
that is it may sound like the best way,
but it's not the only way. And the thing of
it is, there are still certain people who are
not insurable or they aren't covered because
of age. There's another real problem and that
is I don't know how many people have or can
get insurance licenses. This is not nothing
something that everybody -- again, Tom or I
could probably do that because we have enough
staff that we could push people -- matter of
fact, all of our counselors do actually have
licensures -- life-insurance license. I don't
know how many others could get them. So,
again, it gets back to how many can you --
people would really get prearrangements if it has to be totally insurance.

MS. COLLINS: Yeah.

MR. MEIERHOFFER: That's the dilemma.

MS. COLLINS: Yeah. I understand.

It's just that, I guess, just this discussion today that we've had, though, about the trusting, and it's clear to me that AARP is not going to get what it wants in terms of 100-percent trusting. I mean, this is what we're kind of stuck on here, so I just wanted to make that comment. But we are very, very willing to compromise, but I'm going to talk with our policy people and just see what we can compromise on.

CHAIRMAN: Thank you, Norma. Bob?

MR. BAKER: This may not be the time for this discussion, but it seems like that insurance is favorable to some. We have both. But we have not brought up the issue of what happens if you cancel an insurance policy, how much you get back, and then how much does that consumer actually pay for that $5,000 contract. Now, I have my whole-life nonparticipating contracts, and, you know,
they may pay you twice as much for that $5,000 contract over the life of it. We see that
all the time. So, I don't know whether that's a separate issue we're going to get into or
whether insurance -- I just wanted to bring that up, though, because it may not be a fact
that a lot of people are aware of as far as one of the funding vehicles for prearrangements.

CHAIRMAN: Okay. Thank you.

MS. GRIMSTON: Okay. Let's talk about default, and when I say default, we're talking about someone who is in default for nonpayment.

CHAIRMAN: Mike?

MR. MEIERHOFFER: I can start here. What I see typically done on default is, basically, the funds remain in trust, those that are placed in trust at this point. The contract is voided at that point. And at the time that the person dies, if they come back to you, then the policy has to be -- or the funeral is rewritten in terms of what the price is today. Or, in fact, the monies can be refunded to the person from trust. So, you've really got a couple of options. The
monies can -- and a lot of times, the monies
just stay there because they don't ask for
them back and they'll stay there until the
family comes in and tries to reconstruct the
funeral at the time of death.

MR. STALTER: And the only thing I
would add to that is that, basically, when it
goes into default, the right is just to the
principal amount paid to trust. If there's an
accumulation of income, basically, you know,
that goes to the funeral home. I mean, we'll
let those funds sit there, but, generally, in
default, you just say that the consumer has a
right to those funds deposited to trust.

CHAIRMAN: Do you all agree on that?

MS. GRINSTON: Is that a consensus?

Sharon?

MS. EULER: Question, Mike. You say
the contract is void, but you keep the money
and you hold it trust?

MR. MEIERHOFER: Unless they ask for
it. If they ask for the money back, they get
their money back. But in a lot of these
instances, they won't do that. They just --
they fall off the face of the earth, so the
money -- we didn't even know where to refund it. But the fact of it is, the monies are there for them at any time. The contract is voided after 30, 60, 90 days, however the contract is written.

MS. EULER: But if you provide the money towards their funeral at the time of death, if the family comes -- I'm just having -- I'm trying to figure out conceptually how this works because --

MR. MEIERHOFER: They have a credit towards their funeral service of X dollars on the contract. That's what they have.

MS. EULER: And if they never show up?

MR. MEIERHOFER: Then that's an escheat back to the State.

MR. STALTER: It escheats to the State.

MS. EULER: Escheat. Okay. Because that was -- because, ordinarily, when you've got money that belongs to somebody else and they're not around, it goes to the State.

MR. MEIERHOFER: Well, the dilemma, though, and I've had this happen to me, is that after -- what is it -- seven years of no activity --
MS. EULER: Uh-huh.

MR. MEIERHOFER: -- and we have had banks that have taken funds when, in fact, we're on an account with them, and just taken them to the State, even though the person is alive and no activity. So, that's another thing you've got to be aware of.

MS. EULER: Yeah.

MR. MEIERHOFER: And how do you escheat it to the State if, in fact, the person is really alive and well and going to use it, so it's a problem.

MS. EULER: Well, because it's almost as if you're not voiding the preneed contract because you're still holding the money, you are just changing the terms of the contract in that it becomes a credit.

MR. MEIERHOFER: No. The contract is written that way. The contract is actually written that way.

MS. EULER: Okay.

MR. MEIERHOFER: This isn't changing the terms of anything.

MS. EULER: Okay. That's what I'm trying to understand.
MR. MEIERHOFER: The contract states that. Yeah. The contract states this. And, in fact, if they want their money back, they can have it. If they don't, the money stays there and waits for them until they die.

MS. EULER: Okay. Thank you for explaining that.

CHAIRMAN: So, we all agree on that?

Okay.

MS. GRINSTON: Mr. Meierhoffer, could you do that again?

MR. MEIERHOFER: Do it again?

MS. GRINSTON: Yeah. Tell me --

MR. MEIERHOFER: Okay. Well, essentially, in a default, the contract is null and void after a period of time, whatever time you want to put on it, 60 days, 90 days, a year, however you want to do, so it's null and void. The monies would be available to the customer who, in fact, defaults in trust. Those monies in trust would go back in total, less interest. If the person doesn't ask for the monies back, they stay in the account until they are -- a funeral service is provided, but they are listed as a credit.
toward the new service selected at today’s price.

Tom, is that sounding like what you do?

MR. KUTIS: We would notify them, and ask them if they would like their money to be refunded. Some people would say yes and others, just as you stated, would leave the money in there and say just let that apply.

MR. MEIERHOFF: Yeah. Our job is to try to keep it in effect, so we continue to try to get them to comply with the contract, and we give them additional time if they wish. And in our contract, if somebody is out of work or something like this, we hold it for a year or two. I mean, there are things in there that provide for circumstances beyond their control.

CHAIRMAN: Bill?

MR. STALTER: It kind of flips from a guarantee to not guaranteed, basically.

CHAIRMAN: Right. Norma?

MS. COLLINS: My question was sort of similar to what Tom just said, and that question was for you, Mike, whether or not the consumer is aware that he or she could request
that money back. You said that if they don't
ask for it back. I mean, do they know that
they can request it, or do you ask them if
they want it?

MR. MEIERHOFER: They're in default
at that point. They've got a choice to make.
And in some cases, they make none, it stays.

MS. COLLING: Okay. Okay. I was just
-- yeah. I just wanted to be clear on that.

MS. GRINSTON: And that's in the law
now, the notification requirement.

MR. MEIERHOFER: I'm sorry?

MS. GRINSTON: That's in the law now,
the notification requirement, so --

MR. MEIERHOFER: Yeah.

MR. McCULLOCH: Currently, you notify
the purchaser and the funeral home, is what it
says.

MS. GRINSTON: Okay. So, do we have a
consensus on that -- on default?

CHAIRMAN: Say aye. Those opposed?
(Unanimous voice vote for approval.)

CHAIRMAN: Thank God something passed
through.

MS. GRINSTON: Let's -- I hate to do
this. Nonguaranteed. Should the funding mechanisms be different for nonguaranteed plans? What we've just done, should it be any different for nonguaranteed plans or should everything be under the same reimbursement provisions we just talked about? Someone told me to take that as a yes and go.

MS. HULER: I'm good with that.

MR. STALTER: So, we're saying a nonguaranteed would be 100 percent in the trust, and, basically, you're holding the account for the future use at the time of death.

MR. MEIERHOFER: A hundred percent plus interest? Yeah, I agree.

MS. GRINSTON: Any objections to that? Okay. Anyone opposed? All right. I think we've gotten --

CHAIRMAN: It's a miracle.

MS. GRINSTON: And I think -- you guys are going to look at this language once we put it on paper, and we're going to move to the Medicaid things because I think our person is going to be joining us shortly. For those contracts that are not paid in full -- we've
been doing this on the paid-in-full contract.

For those contracts that are not paid in full, someone mentioned the suggestion that the percentages come off of the amount that has been paid. Is that problematic? Like, let's say we did the 100, 20-percent -- you know, 20-percent administrative expense, that those same fees and structures would be assessed against the amount that has been paid in for something that's not paid in full.

MS. EULER: So, if somebody is making $100-a-month payments, $80 goes into trust, $20 goes to the seller every month; is that what you're saying?

MR. MEIERHOFFER: Actually, the way it has been is the first 20 percent goes to the seller.

MS. EULER: Right. Right.

MR. MEIERHOFFER: But you're saying now --

MS. EULER: I understand how it has been, but I think what -- I was just trying to clarify what Kim was saying. Is that what you were saying?

MS. GRINSTON: I think so.
MS. EULER: That instead of as it is now with the first 20 percent going to the seller, 20 percent comes on each payment; is that what you're saying?

MS. GRINSTON: No. No. Actually, I wasn't asking that question. If --

MS. EULER: I'm just trying to clarify what you were saying.

MS. GRINSTON: Yeah.

MS. EULER: I'm not trying to --

MS. GRINSTON: And I think I just answered my own question. I think I just answered my own question.

MR. MEIERHOFER: Excuse me. This is a big deal for cash flow for running a business, and that is if you're paying your expenses up front and you don't get paid for six years or something, or you get paid pieces of it, John and other people running an active program are not going to be able to do it.

You've got to do it on the basis of the money up front, then the trust gets the rest of it following that.

MS. GRINSTON: Respectfully, Mr. Meierhoffer, is that the way we're doing it
now, though? If I'm on installment payments, aren't you guys getting payments? You're not getting everything up front now, you're doing it as it comes in; am I right?

MR. McCULLOCH: But we get all of it.

MR. MEIERHOFER: But it all goes into the -- it doesn't go to the trust until you get 20 percent.

MS. GRINSTON: Okay.

MR. MEIERHOFER: Then it goes to the trust.

MS. GRINSTON: Okay. And, again, and I know we've talked about this. To me, I just see it -- people said there may be an administrative expense. What we're really talking about is just, you know, the trustee, you know transfer-over period. Who gives you the money, yourself or your trustee? Am I understanding that that's just the --

(Several people talking simultaneously.)

MR. MEIERHOFER: You were doing it good. I think what's happening here is that we're talking about the trustee getting the money first. We've talked about that; right?

MS. GRINSTON: Right.
MR. MEIERHOFER: Okay. Then the question becomes at that point, do we distribute to the seller 20 percent of each $100 that comes in, or do we distribute the first $100 up to 20 percent of the monies that get into this -- that are -- of this contract.

MS. GRINSTON: Oh, yeah. Okay.

MR. MEIERHOFER: That's the key.

That's the key.

MS. GRINSTON: I understand. That was a different question than what I was asking.

MR. MEIERHOFER: I'm sorry.

MS. GRINSTON: But on that question, we could go ahead and address that question now, though, because that was what Don raised originally. Per, you know, do we do it as the payments come in or do we do -- keep the current system and you get the first 20 percent?

MR. MEIERHOFER: It's a cash-flow issue in terms of how we administrate. It's just, if you feel that the money is going to be taken care of properly by the trust by 100 percent of it going to the trustee and then it doesn't really -- it shouldn't matter to you.
all how the monies come out. It's a matter
of safekeeping. And 20 -- and 80 percent is
going to trust. The question is, is it going
first or does it come in after the seller
takes his administrative fees? That's the
question.

CHAIRMAN: So, what's the answer?

MR. MEIERHOFFER: I propose that the 20
percent go to the seller first and then the
remaining 80 percent go to the trust through
the trustee -- all of it going through -- I
think that's what we said, all going through
the trustee.

MS. GRINSTON: Everything go through
the trustee. So, your 20 percent is assessed
against -- from the initial payments?

MR. MEIERHOFFER: Yes. Or payments.

MS. GRINSTON: Yeah. I understand
that. Thoughts on that?

CHAIRMAN: Everybody agree with that?

MS. GRINSTON: Okay. Is that a
consensus?

CHAIRMAN: Everybody agree with that?

All in favor, say aye. All those opposed?

(Unanimous voice vote for approval.)
CHAIRMAN: Thank you.

MS. GRAINSTEIN: Okay. I think I have what I need on the funding mechanisms to begin working on the language for the trust issues. But I want to go back to something, and, again, you guys are going to look at this again and again and again, because what we're planning to do is giving you several drafts between now and the next meeting so that you guys can comment and make sure that what I'm writing is matching what you voted on. But I want to talk about the insurance issues because it has been raised about what happens when you have an insurance-funded preneed contract. My understanding from the first meeting, I believe I was told, that when there is insurance-funded preneed contract, the seller isn't holding on to any fees. All of those fees go straight to the insurance company and the seller just gets whatever the insurance company pays out. So, am I correct in understanding, from what you all told me in the first meeting, that if I sell an insurance-funded preneed contract, there isn't -- we don't worry about the 80-20 or anything
else because all of the funds are going
straight through insurance? Am I correct
about that?

MR. MCCULLOCH: I think so.

CHAIRMAN: Sharon?

MS. EULER: Can we move back to the
trust issue when we get through with this
topic --

MS. GRINSTON: Okay.

MS. EULER: -- to talk about putting
in the statute the provision that people can
make their payments directly to the trust?

MS. GRINSTON: Sure.

MS. EULER: Okay.

MS. GRINSTON: But am I correct on
that with the insurance-funded option, that
there isn't a chance we have preneed sellers
actually holding money then? If they are
assessing it, that money is going straight to
the insurance company? The position, from
what I heard in the first meeting, and the way
436 is established now, is that the
cancellation of that insurance policy, the
cancellation of everything else goes through
the Department of Insurance and how they
regulate insurance. Am I hearing something
different on how we address insurance-funded
preneed contracts or am I hearing that we
maintain status quo? The preneed contract is
under us, the insurance contract is under
insurance. Since the preneed seller won't be
retaining monies or anything else, that the
refunding, the cancellation provisions, all
should really be handled through insurance on
the insurance policy?

(Numerous people answer yes.)

CHAIRMAN: Don?

MR. OTTO: The only thing I'd like to
see is disclosures on the insurance side that
mirror the disclosures that are required on
the trust side, so I think the consumer should
-- it be made very clear to the consumer what
will happen if they cancel this insurance
policy, how much they will get back. What --
how much they will be -- you know, how much
they will be -- and, particularly, what's the
phrase, a nonparticipatory --

MR. BAKER: Whole-life

nonparticipatory.

MR. OTTO: Whole life, if it's
something -- how much will the consumer be paying in, you know? You get that when you pay a car loan, you know, when you buy a car, it says on your little thing here's how much your total payments are going to be.

MR. MEIERHOFER: I think that's on there now.

MR. OTTO: Well, I mean, it's not required under the law in the pre --

MR. MEIERHOFER: In the insurance portion.

MR. OTTO: Yeah. But it's not required. I mean, I'm just saying that this Board, I think, should require that these disclosures be made to the consumer.

MR. MEIERHOFER: Okay.

MS. GRINSTON: Well, are you talking about doing that by statute at 333 or doing that through something the Division has -- the Department of Insurance may have at 333 -- I don't know if they have rule-making authority to address disclosure.

MR. OTTO: No. I think that should be the State Board saying funeral home -- you know, funeral seller, that we are now -- we're...
licensing these sellers. If you choose to
sell insurance, we want to make sure that
you're making the following disclosures. Now,
if they're already making those following
disclosures under what the current insurance
law is, great.

MS. GRINSTON: Do you want those
disclosures to come from the seller or from
the insurance company?

MR. OTTO: Well, I think it should
come from the seller.

MR. STALTER: I think it has to come
from your seller. That's where your license
authority will be.

(Several people talking simultaneously.)

MS. GRINSTON: Yeah. But what I'm
saying is, I don't know because the
cancellation and refund provisions, would that
be in the hands of the insurer? Are they the
best ones to tell you what happens when you
cancel my policy, or is the seller the best
one to say let me tell you what happens when
you cancel Homesteaders policy?

MR. OTTO: I think the seller should
-- if the seller is selling this to the
consumer, I think the seller should tell them what happens.

CHAIRMAN: Sharon?

MS. EULER: I think we should leave the selling of insurance to be regulated by the Department of Insurance and not impose any additional requirements on our licensees with regard to insurance because we don't regulate insurance.

MR. MEIERHOFFER: I agree.

CHAIRMAN: Okay. All in favor --

MR. MCCULLOCH: But you can see Don's point, though. It's a very unfair playing field. We have to do truth in lending, insurance does not. They just call the premium --

MS. EULER: I don't know if they do or not. Do they?

MR. MCCULLOCH: No, they do not.

MR. MCCORD: Mark Steller, who is not here today, it would be his area in the financial regulation. I believe, Don, that they do disclose how much is owed over the term of a policy. There are insurance agents who -- and it may be based on company. Mark,
do you have a comment?

MR. WARREN: Yeah. There are
illustration requirements. I mean wasn't
that covered, and then also --

UNIDENTIFIED: (Inaudible.)

MR. WARREN: yeah. And then there are
advertising requirements which are imposed on
the companies which the department regulates
what you can say in the illustrations.

MR. MCCORD: So, I think my comment is
I believe that's taking place now.

MS. GRINSTON: Yeah.

MR. MCCORD: That that disclosure is
being made from the insurance companies when
you buy a policy.

MS. GRINSTON: And, legally, my
thought is what -- if the seller says one
thing and the insurance company says this is
our contract, that's not what we meant, you
know, who do we hold -- what if the seller is
wrong about reading this contract and
Homesteaders is saying that's not what my
contract says, you know?

MS. ERICKSON: Pardon me, Kim. Are you
talking about a dispute of terms between the
seller and the insurance company?

MS. GRINSTON: Right. If the seller is required to do the disclosure in cancellation and they say this is what happens when you cancel, is the seller the best person to do that disclosure when this is another company's -- it's the insurance company's policy and they have -- you know, their construction is what's going to control the policy and not the seller.

MS. ERICKSON: If I could comment on that. As it is now, if an agent, whatever product they're selling, misrepresents what their insurance company is offering, we can seek regulatory authority -- we have regulatory authority, rather, over that licensee. If it was done with the insurance company's knowledge and/or the insurance company had a duty for training and supervision, which they do, then we can go after the insurance company, as well. So, I'm with Larry believing that there are already sufficient protections within insurance laws for those who are selling, are licensees to sell insurance in Missouri, let the insurance
company use its own disclosures rather than require it through this Board's regulatory scheme.

MS. GWINSTON: And not through the preneed seller?

MS. ERICSON: That's correct.

MR. MEIERHOFFER: I agree.

MS. GWINSTON: Okay. Let's take --

I'm sorry.

CHAIRMAN: No, go ahead.

MS. GWINSTON: Discussion. Sorry.

CHAIRMAN: Everybody agree? All in favor say aye. All those opposed?

(Remember people answer aye, one answer nay.)

CHAIRMAN: Okay. We've got a new --

Sharon would you like to introduce --

MS. EULER: Charles Bentley is here to talk with us. Charles Bentley is here to talk with us some about what accounts need to have on them to insure that people remain qualified for public assistance, and also to talk about the question we were talking about earlier today, if somebody cancels a contract and they're on public assistance, does the
cancellation of that contract, which means
they receive the funds, affect their
eligibility for public assistance.

CHAIRMAN: Charles, thank you for
coming.

MS. EULER: On very short notice, I
might add.

CHAIRMAN: Yes, on very short notice.

Thank you.

MR. BENTLEY: Okay. I don't -- I'm
not sure exactly what all you want to know
other than what I was told on the phone a few
minutes ago. But, basically, what we're doing
when we're determining eligibility for
Medicaid for persons -- or MO HealthNet now --
who have -- we're looking at what available
assets do they have. And since about 1982,
preneed burial contracts that are irrevocable
are an excluded asset because the person
cannot get the money back -- you know, it can
only be used for their burial. There was a
further change in the law where if, for some
reason, they over fund that burial contract
and the person then dies and the family wants
to -- they can't just get the money back, the
money has go to pay towards their -- whatever
they used in Medicaid services if they
overfunded the contract. I mean, basically,
we're looking for just -- if these are
standard agreements, a lot of them are funded
by assignment of life insurance, but what
we're looking for now in order to exclude them
as an asset is that it is an irrevocable
contract that cannot be dissolved. And if
they're not irrevocable, there's only -- if
there's a $1,500 cash value that's excluded
from any life-insurance policy or preneed
contract. So, if you're wanting to do
something else, there's other things you could
possibly do, but it would be a change. It
probably would take a change in Chapter 208 to
affect -- if you want to exclude them, because
I think that was one thing that was -- Sharon
brought up was wanted somehow the burial
policy to be able to be canceled and still not
affect the person's MO HealthNet or Medicaid
eligibility. So, I don't know what --

MR. MEIERHOFER: I think the question
that we talked about and kicked around the
other day, sir, was the fact that not so much
canceling it, but transferring a irrevocable contract to another funeral home. And the way we’ve been doing it is not canceling anything at all.

MR. BENTLEY: Right.

MR. MEIERHOFFER: It just moves to the other funeral home without the consumer ever touching the money, which shouldn’t change their eligibility. That was the question I think we were concerned about.

MR. BENTLEY: That should not -- that would not affect our eligibility at all.

MR. MEIERHOFFER: And that’s the way we’ve been doing it. Is that okay?

MR. BENTLEY: And that’s perfectly fine because the contract itself, you’re just transferring the ownership of who is going to provide the services, I take it.

MR. MEIERHOFFER: Okay. The next question was and would be: If, in fact, a person wanted their money back, that, in fact, the money couldn’t go to the consumer, it would have to go back to the State, would it not? If they came in and said we want to --

MR. BENTLEY: Well, I mean, I’m
assuming that they can't get their money back right now because they've signed this election of irrevocability, so they can't get it back at all. If you changed it in such a way that they could get it back, which -- and anybody could get it back now because they don't -- this is an option. They don't have to elect to make it irrevocable.

MR. MEIERHOFFER: That's correct. Unless, the way the law reads, as I understand it, you have to be applying for or be accepted into Medicaid.

MR. OTTO: No. Unfortunately, no.

MR. MEIERHOFFER: That's the way it's supposed to be.

MR. BENTLEY: It's worded something like what you said, but I don't know that it's strictly interpreted that way.

MR. MEIERHOFFER: Okay.

MR. BENTLEY: If anyone who is on Medicaid or would like to be on Medicaid or might someday -- they think about Medicaid. I don't know. It's, I think, broadly interpreted.

MR. OTTO: One complicating thing that
I know we have run into with the current law is 436 says a person who -- and I'll get the exact wording is there. A person -- basically, if you're intending at some time in the future to become eligible for public assistance, you can make it irrevocable.

MR. BAKER: Eligible or desire to become eligible.

MR. OTTO: Yeah. So, you may have made something irrevocable. You've never received a dime in public assistance, and then you want to cancel the contract.

MR. BENTLEY: Right.

MR. OTTO: So, you would owe no money because you never received any public assistance.

MR. BENTLEY: Correct.

CHAIRMAN: Well, I don't think that's his department. I think that's just --

MR. OTTO: No. That's something that I think -- I would like that clarified in the law whether or not can we cancel -- can we cancel an irrevocable contract?

MS. RULER: But if you do have -- if you have signed a waiver so that your contract
is irrevocable, you are receiving Medicaid benefits, and your child decides to cancel your preneed contract, you know, if that contract is canceled and if the funds are then refunded to the purchaser who is on Medicaid, that would render them ineligible to continue to receive assistance, would it not? It would affect their eligibility?

MR. BENTLEY: If you change the law in such a way that irrevocable no longer means irrevocable, then they're not going to be -- they're not going to have been eligible for Medicaid at all.

MS. EULER: Okay.

MR. BENTLEY: I mean, that's what we would have to look -- under the way our current statutes are written, because we're not specifically excluding them because they're a preneed contract. We're excluding them because they can't -- they have no cash value. You can't get any money back. There are other types of assets that we just exclude because either federal law says to exclude it or the State has taken a federal option to exclude something. So, we could, under State
law and Medicaid, exclude preneed contracts
whether they're irrevocable or not, but that
would take a change in State Medicaid law.
Because right now, we exclude $1,500 cash
value of an insurance policy or a preneed
contract even if it's not irrevocable. So,
there's already an exclusion of some value of
these contracts even if they don't make them
irrevocable, but -- and, I don't know, 40
years ago, whenever they came up with that
$1,500 number, you might have been able to
bury someone for that. That is probably a
slightly outdated amount at this point.

CHAIRMAN: Well, according to Stroud
down there, Larry --

MR. KUTIS: And your child cannot come
in and cancel your irrevocable contract,
because we've had the kids said we'd like to
go the racetrack and, you know, go somewhere
else with the money and they cannot do that.

CHAIRMAN: Mike?

MR. MEIERHOFER: I'd like to ask you a
question that's always concerned me and that
is: Let's go back to insurance as far as
insurance policies are concerned because it's
a regular occurrence when somebody comes in with an insurance policy and wants to give that to the funeral home for some type of credit toward a funeral service, and these are typically where the nonguaranteed contracts come in. I've had people tell me you can't accept them unless you are the beneficiary, meaning the funeral home, or that an assignment has to be irrevocable, and you're saying here that $1,500 of the cash value is all that can be considered. So, help me understand what the real truth is.

MR. BENTLEY: No. Well, with a life-insurance policy, in general, it has a cash value. The first $1,500 is not -- is an excluded asset from Medicaid in Missouri. So, someone who has a life-insurance policy, no matter what they intend to do with it, it has a cash value, the first $1,500 has no effect on their Medicaid eligibility. Anything above that $1,500 is counted just like money that's in a checking account, a savings account.

There's a $1,000 limit for a single person, a $2,000 limit for a married couple. So -- and then the only -- the special exception is for
the preneed contracts that they can be made
irrevocable. So, no matter -- so, there's no
money coming back. And then the other change
that they made -- and I don't know how long
ago it's been. It was a long time ago -- was
allowing people, rather than have to cash in a
life insurance to purchase a preneed burial
contract, which could be irrevocable, you
could make an irrevocable assignment of the
life insurance to fund the burial policy. So
-- and that usually involves changing --
making an irrevocable change in the
beneficiary to make the funeral home the
beneficiary of the policy. And then we're
going to exclude that and not consider any
kind of transfer of resources that could make
them ineligible if that life insurance that's
been assigned to the funeral home is also tied
to an irrevocable preneed contract. That's
kind of where those things work together. So,
the point you were making about that ambiguity
in the law, I suppose you could do something
in the statute that clarifies that this
election of irrevocability -- is much easier
to say. It's the attorneys that don't like
that, I think.

MR. MEIERHOFFER: Well, we're not attorneys, so we can talk that way.

MR. BENTLEY: Yes. So, if it were you could possibly change that statute that election should only be made at the time person is either a Medicaid recipient or is applying for Medicaid. And that way, they could do it earlier. You could make an exception that they could get out of it if they've never drawn any Medicaid benefits. That would be an easy enough, probably, change in the law.

MR. OTTO: I'd just like it to be clear from our standpoint. If somebody wants to cancel it and they claim they've never gotten any -- you know.

MR. MEIERHOFFER: That would be easy -- that would be the way to do it.

MR. OTTO: One way or the other.

MR. BENTLEY: But how would you know they've never gotten any Medicaid would be the hard part, I think.

CHAIRMAN: Bob?

MR. BAKER: I have two or three
questions for you and one will lead to another one. Are you saying that all that has to be done is that the funeral home be made the irrevocable beneficiary?

MR. BENTLEY: Of the life insurance?

MR. BAKER: Yes.

MR. BENTLEY: Yes.

MR. BAKER: How about ownership? The owner still has the right to do whatever they want to with that policy?

MR. BENTLEY: No, because they have irrevocably named the funeral company as the beneficiary.

MR. BAKER: Okay.

MR. BENTLEY: So, once they make that -- so what we're looking for is they've made an election, even though they still may own the policy, that they cannot change that beneficiary.

MR. BAKER: Okay. We deal with several different companies.

MR. BENTLEY: Yeah.

MR. BAKER: So, we get a different answer from each one. One wants us to have both the ownership and beneficiary to be made
irrevocable to the funeral home because the owner still has the right to do whatever they want to with that policy. They just have to do it with the signature of the irrevocable beneficiary.

CHAIRMAN: Bob, just one second.

Gerry, do you have a comment to make about it? You don't have to come up.

MR. KRAUS: This goes back a few years, but we worked with the Health Care Financing Administration in Washington on this issue, and they recommended a couple of different routes, one being you can have your final-expense policy qualified as burial insurance, and it being exempt that way, and you see some programs marketed that way, sheltering final-expense policies. The other one we use and most of the national companies use, and it is in a preneed transaction, you must sign ownership to a funeral home, and it's a two-step process. That funeral home immediately reassigns into a trust the rights of the policy owner. So, there is really no money that leaves the policy, it stays with the company. The rights of the person stay
with the trust until death, and it's an irrevocable mechanism which satisfies most State Medicaid requirements, as I'm hearing it would here. Now, just a clarification in terms, we have found that most helpful in these discussions differentiate between making the contract irrevocable, which we don't feel it should be in any circumstance, and the funding irrevocable, which would be sensible in Medicaid situations only. So, all of the premium contracts should be revocable, but funding should be made irrevocable. That satisfies what they want.

CHAIRMAN: Thank you.

MS. BULER: Charles, could you tell everybody what your official title is? I'm sorry; I didn't introduce you very well.

MR. BENTLY: Yeah. I'm the deputy director for income maintenance policy for Family Support Division and --

CHAIRMAN: Charles, I think Bob had another question for you.

MR. BAKER: Yes. My second part of the question is that we get different opinions from each of the counties that we deal with.
Can we get something that is sent out to all funeral homes that says this is the way that it is supposed to work that we can take to those people that say you're not doing it right?

MR. BENTLEY: We could refer you to our policy and --

MR. BAKER: It's in your policy manual, I know. I've seen it.

MR. BENTLEY: And I think you could refer them to that. And I -- and since I wasn't really planning on talking about this today, I did get it printed out so I can read it to you, because I don't --

MR. BAKER: I think I've seen it, but we get difference of opinion.

MR. BENTLEY: Yeah. What our policy -- and what it actually says about the funding of it from the life insurance is it has to be a valid preneed contract and either the funeral home -- the verification with the funeral home, the documents, the funding of the contract was made by the irrevocable assignment of the life insurance or you have an agreement with the insurance company that
transfers the ownership of the policy or names
the funeral home as the irrevocable
beneficiary. So, there's about three
different ways you can fund it, but what,
basically, they have done is, they have made
it so that life insurance themselves, they
cannot get the benefits either because they no
longer own the policy which may have been, I
think, what we may have originally said back
when this first changed years ago, but I think
we ran into problems. Some insurance
companies would not let you do that, but they
would let you make the change in the
beneficiary. So, I think this was -- there
were some changes over the years to
accommodate because there's one thing for the
State to have a policy and the law to say one
thing, but the insurance laws are telling them
something else and their companies' bylaws
were telling them something else. So, I think
when you run into problems with different
counties saying different things, what you
should do is refer them to where our policy
is. We could send something out to everybody
that says where it is. Then the other thing
to do, I think. is, well, when you say, well,
I think your policy is this and I heard from
Jefferson County they do it this way and here
in Warren County, you're doing something else,
I think what you should do is say, well, ask
to maybe talk to a supervisor about that and
ask them, well, could you suggest that maybe
they clarify the issue, you know.

MR. BAKER: Yeah. We've tried that.

MR. BENTLEY: Yeah. I'm a little
hesitant for us to be sending out something to
you that we don't send to them.

MR. MCCULLOCH: Just say why wouldn't
you just tell your Division how it is instead
of us trying to --

MR. BENTLEY: We have told them how it
is. They know how it is. I don't -- they're
all supposed to follow the policy as it's
written and, you know, we have thousands of
pages. We don't send out a weekly memo saying
follow all those pages. I mean, there's a
certain amount -- I mean, it's -- there's not
a lot --

MR. MCCULLOCH: That's why government
gets a bad name.
MR. BENTLEY: What?

MR. MCCULLOCH: That's why government gets a bad name.

CHAIRMAN: Yeah. Charles, I think --

MR. BENTLEY: And so do insurance companies and funeral homes on certain issues like this, too.

MR. BAKER: My other question I'm going to have is, whenever we're dealing with the insurance companies, the ones that are here are fine, but we have some who shall remain nameless, but they start with Prudential is one. They won't even talk to us. Don has had the issue come up, you know, and they just totally blow it off. The people, all of a sudden, are not eligible and they say, "How do I pay for mama's nursing home this month?" We can't get them to move off center, or they delay it so long. Is there anything that you can do to speed up that process and to require that they follow the regulations that you have?

MR. BENTLEY: Well, we can't require them to do anything. I believe what our policy directs people to do, and maybe -- we
can go back and I can have people look at this again because maybe the people responsible for -- that work for me for writing this down could do it better than we did when we wrote this years ago.

CHAIRMAN: Gerry, you've got a comment?

MR. BENTLEY: But I think what we've said on that issue is if we have documentation that the person has made the request to the insurance company to make the change, that we will assume that it's going to be made and we will set a priority to check in again in three months because we -- you can run into that. They'll have a small cash value that puts them over the Medicaid limit, but -- and if they could just get it assigned to the funeral home, it would not cause ineligibility, but it drags on for months. So, I think we have answered questions and given people direction to do that, and I don't know whether it says that specifically in here or not, but we can look at that again because I think that is a serious problem.

CHAIRMAN: Gerry?

MR. KRAUS: This is to Bob's question
about why do all the insurance companies tell
him different stories. There are a lot of
regional influences in Medicaid. There are a
lot of regional influences in the
life-insurance industry as far as naming
beneficiary, naming funeral-home owner. And
the insurance companies have to go with the
flow and match the trade practices in their
trade area. So, if you're dealing with a
company that's more southeastern, you'll find
it's pretty practical or pretty unusual for
them to name funeral homes as beneficiaries.
Somebody that's western wouldn't do that.
Somebody that's dealing from a national scene
wouldn't do that. So, that's part of the
reason that you get different signals from
different companies. And each of the states,
keep in mind, have little twists that they put
on their public-assistance programs, too.

MR. BENTLEY: My suggestion would be
follow the law, not trade practices.

MR. KRAUS: And these do. These
follow both.

CHAIRMAN: Mary?

MS. ERICKSON: Charles, thank you for
coming today. I have kind of a basic question
and maybe it was covered and maybe it wasn't.
In the insurance arena, it's very clear that
the asset will be excluded if the beneficiary
is the funeral home and that's irrevocable, so
that's very clear. Can you tell me, please,
if a preneed contract is entered in with a
consumer and this is going to a trust fund --
it's not going to insurance, it's backed by a
trust fund -- does the contract itself, must
that be irrevocable, or let me ask this --
hang on. Can the contract be revocable, but
there be a separate trust assignment that is
irrevocable, a separate document, or how do
you see this mechanism working?

MR. BENTLEY: It's complicated.

MS. ERICKSON: I'm sorry.

MR. BENTLEY: We would be -- what we
would be doing in there, what the person has
done, they've transferred ownership of their
burial contract or their insurance policy to
the trust. So, then the -- so, we're no
longer necessarily concerned about the value
of the insurance policy or the burial
contract, or their bank accounts that they've
put in that trust, or the land they put in
that trust. But what becomes an asset to them
is the trust itself, so then what we're
looking at is what is the value of all the
assets that the trust owns and then under what
circumstances can the person access the trust.
And you see with a lot estate planning, people
-- elderly people, especially, set up trusts,
but usually they will make the trust is
revocable. And so, they make --

MS. ERICKSON: Can I clarify my
question? I'm sorry. I'm not talking about a
trust set up by an individual. I'm talking
about our trusts that our preneed sellers have.

MR. BENTLEY: Okay.

MS. ERICKSON: And that is the vehicle
backing the funding for those preneed
contracts.

MR. BENTLEY: So, you're taking --

MS. ERICKSON: It is not an insurance
product; right, gentlemen? And my question
is: In order to protect those consumers who
need Medicaid eligibility, the contract -- the
preneed contract, must that state specifically
it's irrevocable or the contract funds will be
placed with the preneed seller's trust funds
to manage and to make sure they're paid out at
death? Or can there be a contract -- a
preneed contract, and then there is a separate
document that makes the funding irrevocable to
the trust? Do you understand my question,
Sharon?

MS. EULER: And the answer is either
way. So long -- and Charles, you --

MR. BENTLEY: Yeah. It's --

MS. EULER: Because the key is that the
consumer can't have access to the funds.

MR. BENTLEY: They can't have access
to the money, so depending on how you're doing
-- it seems like, to me, when you put the
money in the trust, the burial trust, that is
to protect that money is secured, then it will
pay -- be there when it's time to pay out for
the funeral. But if the person can still cash
in that life insurance, even though it's
assigned -- something has to prevent the
purchaser of the burial contract from being
able to get the money back, and I'm not sure
just putting it in the trust does that by
itself. I don't know.
MS. EULER: It does, because the seller places the money into the trust.

MR. BENTLEY: But then how does the seller have the money?

MS. EULER: The consumer pays it to the seller.

MR. BENTLEY: But they pay it. If they pay it to them.

MS. EULER: Yes.

MR. BENTLEY: But -- so then -- but they haven’t paid it to them if they just give you a life insurance policy --

MS. EULER: They don’t. They’re giving them cash.

MR. MEIERHOFER: This is cash. This is a cash, yeah.

MR. BENTLEY: Cash. Right. So, if you’re giving them cash, you have some agreement with them, so that may be the difference between a trust and a contract.

These may be -- the effect needs to be that there is some kind of an agreement that says in exchange for the money they gave you, you’re promising to deliver certain services. So, you don’t need an insurance company
involved at all. Your agreement between you and the customer is what gives you the right to have the money and put the money aside in this trust for them, but that agreement has something in there that says that they cannot get a refund on their money, is what we’re looking for.

MS. ERICKSON: Thank you, Charles. Thank you, Sharon.

CHAIRMAN: George, did you have a comment?

MR. CLINE: I was just going to help clarify that. When you make your contract originally, it’s generally irrevocable. But if you choose to make it irrevocable, there’s a separate addendum to the contract which goes now to the funeral home, but it also goes to the bank at the trust fund. Now, people should realize that the funds in the trust, they can’t be released until either there’s a death certificate produced or a notarized burial certificate of performance. So, once the funds are in there, they stay with the trustee. So, that’s, basically, how it’s done.

MS. ERICKSON: Thank you, George.
That was very helpful to understand that there can be an addendum.

MR. CLINE: So, a copy goes to the funeral home and a copy goes to the social worker, it shows it's irrevocable, that she has either one of them or intends to be, and that also protects any heirs that want to get the money out from having that possibility of taking any money out of that trust; it's not going to happen.

MS. ERICKSON: Thank you, George.

MR. STALTER: Have you relinquished your witness?

MS. RULER: He's here out of the kindness of his heart to help educate the funeral industry on the Medicaid eligibility rules.

MR. STALTER: Where I thought we were going with this was the fact that some of your options -- when we talk about some of the -- some preneed contracts can be funded with a joint bank account. So, I mean, how would you effect exclusion of that account for asset determination?

MR. SEXTON: What -- if you were
wanting to make a change, you could. I mean, you could write a section or get some legislator to make a proposal in Section -- Chapter 208 to exclude assets that are used to fund a preneed burial contract. There's already a provision in the law for designated burial funds or money -- and up to, I think, it, again, is $1,500 in any bank account can be designated as a burial fund as long as there's not another existing either preneed contract or life-insurance policy. So, in theory, you could pass a law that says $5,000 in a -- that's given over to fund a preneed burial contract, revocable or irrevocable, is an excluded asset for Medicaid.

MS. ERICKSON: And that change would have to be effectuated in Chapter 208, which is Missouri HealthNet.

MR. BENTLEY: I think so, because you're trying to effect Medicaid Law.

MS. ERICKSON: And that would be -- Missouri's Medicaid law must be consistent, obviously, with federal law. Is there a federal law that corresponds with that exception you're describing?
MR. BENTLEY: Under federal law, you
have -- you cannot be -- your basic Medicaid
rules for the elderly, blind, and disabled are
tied to -- cannot be more restrictive than
they were in 1973, at least the way the State
of Missouri does it. Other states, it's more
restrictive than the SSI program, but you
cannot be more restrictive than that. You use
the basic rules you used to use for these old
cash-assistance programs that went away a long
time ago. You can, though, be less
restrictive. It's a State option. So, we
could choose a State option like that resource
limit of $1,000. That's -- we can't be more
restrictive than that. We could be less. The
State could raise that limit. They could also
choose to exclude more than $1,500 of life
insurance. But -- so, the federal government
would allow those kinds of less restrictive
requirements, but in order for us to do it
within Family Support Division, we would need
an authorization from the legislature in order
to do that, or possibly from the governor's
office.

MR. OTTO: Run with that, Mike.
MR. MEIERHOFFER: Question: Of the $1,500 exclusion, is that a State-mandated number or is that a federal or in combination therefore?

MR. BENTLEY: It's a combination, I would --

MR. MEIERHOFFER: I guess the question is, would this be --

MR. BENTLEY: SSI?

MR. MEIERHOFFER: Yeah. Would this --

MR. BENTLEY: SSI has --

MR. MEIERHOFFER: It's federal, so there's no way we can change it at this level?

MR. BENTLEY: We can go up, we cannot go down?

MR. OTTO: Yeah. That's a minimum. So, we could change it to $8,000, I think.

MR. MEIERHOFFER: Well, that's my question.

MR. BENTLEY: Fifteen hundred dollars, I believe, is what SSI uses. I'd have to go back and look and see what we used, and the state may have used at one time, $1,000, and we might have the right to go back to $1,000, not that I think there would be much sentiment.
to do that.

MR. MEIERHOFFER: No. I was thinking
the other way.

MR. BENTLEY: Right. So -- right. So,
basically, $1,500 -- we're at the minimum.

MR. MEIERHOFFER: The max.

MR. BENTLEY: The minimum.

MR. MEIERHOFFER: The minimum.

MR. BENTLEY: No, it's a minimum.

MR. MEIERHOFFER: All right.

MR. BENTLEY: You can go above.

MR. MEIERHOFFER: Well, is this not a
time to address that for funeral services?

MR. BENTLEY: Now, we -- our division
and our department, I would assume, would take
it, would be neutral on that.

MR. MEIERHOFFER: Well, that very well
could be. I'm just talking to this group.

Is this not a time during while we're doing
this -- of course, this comes through your --
this has to be legislated through your
department; right?

MR. BENTLEY: Yeah. Someone would
propose a change in statute to raise that
exclusion. You could do it, you could raise
the exclusion generally for life insurance --
cash-surrender value of life insurance. You
could do a separate inclusion to do it only
for preneed contracts. I mean, those would be
options that would be allowed under federal
law, and if someone were to propose that in
the legislature, we would estimate a cost of
what that would be.

MR. MEIERHOFER: Okay.

CHAIRMAN: Mike, we'll put you in
charge of that committee. Go ahead and tackle
that law while we're trying to put this one
together. Go ahead.

MR. TRIMM: What would happen if the
life-insurance policy was, say, $2,000, and
that was given over to the funeral home?
Under the present law, what happens to that
other $500 at the time of a funeral?

MR. BENTLEY: The other $500?

MR. TRIMM: Out of $1,500. $1,500 was
excluded.

MR. BENTLEY: Oh, no. Well, see, when
they use the life insurance to fund the
preneed contract, it doesn't matter how -- the
$1,500 no longer applies. They just -- they
can use one that has a higher cash value fund
their preneed contract.

MR. TRIMM: And there would be no
problem as far as the Medicaid benefit?

MR. BENTLEY: There would be no
problem. There would be no problem with that.
What they can't do when they're using
insurance policy to fund a burial policy, it
uses up that $1,500 exclusion, so they can't
have that against a different life-insurance
policy. But they could fund their burial plan
with something with a $5,000 cash value or
whatever, you know, as long as, you know,
you're selling them something of equal value
and return, and we usually assume that you are.

CHAIRMAN: Charles, I think we've got
some limited time here, and I appreciate you
running over and taking time out of your
schedule today, and you've answered a lot of
the questions, and I think that helps, and
appreciate it. Sharon, thank you for having
him come over.

MS. EULER: Certainly. Thank you,
Charles.

MR. MEIERHOFER: Thank you, Charles.
CHAIRMAN: Rich, did you have an assignment?

MR. WEAVER: Homework assignment, too.

CHAIRMAN: Yeah.

MR. WEAVER: Yeah. I had a brief one.

CHAIRMAN: Okay.

MR. WEAVER: And, actually, my spokesperson left already, but I contacted the Missouri Bankers Association. I actually have a call in to Missouri Independent Bankers Association on the issue on the independent investment advisor. And I know when I mentioned that last week, I know that some people disagreed with striking that, and I guess our position, what we have the most concern with is the part in 436.031 that allows the seller, basically, to pick the investment advisor. And so, our recommendation, and then Mr. Ratliff is going to survey the trust companies in the state, but their initial recommendation is if you basically took that part out of the statute, then keep it consistent with the -- with Chapter 469.909 on the Prudent Investor Act, it basically puts the responsibility on the
trustee can delegate that authority to an investment advisor. But the issue we have with it is if the seller is able to pick that investment advisor, right out of the gate, you have an inherent conflict with that. And so, that would be our recommendation on that issue. And like I said, Mr. Ratliff could maybe come back next week, but he said, initially, in talking with their attorney, they’re looking at it from the standpoint that if the trustee is going to be held accountable for the monies, and so, we’re saying if we’re getting 100 percent in the account, the trustee is accountable because there’s also a section of the law that basically kind of absolves the trustee of any problems with the investment advisor. They want to be -- say, if we’re accountable, we’re responsible for it, we want 100 percent of that responsibility, and then that eliminates a little bit of the finger-pointing that’s going on with the problems is who is actually responsible for managing those investments. So, that’s what our recommendation would be and, like I said, I’m assuming Bill will
attend the meeting next week to give an
official response on behalf of the bankers
then if you want to hear from him.

CHAIRMAN: Anybody have any questions
of Rich? All right. Joy, you have a comment?

MS. GERSTEIN: Yeah. I will not be at
next week’s meeting --

MS. DUNN: We don’t have a meeting
next week.

MS. GERSTEIN: What’s the date?

MS. DUNN: August 12th.

MS. GERSTEIN: Right. I will not be
able to attend the August 12th meeting.

(Inaudible.) But I did want to tell you I’ve
enjoyed meeting each and every one of you.
I’ve actually enjoyed working with you. I’ve
learned a lot, and you have been wonderfully
patient with me and some of my questions. But
I will be still on the Board, so I will be
voting on this in the end. They’re going to
telephone me in, I think. So, I probably
won’t see anybody until after September 5th.
I’ll see you in September. Thank you, and
thank you again for taking part in this. I
look forward to seeing you in September.
CHAIRMAN: Thank you, Joy.

MR. OTTO: I'm going to -- the door is open, so I can say this and maybe get out.

Is one more meeting enough?

MS. EULER: That's all we've got.

MS. GRINSTON: That's a good point, but I'd like to add something in. We're getting ready to give out handouts of what -- of the draft incorporating a lot of your comments that I've gotten so far. What we really need to do now is put the language on paper and work out the language on paper. I think we've gotten the concepts hammered out. We need to make sure the language is workable and iron out the kinks. What I'd like to do is today is Tuesday. We'd like to get you a draft out of today's discussion by Friday. But I need people to start doing edits on or comments on the draft that you guys are going to have today, which we can send an electronic copy to you, as well. The draft we have today is a colored -- is a draft that's in color just to help your process. If we do that, we have, basically, a week and a half, almost two weeks to really take in comments.
and to continue to send drafts out to the committee and everything else. I think by next week, we probably will know if we need to meet to do more than that, but I think that our next meeting should probably be, you know, really a hard-working session on the language, and let’s see where we get with comments because if the comments are coming in and we can fix some of those things before the meeting and just turn those back out to you as a draft, we may not need another meeting if all we need to do is look at the language to make sure it matches up.

MR. MEIERHOFER: Two comments. One is I asked for an address -- and e-mail address of everybody here, and I think the response --

MS. DUNN: I know, Mike, and I have to get permission since we have licensees --

MR. MEIERHOFER: Well, actually, we checked off on that, believe it or not, on all that --

MS. DUNN: Yeah. Some folks haven’t, so I wanted to wait till this meeting because I’m under -- when it’s licensees, I have to be
very careful.

MR. MEIERHOFFER: Oh, I understand. I was trying to clear this for you so that if --

MS. DUNN: Okay. That’s great.

MR. MEIERHOFFER: -- we can get that, that would help us communicate. And then, secondly, I did communicate some comments, and I don’t know --

MS. EULER: They’re in here.

MR. MEIERHOFFER: Has that been -- okay. Okay.

MS. GRINSTON: They’re in the draft.

For most of the comments, you’re going to see the name of the person who made the comments. Some stuff is just cleanup from the office or from the Division. One of the things that did come up, and I’ll just say this very quickly, is, you know, with the fee language that you looked at, there was language that said, you know, shall pay a fee of blank dollars or an amount established by the Board by rule. Just to let you know why it’s in there, because we had a couple of people suggest that that be amended. If the legislation passes and takes effect August 2009, the Board won’t be able to
do a rule and get a rule in place to set a
fee until probably mid, late, or somewhere in
2010. And so, what will happen is for the
2009 renewal period, since there is nothing in
statute, we wouldn't be able to renew anybody
on the preneed side because we can't assess a
fee, and so, we'd really have almost possibly
a year of us not having any fee in statute.
And so, that's the reason why the
recommendation is that we have something just
to give the Board time enough to make a rule
and hold it in there. The numbers that are
there are not solid. They're really
placeholders right now. I think there's a
blank there. I don't think there is any
number there. And so, that's just an FYI.
For those people who made those comments, that
was screened out. That's the reason why we
left that in there because we needed to make
sure something was in place so we could renew
everybody in '09.

CHAIRMAN: Sharon?

MS. BULER: I would like to make note
that the comments that have my name next to
them, I made for the help of the Board
drafting, and they are not the position of the
office of the attorney general, they are
simply my editing comments to assist with the
Board so I would just like to clarify that.

MS. GRINSTON: And all of the comments
are open to you all for review and everything
else. But if you all could please -- you all
have Connie's e-mail address. As your
comments come in, when we send out a draft,
we'll set a deadline for comments. If you
guys could please do that, and we'll just keep
incorporating those through. If you see a
deletion that you don't like, let me know you
don't like the deletion, and we'll work
through it so that the next time you look at
it, we'll get a draft that is a little closer
to what you suggested.

MS. EULER: And there's no meeting
next week.

MS. GRINSTON. I believe that's so.
CHAIRMAN: That's right.

MS. GRINSTON: Unless you want to come
and meet with the real estate appraisers, and
I don't think you want to do that.

CHAIRMAN: Folks, is there anybody on
the panel or in the room that doesn’t want to
share their e-mail address with Mike?

MR. MEIRKOPPER: Not necessarily with
me. Anybody. Anybody.

CHAIRMAN: I mean, does everybody
understand? I mean, it’s all right to share
your addresses with everybody? Okay. The
next meeting is August 12th, here, at 9:30,
and casual dress.

MS. COLLINS: More casual than what we
have on?

CHAIRMAN: Yeah. Bathing suits,
whatever you want to wear. It’s going to be
hot. It’s going to be 100 degrees on August
12th. Anyway, guys, thank you all. You’re
just -- you’re a tremendous group of people.
It’s been a really good day. I mean, it
seems like we’re working a slow pace, but
we’ve had some great conversations and I
appreciate each and every one of you. So,
thank you. Have a safe trip home. Meeting
adjourned.

(Off the record)
I, Kristy B. Bradshaw, a Certified Court Reporter in the State of Missouri, do hereby certify that the foregoing transcript constitutes a full, true and correct record of said proceedings that were held on July 29, 2008; that said proceedings were recorded by me and afterwards transcribed under my direct supervision.

Given at my office this 5th day of September 2008.

Kristy B. Bradshaw, CCR
Funeral Consumer Alliance - FCA
Presentation Missouri Preneed 2008
Proposed Amendments to Missouri Statutes, Chapter 436, Regarding Prepaid Funerals and Burials
Submitted by Funeral Consumers Alliance, Inc., and Funeral Consumers Alliance of Greater Kansas City
July 24, 2008

To the members of the preneed review committee:

It’s clear from the financial crises affecting prepaid funeral trust funds that Missouri laws need to change. Both funeral consumers and funeral homes are at great financial risk, largely because of Missouri’s inadequate laws that permit and encourage financial chicanery.

Funeral Consumers Alliance is not alone in believing that the only acceptable standard is 100 percent deposit of consumers’ prepaid money, interest accrual, and complete portability/transferability without penalty. The National Funeral Directors Association - the largest funeral home association of its kind - recognizes nothing less is acceptable. Writing in the March, 2008 issue of NFDA’s The Director, NFDA Board member Robert T. Rosson, Jr., wrote:

One fundamental principle in prepaid operations is the recognition that prepaid funds are not under any circumstances our money. We simply cannot fund any of our business opportunities with preneed money. It is the consumers’ money, and it remains theirs until we fulfill our obligation of service. In all cases, 100 percent of preneed funds should be deposited into legal trusts, and no principal or interest should be withdrawn until after the contracted funeral services have been performed.

We offer the following minimum suggestions for improving state laws, and we’d be happy to make available detailed suggestions for rewriting the statutes if requested.

• Require 100 percent deposit of a customer’s prepaid funeral money in a regulated financial institution.
• Require funeral providers to refund 100 percent, with interest, if the consumer wishes to cancel the contract before death.
• Require funeral providers to transfer the consumer’s investment - principal and interest - to a new provider of the consumer’s choice on request.
• Cap any administrative fees, or fees of any sort, at ½ of 1 percent, as New York state does. Missouri’s current law allows providers to skim an unconscionable 20 percent from the customer’s account, in addition to all the interest annually. This is not only grossly unfair to the consumer, it encourages providers to indulge in short term greed that puts the financial security of the business and the consumer at great future risk.
• Prohibit funeral providers from converting a customer’s trust-funded funeral to an insurance policy under any circumstances.
• Require funeral providers to send customers an annual 1-page statement showing how much money is in the customer’s trust account and how much interest has accrued.
• Require funeral providers to submit to the state annually a copy of each preneed contract sold.
• Require the state to audit a reasonable sample of funeral providers annually to determine compliance with trusting laws.
• Lift unjustifiable restrictions on public access to information on government regulation and licensing of prepaid funeral sellers. Both current and proposed laws almost totally deny the public access to complaint records, the legal standing of preneed sellers, and other information vital to consumers and public interest groups.
Missouri Preneed Law: A Financial House of Cards

This example shows why Missouri's laws allowing funeral homes to skim 20 percent from a consumer's prepayment, plus all the interest annually, is bad for business and consumers.

Mrs. Smith decides to prepay Johnson Funeral Home $6,000 (today's retail price) toward her eventual funeral. Johnson funeral home deducts its 20-percent commission, leaving $4,800 to be placed in trust. Assume Mrs. Smith's trust fund earns 4 percent interest every year (a generous assumption by today's standards), and that Johnson Funeral Home deducts the interest every year as allowed by law. Also assume Johnson Funeral Home's prices increase by an average of 4.72 percent each year (calculated from Bureau of Labor Statistics reports from 2000 - 2007). Assume Mrs. Smith lives for 7 seven years, the average length of a preneed contract.

<table>
<thead>
<tr>
<th>Year</th>
<th>Amount in Trust</th>
<th>Interest Skimmed</th>
<th>Johnson's Prices</th>
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<tbody>
<tr>
<td>2008</td>
<td>$4,800</td>
<td>$192</td>
<td>$6,000</td>
</tr>
<tr>
<td>2009</td>
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<tr>
<td>2010</td>
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<tr>
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<tr>
<td>2013</td>
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<td>$192</td>
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</tr>
<tr>
<td>2014</td>
<td>$4,800</td>
<td>$192</td>
<td>$7,914</td>
</tr>
</tbody>
</table>

TOTAL Interest skimmed over seven years: $1,182
TOTAL in trust at Mrs. Smith's death: $4,800
RETAIL price at Johnson Funeral Home at Mrs. Smith's death: $7,914

DEPOTIT: $3,114

Even if all the interest had accrued over the life of the contract, there would still have been a $1,992 shortfall — Missouri's 20 percent initial commission makes it impossible for the trust account to ever fully fund the eventual funeral. The problem Missouri is facing with the NPS meltdown are no surprise — what's shocking is that it's taken this long for the inevitable to occur.

No business can take tomorrow's profit today and expect to service its obligations in the future. As more preneed contracts come due, more funeral homes are either going to be giving away funerals at cost or less, and the unscrupulous providers will resort to illegal tactics to make up for their poor business choices.

• Survivors will likely be pressured to buy more goods and services to make up for the shortfall - so much for "taking care of everything" in advance.
• We'll hear more reports of families that cheaper caskets will be substituted than what were paid for.
• Financially desperate and unscrupulous funeral homes will consider refusing to abide by the contracts altogether and demanding out of pocket payment from survivors.

These are the obvious and inevitable consequences of the shortsighted business practices Missouri law permits. This must change now, unless the state wants to spend its time and taxpayer dollars in perpetuity cleaning up the fallout from defrauded families and bankrupt funeral homes. Most importantly — claims that "we won't be able to stay in business if we can't take a cut up front" are red herrings. The chart on the following page shows that's not true — 29 states require 100 percent trust funding, and their funeral homes aren't going out of business. Missouri funeral homes don't have "special circumstances." They're merely used to doing business in an irresponsible way because of the state's permissive laws — the sixth worst preneed law in the country.
<table>
<thead>
<tr>
<th>State</th>
<th>Required Deposit</th>
<th>Who gets the interest?</th>
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<tbody>
<tr>
<td>Alaska</td>
<td>100% accrues</td>
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<tr>
<td>Arkansas</td>
<td>100% seller</td>
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<tr>
<td>California</td>
<td>100% accrues</td>
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<td>Connecticut</td>
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<td>Maine</td>
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<tr>
<td>Maryland</td>
<td>100% accrues</td>
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<tr>
<td>Massachusetts</td>
<td>100% seller if fixed price funeral</td>
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<tr>
<td>Michigan</td>
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<td>Minnesota</td>
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<td>South Carolina</td>
<td>100% accrues</td>
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<tr>
<td>Tennessee</td>
<td>100% accrues</td>
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<tr>
<td>Utah</td>
<td>100% accrues</td>
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<tr>
<td>Vermont</td>
<td>100% accrues</td>
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<tr>
<td>Wisconsin</td>
<td>100% accrues</td>
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<tr>
<td>Wyoming</td>
<td>100% seller</td>
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<tr>
<td>Indiana</td>
<td>100% accrues</td>
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<tr>
<td>North Dakota</td>
<td>100% accrues</td>
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<tr>
<td>Ohio</td>
<td>100% accrues</td>
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<tr>
<td>Illinois</td>
<td>95% accrues</td>
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<td>Washington</td>
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<tr>
<td>West Virginia</td>
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<tr>
<td>Virginia</td>
<td>90% if guaranteed accrues</td>
<td>100% if not</td>
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<tr>
<td>Oregon</td>
<td>90% if guaranteed accrues</td>
<td>100% if not*</td>
</tr>
<tr>
<td>New Mexico</td>
<td>Insurance only</td>
<td></td>
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<tr>
<td>DC</td>
<td>No laws</td>
<td></td>
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<tr>
<td>Arizona</td>
<td>85% seller if fixed price funeral</td>
<td></td>
</tr>
<tr>
<td>Idaho</td>
<td>85% accrues</td>
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<tr>
<td>Mississippi</td>
<td>85% accrues</td>
<td></td>
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<tr>
<td>State</td>
<td>Minimum Guarantee</td>
<td>Further Details</td>
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<td>------------</td>
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</tr>
<tr>
<td>South Dakota</td>
<td>85% if guaranteed, 100% if not accrues</td>
<td>seller, if more than inflation</td>
</tr>
<tr>
<td>Nebraska</td>
<td>85%</td>
<td></td>
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<tr>
<td>Iowa</td>
<td>80% seller half</td>
<td></td>
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<td>Missouri</td>
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<tr>
<td>Colorado</td>
<td>75% seller</td>
<td></td>
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<tr>
<td>Nevada</td>
<td>75% seller, 75% of income</td>
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<tr>
<td>Alabama</td>
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<tr>
<td>Hawaii</td>
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<tr>
<td>Florida</td>
<td>70% accrues</td>
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</table>
MFDEA Preneed Concept
OPTION A

An account would be set up at a bank in the consumer’s name Payable On Death to the Funeral Home. The consumer would be able to change the POD at any time. The consumer would be able to withdraw the funds at any time and would receive all of the funds plus all of the income. The consumer would also be responsible for paying any taxes on the income. A provision would have to be included (as it is now for joint accounts) that allows the fund to be made irrevocable. Upon death the funds would be paid to the funeral home.

HOWEVER THERE WOULD BE NO “GUARANTEED” CONTRACT UNDER THIS OPTION. The consumer may wish to pick out the funeral they would wish to have and fill out a goods and services statement, but just as with current non-guaranteed trusts or joint accounts, at-need prices would be charged at the time of death. If the funeral home works with and helps set up such an account for the consumer, it should be allowed to charge a small fee for this service that would be capped via rulemaking by the State Board.

If the consumer wishes to have a guaranteed contract where the prices are locked-in, does not want to have to pay taxes on the income or otherwise does not wish to own or control the funds, then Option “B” would be available.

OPTION B

This would be a Trust similar to what is currently in Chapter 436. The Seller would have the right to retain 20% (or perhaps 10% if that is the consensus) and would have the right to all income from the Trust. If the consumer cancels or wishes to change funeral homes, the consumer would get back 80 or 90% and would not be entitled to the interest/income. However, in this case, the contract could be “guaranteed” with locked-in prices.

The key is that it is made very clear to the consumer that, with Option B, what the consumer is doing is BUYING AND PREPAYING FOR A FUNERAL AT THIS FUNERAL HOME and that the money is not being placed into trust for the consumer but being invested to cover the seller’s and provider’s expenses and the risk of the guarantee. Very clear disclosures drafted by the State Board would make it clear to the consumer what the arrangement consists of and what happens if there is a cancellation or change in funeral home. The consumer would have to sign the disclosure statement.

It would not seem necessary with this arrangement that the current “Joint Account” provisions of 436 be retained, but that may be an item for discussion.
Department of Insurance, Financial Institutions and Professional Registration - Preneed Trust Legislation
Preneed Trust Legislation

1. “Random” or comprehensive audits are often ineffective. Just expanding the frequency of examinations without better standards will not prevent the problems. The law should allow random examinations and require “cause” for audits with “cause” based upon reasonable suspicion of either a violation of 436 or imprudent or unsound investment of trust assets. It should not require a complaint and may be based upon activity in the Trust that appears to be detrimental to the preneed contract holder or contrary to their interests.

2. Require Trustee to file annual report with a listing of assets (a Trust balance sheet.) If the preneed contract deposits (currently 80% of preneed contract sale receipts – which should be raised to 85-90%) exceed $3,000,000, the Trustee should be required to file a certified annual report.

3. Require Trustee (or trust officer) to attest to “market value” in the annual report.

4. Define “market value” – a valuation principle that includes transferability of ownership – “market” means you can sell it.

5. Require Trustee to attest that it controls the assets in annual report – It is not problematic for the Trustee to engage the services of an investment advisor, but Trustee must maintain control of assets and the statute should not contain language that might be interpreted to absolve the Trustee of his fiduciary duties or responsibility to attest to market value of trust assets. This will require deleting the last sentence in §436.031.2 – “The trustee shall be relieved of all liability regarding investment decisions made by such qualified investment advisor.”

Amended Section
§ 436.005 Definitions

(4) “Market value”, a fair market value,
(a) As to cash and credit, the amounts thereof;
(b) As to a security as of any date, the price for the security in that date obtained from a generally recognized source or the most recent quotation from a source, or to the extent no generally recognized source exists, the price to sell an asset in an orderly transaction between unrelated market participants at the measurement date; and
(c) As to any other asset, the price to sell an asset in an orderly transaction between unrelated market participants at the measurement date consistent with Statements of Financial Accounting Standards.
Amended Section
§ 436.027
Designate the current language as 1. and add a second paragraph:

1. The seller may retain as his own money, for the purpose of covering his selling expenses, servicing costs, and general overhead, the initial funds so collected or paid until he has received for his use and benefit an amount not to exceed fifteen percent of the total amount agreed to be paid by the purchaser of such prepaid funeral benefits as such total amount is reflected in the contract.

2. All amounts paid by purchasers to the seller under the terms of a prepaid contract, with the exception of those funds permitted to be retained as set forth in subsection 1, shall, within thirty days after collection, be:

(1) deposited in a trust account maintained at a financial institution designated by the seller in section 436.021(6), and as subject to the provisions of sections 436.031 and 436.032;

(2) deposited in an account in the joint names of the provider and purchaser pursuant to section 436.033; or

(3) used to purchase from an insurance company with no affiliation to the seller a whole life insurance contract for the face amount of the prepaid contract, which names the purchaser as the owner of the insurance contract, and with a cash surrender value of no less than eighty-five percent of the amounts paid by the purchaser.

3. It is unlawful for the seller to use, dispose or transfer the amounts paid by purchasers for any purpose other than as authorized in this section.

New Section
§ 436.032

1. Every trustee of a prepaid trust that has accepted deposits made to it by the seller of prepaid contracts shall before March 31st of each calendar year file with the board the following:

(1) A signed and notarized statement by the trustee, or its officer, attesting to the market value of assets in the prepaid trust as of December 31st of the preceding calendar year;

(2) A statement of income and changes in financial position of the prepaid trust for the preceding calendar year, and

(a) administered the trust solely in the interests of the purchasers and beneficiaries;

(b) taken all reasonable steps to control all assets derived from deposits made to it by the seller;

(c) prudently invested and protected all property in the prepaid trust in compliance with the duties and obligations of a trustee and
in furtherance of the purposes of sections 436.005 to 436.072, RSMo;
(d) distributed interest, dividends and capital gains, net of losses, from the trusteed trust only when prudent under the limitations of section 436.031, RSMo; and
(e) net, in connection with the investment of property in the trust, received any advice or been influenced, directly or indirectly, by the seller, any agent of the seller, or any other person with whom the seller has a prior business relationship or has paid or promised to pay any money or other benefit for any purpose.

2. Every trustee that has accepted more than three million dollars in deposits from the seller shall file a certified balance sheet of the trust as of December 31st of the preceding calendar year.

3. Whenever it shall appear to the director of finance that any trustee under this chapter has engaged in any violation of this section, or any director, officer, employee, agent, or other person participating in the conduct of the affairs of the trustee has participated in any violation of this section, the director of finance may initiate an action and issue orders to cease and desist and all other relief pursuant to the provisions of sections 361.260 through 361.290, RSMo.

4. It is unlawful for any seller to continue to sell preneed contracts in this state, if a financial institution designated as trustee by the seller under section 436.021.2(c) has failed to file the annual statements with the board as required by this section.

New Section
§ 436.057

1. The board may conduct an examination of any seller or any preneed trust in this state as often as the board in its discretion deems appropriate.

2. Whenever it shall appear to the board that a seller or trustee has failed to comply with any provision of sections 436.027, 436.031 or 436.032, or the market value of assets in trust is less than equal to ninety percent of the total amounts paid by the purchasers of the preneed contracts, the board in its discretion may order as audit of the preneed trust, and such decision by the board does not require a complaint and may be based upon detected activity in a preneed trust that appears to be detrimental to the purchasers or beneficiaries or contrary to their interests.

3. When making an examination or audit under this section, the board may appoint and retain appraisers, independent certified public accountants or other professionals and specialists as examiners, the cost of which shall be borne directly by the seller.
4. The examiner appointed by the board may during normal business hours examine, audit and inspect any and all books and records maintained by a seller or any preneed trust transacting business in this state.

5. It is unlawful during an examination ordered by the board for any person to deny an examiner appointed by the board reasonable access to any and all books and records maintained by the seller or any preneed trust transacting business in this state.
Schnieders, Pam

From: Josh [josh@funerals.org]
Sent: Sunday, July 27, 2008 11:32 PM
To: Josh; Meadows, Tim
Cc: Nancy Peterson; Steve Nicely; Bev McGill; ncollins@aarp.org; Clarkston, Connie; PR.Embalm; wastai@swbell.net
Subject: Funeral Consumers Alliance Comments on 436 Draft
Attachments: 7-23 436 Draft - Comments from Funeral Consumers Alliance.doc

To all on the 436 Review Committee:

I appreciate the time and effort all of you have put into this project, and especially the gracious welcome Rep. Meadows and the State Board extended to me.

I'm attaching my comments on the draft of 436 which Becky Dunn emailed me after the July 24, 2008 meeting. I hope they're clear, but if there's any confusion, please let me know.

Thank you for your hard work - I can see what a bear it is to compile so many suggestions and so much statutory language.

Sincerely,

Joshua Slocum
Executive Director
Funeral Consumers Alliance
802-865-8300
www.funerals.org

10/1/2008
Comments in blue and strikeouts from Josh Slocum, exec. director, Funeral

Consumers Alliance, Inc. 800-785-0107, www.funerals.org, josh@funerals.org. Submitted

July 28, 2008

Notes from Slocum:
* Chapter 436, as originally drafted, is verbose and full of excessive legalese that only confuses everyone. The statute really should be rewritten from scratch, with an eye to combining the main consumer protections desired with economical language and construction. My notes below highlight the changes I'd make to 436, but I'd vastly prefer to see it rewritten entirely. Please refer to my 4-page handout on MO preneed law, distributed July 24, 2008, for a bulleted list of provisions ICA believes MO preneed law should contain.

* I see no clear language in this draft requiring the seller to deposit 100 percent of a consumer's prepayment with regard to a trust-funded account. If I've missed this, I apologize - this electronic document is significantly different from the paper copy I received on July 24. If I have not, it should be added. I also see no clear language describing the consumer's right to transfer a preneed contract (especially an irrevocable one) to another seller without penalty. This should also be added.

PROPOSED DRAFT

333.700. The provisions of sections 333.700 to 333.900 shall be referenced as the "Missouri Preneed Funeral Contract Act."

333.705. As used in sections 333.705 to 333.900, unless the context otherwise requires,

(1) "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;
(2) "Board," the Missouri State Board of Embalmers and Funeral Directors;
(3) "Division", the division of professional registration of the department of insurance, financial institutions and professional registration;
(4) "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,
gravestones, grave markers, monuments, tombstones, crypts, niches or mausoleums;

(5) "Insurance-Funded" Preneed Contract- A preneed contract which is designated to be
funded by payments or proceeds from an insurance policy;

(6) "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;

(7) "Person", any individual, partnership, corporation, cooperative, association, or other
entity;

(8) "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;

(9) "Preneed Counselor", any person authorized to sell a preneed contract on behalf of a
preneed seller; The term counselor is an inappropriate euphemism the state should not qualify,
"Sales agent" would be a more honest term.

(10) "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;

(11) "Provider", the person designated to provide the disposition or funeral services,
facilities, or merchandise described in a preneed contract;
(12) "Purchaser", the person who is obligated to pay under a preneed contract;
(13) "Sellers", the person who sells a preneed contract to a purchaser and who is obligated
to collect and administer all payments made under such preneed contract;
(14) "Trustee", the trustee of a preneed trust, including successor trustees.
(15) "Trust-Funded" Preneed Contract- A preneed contract which provides that payments
for the preneed contract shall be deposited and maintained in trust.

**APPLICABILITY**

333.7181 The provisions of sections 333.700 to 333.900 shall not apply to:
(1) Any contract or other arrangement sold by a cemetery operator for which payments
received by or on behalf of the purchaser are required to be placed in an endowed care fund;
or
for which a deposit into a segregated account is required under Chapter 214, RSMo, provided
that a cemetery operator shall comply with sections 333.700 to 333.900 if the contract or
arrangement sold by the operator includes services that may only be provided by a licensed
funeral director or embalmer;
(2) A contract of insurance, provided that sections 333.700 to 333.900 shall apply to any
preneed contract sold with a preneed contract.

**PRENEED PROVIDER LICENSING**

333.720. 1. Except as provided herein, the provider designated in a preneed contract shall
be obligated to provide the funeral or burial services, facilities, or merchandise as described in
the preneed contract.
2. No person shall be designated as a provider, or agree to perform the obligations of
a provider under a preneed contract unless, at the time of such agreement or designation, such
person is licensed as a preneed provider by the Board. A preneed provider shall be authorized
and registered with the Missouri Secretary of State to conduct business in Missouri and shall be
licensed as a funeral establishment by the Board. A funeral establishment license shall not be
required if the person is the owner of real estate situated in Missouri which has been formally
dedicated for the burial of dead human bodies and the contract only provides for the delivery of
one or more grave vaults and is in compliance with the provisions of chapter 214, RSMo;

3. As applicant for a preneed provider license shall:
   (1) File an application on a form promulgated by the Board and pay a licensing fee of
       dollars or in an amount promulgated by the Board by rule;
   (2) Identify the name and address of a custodian of records responsible for maintaining
       the books and records of the provider relating to preneed contracts;
   (3) Identify the name and address of each seller authorized by the provider to sell
       preneed contracts in which the provider is designated or obligated as the provider;
   (4) File with the state board a written consent authorizing the state board to inspect or
       order an investigation, examination or audit of the provider’s books and records which contain
       information concerning preneed contracts sold for or on behalf of a preneed seller or in which the
       applicant is named as a preneed provider;

4. Each preneed provider shall apply to renew his or her license on or before October
   thirty-first of each year or a date established by the Board by rule. A license which has not been
   renewed prior to the renewal date shall expire. Applicants for renewal shall:
   (1) File an application for renewal on a form promulgated by the Board by rule;
   (2) Pay a renewal fee of dollars or in an amount established by the Board by
       rule;
   (3) File an annual report with the state board which shall contain:
(a) The name and address of a custodian of records responsible for maintaining
the books and records of the provider relating to preneed contracts;
(b) The business name or names of the provider and all addresses from which it
engages in the practice of its business;
(c) The name and address of each seller with whom it has entered into a written
agreement since last filing an annual report with the Board authorizing the seller to designate or
obligate the licensee as the provider in a preneed contract, and;
(d) Any information required by the Board by rule.
5. Any license not renewed as provided by this section shall become void. A
licensee who fails to apply for renewal may apply for reinstatement by satisfying the
requirements of section 4 of this section and paying a delinquent fee as promulgated by the
Board by rule.

PRENEED SELLER LICENSING
333.725. 1. The preneed seller designated in a preneed contract shall be obligated to
administer all payments made by or on behalf of a purchaser of a preneed contract and ensure the
preneed contract is managed and fulfilled in compliance with sections 333.700 to sections
333.900 and as provided by the contract.
2. No person shall sell, perform or agree to perform the seller's obligations under, or
be designated as the seller of, any preneed contract unless, at the time of the sale, performance,
agreement, or designation, such person is licensed by the Board as a preneed seller and
authorized and registered with the Missouri Secretary of State to conduct business in Missouri.
3. An applicant for a preneed seller license shall:
(1) File an application on a form promulgated by the Board and pay a licensing fee of

(2) Be an individual resident of Missouri of eighteen years of age or a business entity
duly registered with the Missouri Secretary of State to transact business in Missouri;

(3) Identify the name and address of a custodian of records responsible for maintaining
the books and records of the seller relating to preneed contracts;

(4) Identify the name and address of each licensed provider that has authorized the seller
to designate the licensee as a provider under a preneed contract;

(5) Has established, as grantor, a preneed trust or an agreement to utilize a preneed trust
with terms consistent with sections 333.000 to 333.071. A trust shall not be required if the
applicant certifies to the Board that the preneed seller will only sell insurance-funded or joint-
account funded preneed contracts, and;

(6) Identify the name and address of a trustee or, if applicable, the financial institution
where any preneed trust or joint accounts will be maintained, and;

(7) File with the state board a written consent authorizing the state board to inspect or
order an investigation, examination or audit of the seller’s books and records which contain
information concerning preneed contracts sold by or on behalf of the seller.

(8) Pass a written examination administered by the state board which tests the seller’s
knowledge of Missouri statutes relating to preneed sales, Missouri funeral law and regulations,
and the Federal Trade Commission’s Funeral Rule. Such test shall be written with an emphasis
on determining the applicant’s knowledge of consumers’ rights to determine the manner and cost
of a disposition under state law and the Funeral Rule, and consumers’ rights to transfer or cancel
prepaid agreements.
4. Each preneed seller shall apply to renew his or her license on or before October thirty-first of each year or a date established by the Board by rule. A license which has not been renewed prior to the renewal date shall expire. Applicants for renewal shall:

(1) File an application for renewal on a form promulgated by the Board by rule;

(2) Pay a renewal fee of _______ dollars or in an amount established by the Board by rule, and;

(3) File annually with the state board a signed and notarized annual report as provided by sections 333.700 to 333.900 on forms provided by the state board.

5. Any license not renewed as provided by this section shall become void. A licensee who fails to apply for renewal may apply for reinstatement by satisfying the requirements of section 4 of this section and paying a delinquent fee as promulgated by the Board by rule.

PRENEED COUNSELORS-SALES AGENTS (replace "counselor" throughout)

333.730.1 Any person employed or otherwise authorized to sell, negotiate or solicit the sale of preneed contracts for or on behalf of a preneed seller shall be registered with the Board as a preneed counselor. The Board shall maintain a registry of all preneed counselors registered with the Board. The registry shall be deemed an open record and made available on the Board website.

2. An applicant for a preneed counselor registration shall:

(1) File an application on a form promulgated by the Board and pay a registration fee of _______ dollars or in an amount promulgated by the Board by rule which shall not exceed _______ percent of the application fee established by the Board pursuant to Chapter 333 for a funeral director license;
(2) Be eighteen years of age, and;

(3) Provide the name and address of each seller for whom the applicant is authorized to
sell, negotiate or solicit the sale of preneed contracts for or on behalf of the seller.

(4) Pass a written examination administered by the state board which tests the applicant's
knowledge of Missouri statutes relating to preneed sales, Missouri funeral law and regulations,
and the Federal Trade Commission's Funeral Rule. Such test shall be written with an emphasis
on determining the applicant's knowledge of consumers' rights to determine the manner and cost
of a disposition under state law and the Funeral Rule, and consumers rights' to transfer or cancel
prepaid agreements.

4. Each preneed counselor shall apply to renew his or her registration on or before
October thirty-first of each year or a date established by rule of the Board. A registration which
has not been renewed prior to the renewal date shall expire. Applicants for renewal shall:

(1) File an application for renewal on a form promulgated by the Board by rule;

(2) Pay a renewal fee of ______ dollars or in an amount promulgated by the Board by
rule which shall not exceed ______ percent of the application fee established by the Board
pursuant to Chapter 333 for a funeral director license, and;

(3) Provide the name and address of each seller for whom the counselor is authorized to
sell, negotiate or solicit the sale of preneed contracts for or on behalf of the seller.

5. Any registration not renewed as provided by this section shall become void and
the registrant shall be immediately removed from the preneed counselor registry by the Board. A
registrant who fails to apply for renewal may apply for reinstatement by satisfying the
requirements of section 4 of this section and paying a delinquent fee as promulgated by the
Board.
6. Notwithstanding any other provision of law, the Board may remove a preneed
counselor from the registry if the counselor has been 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 sections 333.700 to 333.900, for any offense involving the
misappropriation or theft of, 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.

7. A preneed counselor who has been removed from the registry by the Board may
appeal the removal to the administrative hearing commission. Notice of such appeal must be
received by the administrative hearing commission within thirty days of mailing, by certified
mail, the notice of removal. Failure of a preneed counselor registrant to notify the administrative
hearing commission of his or her intent to appeal waives all rights to appeal the removal. Upon
notice of such person's intent to appeal, a hearing shall be held before the administrative hearing
commission in accordance with Chapter 621, RSMs.

8. No person shall sell, negotiate or solicit the sale of any preneed on behalf of a
preneed seller unless registered as a preneed counselor as required by this section.

SELLERS & PROVIDERS

333.738. 1. No seller or preneed counselor shall designate a person as a provider in a
preneed contract unless the provider has a written contractual agreement with the preneed seller.

Any seller who designates a person as a provider in a preneed contract without a contractual
relationship with such person is in violation of the provisions of sections 333.700 to 333.900.

2. The written agreement required by this section shall include:
(1) Consent from the provider authorizing the seller to designate or obligate the provider under a preneed contract;

(2) Procedures for tracking preneed contract funds or payments received by the provider and for remitting such funds or payments to the seller, including, the time period authorized by the seller for the remittance of funds and payments, and;

(3) The signatures of the seller and the provider or their authorized representatives and the date such signature was obtained.

3. A provider shall notify the Board within fifteen days of authorizing or otherwise agreeing to allow a seller to designate him or her as the provider under any preneed contract.

4. Any person who knowingly permits a seller to sell a preneed contract designating him or her as the provider shall be obligated to provide the disposition or the funeral or burial facilities, merchandise and services described in the preneed contract for the beneficiary. If a provider has knowledge that a seller is designating him or her as the provider under any preneed contract and fails within thirty days after first obtaining such knowledge to take action to prevent the seller from designating him or her as the provider and to inform the Board, the provider shall be deemed to have consented to such designation and shall be obligated under the contract as provided herein. Notice to the Board as required by this subsection shall be provided within thirty days of the provider having knowledge that a seller is designating him or her as the provider under a preneed contract without authorization.

5. The provisions of subsection 4 and 5 of this section shall not be construed to exempt any seller or provider from having a written agreement as required by this section.

Failure to comply with the provisions of this section shall be cause for discipline of a preneed license or of any license issued by the Board under sections 333.000 to 333.700, RSMo.
6. Upon request of the board, a licensed seller or provider shall provide a copy of any preneed contract or any contract or agreement with a seller or provider to the Board.

PRENEED CONTRACT REQUIREMENTS

333.740. 1. A preneed contract made after August 28, 2009, shall be in writing and shall clearly and conspicuously:

(1) Include the contract number on the face of the contract and the name, address and phone number of the purchaser and beneficiary;

(2) Identify the name, address, phone and license number of the preneed provider and the preneed seller;

(3) Set out in detail the final disposition arrangements for the beneficiary or the funeral or burial services, facilities and merchandise to be provided;

(4) Identify on its face whether the contract is trust-funded, insurance-funded or joint account funded;

(5) Designate whether the costs for the final disposition or the funeral or burial services, facilities or merchandise are guaranteed or nonguaranteed. If only a portion of the costs are guaranteed, the contract shall clearly and separately identify the costs that are guaranteed and the costs that are nonguaranteed;

(6) Prominently identify if the contract is revocable or irrevocable;

(7) Set forth the terms for cancellation and transfer to another provider by the purchaser or by the seller on default of payment;

(8) Identify the preneed trust or joint account into which contract payments shall be deposited, including the name and address of the trustee or the financial institution thereof;
(10) Include the name, address and phone number of any insurance company issuing an insurance policy used to fund the preneed contract;

(11) Identify the type of insurance that will be used to fund the insurance policy, including the number of such policy, if available;

(12) Explain how interest will be distributed and designate the amount of administrative expenses that will be retained by the seller as authorized by this section;

(13) Identify any other type of expenses or taxes that may be deducted from preneed funds, and the amount of any such expense if known by the seller at the time of the sale;

(14) Include the name and signature of the purchaser, the preneed counselor responsible for the sale of, if any, and of the seller, or its duly authorized representative;

(15) Include the signature of the preneed provider if the preneed contract is sold to the purchaser by the provider.

(16) Include a disclosure statement immediately under the signature of the purchaser which states that the preneed seller and provider identified in the contract are licensed by the Missouri State Board of Embalmers and Funeral Directors and that complaints against a preneed provider, seller or counselor may be filed with the Missouri State Board of Embalmers and Funeral Directors. The statement required by this section shall also include the current address and phone number for the Board, and;

(14) Comply with the provisions of section 333.700 to 333.900 or any rule promulgated pursuant thereto.

2. A preneed contract shall be voidable and unenforceable at the option of the purchaser, or the purchaser's legal representative, if the contract is not in compliance with this section, not
If a preneed contract does not comply with the provisions of sections 333.700 to 333.900, all payments made under such contract shall be recoverable by the purchaser, or the purchaser's legal representative, from the contract seller or other payee thereof, together with interest at the rate of ten percent per annum and all reasonable costs of collection, including attorneys' fees.

After the seller retains any amount authorized by sections 333.700 to 333.900, all funds paid by or on behalf of the purchaser as payment for a preneed contract shall be placed in trust, in a joint account or shall be used to purchase insurance, as authorized by sections 333.700 to 333.900.

A preneed contract may not be redesignated as a trust-funded, insurance-funded or joint-account funded preneed contract without the consent of the purchaser. A seller, provider, or sales agent may not secure the purchaser's consent without providing the purchaser a written statement explaining in plain language any financial consequences the redesignation may have. These shall include, at a minimum, any reduction in cash surrender value, interest accrual, and fees as provided in this section. The seller, provider, or sales agent must secure the purchaser's signature on such a disclosure statement or the purchaser will not be deemed to have consented to the redesignation.

TRUST FUNDED PRENEED CONTRACTS

A trust-funded preneed contract shall comply with sections 333.700 to 333.900 and the specific requirements of sections 333.745 to 333.750.
2. The trustee of a preneed trust shall be a state or federally chartered financial
institutions authorized to exercise trust powers in Missouri. The trustee shall accept all deposits
made to it for a preneed contract and shall hold, administer, and distribute such deposits, in trust,
as trust principal, pursuant to sections 333.700 to 333.900.

3. The financial institution referenced herein may neither control nor be controlled
by or under common control with the seller. The term “control” including terms, “controlled by”
and “under common control” with, means the possession, direct or indirect, of the power to
direct or cause the direction of the management and policies 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 shall 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 and within its sole discretion that control does not or fact exist.

4. Payments regarding two or more preneed contracts may be deposited into and
commingled in the same preneed trust, so long as the trust’s grantor is the seller of all such
preneed contracts and the trustee maintains adequate records that individually and separately
identify the payments, earnings and distributions for each preneed contract.

5. Within a reasonable time after accepting a trusteeship or receiving trust assets, a
trustee shall 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 sections 333.700 to 333.900.
6. All expenses of establishing and administering a prepaid contract, including, without limitation, trustee’s fees, legal and accounting fees, investment expenses, and taxes, shall be paid or reimbursed directly by the seller of the prepaid contracts administered through such trust and shall not be paid from the principal of a prepaid trust. (Other states allow the trustee to deduct a small, reasonable fee directly from the trust. Missouri may want to consider allowing this, perhaps 1% of 1 percent.) In investing and managing trust assets, a trustee may only incur costs that are appropriate and reasonable in relation to the assets, the purposes of the trust, and the skills of the trustee.

7. The income of a prepaid contract shall be entitled to all income, including, without limitation, interest, dividends, and capital gains, and losses generated by the investment of prepaid trust property regarding such contract, and the trustee of the trust may distribute all income net of losses to the seller upon the final disposition of the beneficiary or provision of the funeral or burial service of facilities or funeral merchandise to or for the benefit of the beneficiary. If I read this correctly, this means the seller is entitled to all interest and income under any circumstances, regardless of whether the contract is price-guaranteed. This is highly irregular and unacceptable. It’s unfair to the consumer as well as to the actual provider (the funeral home). Missouri needs to get out of the business of enriching third-party sellers.

8. The trustee of a prepaid trust shall maintain adequate books and records of all transactions administered through the trust and pertaining to the trust generally. The trustee shall assist the seller who established the trust or its successor in interest in the preparation of the annual report described in Section 333.000. The seller shall furnish to each contract purchaser, within fifteen days after receipt of the purchaser’s written request, a written statement of all deposits made to such trust regarding such purchaser’s contract. The seller (or the provider, if the
provider is also the seller) shall submit annually to the purchaser a statement describing the
amount of principal in the trust, the interest accrued during the prior year, and the total of
principal plus all interest earned over the life of the trust.

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

333.747. All property held in a preneed trust, including principal and undistributed
income, shall be invested and reinvested by the trustee thereof and shall only be invested and
reinvested in investments which have reasonable potential for growth or producing income.

2. A trustee shall 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 shall exercise reasonable care, skill, and caution. In no
instance shall funds in or belonging to a preneed trust be invested in any term life insurance
product. A trustee who has special skills or expertise, or is named trustee in reliance upon the
trustee's representation that the trustee has special skills or expertise, has a duty to use those
special skills or expertise when investing and managing trust assets, and;

3. A trustee shall diversify the investments of the trust unless the trustee reasonably
determines that, because of special circumstances, the purposes of the trust are better served
without diversifying.

4. In investing and managing trust assets, a trustee shall consider the following as are
relevant to the trust:

(1) General economic conditions;
(2) The possible effect of inflation or deflation;

(3) The expected tax consequences of investment decisions or strategies;

(4) The role that each investment or course of action plays within the overall trust portfolio;

(5) The expected total return from income and the appreciation of capital;

(6) Other resources of the beneficiaries known to the trustee;

(7) Needs for liquidity, regularity of income, and preservation or appreciation of capital;

(8) 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

(9) The size of the portfolio, nature and estimated duration of the fiduciary relationship and distribution requirements under the governing instrument.

9. It is unlawful for any trustee, preneed seller, preneed provider or preneed counselor to procure or accept a loan against any investment or asset of or belonging to a preneed trust. 333.749.1. A preneed trustee may delegate to an agent duties and powers that a prudent trustee of comparable skills could properly delegate under the circumstances. The trustee shall exercise reasonable care, skill, and caution in:

(1) Selecting an agent;

(2) Establishing the scope and terms of the delegation, consistent with the purposes and terms of the trust; and

(3) Periodically reviewing the agent's actions in order to monitor the agent's performance and compliance with the terms of the delegation.

2. In performing a delegated function, an agent owes a duty to the trust to exercise reasonable care to comply with the terms of the delegation.
3. By accepting a delegation of powers or duties from the trustee of a preneed trust, an agent submits to the jurisdiction of the courts of this state.

4. Delegation of an agent as provided herein shall not relieve the trustee of any duty or responsibility imposed on the trustee by sections 333.700 to 333.900 or the trust agreement.

333.750.1 A trustee shall not sale, invest or authorize any transaction involving the investment or management of trust property with:

(1) The spouse of the trustee;

(2) The descendants, siblings, parents, or spouses of a preneed seller or an officer, manager, director or employee of a preneed seller, provider or counselor;

(3) An agent or attorney of the trustee, preneed seller or provider; or

(4) A corporation or other person or enterprise in which the trustee, preneed seller, preneed provider, or a preneed provider owns a significant interest or has an interest that might affect the trustee's best judgment.

INSURANCE-FUNDED PRENEED CONTRACTS

333.750.1 An insurance-funded preneed contract shall comply with sections 333.700 to 333.900 and the specific requirements of this section.

2. In no event shall the seller or provider, or any agent, receive or collect from the purchaser of an insurance-funded preneed contract any amount in excess of what is required to pay the premiums on the insurance policy as assessed or required by the insurer as premium payments for the insurance policy. In no instance shall a preneed seller receive or collect any administrative or other fee to the purchaser for or in connection with an insurance funded preneed contract, other than those fees or amounts assessed by the insurer.
3. Payments collected by or on behalf of a preneed seller for an insurance funded preneed contract shall be promptly remitted to the insurer or the insurer's designee as required by the insurer, provided that in no event shall payments be retained or held by the preneed seller or counselor for more than thirty days from the date of receipt.

4. A preneed seller or any preneed counselor authorized to sell an insurance funded preneed contract on behalf of a seller shall disclose to the purchaser at the time of sale if the seller or counselor is a licensed insurance agent and if the seller or counselor will receive any commission, payment or other valuable consideration, and the amount or percentage of any such payments or commissions, for the sale of the insurance product used to fund the contract.

5. In no instance shall any term life insurance policy be used to fund a preneed contract nor shall a preneed seller or provider be listed or otherwise designated as the owner of an insurance policy used to fund a preneed contract.

6. It is unlawful for a preneed seller, provider or counselor to procure or accept a loan against any insurance contract used to fund a preneed contract.

7. No preneed seller or provider shall accept an assignment of insurance proceeds or knowingly allow the preneed seller or provider to be designated as the beneficiary in an insurance policy unless a preneed contract has also been issued by a licensed seller. A preneed contract shall only be required by this section if the insurance proceeds are to be used 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 and the price of such services, facilities or merchandise are guaranteed by the provider or seller. A preneed contract written pursuant to this subsection shall be deemed an
insurance-funded preneed contract and shall comply with this section and all applicable
provisions of section 333.700 to 333.900, 

9. Laws regulating insurance shall not apply to preneed contracts, but shall apply to
any insurance sold with a preneed contract.

**NOTE: THIS SECTION IS STILL IN THE DRAFTING PROCESS**

333.755. A joint account-funded preneed contract shall comply with sections 333.700 to
333.900 and the specific requirements of this section.

2. In lieu of a trust-funded or insurance-funded preneed contract, a preneed seller
and the purchaser may agree in writing that all funds paid by the purchaser for the preneed
contract shall be deposited with a financial institution chartered and regulated by the federal or
state government authorized to do business in Missouri in an account in the joint names and
under the joint control of the provider and purchaser. There shall be a separate joint account
established for each preneed contract sold or arranged under this section.

3. All consideration paid or 100 percent of the money paid by the purchaser under a
joint-account funded contract shall be deposited into a joint account authorized as authorized by
this section within five days of receipt of payment by the seller.

4. The financial institution shall hold, invest, and reinvest funds deposited pursuant
to this section in savings accounts, certificates of deposit or other accounts offered to depositors
by the financial institution as provided in the written agreement of the purchaser and the seller,
provided the financial institution shall not invest or reinvest any funds deposited pursuant to this
section in term life insurance or any investment that does not reasonably have the potential to
gain income or increase in value.
5. Income generated by preneed funds deposited pursuant to this section shall be used to pay the reasonable expenses of administering the account, not to exceed ¼ of 1 percent of the total amount in trust, and the balance of the income shall be distributed or reinvested as provided in this section in the written agreement of the purchaser and seller.

6. A joint-funded preneed contract shall clearly designate the following:

   (1) The name of the financial institution in which the account will be held and the account number.

   (2) STILL WORKING ON THIS:

7. At any time before final disposition, or before, the funeral or burial services, facilities, or merchandise described in a preneed contract are furnished, the purchaser may cancel the contract without cause by delivering written notice thereof to the seller and the financial institution. Within fifteen days of receipt of notice of cancellation, the financial institution shall distribute all deposited funds and accrued interest, less any administrative fees as provided in this section, not to exceed ¼ of 1 percent of the total amount in trust, to the purchaser. Interest shall be distributed as provided in the agreement with the seller and purchaser.

8. Within fifteen days after a 'provider and witness the deceased's legal representative certifies to the financial institution in writing that he has furnished the final disposition, or funeral services, facilities, and merchandise described in a contract, or has provided alternative funeral benefits for the beneficiary pursuant to special arrangements made with the purchaser, the financial institution shall distribute the deposited funds, if the certification has been approved by the purchaser.

ANNUAL REPORTS
333.760. 1. Each preneed seller shall file an annual report with the Board which shall contain, at least the following information:

(1) The name, addresses and contract number of all purchasers as reflected in any preneed contract sold since the filing of the last report;

(2) The total number and total face value of preneed contracts sold since the filing of the last report;

(3) The contract amount of each preneed contract sold since the filing of the last report, identified by contract;

(4) The amount of funds received by the seller for payment on each preneed contract since the filing of the last report, identified by contract, and the date such funds were received;

(5) The total amount of funds retained by the seller for administrative expenses from payments received on behalf of a purchaser since the filing of the last report, identified by contract;

(6) The name, address and license number of all preneed counselors employed or authorized to sell preneed contracts on behalf of the seller;

(7) The date the report is submitted and the date of the last report;

(8) The number of all Missouri preneed contracts fulfilled by the preneed seller during the preceding calendar year;

(9) The name and address of each provider with whom it is under contract;

(10) The name and address of the person designated by the seller as custodian of the seller’s books and records relating to the sale of preneed contracts.
(11) Written consent authorizing the state board to order an examination and if necessary
an audit of any joint or trust account established pursuant to sections 333.700 to 333.900,
designated by depository or account number.

(12) Written consent authorizing the state board to order an investigation, examination
and if necessary an audit of its books and records relating to the sale of preneed contracts;

(13) The annual status report shall be certified under oath as complete and correct by an
officer of the preneed seller. The preneed seller or officer shall be subject to the penalty of
making a false affidavit or declaration, and;

(14) Any information deemed necessary by the Board to ensure compliance with
sections 333.700 to 333.900.

(15) A copy of each preneed contract sold, which may be provided by scanned electronic

2. A preneed seller that sells or has sold trust-funded preneed contracts shall also include
in the annual report required by section 1 of this section:

(1) The name and address of the financial institution in Missouri in which it maintains a
preneed trust account and the account numbers of such trust accounts, and;

(2) The trust fund balance as reported in the previous year's report;

(3) The current trust fund balance;

(4) Principal contributions received by the trustee since the previous report;

(5) Total trust earnings and total distributions to the preneed seller since the previous
report;
(6) A statement of all assets and investments of the trust listing cash, real or personal property, stocks, bonds, and other assets, showing cost, acquisition date and current market value of each asset and investment, and:

(8) Total expenses, excluding distributions to the preneed seller, since the previous report.

(9) The information required by subsections (1) to (8) of this section shall be certified to under oath as complete and correct by a corporate officer of the trustee. The trustee shall be subject to the penalty of making a false affidavit or declaration.

3. A preneed seller that sells or who has sold joint-account funded preneed contracts shall also include in the annual report required by section 1 of this section:

(1) The name and address of the financial institution in Missouri in which it maintains the joint account and the account numbers for each joint account, and;

(2) The amount on deposit in each joint account;

(3) The joint account balance as reported in the previous year's report;

(4) Principal contributions placed into each joint account since the filing of the previous report;

(5) Total earnings since the previous report;

(6) Total distributions to the preneed seller from each joint account since the previous report;

(7) Total expenses deducted from the joint account, excluding distributions to the preneed seller, since the previous report, and;
1 (8) The information required by subsection (1) to (7) of this section shall be certified to
2 under oath as complete and correct by an authorized representative of the financial institution.
3 The affiant shall be subject to the penalty of making a false affidavit or declaration.
4 A person who sells or who has sold any insurance-funded prepaid contracts
5 shall also include in the annual report required by section 1 of this section:
6 (1) The name and address of each insurance company issuing insurance funds prepaid
7 contract sold by the seller during the preceding year;
8 (2) The type of insurance purchased to fund each prepaid contract, identified by
9 contract;
10 (3) The total amount of funds collected by the seller for each prepaid contract, including,
11 any funds used to pay insurance premiums and the date such funds were received;
12 (4) The total amount of premiums received by the insurance company for each insurance
13 policy used to fund a prepaid contract sold by the prepaid seller;
14 (5) The statutory total face value and total cash surrender value of each policy, and;
15 (6) The information required by subsection (1) to (5) of this section shall be certified to
16 under oath as complete and correct by an authorized representative of the insurer. The affiant
17 shall be subject to the penalty of making a false affidavit or declaration.
18 5. All reports required by this section shall be filed by the thirty-first day of October
19 of each year or by the date established by the Board by rule. Annual reports filed after the date
20 provided herein shall be subject to a late fee of $_______ dollars for every month past the
21 renewal deadline or in an amount established by rule of the Board.
6. A seller who fails to file their annual report on or before the thirty-first day of October shall be prohibited from selling any preneed contracts until the annual report, and all applicable fees, have been paid to the board.

**RECORD RETENTION**

333.762. A preneed seller shall maintain:

(1) Adequate records of all preneed contracts and related agreements with providers, the trustee of a preneed trust, or the financial institution holding a joint account established pursuant to 333.700 to 333.900;

(2) Preneed contracts shall be maintained by the seller for the duration of the contract and for no less than (2) years after the final disposition of the beneficiary or after the funeral or burial facilities, services or merchandise designated in the contract.

**INVESTIGATION/INSPECTIONS**

333.765.1. The Board shall have authority to:

(1) Conduct inspections of preneed providers, sellers and counselors to determine compliance with sections 333.700 to 333.900, at the discretion of the Board and with or without cause;

(2) Investigate the activities of any preneed seller, provider or counselor for the purpose of determining violations of sections 333.700 to 333.900 or to determine whether grounds exist for disciplining any person licensed or regulated under sections 333.700 to 333.900. The Board shall have authority to conduct an investigation if an inspection authorized by this section identifies a probable violation of sections 333.700 to 333.900 or upon receipt of a complaint filed with the Board or by the Board staff;
(3) Conduct a financial examination of the books and records of a licensee, and if necessary an audit of a licensee or any trust or joint account, to determine if preneed funds are being maintained or handled by the licensee as required by sections 333.780 to 333.900. The Board shall conduct a financial examination of the books and records of each preneed seller as authorized by this section at least once every [three/five] years, as financially permissible pursuant to the funding of the board; Consider another option - conducting a financial examination or audit of a reasonable sample of sellers annually. A CPA could advise the board on what percentage of sellers should be audited in order to maximize the likelihood of detecting fraud.

2. Upon determining that an inspection, investigation, examination or audit shall be conducted, the board shall issue a notice authorizing an employee or other person appointed by the board to perform such inspection, investigation, examination or audit. The notice shall instruct the person appointed by the board as to the scope of the inspection, investigation, examination or audit.

(a) The board shall not appoint or authorize any person to conduct an inspection, investigation, examination or audit pursuant to this section if the individual has a conflict of interest or is affiliated with the management of, or owns a pecuniary interest in any person subject to inspection, investigation, examination or audit under section 333.900 to section 333.999.

(b) The board may request that the director of the division of professional registration, the director of the department of insurance, financial institutions and professional registration, or the office of the attorney general designate one or more investigators or financial examiners to assist in any investigation, examination or audit.
3. Upon request by the board, a licensee or registrant shall make the books and records of the licensee or registrant available to the board for inspection and copying at any reasonable time, including, any insurance, trust, joint account or financial institution records deemed necessary by the board to determine compliance with sections 333.700 to 333.900.

4. The board or a designated member thereof or any agent authorized by the board may enter the office, premises, establishment, or place of business of any preneed seller or provider of funeral service contracts licensed in this state, or any office, premises, establishment, or place where the practice of selling and/or providing preneed funerals is carried on, or where such practice is advertised as being carried on for the purpose of inspecting such office, premises, establishment, or place to determine compliance with sections 333.700 to 333.900, or for the purpose of inspecting, examining, investigating or auditing the licensee or the sale of preneed contracts.

5. The board shall have the power to issue a subpoena to compel the production of records and papers by any licensee or registrant of the board. Subpoenas issued pursuant to this section shall be served in the same manner as subpoenas in a criminal case.

6. All preneed sellers, providers and counselors shall cooperate with the state board or its designee, the division of finance, the department of insurance, financial institutions and professional registration and the office of the attorney general of Missouri, in any inspection, investigation, examination or audit brought under the provisions of sections 333.700 to 333.900.

7. This section shall not be construed to limit the board’s authority to file a complaint with the administrative hearing commission charging a licensee of the board with any actionable conduct or violation, regardless of whether such complaint exceeds the scope of acts
charged in a preliminary public complaint filed with the board and whether any public complaint
has been filed with the board;
8. If an investigation, audit or examination finds a violation of sections 333.700 to
333.900, the office of the attorney general may initiate a judicial proceeding to:
(1) Declare rights;
(2) Approve a nonjudicial settlement;
(3) Interpret or construe the terms of the trust;
(4) Determine the validity of a trust or of any of its terms;
(5) Compel a trustee to report or account;
(6) Enjoin a trustee from performing a particular act or grant to a trustee any necessary or
desirable power;
(7) Review the actions of a trustee, including the exercise of a discretionary power;
(8) Appoint or remove a trustee;
(10) Determine the liability of a trustee for an action relating to the trust and compel
redress of a breach of trust by any available remedy;
(12) Approve employment and compensation of agents;
(13) Determine the propriety of investments or of principal and income allocations, or;
(17) Determine the timing and quantity of distributions and dispositions of assets.
(18) This section does not preclude any other authority vested in the attorney general by
law.

DISCIPLINARY ACTION
333.770. 1. The board may refuse to issue any registration or license required by sections
333.700 to 333.900 for one or any combination of causes stated in subsection 2 of this section.
The board shall notify the applicant in writing of the reasons for the refusal and shall advise the applicant of his right to file a complaint with the administrative hearing commission as provided by chapter 621, RSMo.

The Board should also be given the authority to levy fines against violators. Sometimes revocation or suspension of a license is too harsh, and can do more harm than good. Fines should be calculated so as to “hurt” enough to effectively deter future violations, but not so as to cripple the business. Consider calculating fines based on a percentage of revenue, rather than as an absolute number, to equalize penalties against large and small businesses.

The board may cause a complaint to be filed with the administrative hearing commission as provided by chapter 621, RSMo, against any person selling or provider licensed with the board [or person licensed with the board] or any person who has failed to renew or has surrendered his license [or registration] for any one or any combination of the following causes:

1. Use of any controlled substance, as defined in chapter 195, RSMo, or alcoholic beverage to an extent that such use impairs a person’s ability to perform the work of any profession registered under sections 333.700 to 333.900;
2. The person has been finally adjudicated and found guilty, or entered a plea of guilty or nolo contendere, in a criminal prosecution under the laws of any state or of the United States, for any offense involving the misappropriation or theft of funds, 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 license or registration pursuant to sections 333.700 to 333.900;
(i) 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 the profession for which the individual is
licensed or registered;
(6) Violation of, or assisting or enabling any person to violate, any provision of sections
333.700 to 333.900 or sections 333.700 to 333.900, or of any lawful rule or regulation adopted
pursuant to Chapter 333 or sections 333.700 to 333.900;
(7) Impersonation of any person holding a preneed licensee or registration with the board
or allowing any person to use his or her license or registration;
(8) Disciplinary action against the holder of any license or registration or other right to
practice any profession regulated pursuant to this chapter or by any 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 as a preneed seller,
preneed provider or preneed counselor as defined or regulated by sections 333.700 to 333.900
who is not licensed or registered and currently eligible to practice under sections 333.700 to
333.900;
(12) Issuance of a registration or license based upon a material mistake of fact;
(13) Failure to display or present a valid certificate or license if so required by sections
333.700 to 333.900 or any rule promulgated thereunder;
(14) Violation of any professional trust or confidence;
(15) Make or file any report required by sections 333.000 to 333.999 which the licensee
or registrant knows to be false or knowingly fail to make or file a report required by sections
333.000 to 333.999;
(16) Use of any advertisement, solicitation or press releases which is false, misleading
or deceptive to the general public or persons to whom the advertisement or solicitation is
primarily directed, and;
(16) Willfully and through undue influence selling a press release, contract, or;
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, 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.
(17) Violating any provision of the Federal Trade Commission’s Funeral Rule.
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 and
after providing the licensee an opportunity to respond, a shortage in the trust fund or joint
account which exceeds [twenty percent of the amount required to be held in the trust or joint
account or fifty thousand dollars, whichever is lesser] or upon being adjudicated and found
guilty, or entering a plea of guilty or nolo contendere, in a criminal prosecution under the laws of
any state or of the United States, for any offense involving the stealing, misappropriation or theft
of funds.
5. A person whose license was 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.

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.

333.775. If a seller shall fail to make timely payment of an amount due a purchaser, or a provider pursuant to the provisions of sections 333.700 to 333.900, the purchaser or provider, as appropriate, shall have the right, in addition to other rights and remedies against such seller, to make demand upon the trustee of the preneed trust for the contract to distribute to the purchaser or provider from the trust, as damages for its breach, an amount equal to all deposits made into the trust for the contract.

333.780. Upon the death or legal incapacity of a purchaser, all rights and remedies granted to the purchaser pursuant to the provisions of sections 333.700 to 333.900 shall be enforceable by and accrue to the benefit of the purchaser's legal representative or his successor designated in such contract, and all payments otherwise payable to the purchaser shall be paid to that person.

333.785. 1. Any person, including the officers, directors, partners, agents, or employees of such person, who shall knowingly and willfully violate or assist or enable any person to violate any provision of sections 333.700 to 333.900 by incompetence, misconduct, gross
negligence, fraud, misrepresentation, or dishonesty is guilty of a class D felony. Each violation
of any provision of sections 333.700 to 333.900 constitutes a separate offense and may be
prosecuted individually. The attorney general shall have concurrent jurisdiction with any local
prosecutor to prosecute under this section.

2. Any violation of the provisions of sections 333.700 to 333.900 shall constitute a
violation of the provisions of section 407.020, RSMo. In any proceeding brought by the attorney
general for a violation of the provisions of sections 333.700 to 333.900, the court may order all
relief and penalties authorized under chapter 407 and, in addition to imposing the penalties
provided for in sections 333.700 to 333.900, order the revocation or suspension of the
[registration] license of a defendant seller or provider.

INJUNCTIONS

333.790. 1. Upon application by the board, and the necessary burden having been met, a
court of general jurisdiction may grant an injunction, restraining order or other order as may be
appropriate to enjoin a person from:

(1) Offering to engage or engaging in the performance of any acts or practices for which
a registration or authority, permit or license is required by sections 333.700 to 333.900 upon a
showing that such acts or practices were performed or offered to be performed without the
required registration or authority, permit or license; or

(2) Engaging in any practice or business authorized by a registration or authority, permit
or license issued pursuant to sections 333.700 to 333.900 that is in violation of sections 333.700
to 333.900 or upon a showing that the holder presents a substantial probability of serious danger
to the health, safety or welfare of any resident of this state or client or customer of the licensee,
or;

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(3) Engaging in any practice or business that presents a substantial probability of serious danger to the solvency of any preneed seller.

2. Any such action shall be commenced either in the county in which such conduct occurred or in the county in which the defendant resides or, in the case of a firm or corporation, where the firm or corporation maintains its principal office.

3. Any action brought under this section shall be in addition to and not in lieu of any penalty provided by sections 333.700 to 333.900 and may be brought concurrently with other actions to enforce sections 333.700 to 333.900.

**TERMINATION OF BUSINESS - PROVIDER**

333.800.1 A preneed provider that intends to sell or otherwise dispose of all or a majority of its business assets, or its stock if a corporation, shall notify the Board at least sixty days prior to selling or otherwise disposing of its business assets or stock, or ceasing to do business as a preneed provider, and shall file a notification report on a form established by the board.

2. The report required by this section shall include:

(a) The name, phone number and address of the purchasers of any outstanding preneed contract for which the licensee is the designated provider;

(b) The name and license numbers of all sellers authorized to designate the licensee as a provider in a preneed contract;

(c) The name, address and license number of the provider assuming or agreeing to assume the licensee’s obligations as a provider under a preneed contract, if any;
(d) The name, address and phone number of a custodian who will maintain the books and records of the provider containing information about preneed contracts in which the licensee is or was formerly designated as provider;

(e) A most annual report containing the information required by section 333.000;

(f) Any other information required by the Board by rule.

3. Within three days after the provider sells or transfers its assets or stock or ceases doing business, the former provider shall notify each seller in writing that the former provider has sold or transferred its assets or stock or has ceased doing business.

(a) Within thirty days after the seller receives notification from the provider under this subsection, the seller shall provide written notification to all purchasers with outstanding preneed contracts in which the former provider was designated as provider indicating that the provider has transferred ownership or has ceased doing business. Such notice shall give the purchaser the option to select another provider that has a written agreement with the seller pursuant to the provisions of section 333.060 or to cancel the contract if an alternate provider is not accepted by the purchaser.

(b) If an alternate provider is selected by the purchaser, the seller shall amend the preneed contract to reflect the change in provider and shall notify the new provider of the designation;

(c) If the purchaser elects to cancel the contract, the seller shall refund all amounts paid by or on behalf of the purchaser and any related interest. Nothing in this section shall be
constrained to prohibit a seller from seeking reimbursement from the former provider of any funds
paid to the purchaser after a cancellation authorized by this subsection.

4. A preneed provider not subject to subdivision 1 of this section may only transfer its
obligations as a provider to an alternate provider upon the consent of the seller, purchaser and the
provider assuming the provider obligations under the contract. If an alternate provider is
selected by the purchaser, the seller shall amend the preneed contract to reflect the change in
provider and shall provide the purchaser with a copy of the amended contract.

5. The office of the attorney general shall have authority to initiate legal action to
compel or otherwise ensure compliance with this section by a former preneed provider licensee.

TERMINATION OF BUSINESS; SELLER

333.895.1 A preneed seller that intends to sell or otherwise dispose of all or a majority of
its business assets, or its stock if a corporation, shall notify the Board at least sixty days prior to
selling or otherwise disposing of its assets or stock, or ceasing to do business as a preneed seller,
and shall file a notification report on a form established by the board.

2. The report required by this section shall include:

(a) A final annual report containing the information required by section 333.800;
(b) The name, address and phone number of a custodian for the books and records of the
seller that contains information about preneed contracts in which the licensee is or was formerly
designated as seller;
(c) The date the seller intends to sell or otherwise dispose of its business assets, or its
stock if a corporation, or to cease doing business;
(d) A notarized and signed statement from the person assuming or agreeing to assume
the obligations of the seller indicating that the assuming seller has been provided with a copy of
the seller’s final annual report and has consented to assuming the outstanding obligations of the
seller;

e) In lieu of the notarized statement required by subdivision (f), the seller may file a
plan detailing how the assets of the seller will be set aside and used to service all outstanding
preneed contracts sold by the seller, and;

f) Any other information required by the Board by rule.

3. Within thirty days after assuming the obligations of a seller pursuant to this section,
the assuming preneed seller shall:

1. Notify each provider in writing that the former seller has sold or transferred its assets
or stock or has ceased doing business, and;

2. Provide written notification to the purchasers of each preneed contract assumed by
the seller indicating that the former seller has transferred ownership or has ceased doing
business. Such notice shall give the purchaser the option to maintain or to cancel the contract. If
the purchaser elects to cancel the contract, the seller shall refund all amounts paid by or on behalf
of the purchaser and any related interest. This section shall not be construed to limit or
otherwise restrict any civil or other legal right a purchaser or provider may have against the seller
for damages, breach of a contractual relationship or for unpaid fees.

4. Upon receipt of the written notification, the state board or the office of the
attorney general may take reasonable and necessary action to determine that the seller has made
proper plans to assure that the trust assets of the seller will be set aside and used to service
outstanding preneed contracts sold by the seller. Such action may include, but is not limited to,
an examination of books and records or audit of the trust account. The attorney general shall be
authorized to bring legal action to ensure compliance with this section including an action for
injunctive or declaratory relief.

5. A preneed seller not subject to subdivision 1 of this section may only transfer its
obligations as a seller under a preneed contract to an alternate seller upon consent of the
purchaser and the person assuming the obligations of the seller under the contract. If the
purchaser fails to consent, the seller shall refund all amounts paid by or on behalf of the
purchaser with any related interest or earnings. If the purchaser and seller consent to the transfer,
the seller shall amend the preneed contract to reflect the change and shall provide the purchaser
with a copy of the amended contract.

6. Nothing in this section shall be construed to require the state board to audit,
investigate or examine the books and records of a seller subject to the provisions of this section
nor shall this section be construed to amend, rescind or supersede any duty imposed on, or due
diligence required of, an entity assuming the obligations of the seller.

7. The office of the attorney general shall have authority to initiate legal action to
compel or otherwise ensure compliance with this section by a former preneed provider licensee.

333.810. A preneed contract may offer the purchaser the option to acquire and maintain
credit life insurance on the life of the purchaser. Such insurance shall provide for the payment of
death benefits to the seller in an amount equal to the total of all contract payments unpaid as of
the date of such purchaser’s death, and shall be used solely to make those unpaid payments.

333.820. If a seller shall fail to make timely payment of an amount due a purchaser or a
provider pursuant to the provisions of sections 333.700 to 333.900, the purchaser or provider, as
appropriate, shall have the right, in addition to other rights and remedies against such seller, to
make demand upon the trustee of the preneed trust for the contract to distribute to the purchaser
or provider from the trust, as damages for its breach, an amount equal to all deposits made into
the trust for the contract.

333.830. Upon the death or legal incapacity of a purchaser, all rights and remedies
granted to the purchaser pursuant to the provisions of sections 333.700 to 333.900 shall be
enforceable by and accrue to the benefit of the purchaser's legal representative or the purchaser's
successor designated in such contract, and all payments otherwise payable to the purchaser shall
be paid to that person.

333.840. Each seller shall remit an annual reporting fee in an amount of ____ dollars for
each promissory contract sold in the year since the date the seller filed its last annual report with the
state board. This reporting fee shall be paid annually and may be collected from the purchaser of
the promissory contract as an additional charge or remitted to the state board from the funds of the
seller. The reporting fee shall be in addition to the fees authorized by section 333.000.

RULEMAKING

333.850. 1. The board shall establish the amount of the fees authorized in this chapter and
required by rules promulgated thereunder. Such fees shall be set at a level to produce revenue
which does not substantially exceed the cost and expense of administering this chapter.

3. The board shall promulgate and enforce rules for the transaction of its business and for
standards of service and practice to be followed for the licensing and registration of providers,
sellers and counselors deemed necessary for the public good and consistent with the laws of this
state.

4. Any rule or portion of a rule, as that term is defined in section 536.010, RSMo, that is
created under the authority delegated in this section shall become effective only if it complies
with and is subject to all of the provisions of chapter 536, RSMo, and, if applicable, section
536.028. RSMo. This section and chapter 536, RSMo, are nonseverable and if any of the powers vested with the general assembly pursuant to chapter 536, RSMo, to review, to delay the effective date, or to disapprove and annul a rule are subsequently held unconstitutional, then the grant of rule-making authority and any rule proposed or adopted after August 28, 2008, shall be invalid and void.

This draft doesn’t appear to include the language in 436.067. Confidentiality of Information. Given to Board, Division, or AG. . . .

That’s good, if the drafters intend to leave that out. The current provisions lock down any and all data on complaints and investigations, even after they’re adjudicated, and shield that information from public and consumer view. That is unacceptable, and it appears to directly contradict current Open Government laws in the state of Missouri. The public, consumers, and the press have a right to know what actions their government offices have taken to regulate funeral service and to adjudicate consumer complaints.
From: Dunn, Becky
Sent: Monday, July 28, 2008 10:21 PM
To: Schnieders, Pam; Hayes, Lori
Subject: FW: revised list
Attachments: Chapter 436 Revisions.xls

for the minutes July 29, 2008

From: Michael Meierhoffer [mailto:michael.meierhoffer@meierhoffer.com]
Sent: Monday, July 28, 2008 11:40 AM
To: Clarkston, Connie; Dunn, Becky
Cc: ‘david power’, Dennis Rosonke; ‘Eric Montega’; ‘Scott Meierhoffer’; ‘Todd Meierhoffer’
Subject: FW: revised list

Connie:

Please find attached the suggested changes to Chapter 436. Most importantly the highlighted items should be removed. These items are so restrictive as to make normal contract (Tort Law) unenforceable or the burden of reporting extremely burdensome and costly.

Please call if I can further explain.

Thank you,

Michael Meierhoffer
President/CEO
Meierhoffer Funeral Home & Crematory
St. Joseph Memorial Park
5005 Frederick Blvd.
St. Joseph, MO 64506
816.271.0383

From: Eric Montega [mailto:Eric.Montega@meierhoffer.com]
Sent: Monday, July 28, 2008 11:07 AM
To: michael.meierhoffer@meierhoffer.com
Subject: revised list

Eric W. Montega
General Manager
Meierhoffer Family Funeral Service & St. Joseph Memorial Park Cemetery
eric.montega@meierhoffer.com
816-232-3386

10/1/2008
<table>
<thead>
<tr>
<th>Page</th>
<th>Suggested Changes</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Insert Definition of Funeral Service. This term is used throughout the text, but it is not defined.</td>
</tr>
<tr>
<td>2</td>
<td>Replace the word “loud” with “loud”</td>
</tr>
<tr>
<td>3</td>
<td>Change word “has” to “have”</td>
</tr>
<tr>
<td>4</td>
<td>Insert the word “loud” with “loud”</td>
</tr>
<tr>
<td>5</td>
<td>Replace the word “loud” with “loud”</td>
</tr>
<tr>
<td>6</td>
<td>Change word “has” to “have”</td>
</tr>
<tr>
<td>7</td>
<td>Insert the word “loud” with “loud”</td>
</tr>
<tr>
<td>8</td>
<td>Change word “has” to “have”</td>
</tr>
<tr>
<td>9</td>
<td>Insert the word “loud” with “loud”</td>
</tr>
<tr>
<td>10</td>
<td>Change word “has” to “have”</td>
</tr>
<tr>
<td>11</td>
<td>Insert the word “loud” with “loud”</td>
</tr>
</tbody>
</table>

*Note: The text is partially visible and may require further clarification or context to interpret accurately.*
<table>
<thead>
<tr>
<th>Line</th>
<th>Detail</th>
</tr>
</thead>
<tbody>
<tr>
<td>11</td>
<td>Add the phrase &quot;or their designee&quot; after &quot;the signature of the prevalent provider.&quot;</td>
</tr>
<tr>
<td>11</td>
<td>Strike section (16) entirely.</td>
</tr>
<tr>
<td>12</td>
<td>Add the phrase &quot;or their designee&quot; after &quot;signed by the seller.&quot;</td>
</tr>
<tr>
<td>12</td>
<td>Strike the phrase beginning with &quot;together with interest.&quot;</td>
</tr>
<tr>
<td>15</td>
<td>Replace the word &quot;sale&quot; with &quot;sell.&quot;</td>
</tr>
<tr>
<td>17</td>
<td>Strike #4 entirely.</td>
</tr>
<tr>
<td>18</td>
<td>Strike items (4) and (5) entirely.</td>
</tr>
<tr>
<td>20</td>
<td>Strike &quot;October thirty-first of each year&quot; (leave it to the Board to establish date.)</td>
</tr>
<tr>
<td>23</td>
<td>Remove phrase of dollars for every month past the renewal deadline of.</td>
</tr>
<tr>
<td>23</td>
<td>Strike &quot;October thirty-first of each year&quot; (leave it to the Board to establish date.)</td>
</tr>
<tr>
<td>25</td>
<td>Use five years for audit period.</td>
</tr>
<tr>
<td>30</td>
<td>Remove the phrase &quot;or.&quot;</td>
</tr>
<tr>
<td>30</td>
<td>Replace &quot;was&quot; with &quot;has been.&quot;</td>
</tr>
<tr>
<td>32</td>
<td>Remove the word &quot;registration.&quot;</td>
</tr>
<tr>
<td>34</td>
<td>Remove items (b), (c), (d) and (4).</td>
</tr>
<tr>
<td>36</td>
<td>Remove text beginning with &quot;such notice shall give the purchaser...&quot; To end of section 2.</td>
</tr>
<tr>
<td>38</td>
<td>Replace the phrase &quot;in the amount...&quot; with &quot;as determined by the Board.&quot;</td>
</tr>
</tbody>
</table>
To remedy the portability issue, here is a draft proposed solution:

My pre-need purchaser or beneficiary of a pre-need contract may, at any time, amend his or her pre-need contract to designate a provider or providers. Such amendment must be done by providing written notice, signed and dated by either the purchaser or the beneficiary, and must indicate the name and address and telephone number of the new provider. Upon such amendment, the pre-need seller and the new provider shall enter into a written agreement as to the amount to be paid to the provider at time of need. If the provider and seller cannot come to agreement as to the amount to be paid to the provider at the time of death of the beneficiary, the seller, or the trustee of the seller’s pre-need trust, shall pay to the provider the face value of the contract plus interest accruing at the rate of ten percent per annum, compounded.

A pre-need contract may be amended at any time to designate a new pre-need seller, but only with the written consent of both the pre-need seller and either the purchaser or beneficiary. The sellers may, by written agreement, agree upon the amount to be transferred from the seller’s trust to another trust, with the consent of the pre-need purchaser or beneficiary. If the purchaser or beneficiary desires the funds to be transferred to another pre-need trust, the seller whose trust holds the pre-need funds shall transfer to the new trust by agreement with the new seller’s trust. If no agreement can be reached between the old seller and the new seller as to the amount of funds to be transferred, than the old seller shall transfer to the new seller, the total amount of funds the purchaser has paid on the pre-need contract together with interest at the rate of ten percent per annum, compounded. In all events, both the seller and either the purchaser or beneficiary shall provide written consent for funds to be transferred between pre-need sellers or pre-need trusts.
FROM: Kutis Funeral Home, Inc.

2906 Gracie Avenue
St. Louis, Mo. 63118
(314) 772-3000

1051 Gracie Avenue
St. Louis, Mo. 63123
(314) 842-4458

5255 Lemay Ferry Road
St. Louis, Mo. 63129
(314) 844-4500

TO: Connie Clarkston

FROM: George Clark

SEC 333.730.1

Licensed funeral directors need not be designated as pre-need counselors. They should not have to pay extra fees, nor need to file extra paperwork. They are already qualified.

333.740
(1) Contracts shall be numbered, but only after all conditions met and contract completed.

333.765.1 Five years

We will have another chance to review the final draft. Please advise committee when that agenda will be.

Thank you.

George Clark
Schnieders, Pam

From: Dunn, Becky
Sent: Tuesday, July 29, 2008 7:20 AM
To: Hayes, Lori; Schnieders, Pam
Subject: 7/29/08
Attachments: 7-28 436 Draft.doc

for the agenda minutes today
333.700. The provisions of sections 333.700 to 333.900 shall be referenced as the "Missouri Preneed Funeral Contract Act."

333.705. As used in sections 333.700 to 333.900, unless the context otherwise requires, the following terms shall mean:

(1) "Audit"

(2) "Beneficiary", the individual who is to be the subject of the disposition, or who will receive funeral services, facilities or merchandise described in a preneed contract;

(2) "Board," the Missouri State Board of Embalmers and Funeral Directors;

(4) "Division", the division of professional registration of the department of insurance, financial institutions and professional registration;

(5) "Examination of books and records."

(6) "Guaranteed contract."

(7) "(Meierhoffer)"

"Funeral merchandise" caskets, grave vaults, grave lots, grave space, grave markers, monuments, tombstones, crypts, niches, mausoleums, or receptacles and other personal property incidental to the final disposition of human remains. (Exler)

(B) "Funeral service" (Meierhoffer)

(9) "Insurance-Funded" Preneed Contract- A preneed contract which is designated to be funded by payments or proceeds from an insurance policy;

(10) "Investigation"
(1) "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.

(2) "Market value": See DIF Comment

(3) "Non-guaranteed contract"

(4) "Person", any individual, partnership, corporation, cooperative, association, or other entity;

(5) "Preneed contract": any contract that 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; (Meierhoff)
(22) "Trust-Funded" Preneed Contract: A preneed contract which provides that payments for the preneed contract shall be deposited and maintained in trust.

APPLICABILITY

333.710.1 The provisions of sections 333.700 to 333.900 shall not apply to:

(1) Any contract or other arrangement sold by a cemetery operator for which payments received by or on behalf of the purchaser are required to be placed in an endowed care fund or for which a deposit is made into a segregated account is required under Chapter 214, RSMo, provided that a cemetery operator shall comply with sections 333.700 to 333.900 if the contract or arrangement sold by the operator includes services that may only be provided by a licensed funeral director or embalmer;

(2) A contract of insurance, provided that sections 333.700 to 333.900 shall apply to any preneed contract sold with a contract of insurance. (Meierhoffer)

PRENEED PROVIDER LICENSING

333.720.1 Except as provided herein, the provider designated in a preneed contract shall be obligated to provide the funeral or burial services, facilities, or merchandise as described in the preneed contract.

2. No person shall be designated as a provider, or agree to perform the obligations of a provider under a preneed contract unless, at the time of such agreement or designation, such person is licensed as a preneed provider by the Board. Nothing in this section shall exempt any person from meeting the licensing requirements for a funeral establishment as provided in this chapter. (Grimmert, Odell)

3. An applicant for a preneed provider license shall:

[Deleted: A preneed provider shall be authorized and registered with the Missouri Cemetery Board to conduct business in Missouri.]

[Deleted: and shall be licensed as a funeral establishment by the Board. A funeral establishment license shall not be required if the entity is the owner of real estate shown in Missouri which has been formally dedicated for the burial of dead human bodies and the contract only provides for the delivery of one or more graves ready and in compliance with the provisions of chapter 214, RSMo.]

[Deleted: preneed]
(1) File an application on a form promulgated by the Board and pay a licensing fee of
_______ dollars or in an amount promulgated by the Board by rule;

(2) Be authorized and registered with the Missouri Secretary of State to conduct business
in Missouri (Euler)

(3) Identify the name and address of a custodian of records responsible for maintaining
the books and records of the provider relating to preneed contracts;

(4) Identify the name and address of each seller authorized by the provider to sell
preneed contracts in which the provider is designated or obligated as the provider;

(5) File with the state board a written consent authorizing the state board to inspect or
order an investigation, examination or audit of the provider's books and records which contain
information concerning preneed contracts sold for or on behalf of a preneed seller or in which the
applicant is named as a preneed provider;

(6) Each applicant, or if a corporation, each officer, director, manager, or controlling
shareholder, shall be of good moral character (Euler)

(7) Have obtained a high school diploma or equivalent thereof; and (Euler)

(8) Meet all requirement for licensure (Euler)

4. Each preneed provider shall apply to renew his or her license on or before October
thirty-first of each year or a date established by the Board by rule. A license which has not been
renewed prior to the renewal date shall expire. Applicants for renewal shall:

(1) File an application for renewal on a form promulgated by the Board by rule:

(2) Pay a renewal fee of _______ dollars or in an amount established by the Board by
rule;
1. (3) Be authorized and registered with the Missouri Secretary of State to conduct business

2. in Missouri. (Delete)

3. (4) File an annual report with the state board which shall contain:

4. (a) The name and address of a custodian of records responsible for maintaining

5. the books and records of the provider relating to preneed contracts;

6. (b) The business name or names of the provider and all addresses from which it

7. engages in the practice of its business;

8. (c) The name and address of each seller with whom it has entered into a written

9. agreement since last filing an annual report with the Board authorizing the seller to designate or

10. obligate the licensee as the provider in a preneed contract; and

11. (d) Any information required by the Board by rule.

12. 5. Any license not renewed as provided by this section shall become void. A

13. licensee who fails to apply for renewal may apply for reinstatement by satisfying the

14. requirements of section 4 of this section and paying a delinquent fee as promulgated by the

15. Board by rule.

PRENEED SELLER LICENSING

333.725. 1. The preneed seller designated in a preneed contract shall be obligated to

administer all payments made by or on behalf of a purchaser of a preneed contract and ensure the

preneed contract is managed and fulfilled, and payments remitted, in compliance with sections

333.700 to sections 333.900 and as provided by the contract. (Delete)

2. No person shall sell, perform or agree to perform the seller's obligations under, or

be designated as the seller of, any preneed contract unless, at the time of the sale, performance,

agreements, or designation, such person is licensed by the Board as a preneed seller and

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authorized and registered with the Missouri Secretary of State to conduct business in Missouri.

3. An applicant for a preneed seller license shall:
   (1) File an application on a form promulgated by the Board and pay a licensing fee of
       dollars or in an amount promulgated by the Board by rule;
   (2) Be an individual resident of Missouri of eighteen years of age or a business entity
       duly registered with the Missouri Secretary of State to transact business in Missouri;
   (3) Each applicant, or if a corporation, each officer, director, manager, or controlling
       shareholder, shall be of good moral character; (Tester)
   (4) Have obtained a high school diploma or equivalent thereof; and (Tester)
   (5) Meet all requirements for licensure. (Tester)
   (6) Identify the name and address of a custodian of records responsible for maintaining
       the books and records of the seller relating to preneed contracts;
   (7) Identify the name and address of each licensed provider that has authorized the seller
       to designate the licensee as a provider under a preneed contract;
   (8) Have established, as grantor, a preneed trust or an agreement to utilize a preneed trust
       with forms consistent with sections 333.000 to 333.071. A trust shall not be required if the
       applicant certifies to the Board that the preneed seller will only sell insurance-funded or joint-
       accounts funded preneed contracts, and, (Meierhofer)
       (9) Identify the name and address of a trustee or, or if applicable, the financial institution
           where any preneed trust or joint accounts will be maintained, and;
   (10) File with the state board a written consent authorizing the state board to inspect or
        order an investigation, examination or audit of the seller’s books and records which contain
        information concerning preneed contracts sold by or on behalf of the seller.
4. Each preneed seller shall apply to renew his or her license on or before October thirty-first of each year or a date established by the Board by rule. A license which has not been renewed prior to the renewal date shall expire. Applicants for renewal shall:

(1) File an application for renewal on a form promulgated by the Board by rule;

(2) Pay a renewal fee of _______ dollars or in an amount established by the Board by rule, and;

(3) File annually with the state board a signed and notarized annual report as provided by sections 333.700 to 333.900 on forms provided by the state board.

5. Any license not renewed as provided by this section shall become void. A licensee who fails to apply for renewal may apply for reinstatement by satisfying the requirements of section 4 of this section and paying a delinquent fee as promulgated by the Board by rule.

PRENEED SALES AGENTS

COMMENT: Licensed funeral directors or apprentices need not be designated as preneed sales agents. They should not have to pay extra fees nor need to file extra paperwork. They are already qualified. (Katzir)

333.730.1 Any person employed or otherwise authorized to sell, negotiate or solicit the sale of preneed contracts for or on behalf of a preneed seller shall be registered with the Board as a preneed sales agent. The Board shall maintain a registry of all preneed sales agents registered with the Board. The registry shall be deemed an open record and made available on the Board website.

2. An applicant for a preneed sales agent registration shall:
(1) File an application on a form promulgated by the Board and pay a registration fee of
____ dollars or in an amount promulgated by the Board by rule which shall not exceed
____ percent of the application fee established by the Board pursuant to Chapter 333 for a
funeral director license;

(2) Be eighteen years of age;

(3) Each applicant, or if a corporation, each officer, director, manager, or controlling
shareholder, shall be of good moral character; (Federal)

(4) Have obtained a high school diploma or equivalent thereof; and (Federal)

(5) Meet all requirement for licensure; and (Federal)

(6) Provide the name and address of each seller for whom the applicant is authorized to
sell, negotiate or solicit the sale of preneed contracts for or on behalf of the seller.

4. Each preneed sales agent shall apply to renew his or her registration or on or before
October thirty-first of each year or a date established by rule of the Board. A registration which
has not been renewed prior to the renewal date shall expire. Applicants for renewal shall:

(1) File an application for renewal on a form promulgated by the Board by rule;

(2) Pay a renewal fee of _________ dollars or in an amount promulgated by the Board by
rule which shall not exceed _________ percent of the application fee established by the Board
pursuant to Chapter 333 for a funeral director license, and;

(3) Provide the name and address of each seller for whom the preneed sales agent is
authorized to sell, negotiate or solicit the sale of preneed contracts for or on behalf of the seller;

(4) Meet all requirements for licensure.
5. Any registration not renewed as provided by this section shall become void and
the registrant shall be immediately removed from the preneed sales agent registry by the Board.
A registrant who fails to apply for renewal may apply for reinstatement by satisfying the
requirements of section 4 of this section and paying a defunct fee as promulgated by the
Board.

6. Notwithstanding any other provision of law, the Board may remove a preneed
sales agent from the registry if the agent has been 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 sections 333.700 to 333.900, for any offense involving the
misappropriation or theft of, 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.

7. A preneed sales agent who has been removed from the registry by the Board may
appeal the removal to the administrative hearing commission. Notice of such appeal must be
received by the administrative hearing commission within thirty days of mailing, by certified
mail; the notice of removal. Failure of a preneed sales agent registrant to notify the
administrative hearing commission of his or her intent to appeal waives all rights to appeal the
removal. Upon notice of such person's intent to appeal, a hearing shall be held before the
administrative hearing commission in accordance with Chapter 621, RSMo.

8. No person shall sell, negotiate or solicit the sale of any preneed on behalf of a
preneed seller unless registered as a preneed sales agent as required by this section.

SELLERS & PROVIDERS
333.738. 1. No person shall be designated as a provider in a preneed contract unless the provider has a written contractual agreement with the preneed seller. Any seller who designates a person as a provider in a preneed contract without a contractual relationship with such person is in violation of the provisions of sections 333.700 to 333.900. (Fischer)

2. The written agreement required by this section shall include:

   (1) Written consent from the provider authorizing the seller to designate or obligate the provider under a preneed contract. (Meinshofer)

   (2) Procedures for tracking preneed contract funds or payments received by the provider and for remitting such funds or payments to the seller, including, the time period authorized by the seller for the remittance of funds and payments, and;

   (3) The signatures of the seller and the provider or their authorized representatives and the date such signature was obtained.

3. A provider shall notify the Board within fifteen days of authorizing or otherwise agreeing to allow a seller to designate him or her as the provider under any preneed contract. Any person who knowingly permits a seller to sell a preneed contract designating him or her as the provider shall be obligated to provide the disposition or facilities, merchandise and services described in the preneed contract for the beneficiary. Notice to the Board as required by this subsection shall be provided in writing, within thirty days of the provider having knowledge that a seller is designating him or her as the provider under a preneed contract without authorization. (Meinshofer)

4. The provisions of subsection 4 and 5 of this section shall not be construed to exempt any seller or provider from having a written agreement as required by this section.
Failure to comply with the provisions of this section shall be cause for discipline of a preneed license or of any license issued by the Board under sections 333.000 to 333.700, RSMo.

Upon request of the Board, a licensed seller or provider shall provide a copy of any preneed contract or any contract or agreement with a seller or provider to the Board.

PRENEED CONTRACT REQUIREMENTS

333.740. 1. A preneed contract made after August 28, 2009, shall be in writing and shall clearly and conspicuously:

(1) Include the contract number on the face of the contract and the name, address and phone number of the purchaser and beneficiary. Shall be numbered, but only after all conditions are met and the contract completed. (Kotis)

(2) Identify the name, address, phone and license number of the preneed provider and the preneed seller;

(3) Set out in detail the final disposition arrangements for the beneficiary or the funeral or burial services, facilities and merchandise to be provided;

(4) Identify on its face whether the contract is trust-funded, insurance-funded or joint-account funded;

(5) Designate whether the costs for the final disposition or the funeral or burial services, facilities or merchandise are guaranteed or nonguaranteed. If only a portion of the costs are guaranteed, the contract shall clearly and separately identify the costs that are guaranteed and the costs that are nonguaranteed;

(6) Prominently identify if the contract is revocable or irrevocable;

(7) Set forth the terms for cancellation by the purchaser or by the seller on default of payment and transfer of the contract; (Meutenhoff)

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(8) Identify the preneed trust or joint account into which contract payments shall be deposited, including the name and address of the trustee or the financial institution thereof;

(10) Include the name, address and phone number of any insurance company issuing an insurance policy used to fund the preneed contract;

(11) Identify the type of insurance that will be used to fund the insurance policy, including the number of such policy, if available;

(Meierhoffer)

(12) Identify any other type of expenses or taxes that may be deducted from preneed funds, and the amount of any such expense if known by the seller at the time of the sale;

(13) Include the name and signature of the purchaser, the preneed sales agent responsible for the sale of, if any, and of the seller, or its duly authorized representative;

(14) Include the signature of the preneed provider, or their designee, if the preneed contract is sold to the purchaser by the provider, and (Meierhoffer)

(Meierhoffer)

(15) Comply with the provisions of section 333.700 to 333.900 or any rule promulgated pursuant thereto.

2. A preneed contract shall be voidable and unenforceable at the option of the purchaser, or the purchaser's legal representative, if the contract is not in compliance with this section, not issued by a preneed seller duly licensed by the Board or if the purchaser has not received a copy of the preneed contract signed by the seller or their designee (Meierhoffer).

3. If a preneed contract does not comply with the provisions of sections 333.700 to 333.900, all payments made under such contract shall be recoverable by the purchaser, or the purchaser's legal representative, from the contract seller or other payee thereof (Meierhoffer).
3. After the seller retains any amount authorized by sections 333.700 to 333.900, all funds paid by or on behalf of the purchaser as payment for a preneed contract shall be placed in trust, in a joint account or shall be used to purchase insurance, as authorized by sections 333.700 to 333.900.

5. A preneed contract may not be redesignated as a trust-funded, insurance-funded or joint-account funded preneed contract without the consent of the purchaser. A seller, provider, or sales agent may not secure the purchaser's consent without providing the purchaser a written statement explaining in plain language any financial consequences the redesignation may have. These shall include, at a minimum, any reduction in cash surrender value, interest accrual and fees as provided in this section. The seller, provider, or sales agent must secure the purchaser's signature on such a disclosure statement or purchaser will not be deemed to have consented to the redesignation. (Solicits)

TRUST FUNDED PRENEED CONTRACTS

333.745. A trust-funded preneed contract shall comply with sections 333.700 to 333.900 and the specific requirements of sections 333.745 to 333.750. A seller shall deposit payments received on a trust funded preneed contract into a trust designated by this section within forty-five days of receipt of such funds by the seller or its designee. (Grants)

2. The trustee of a preneed trust shall be a state or federally chartered financial institution authorized to exercise trust powers in Missouri. The trustee shall accept all deposits made to it for a preneed contract and shall hold, administer, and distribute such deposits, in trust, as trust principal, pursuant to sections 333.700 to 333.900.
3. The financial institution referenced herein may neither control nor be controlled by or under common control with the seller. The term "control" including terms, "controlled by" and "under common control" with, means 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 shall 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 and within its sole discretion that control does not in fact exist.

4. Payments regarding two or more preneed contracts may be deposited into and commingled in the same preneed trust, so long as the trust's grantor is the seller of all such preneed contracts and the trustee maintains adequate records that individually and separately identify the payments, earnings and distributions for each preneed contract.

5. Within a reasonable time after accepting a trusteedship or receiving trust assets, a trustee shall 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 sections 333.700 to 333.900.

6. All expenses of establishing and administering a preneed trust, including, without limitation, trustee's fees, legal and accounting fees, investment expenses, and taxes, shall be paid or reimbursed directly by the seller of the preneed contracts administered through such trust and shall not be paid from the principal of a preneed trust. In investing and managing trust assets, a
trustee may only incur costs that are appropriate and reasonable in relation to the assets, the
purposes of the trust, and the skills of the trustee. COMMENT: Other states allow the trustee to
deduct a small, reasonable fee directly from the trust. Missouri may want to consider allowing
this, perhaps ½ of 1%. (Solocum)

8. The seller of a preneed contract shall be entitled to all income, including, without
limitation, interest, dividends, and capital gains, and losses generated by the investment of
preneed trust property regarding such contracts, and the trustee of the trust may distribute all
income, net of losses, to the seller under the final disposition of the beneficiary or provision of the
funeral or burial services, or facilities, or funeral merchandise to, or for the benefit of the
beneficiary.

8. The trustee of a preneed trust shall maintain adequate books and records of all
transactions administered through the trust and pertaining to the trust generally. The trustee shall
assist the seller who established the trust or its successor in interest in the preparation of the
annual report described in section 333.000. The seller shall furnish to each contract purchaser,
within fifteen days after receipt of the purchaser's written request, a written statement of all
deposits made to such trust regarding such purchaser's contract (plus principal, plus interest from
the year and principal plus interest over the life of the trust). (Solocum) 9. A preneed
trust shall terminate when trust principal no longer includes any payments made under any
preneed contract, and upon such termination the trustee shall distribute all trust property,
including principal and undistributed income, to the seller which established the trust.

333.747.1 All property held in a preneed trust, including principal and undistributed
income, shall be invested and reinvested by the trustee thereof and shall only be invested and
reinvested in investments which have reasonable potential for growth or producing income.
2. A trustee shall 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 shall exercise reasonable care, skill, and caution. In no instance shall funds in or belonging to a prepaid trust be invested in any term life insurance product. A trustee who has special skills or expertise, or is named trustee in reliance upon the trustee's representation that the trustee has special skills or expertise, has a duty to use those special skills or expertise when investing and managing trust assets, and;

3. A trustee shall diversify the investments of the trust unless the trustee reasonably determines that, because of special circumstances, the purposes of the trust are better served without diversifying.

4. In investing and managing trust assets, a trustee shall consider the following as are relevant to the trust:
   (1) General economic conditions;
   (2) The possible effect of inflation or deflation;
   (3) The expected tax consequences of investment decisions or strategies;
   (4) The role that each investment or course of action plays within the overall trust portfolio;
   (5) The expected total return from income and the appreciation of capital;
   (6) Other resources of the beneficiaries known to the trustee;
   (7) Needs for liquidity, regularity of income, and preservation or appreciation of capital;
   (8) 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
(9) The size of the portfolio, nature and estimated duration of the fiduciary relationship and distribution requirements under the governing instrument.

9. It is unlawful for any trustee, preneed seller, preneed provider or preneed sales agent to procure or accept a loan against any investment or asset of or belonging to a preneed trust.

333.749.1. A preneed trustee may delegate to an agent duties and powers that a prudent trustee of comparable skills could properly delegate under the circumstances. The trustee shall exercise reasonable care, skill, and caution in:

(1) Selecting an agent;

(2) Establishing the scope and terms of the delegation, consistent with the purposes and terms of the trust; and

(3) Periodically reviewing the agent's actions in order to monitor the agent's performance and compliance with the terms of the delegation.

2. In performing a delegated function, an agent owes a duty to the trust to exercise reasonable care to comply with the terms of the delegation.

3. By accepting a delegation of powers or duties from the trustee of a preneed trust, an agent submits to the jurisdiction of the courts of this state.

4. Delegation of an agent as provided herein shall not relieve the trustee of any duty or responsibility imposed on the trustee by sections 333.700 to 333.900 or the trust agreement.

333.750.1 A trustee shall not sell, invest or authorize any transaction involving the investment or management of trust property with:

(1) The spouse of the trustee;

(2) The descendents, siblings, parents, or spouses of a preneed seller or an officer, manager, director or employee of a preneed seller, provider or preneed sales agent;
1. An agent, preneed sales agent, or attorney 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.

INSURANCE-FUNDED PRENEED CONTRACTS

SEE DIPP document.

333.251: An insurance-funded preneed contract shall comply with sections 333.700 to 333.900 and the specific requirements of this section.

2. In no event shall the seller or provider, or any agent, receive or collect from the purchaser of an insurance-funded preneed contract any amount in excess of what is required to pay the premiums on the insurance policy as assessed or required by the insurer as premium payments for the insurance policy. In no instance shall a preneed seller receive or collect any administrative or other fee to the purchaser for or in connection with an insurance-funded preneed contract other than those fees or amounts assessed by the insurer.

3. Payments collected by or on behalf of a preneed seller for an insurance-funded preneed contract shall be promptly remitted to the insurer or the insurer's designee as required by the insurer, provided that in no event shall payments be retained or held by the preneed seller or preneed sales agent for more than thirty days from the date of receipt.

4. A preneed seller or any preneed sales agent authorized to sell an insurance-funded preneed contract on behalf of a seller shall disclose to the purchaser at the time of sale if the seller or preneed sales agent is a licensed insurance agent and if the seller or preneed sales agent
will receive any commission, payment or other valuable consideration, for the sale of the
insurance product used to fund the contract. Nor the amount or percentage of any such providers
or commission. (Deleted)

5. In no instance shall any term life insurance policy be used to fund a preneed
contract nor shall a preneed seller or provider be listed or otherwise designated as the owner of
an insurance policy used to fund a preneed contract.

6. It is unlawful for a preneed seller, provider or preneed sales agent to procure or
accept a loan against any insurance contract used to fund a preneed contract.

7. No preneed seller or provider shall accept an assignment of insurance proceeds or
knowingly allow the preneed seller or provider to be designated as the beneficiary in an
insurance policy unless a preneed contract has also been issued by a licensed seller. A preneed
contract shall only be required by this section if the insurance proceeds are to be used 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 and the price of such services, facilities or merchandise are guaranteed by
the provider or seller. A preneed contract written pursuant to this subsection shall be deemed an
insurance-funded preneed contract and shall comply with this section and all applicable
provisions of sections 333.700 to 333.900.

9. Laws regulating insurance shall not apply to preneed contracts, but shall apply to
any insurance sold with a preneed contract.

JOINT ACCOUNT-FUNDED PRENEED CONTRACTS

***NOTE: THIS SECTION IS STILL IN THE DRAFTING PROCESS***
333.7551. A joint account funded preneed contract shall comply with sections 333.700 to 333.900 and the specific requirements of this section.

2. In lieu of a trust-funded or insurance-funded preneed contract, a preneed seller and the purchaser may agree in writing that all funds paid by the purchaser for the preneed contract shall be deposited with a financial institution chartered and regulated by the federal or state government authorized to do business in Missouri in an account in the joint names and under the joint control of the provider and purchaser. There shall be a separate joint account established for each preneed contract sold or arranged under this section.

3. All consideration paid by the purchaser under a joint-account funded contract shall be deposited into a joint account authorized as authorized by this section within five days of receipt of payment by the seller.

4. The financial institution shall hold, invest, and reinvest funds deposited pursuant to this section in savings accounts, certificates of deposit or other accounts offered to depositors by the financial institution as provided in the written agreement of the purchaser and the seller, provided the financial institution shall not invest or reinvest any funds deposited pursuant to this section in zero life insurance or any investment that does not reasonably have the potential to gain income or increase in value.

5. Income generated by preneed funds deposited pursuant to this section shall be used to pay the reasonable expenses of administering the account, and the balance of the income shall be distributed or reinvested as provided in the written agreement of the purchaser and seller.

6. A joint-funded preneed contract shall clearly designate the following:

1. The name of the financial institution in which the accounts will be held and the account number.
(2) STILL WORKING ON THIS:

7. At any time before final disposition, or before the funeral or burial services, facilities, or merchandise described in a preneed contract are furnished, the purchaser may cancel the contract without cause by delivering written notice, thereof to the seller and the financial institution. Within fifteen days of receipt of notice of cancellation, the financial institution shall distribute all deposited funds to the purchaser. Interest shall be distributed as provided in the agreement with the seller and purchaser.

8. Within fifteen days after a provider and a witness certifies to the financial institution in writing that he has furnished the final disposition, or funeral services, facilities, and merchandise described in a contract, or has provided alternative funeral benefits for the beneficiary pursuant to special arrangements made with the purchaser, the financial institution shall distribute the deposited funds, if the certification has been approved by the purchaser.

ANNUAL REPORTS

SEE DIFP document.

333.760. 1. Each preneed seller shall file an annual report with the Board which shall contain, at least the following information:

(a) The name, addresses and contract number of all purchasers as reflected in any preneed contract sold since the filing of the last report;

(b) The total number and total face value of preneed contracts sold since the filing of the last report;

(c) The contract amount of each preneed contract sold since the filing of the last report, identified by contract;

(Meierhoff)
(6) The name, address and license number of all preneed sales agents employed or authorized to sell preneed contracts on behalf of the seller;

(7) The date the report is submitted and the date of the last report;

(8) The number of all Missouri preneed contracts fulfilled by the preneed seller during the preceding calendar year;

(9) The name and address of each provider with whom it is under contract;

(10) The name and address of the person designated by the seller as custodian of the seller’s books and records relating to the sale of preneed contracts.

(11) Written consent authorizing the state board to order an examination and if necessary an audit of any joint or trust account established pursuant to sections 333.700 to 333.900, designated by depository or account number.

(12) Written consent authorizing the state board to order an investigation, examination and if necessary an audit of its books and records relating to the sale of preneed contracts;

(13) The annual status report shall be certified under oath as complete and correct by an officer of the preneed seller. The preneed seller or officer shall be subject to the penalty of making a false affidavit or declaration.

(14) A copy of each preneed contract sold, which may be provided by a scanned electronic copy and (Solovam)

(15) Any information deemed necessary by the Board to ensure compliance with sections 333.700 to 333.900.

2. A preneed seller that sells or has sold trust-funded preneed contracts shall also include in the annual report required by section 1 of this section:
(1) The name and address of the financial institution in Missouri in which it maintains a
preneed trust account and the account numbers of such trust accounts, and;
(2) The trust fund balance as reported in the previous year's report;
(3) The current trust fund balance;
(4) Principal contributions received by the trustee since the previous report;
(5) Total trust earnings and total distributions to the preneed seller since the previous
report;
(6) A statement of all assets and investments of the trust listing cash, real or personal
property, stocks, bonds, and other assets, showing cost, acquisition date and current market value
of each asset and investment, and;
(7) Total expenses, excluding distributions to the preneed seller, since the previous
report.
(8) The information required by subsections (1) to (8) of this section shall be certified to
under oath as complete and correct by a corporate officer of the trustee. The trustee shall be
subject to the penalty of making a false affidavit or declaration.
3. A preneed seller that sells or who has sold joint-account funded preneed contracts
shall also include in the annual report required by section 1 of this section:
(1) The name and address of the financial institution in Missouri in which it maintains the
joint account and the account numbers for each joint account, and;
(2) The amount on deposit in each joint account;
(3) The joint account balance as reported in the previous year's report;
(4) Principal contributions placed into each joint account since the filing of the previous
report;
(5) Total earnings since the previous report;

(6) Total distributions to the preneed seller from each joint account since the previous report;

(7) Total expenses deducted from the joint account, excluding distributions to the preneed seller, since the previous report, and;

(8) The information required by subsections (1) to (7) of this section shall be certified to under oath as complete and correct by an authorized representative of the financial institution.

The affidavit shall be subject to the penalty of making a false affidavit or declaration.

4. A preneed seller that sells or who has sold any insurance-funded preneed contracts shall also include in the annual report required by section 1 of this section:

(1) The name and address of each insurance company issuing insurance to fund a preneed contract sold by the seller during the preceding year;

(2) The type of insurance purchased to fund each preneed contract, identified by contract;

(3) The total amount of funds collected by the seller for each preneed contract, including, any funds used to pay insurance premiums and the date such funds were received;

(4) The total amount of premiums received by the insurance company for each insurance policy used to fund a preneed contract sold by the preneed seller;

(5) The status, total face value and total cash surrender value of each policy, and;

(6) The information required by subsections (1) to (5) of this section shall be certified to under oath as complete and correct by an authorized representative of the insurer. The affidavit shall be subject to the penalty of making a false affidavit or declaration.
5. All reports required by this section shall be filed by the thirty-first day of October of each year or by the date established by the Board by rule. Annual reports filed after the date provided herein shall be subject to a late fee of ________ dollars for every month past the renewal deadline or in an amount established by rule of the Board.

6. A seller who fails to file their annual report on or before the thirty-first day of October shall be prohibited from selling any preneed contracts until the annual report, and all applicable fees, have been paid to the board.

RECORD RETENTION

333.762. A preneed seller shall maintain:

(1) Adequate records of all preneed contracts and related agreements with providers, the trustee of a preneed trust, or the financial institution holding a joint account established pursuant to 333.700 to 333.900;

(2) Records of preneed contracts, including financial institution statements and death certificates, shall be maintained by the seller for the duration of the contract and for no less than (2) years after the final disposition of the beneficiary or after the funeral or burial facilities, services or merchandise designated in the contract or cancellation of the contract. (Rule)

INVESTIGATION/INSPECTIONS

333.765.1. The Board shall have authority to:

(1) Conduct investigations of preneed providers, sellers and preneed sales agents to determine compliance with sections 333.700 to 333.900, at the discretion of the Board and with or without cause;

(2) Investigate the activities of any preneed seller, provider or preneed sales agent for the purpose of determining violations of sections 333.700 to 333.900 or to determine whether
grounds exist for disciplining any person licensed or regulated under sections 333.700 to
333.900. The Board shall have authority to conduct an investigation if an inspection authorized
by this section identifies a violation of sections 333.700 to 333.900 or upon receipt of a
complaint filed with the Board or by the Board staff. (Reviser)

(3) Conduct a financial examination of the books and records of a licensee, and if
necessary an audit of a licensee or any trust or joint account, to determine if preneed funds are
being maintained or handled by the licensee as required by sections 333.700 to 333.900. The
Board shall conduct a financial examination of the books and records of each preneed seller as
authorized by this section at least once every (five) years, as financially permissible pursuant to
the funding of the board. (Kuris and Meierhoff) COMMENT: Conducting a random sampling
annually (Selescu). SEE DIPP document.

2. Upon determining that an inspection, investigation, examination or audit shall be
conducted, the board shall issue a notice authorizing an employee or other person appointed by
the board to perform such inspection, investigation, examination or audit. The notice shall
instruct the person appointed by the board as to the scope of the inspection, investigation,
examination or audit.

(a) The board shall not appoint or authorize any person to conduct an inspection,
investigation, examination or audit pursuant to this section if the individual has a conflict of
interest or is affiliated with the management of, or owns a pecuniary interest in, any person
subject to inspection, investigation, examination or audit under section 333.000 to section
333.999.

(b) The board may request that the director of the division of professional registration,
the director of the department of insurance, financial institutions and professional registration, or
the office of the attorney general designate one or more investigators or financial examiners to
assist in any investigation, examination or audit, and such assistance shall not be unreasonably
withheld. (Deleted)

3. Upon request by the board, a licensee or registrant shall make the books and
records of the licensee or registrant available to the board for inspection and copying at any
reasonable time, including, any insurance, trust, joint account or financial institution records
deemed necessary by the board to determine compliance with sections 333.700 to 333.900.

4. The board or a designated member thereof or any agent authorized by the board
may enter the office, premises, establishment, or place of business of any prepaid seller or
provider of funeral service contracts licensed in this state, or any office, premises, establishment,
or place where the practice of selling and/or providing prepaid funerals is carried on, or where
such practice is advertised as being carried on for the purpose of inspecting such office,
premises, establishment, or place to determine compliance with sections 333.700 to 333.900, or
for the purpose of inspecting, examining, investigating or auditing the licensee or the sale of
prepaid contracts.

5. The board shall have the power to issue a subpoena to compel the production of
records and papers by any licensee, trustee or registrant of the board. Subpoenas issued pursuant
to this section shall be served in the same manner as subpoenas in a criminal case.

6. All prepaid sellers, providers, sales agent, or trustee shall cooperate with the state
board or its designee, the division of finance, the department of insurance, financial institutions
and professional registration and the office of the attorney general of Missouri, in any inspection,
investigation, examination or audit brought under the provisions of sections 333.700 to 333.900.
7. This section shall not be construed to limit the board's authority to file a complaint with the administrative hearing commission charging a licensee of the board with any actionable conduct or violation, regardless of whether such complaint exceeds the scope of acts charged in a preliminary public complaint filed with the board and whether any public complaint has been filed with the board.

8. The state board, the division of finance, the department of insurance, financial institutions and professional registration and the office of the attorney general of Missouri may share information relating to any proceed investigation, examination or audit. (Express)

Q. If an investigation, audit or examination finds a violation of sections 333.700 to 333.900, the office of the attorney general may initiate a judicial proceeding to:

(1) Declare rights;

(2) Approve a nonjudicial settlement;

(3) Interpret or construe the terms of the trust;

(4) Determine the validity of a trust or of any of its terms;

(5) Compel a trustee to report or account;

(6) Enjoin a trustee from performing a particular act or grant to a trustee any necessary or desirable power;

(7) Review the actions of a trustee, including the exercise of a discretionary power;

(8) Appoint or remove a trustee;

(10) Determine the liability of a trustee for an action relating to the trust and compel redress of a breach of trust by any available remedy;

(12) Approve employment and compensation of agents;

(13) Determine the propriety of investments or of principal and income allocations, or;
(17) Determine the timing and quantity of distributions and dispositions of assets.

(18) This section does not preclude any other authority vested in the attorney general by law.

DISCIPLINARY ACTION

333.770. 1. The board may refuse to issue any registration or license required by sections 333.700 to 333.900 for one or any combination of causes stated in subsection 2 of this section.

The board shall notify the applicant in writing of the reasons for the refusal and shall advise the applicant of his right to file a complaint with the administrative hearing commission as provided by chapter 621, RSMo.

2. The board may cause a complaint to be filed with the administrative hearing commission as provided by chapter 621, RSMo, against any preneed seller or provider licensed with the board or preneed counselor registered with the board or any person who has failed to renew or has surrendered his license [or registration] for any one or any combination of the following causes:

(1) Use of any controlled substance, as defined in chapter 195, RSMo, or alcoholic beverage to an extent that such use impairs a person's ability to perform the work of any profession registered under sections 333.700 to 333.900;

(2) The person has been finally adjudicated and found guilty, or entered a plea of guilty or nolo contendere, in a criminal prosecution under the laws of any state or of the United States, for any offense involving the misappropriation or theft of funds, elder abuse, or for any offense an essential element of which is fraud, dishonesty or an act of violence, or for any offense involving moral turpitude, whether or not sentence is imposed; ( Fuller)
(3) Use of fraud, deception, misrepresentation or bribery in securing any license or registration pursuant to sections 333.700 to 333.900;

(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 the profession for which the individual is licensed or registered;

(6) Violation of, or assisting or enabling any person to violate, any provision of sections 333.790 to 333.900 or sections 333.790 to 333.900, or of any lawful rule or regulation adopted pursuant to Chapters 333.190 to sections 333.790 to 333.900; (Euler)

(7) Impersonation of any person holding a preneed license or registration with the board or allowing any person to use his or her license or registration;

(8) Disciplinary action against the holder of any license or registration or other right to practice any profession regulated pursuant to this chapter or by any 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; COMMENT: Is this needed? (Euler)

(11) Assisting or enabling any person to practice or offer to practice as a preneed seller, preneed provider or preneed counselor as defined or regulated by sections 333.700 to 333.900 who is not licensed or registered and currently eligible to practice under sections 333.700 to 333.900;

(12) Issuance of a registration or license based upon a material mistake of fact;
(3) Failure to display or present a valid certificate or license required by sections 333.700 to 333.900 or any rule promulgated thereunder. 

(4) Violation of any professional trust or confidence; 

(5) Make or file any report required by sections 333.000 to 333.999 which the licensee or registrant knows to be false or knowingly fail to make or file a report required by sections 333.000 to 333.999; 

(6) Use of any advertisement, solicitation or preneed contract which is false, misleading or deceptive to the general public or persons to whom the advertisement or solicitation is primarily directed; and:

(7) Willfully and through undue influence selling a preneed contract, or:

(8) Violating any provision of the Federal Trade Commission’s funeral rule (Solocuts). 

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, 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. COMMENT:

Civil penalties. (Solocuts) 

4. Notwithstanding any other provision of this section, the board may automatically suspend any license issued pursuant to Chapter 333 (sections 333.700-333.900) if the board finds after an inspection, examination, investigation or audit a shortage in the trust fund or joint account which exceeds [twenty percent of the amount required to be held in the trust or joint account or fifty thousand dollars, whichever is lesser] or upon being adjudicated and found
5. A person whose license has been 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.

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.

333.775. If a seller shall fail to make timely payment of an amount due a purchaser, or a provider pursuant to the provisions of sections 333.700 to 333.900, the purchaser or provider, as appropriate, shall have the right, in addition to other rights and remedies against such seller, to make demand upon the trustee of the preneed trust for the contract to distribute to the purchaser or provider from the trust, in damages for its breach, an amount equal to all deposits made into the trust for the contract.

333.700. Upon the death or legal incapacity of a purchaser, all rights and remedies granted to the purchaser pursuant to the provisions of sections 333.700 to 333.900 shall be enforceable by and accrued to the benefit of the purchaser's legal representative or his successor designated in such contract, and all payments otherwise payable to the purchaser shall be paid to that person.
333.785. 1. Any person, including the officers, directors, partners, agents, or employees
of such person, who shall knowingly and willfully violate or assist or enable any person to
violate any provision of sections 333.700 to 333.900 by incompetence, misconduct, gross
negligence, fraud, misrepresentation, or dishonesty is guilty of a class C felony. Each violation of
any provision of sections 333.700 to 333.900 constitutes a separate offense and may be
prosecuted individually. The attorney general shall have concurrent jurisdiction with any local
prosecutor to prosecute under this section.

2. Any violation of the provisions of sections 333.700 to 333.900 shall constitute a
violation of the provisions of section 407.020, RSMo. In any proceeding brought by the attorney
general for a violation of the provisions of sections 333.700 to 333.900, the court may order all
relief and penalties authorized under chapter 407 and, in addition to imposing the penalties
provided for in sections 333.700 to 333.900, order the revocation or suspension of the
registration license of a defendant seller or provider.

INJUNCTIONS

333.790. 1. Upon application by the board, and the necessary burden having been met, a
court of general jurisdiction may grant an injunction, restraining order or other order as may be
appropriate to enjoin a person from:

(1) Offending to engage or engaging in the performance of any acts or practices for which
a registration or authority, permit or license is required by sections 333.700 to 333.900 upon a
showing that such acts or practices were performed or offered to be performed without the
required registration or authority, permit or license; or

(2) Engaging in any practice or business authorized by a registration or authority, permit
or license issued pursuant to sections 333.700 to 333.900 that is in violation of sections 333.700
to 333,900 or upon a showing that the holder presents a substantial probability of serious danger
to the health, safety or welfare of any resident of this state or client or customer of the licensee,
or;

(3) Engaging in any practice or business that presents a substantial probability of serious
danger to the solvency of any prepaid seller.

2. Any such action shall be commenced either in the county in which such conduct
occurred or in the county in which the defendant resides or, in the case of a firm or corporation,
where the firm or corporation maintains its principal office or in Cole county. (Rule
3. Any action brought under this section shall be in addition to and not in lieu of any
penalty provided by sections 333.700 to 333.900 and may be brought concurrently with other
actions to enforce sections 333.700 to 333.900.

TERMINATION OF BUSINESS- PROVIDER

333.808.1 A prepaid provider that intends to sell or otherwise dispose of all or a
majority of its business assets, or its stock if a corporation, shall notify the Board at least sixty
days prior to selling or otherwise disposing of its business assets or stock, or ceasing to do
business as a prepaid provider, and shall file a notification report on a form established by the
board.

2. The report required by this section shall include:

(a) The name, phone number and address of the purchasers of any outstanding prepaid
contract for which the licensee is the designated provider;

(b) The name and license numbers of all sellers authorized to designate the licensee as a
provider in a prepaid contract;
(c) The name, address and license number of the provider assuming or agreeing to
assume the licensee’s obligations as a provider under a preneed contract, if any;

(d) The name, address and phone number of a custodian who will maintain the books
and records of the provider containing information about preneed contracts in which the licensee
is or was formerly designated as provider;

(e) A final annual report containing the information required by section 333.000;

(f) The date the provider intends to sell or otherwise dispose of its business assets, or its
stock if a corporation, or to cease to doing business, and;

Any other information required by the Board by rule.

3. Within three days after the provider sells or transfers its assets or stock or ceases doing
business, the former provider shall notify each seller in writing that the former provider has sold
or transferred its assets or stock or has ceased doing business.

(a) Within thirty days after the seller receives notification from the provider under this
subsection, the seller shall provide written notification to all purchasers with outstanding preneed
contracts in which the former provider was designated as provider indicating that the provider
has transferred ownership or has ceased doing business. Such notice shall give the purchaser the
option to select another provider that has a written agreement with the seller pursuant to the
provisions of sections 333.000 or to cancel the contract if an alternate provider is not accepted by
the purchaser.

(b) If an alternate provider is selected by the purchaser, the seller shall amend the
preneed contract to reflect the change in provider and shall notify the new provider of the
designation;
(c) If the purchaser elects to cancel the contract, the seller shall refund all amounts paid
by or on behalf of the purchaser and any related interest. Nothing in this section shall be
construed to prohibit a seller from seeking reimbursement from the former provider of any funds
paid to the purchaser after a cancellation authorized by this subsection.

4. A preneed provider not subject to subdivision 1 of this section may only transfer its
obligations as a provider to an alternate provider upon the consent of the seller, purchaser and the
provider assuming the provider obligations under the contract. If an alternate provider is
selected by the purchaser, the seller shall amend the preneed contract to reflect the change in
provider and shall provide the purchaser with a copy of the amended contract.

5. The office of the attorney general shall have authority to initiate legal action to
compel or otherwise ensure compliance with this section by a former preneed provider licensee.

TERMINATION OF BUSINESS- SELLER

333.805.1 A preneed seller that intends to sell or otherwise dispose of all or a majority of
its business assets, or its stock if a corporation, shall notify the Board at least sixty days prior to
selling or otherwise disposing of its assets or stock, or ceasing to do business as a preneed seller,
and shall file a notification report in a form established by the board.

2. The report required by this section shall include:

(d) A notarized and signed statement from the person assuming or agreeing to assume
the obligations of the seller indicating that the assuming seller has been provided with a copy of
the seller’s final annual report and has consented to assuming the outstanding obligations of the
seller;
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(e) In lieu of the notarized statement required by subdivision (b), the seller may file a plan detailing how the assets of the seller will be set aside and used to service all outstanding preneed contracts sold by the seller, and:

(f) Any other information required by the Board by rule.

3. Within thirty days after assuming the obligations of a seller pursuant to this section, the assuming preneed seller shall:

(1) Notify each provider in writing that the former seller has sold or transferred its assets or stock or has ceased doing business, and;

(2) Provide written notification to the purchasers of each preneed contract assumed by the seller indicating that the former seller has transferred ownership or has ceased doing business. (Meinholz)

A preneed seller not subject to subdivision 1 of this section may only transfer its obligations to a seller under a preneed contract to an alternate seller upon consent of the purchaser and the person assuming the obligations of the seller under the contract. If the purchaser fails to consent, the seller shall refund all amounts paid by or on behalf of the purchaser with any related interest or earnings. If the purchaser and seller consent to the transfer, the seller shall amend the preneed contract to reflect the change and shall provide the purchaser with a copy of the amended contract.

6. Nothing in this section shall be construed to require the state board to audit, investigate or examine the books and records of a seller subject to the provisions of this section or shall this section be construed to amend, rescind or supersede any duty imposed on, or due diligence required of, an entity assuming the obligations of the seller.
7. The office of the attorney general shall have authority to initiate legal action to compel or otherwise ensure compliance with this section by a former prepaid provider licensee.

333.810. A prepaid contract may offer the purchaser the option to acquire and maintain credit life insurance on the life of the purchaser. Such insurance shall provide for the payment of death benefits to the seller in an amount equal to the total of all contract payments unpaid as of the date of such purchaser's death, and shall be used solely to make those unpaid payments.

333.820. If a seller shall fail to make timely payment of an amount due a purchaser or a provider pursuant to the provisions of sections 333.700 to 333.900, the purchaser or provider, as appropriate, shall have the right, in addition to other rights and remedies against such seller, to make demand upon the trustee of the prepaid trust for the contract to distribute to the purchaser or provider from the trust, as damages for its breach, an amount equal to all deposits made into the trust for the contract.

333.830. Upon the death or legal incapacity of a purchaser, all rights and remedies granted to the purchaser pursuant to the provisions of sections 333.700 to 333.900 shall be enforceable by and accrue to the benefit of the purchaser's legal representative or the purchaser's successor designated in such contract, and all payments otherwise payable to the purchaser shall be paid to that person.

333.840. Each seller shall remit an annual reporting fee in an amount of $_ dollars for each prepaid contract sold in the year since the date the seller filed its last annual report with the state board. This reporting fee shall be paid annually and may be collected from the purchaser of the prepaid contract as an additional charge or remitted to the state board from the funds of the seller. The reporting fee shall be in addition to the fees authorized by section 333.000.

RULEMAKING
333.850. 1. The board shall establish the amount of the fees authorized in this chapter and
required by rules promulgated thereunder. Such fees shall be set at a level to produce revenue
which does not substantially exceed the cost and expense of administering this chapter.
3. The board shall promulgate and enforce rules for the transaction of its business and for
standards of service and practice to be followed for the licensing and registration of providers,
sellers and counselors deemed necessary for the public good and consistent with the laws of this
state.
4. Any rule or portion of a rule, as that term is defined in section 536.010, RSMo, that is
created under the authority delegated in this section shall become effective only if it complies
with and is subject to all of the provisions of chapter 536, RSMo, and, if applicable, section
536.028, RSMo. This section and chapter 536, RSMo, are severable and if any of the powers
vested with the general assembly pursuant to chapter 536, RSMo, to review, to delay the
effective date, or to disapprove and annul a rule are subsequently held unconstitutional, then the
grant of rulemaking authority and any rule proposed or adopted after August 28, 2008, shall be
invalid and void.