MISSOURI STATE BOARD OF EMBALMERS
AND FUNERAL DIRECTORS

CHAPTER 436 LEGISLATION MEETING

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

AUGUST 12, 2006
9:45 A.M. - 4:30 P.M.
CHAIRMAN: I think what we'll do is
we'll go around the table again, introduce
ourselves real quick, and we'll start with
you, Mike, and then -- yes. And then we'll
introduce the public and start the meeting.
(The members of the Committee and
public introduce themselves.)
CHAIRMAN: Well, once again, thank you
for, you know, your time and attendance to
these meetings, and I know it's taken up a lot
of everybody's time, and we really do
appreciate that. Just to go over briefly for
those like Larry who hadn't been here very
often, what we do is the panel has a
discussion. Then we have comments from the
public, and when you come forward, Larry, and
do your preaching, come to the mike and
introduce yourself so the court reporter can
record your name and where you live. Anyway,
we had a few comments and e-mails and letters
addressed to the committee or to the Board.
Does anybody want to make any comment before
we start today about how we're doing business
or --
MR. STALTER: I mean, I'll speak up
about my part of this. I think part of it is
that this group has come in and put in a lot
of time and I think kind of demonstrated that
we're willing to talk about our issues, you
know. There are a lot of agreements that have
been made. There are some disagreements about
issues, but, generally, we -- you know, they
-- those oppositions that could be defended or
set out. And what I would prefer to do is
somehow document the various issues that we do
agree upon, and to the extent that we have
disagreements, allow those who have a position
that differs, be able to set that out in a
document, in essence, to kind of demonstrate
to the legislature. I mean, we do have the
capability to reach an agreement and, in
essence, you know, if there are issues that
the legislature needs to take a look at, then
let's kind of identify those issues so that we
can kind of, I guess, cut the chaff from the
wheat and know the issues that the legislature
has to address. I mean, that's my proposal.
I mean, in our initial meeting, we talked
about that these issues that were priorities
would be documented, and then they're brought
back to the committee, but we could circulate those discussions, whatever the votes were. Well, some of those votes we went up or down on, but I know some of the people had disagreements about them. And I perceived the ability to have what the staff documented to us, be able to respond to. Now, this running draft is hard to respond to in that manner. It's really kind of a document everybody gives input to, but it's hard to see what they're doing this way, and I think that will be confusing to the legislature when we turn that document back over, that that's our work product. At some point, I mean, if we can get through the main issues, and then we can address disagreements in correspondence of e-mails back to the Board. I mean, some way that is more manageable than these meetings, I mean, every week. People are just getting worn slick by the process.

CHAIRMAN: All right. Anybody else?

All right. Kim?

MS. GRINSTON: I just wanted to respond to what Bill said about the process. Your suggestion is exactly what the process is
and was, that we were going to pull together
those things that were common, put those
things that we disagreed upon, we were going
to submit a document with the areas that we
disagreed on indicated in the text of the
document with notes. Now, the reason why the
draft you have now does not reflect all of
those comments is because we haven't finished
the process yet. But our process is and has
always been to do that and to provide that
kind of a document. I understand and the
contcerns about getting this document presented
and finalized, and I share some of those
conscerns. But I did want to make sure that
everyone understood exactly what you
suggested is what we represented we would do
at the beginning of the meeting, that what --
at the beginning of all of our meetings, what
we represented we would do with the
congressional representatives that we did meet
with, and that has been our intention all
along. To the extent that -- and this is my
understanding of your concerns -- is that you
are concerned with the way comments are being
presented back to the group and with what the
draft did. I've tried to clarify and I hope we can clarify for everyone again that what you're looking at is just the beginning draft because what Connie and I envisioned and what we talked about is that once we get more of the consensus language together, that we would have a place and a time, and by e-mail or message, we were going to do it in writing for anyone to submit any objections that they wanted to that we would incorporate into the text of the document, and that you all would see the finalized product once it was done. What you have in your hands now is not what will be submitted to the general assembly unless you tell us to. What you have, really, is a piece of scrap paper. You have a working copy to help me identify the language that is consensus for you all and the language, right now, that is not and where objections need to be noted. So, I wanted to say that. I do want to say that I think we've made a lot of progress. I was looking at a list of some of the things that we needed to look at. I believe that we have reached a consensus on a lot of issues. There
are some big issues, as everybody knows, that we still haven't gotten a consensus on. And, Bill, I don't know, possibly now if there is a recommendation on how you would like comments presented to the group or continuing, you know, even the meeting today or the weekly meetings, I don't know whichever way to pull in all the comments from everyone without getting them all in, sending them out for response, getting them back again, sending them out for response, and getting through that process over and over again.

MR. STALTER: Well, let's go back to the survey. And, you know, you asked the industry to identify what it perceived to be the key issues, and people did that. And from that survey then, the staff decided which issues to take up first, and that's perfectly acceptable. You picked out the right issues. But as we went through that survey and the agenda items, they were marked off as completed. A lot of people ask, "How did we complete those issues," and that's basically -- we all have been here. We've put a lot of time into it, but there are a lot of folks in
the industry who haven't been here, and
they're asking how we decided those issues.
And that's really what I'm trying to get back
to is, you know, those key issues, I'd like to
see how you perceive we took the vote or how
we decided the issues. Part of it is for me
to understand how well you understand our
issues.

Ms. Grinston: And I think that's
fair, Bill. My thought was that the draft --
and we probably could have given -- as you
know, some things came up in the interim -- a
list of everything that we agreed on per
meeting. My thought is that the draft
contained -- and when we talk about the draft
-- the consensus as we perceived it to be on
a lot of those issues. And so, as we walk
through this draft today, my thought is that
that was what we were going to be asking
today, to make sure that we are in line with
what you talked about. Now, to the extent
that you would like us to do something else to
formalize that by topic area as opposed to
putting it in the legislative language, we
could try to work on that for you if you
would like us to, or for other people if

anybody else wants it. If that will help the

process move a little bit faster or clearer

for you, we could try to pull that together.

I think that's something we could do. One of

the issues that we have is, you know, the

transcripts have taken time to come in. And

so, for some of us, we are working off of

notes and everything else. But if you would

like us to pull a by-topic area and develop

something that shows what we agreed on per

topic area, we could definitely try to get

that done for you.

MR. STALTER: Are you saying for me or

for the group? When you say "you" --

MS. GRINSTON: For everybody --

everybody -- anybody who may want it if that's

what you need.

MR. OTTO: I guess my only point is

what is a consensus or what did we agree on?

We had one thing, I think, that was a 9-to-8

vote; okay? Does that mean that the nine --

I mean, I -- is that a consensus? I don't

think so, but it was a majority opinion. So,

is that -- that's my question is: What is a
consensus? If we're not -- if somebody -- if one person disagrees with it or 40 percent of us disagree with it or what?

MS. CLARKSTON: Obviously, Kim and I haven't had time to sit down to really put things on paper to see what this is going to look like, but, in my mind, if we did a consensus meaning the majority voted for something -- not an 8-to-9 vote, by any means, but the majority voted noting where the concerns were, then went to the next level where it was a majority vote, a problem area they needed to talk about and identify, it's not really been settled. I firmly believe we can identify them in that document, or things that were unanizous, so we would have three different levels of recommendations for them. And what I was seeing in my mind was a two-column document. We would have the language on one side, comments to that on the other side or recommendations, and identifying that in that manner. But, again, Kim and I haven't had time to mesh our brains together to get a handle on how we're going to put this document out. I do agree with Kim, the
document you have in front of you is basically your scratch paper, to mark out this is the best way we knew with the time frames that we had to get those comments in a fashion to get those out to you. So, we're really open to suggestions on how you see in your mind this document going forward.

MS. GRINSTON: Again, to echo what Connie said, I think what we intended to do was to present a draft where -- and allow anybody to post any objections they had to anything. Like, if there was something here -- and let's say it was a 10-1 vote or whatever the numbers are, 16-1 vote, if someone wanted to say, you know, on behalf of, you know, AARP, I'll say that, we object because. I think the intent was to incorporate that into the document, but I think we started and attempted to try to pull together a document that we can incorporate something into. And so, what I'd like to do today, if this is okay with everyone, is I'd like to start looking at the language that is on paper and tell you what we believe reflects the -- what our notes show where the
consensus. And if that is not correct or if there is a disagreement with that for you all, to please let us know so that we can go back and note that this is not an area of consensus. But I think everyone can appreciate that this is, of course, a novel process. We are attempting to do this with a lot of divergent interests and comments coming in. There may be a better process and there may be a better way, and please let me know if there is. But if we could try to sort of hone those ideas in. Our idea was always to give everyone who objects a place and an opportunity to object and to submit that over. Our suggestion and our ideal was always to allow you all to look at what comes out of this group as a final product, if anything. And, again, if there are any, you know, suggestions or changes or concerns you have with that. And, Bill, we can try to work on pulling together the document that you discussed, the by-topic area. When I said -- sometimes when we marked completed, it meant that we thought that we had a good enough feeling of where you guys wanted to go to put
it on paper. But as we walk through this
draft today, if we see something on there that
is not a consensus or that you guys disagree
that that was the decision of the group, then
I'd really -- I think we could probably mark
that today.

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

MS. GRINSTON: And I -- Bill, I
understand that. I guess what we tried to do
is tried to get -- to figure out what the
consensus was first before we gave you
something to give out to your clients to make
sure we were right. I guess my thought of
what we're doing today is we're checking to
make sure that what we have is what you want
and what you, you know, probably need to
submit to your clients. But, again, Bill, to
the extent that you do have a concern with
something or if there's anything else we can
do even today to make this process probably
less confusing or something of the sort, I
understand that people are worn slick by this
process. Again, and I'll echo what the
chairman said, what our division director
said, we appreciate everybody who has come out
and helped with this. Our intention is not to
make this process harder than what it needs to
be. We are doing really a novel attempt on a
very complex issue, and we've tackled a lot of
very hard and complex issues. We're going to
have to start with one this morning. But,
again, our intent is not to abuse your time or
anything of the sort, and we do appreciate
everybody who has taken the time to help us
with this project on the drawing-board basis.
Having said that, and as we talk about a
consensus, one of the things that I am
increasingly concerned about -- and I've
shared this concern with the chairman, I've shared this concern with the Board -- is that after the meetings, you guys know we've spent a lot of time talking about, for lack of a better term, this 80-20 split and the current 80-20 process. We've spent a good and fair amount of time dealing with that issue. After the votes, we have received comments formally and informally from several people that they are not comfortable with what the vote was, unclear about what the vote was, or not sure that the vote truly reflected what everyone intended to do. And so, as we look at this idea of the 80-20 process, and we know what we talked about last week, the suggestion has come because, again, I don't want to misrepresent anything anyone has said in this room to anyone, not only to you all, but to the general assembly or to anybody who may come in contact with the final product of what this group has done. To that extent, I don't know if we may need to go back to a suggestion I originally made at our very first meeting when we began to tackle the 80-20 issue. We took a vote on several issues last
week. I don't know if we are at the point because, again, a lot of you who voted have expressed concerns about the vote and, again, what the vote actually was. I don't know if we are in the position where we, once again, need to say that we have -- we understand that the percentage of administrative expense is still an outstanding issue. We have a lot of divergent views and feelings on that, and allow everyone an opportunity to just reflect what they believe the proper split, if you will, in Missouri should be, and embody that in a document based on your language and your words. Again, my concern is that even with what we've done last week, we've come back and a lot of people have expressed concern about that vote. And so, I would like to submit this back out to the Committee. I don't know if what we need to do or if it would be more advisable to simply say that -- you know, that this is the amount that we are suggesting be trusted, this is the amount we are suggesting be authorized for administrative expense, this is the amount for interest, and allow you all to just present your comments on where you
need to be instead of going through and trying
to reach, you know, or more formalize
agreement with everyone else. I'd like to
submit that back out to the Committee, again
and again, that's based on my understanding
from several of you that you are uncomfortable
now with what the vote right now may be.
Open the floor on that one.

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

MS. GRINSTON: Becky.

MS. EULER: I would be Sharon.

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

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

We've compiled the document with what
different people's positions are, and move on
instead of spending all day again today
discussing what we are not going to be able to
come to a consensus on.

CHAIRMAN: Mary?

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

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

(Several people talking simultaneously.)

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

MS. GRIFFIN: Again, I think when we
talk, we just asked -- at the first meeting,
we asked everybody to register their position
and where you are, allow us just to place them
in the document. There will be a suggestion
from the Board: Again, you all know that the Board will be looking at that specifically next week during their Board meeting, but allow -- I mean, anyone else who has a suggestion, and allow the general assembly to do what they do, which is sort of gut out these issues and figure out what should be best because, again, I am concerned that even with the vote that has been taken previously, that it really does not reflect, from the comments that we are receiving, on what everyone thought they were voting on.

CHAIRMAN: Bill?

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

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

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

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

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

MS. GRINSTON: Sure. And I --

MR. STALTER: That -- when you go up to 90 percent, what you'll see with a lot of
companies is they'll start shifting things
that they cover on the 15 or 20 percent over
to the trust. Now, the benefit of that is,
that has to be done by contract and be
disclosed through the fiduciary relationship.
To me, I mean, that's fine, you know.

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

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

MS. GRINSTON: Okay.

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

MS. GRINSTON: Well, then using that
term "sales expense" or "administrative
expense" as we poll the table and just for our
comfort, I would also suggest that we submit
something in writing. The suggestion was that
if you guys want to submit the chart that we
used last week, we have extra copies, if you
want to do your calculations in there. But as
we poll the table, that you clarify for us
what amount you're recommending to be trusting
and what amount are you going to recommend as
a sales expense/expense item, if you will.

CHAIRMAN: Todd?

MR. MAHN: Yeah. Kim, I suggest that,
you know, we pass everyone, you know, on the
panel, that chart again and submit it into the
day today and then -- you know, give an
example: If 50 percent of the room is for
80-20, and 10 percent of the room is for
90-10, and 5 percent of the room is for 95-5,
whatever, you know, then we'll compile them
numbers and we will submit it that way in
percentages to the capitol and this is what,
you know, the feeling was from the panel, and
then we move on to these other topics. And,
you know, I think we should go down the topics
and maybe bring them up, and if they seem to
be a topic that's going to create a lot of
debating, maybe mark it, go on to the next
topic, and get through the easy ones, and then
go back and reflect on the ones that seem to
be harder. But let's knock out some of these
that, you know -- let's get them knocked out
and try to get it all knocked out today.
CHAIRMAN: Thank you, Todd. All right. Let's try to knock this one out first and then we'll go to what you're saying. Do you want to use the chart, Bill, and submit that, or do you want to go around and get --

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

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

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

CHAIRMAN: Right. Sharon?

MS. EULER: I think Todd's suggestion is an excellent one because, again, we can talk all day about this and we're not -- I think we're at a position where there are people who we're not going to -- there is no common ground, unfortunately.
MS. BOHRER: Discussion isn't going to change people's minds.

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

MR. STALTER: Say what, again?

CHAIRMAN: Up-front costs.

MR. STALTER: Yes.

CHAIRMAN: Right. Not to administrate the trust.

MR. STALTER: Yeah. Not the trust.

CHAIRMAN: Okay. Go ahead.


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

CHAIRMAN: No, we're going to --

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

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

MR. TRIMM: 90-10.

MS. RUSSELL: I think we could compromise with the 90-10.
MS. NEUMANN: Ten -- it would be 90-10.

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

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

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

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

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

CHAIRMAN: John McCulloch?

MR. MCCULLOCH: 80-20.

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

CHAIRMAN: Gary?

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

MS. BOTNER: We're going to abstain.

I don't think this is a Department of Insurance issue.
CHAIRMAN: Okay. Norma?

MS. COLLINS: It's my turn?

CHAIRMAN: Yes.

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

CHAIRMAN: Mike?

MR. MEIERHOFER: 80-20, 100 percent through trust, and then 20 percent out from the trust.

CHAIRMAN: Don?

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


CHAIRMAN: Mark?

MR. WARREN: I think my clients would support whatever the industry decides from an
insurance-company standpoint.

CHAIRMAN: Are you running for office?

MR. WARREN: No.

CHAIRMAN: Mike?

MR. WINTER: Mike Winter, 80-20.

CHAIRMAN: George?

MR. CLINE: George Cline, Kutis

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

CHAIRMAN: Todd?

MR. MAHN: 100 percent.

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

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

CHAIRMAN: Okay.

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

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

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

MS. DUNN: I got yours. I think Kim is going to discuss this right now, but Kim
and Connie both have your reply.

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

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

MS. GRINSTON: No. I'm sorry.

UNIDENTIFIED: We're using this one.

MS. GRINSTON: Yeah. If there's a
comment with Homesteaders' up top with a
highlighted section, that's not the correct
draft. Let us know if you don't have that
draft. And, again, it says revised 7/28/00 at
10:10 p.m. Okay.

(Several people talking simultaneously.)

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

MS. GRINSTON: Yes. We are going
through the one that would be the draft from
the division. It should not have anything
from Homesteaders on it. It shouldn't have
any comments from Homesteaders. If you'll just give me a second. Your draft should not have any comments from Homesteaders and it should not have a definition of the word "audit."

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

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

(Several people talking simultaneously.)

MS. GRINSTON: Okay. Let me know if we're not on the same page. Okay. Looking at page 1, and if you guys could just bear with me for a little while, let's see how this process works. 333, I'm going to talk about some of the things that we talked about. Originally, I remember -- I think you say remember the suggestion that we move this over to 333 for purposes of avoiding confusion. Several people have submitted comments about opening 333 via a bill with preneed in it, and so, there were several suggestions made that we keep this in 436 as it is right now as opposed to doing this as a vehicle through
333. We talked to Connie about that, Connie said she doesn't have a problem with keeping it in 436 if you guys think that that may be a little bit of a cleaner process.

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

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

That was the first thought. Are there any
objections to that, this staying in 436 as
opposed to opening up 333 as a vehicle? Don?

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

MR. MEIERHOFER: I agree.

MR. OTTO: But -- okay. This is the
law that takes -- that kicks in August 28th,
2010, or whatever it is, and then this is the
section, and then they put a little heading at
the front of it that says -- that was much
easier when we redid all that other stuff.

Now, it doesn't have to be in 333 if that's a
problem, but having it in a different section
so you know this law is intact until -- for
everything before this date and this is the
section you look to for after this date made
life a lot easier with those.

MS. GRINSTON: And so, probably with
that comment, what we may want to do is, as
it goes over, let them know that we think this
should not be interspersed in between the
current 436, but used as a separate deal.
Okay. Hearing no objections to that, let's
look at 333.705. One of the suggestions that
was made was that we define the term "audit."
And I actually went through and tried to pull
different definitions of audit, and depending
on where you are and what you're doing, that
definition is so incredibly broad and so
incredibly hard to pin down. I actually
consulted with someone I know who does
international banking and banking compliance
and is a SOX person and everything else, and
she indicated to me that the defining audit is
a very difficult term and that probably should
be left to the person calling the audit as to
what the scope of the audit is because there
is a time when an audit may include or the
definition may include what some people think
is an examination. She just said it just may
be very difficult. Mr. Meierhoffer, if you
have Mr. Meierhoffer's comments, he suggested
a term of "audit," and I don't know if you
want to talk about that. But I would like to
submit this to the committee as to whether you
really want to adopt a definition of the term "audit."

MR. MEIERHOFFER: Okay. I --

CHAIRMAN: Mike?

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

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

MR. MEIERHOFFER: From a CPA.

MS. BOHRER: You got it -- okay.

CHAIRMAN: Bill?

MR. STALTER: I mean, we kind of approached this issue years ago. And, really, the main quibble back then was that the Board
did not have the rule-making authority to
address whether or not it was. And what I
was driving for this is that, first,
distinguish between an examination and an
audit, and then allow the Board the regulatory
rule-making authority to define what an audit
should be. And, really, what we were looking
for years ago was that an agreed-upon
procedure so that the Board adopted some kind
of -- you know, set out procedures for what an
audit or an examination would be, and then
that -- it would be public, but we all knew
what was going to come. So, basically, what
an audit would be was something with a good
cause; in other words, set up the criteria for
what would trigger an audit, and then the
frequency of examinations or what would
trigger an examination.

MS. GRINSTON: That's one of the
recommendations from the Department of
Insurance that audits be limited to a
with-cause finding. But -- and so, I do agree
with that. But Mr. Meierhoffer -- and I'm
just looking at this with a legal eye, we
define audit as a systematic examination. And
then it says -- the end of that sentence says, 
you know, to determine things including State 
requirements as required by statute. Well, 
that is an examination of books and records 
because an examination of books and records 
looks to see if you're complying with the 
State requirements as determined by statute. 
I don't know how this definition would be 
drafted to not include an examination of books 
and records because, right now, this 
definition also includes an examination of 
books and records. And I don't know if what 
we need to do is address the back issue of 
when you call an audit with cause, without 
cause. Again, that's the recommendation of 
the department as opposed to trying to define 
it, because sometimes the definition or the 
scope of the audit is going to be determined 
by what it is that you're trying to do, what 
you're needing to audit.

CHAIRMAN: Sharon?

MS. EULER: The Board has its own kind 
of working definition of audit and examination 
of books and records and investigation, at 
least based on my experience, and some of that
is defined by who does it. The division's investigators do not do audits. The audits are done by a CPA. Investigation is done by the Board staff. Examination of books and records is done by division staff. And so, if you're going to define it, I would define it in the way that the Board uses the term because that's what we're talking about as opposed to some abstract definition. Or look at whether you really need to define it at all.

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

CHAIRMAN: Mary?

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

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

MS. DUNN: And the investigation is done by an investigator of the division, and the examination of books and records or audit is done by an outside contractor.
MS. ERICKSON: Thank you. That -- I appreciate that.

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

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

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

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

MS. GRINSTON: Can we hold that thought right now and maybe move to the definition of beneficiary on the audit and to see if we actually need to define that any more. Beneficiary, I don't believe we
received any comments on that except that
homesteaders suggested that we add the term
"funeral beneficiary." Sharon?

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

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

MS. EULER: Yeah. We could --

MR. STALTER: Because you're going to
raise the issue -- we're going to get to it
in the description or definition of funeral
merchandise anyway.
MS. GRINSTON: Okay.

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

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

CHAIRMAN: Any comments on that?

MR. STALTER: Well, I think, you know, we've added someplace later in here a nonguaranteed contract, so you have to make a
distinction. And a guaranteed contract where
a portion of all of the services or
merchandise is there and then what price
they're guaranteed. I mean, that's kind of a
--

MS. GRINSTON: Okay.

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

MS. GRINSTON: I think so.

MR. STALTER: Yeah, a few of them do.

A few of them do.

MR. OTTO: Yeah, I thought so.

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

MS. EULER: No.

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

MS. EULER: No. That we change it. I
don't think anybody suggested we delete it.

CHAIRMAN: Bill?

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

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

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

MS. EULER: Reclarify it.

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

MS. GRINSTON: Right.

MR. MEIERHOFER: That's the part we
don't want to intermingle here.

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

CHAIRMAN: Bob?

MR. BAKER: The only thing I'd like to
add is I think it was within the last year
that -- and I don't know where monument
companies fall into everything. But I know we
periodically run into a situation where
someone has prepaid for a -- like, a final
date or a grave opening, and there was nothing
as far as any record is concerned. Now, where
would that fall? Are we talking about under
our definition here or is that staying with
the cemetery -- what is it, 214, Mike? Is
that --

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

UNIDENTIFIED: 214?

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

UNIDENTIFIED: Bill may have the
explanation.

MR. STALTER: There's kind of -- I
mean, grave markers, openings and closings,
and so forth, should fall under 214. I mean,
that's going to be a topic of discussion on
Thursday about how that's going to be addressed. I mean, it's a valid issue. I mean, what do you do, trust it? I mean, how is it taken care of?

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

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

MS. NEUMANN: May I make a personal note? I'm from Maryland. My grave will be in Maryland. I've already got my tombstone, my plot with the family plot. It's already paid for. I paid for it when my mother died. We had to make a reservation to use that cemetery. So, everything is there. All they've got to do -- and it's done through the cemetery. All they have to do is the day I
die, everything else is already on there.
It's just waiting for my body, and I think
that's where it should be, the cemetery.

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

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

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

MR. MEIERHOFER: Exactly. So, let's
not put ourselves in that corner.

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

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

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

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

MR. BAKER: Or flowers or --

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

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

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

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

CHAIRMAN: Bob?

MR. BAKER: One more comment on a funeral contract. We have people on a routine basis that are doing a spend down. They've
got X number of dollars to spend. They want
to make sure all expenses are covered that has
anything to do with their mother's death, be
it a grave opening, be it a funeral, final
date on the marker, they want to make a
provision for flowers, clothing; you know,
anything that we would normally consider a
cash advance, they want to be able to tie
everything into that and not have to worry
what's going to happen down the road because
they're spending all of Mom's money right now
and they don't have anything left to take care
of any additional expenses later.

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

MR. BAKER: Right.

MS. GRINSTON: And I think what I --
CHAIRMAN: George?

MR. CLINE: I was going to say, you
know, just what Mr. Meierhoffer just said,
it's all in one contract, and it is a service
section, but it's still in the preneed
contract, and that guarantees that the
services and the casket, generally, and the
other contingencies. Like you said, you need
those things because some folks want to put
those things aside for the family later, and
it spells out very clearly these things are
guaranteed, these things may change, you know,
and it's --

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

CHAIRMAN: Sharon?

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

MS. GRINSTON: I think what -- am I
hearing you guys say that you would like that 
clarified -- something that says that it can 
be included in the preneed contract, but it's 
not deemed funeral merchandise?

MS. BOHRER: But it already is.

(Several people talking simultaneously.)

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

CHAIRMAN: Okay.

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

(Several people talking simultaneously.)

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

MS. GRINSTON: Okay. All right.

CHAIRMAN: All right. Everybody 
agreed?

(Numerous people answer yes.)

MS. GRINSTON: And, again, if you
would like to note an objection on the final language, we will include it for you or just raise a question about it. The definition of funeral service, Mr. Meierhoffer has proposed that we define funeral service.

CHAIRMAN: Sharon?

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

MS. EULER: We went round and round on this when we were doing regulations before, and the problem is that funeral service means two different things. Funeral service means the ceremony and funeral service also means the services the funeral home provides relative to final disposition of a human body, and the terms are used in both meanings throughout the statute and the regulations which creates defining it to be a problem, because when we redid the regulations a few years ago, we struggled with that because we wanted to define funeral services, and we couldn't come up with a way to distinguish the two of those because they are used interchangeably throughout the Chapter 333, Chapter 436, and the regulations.
MR. MEIERHOFER: So, you propose?

MS. EULER: That we not define it --

MR. MEIERHOFER: Okay.

MS. EULER: -- because it's self-evident.

MR. MEIERHOFER: Fine. I'd much rather leave them broad, too.

MS. GRINSTON: Funeral service, no definition. Going once, going twice.

CHAIRMAN: Bill has got a comment.

MR. STALTER: Finish that one out.

Finish that one out, first.

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

MR. STALTER: Okay. Now, I want to go back. I was talking to Todd and not paying any attention to this. Can we go back to the funeral merchandise, funeral homes and cemeteries kind of overlap with regard to vault sales. So, if the cemetery sells a vault preneed, I mean, if 214 picks up and provides trusting, do you have joint jurisdiction? I mean, how does this Board take care of those kind of sales to make sure that it's -- you know?
MS. GRINSTON: Can you give me a
second to get to the applicability section
because I think we may need to intertwine that
back over.

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

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

MS. DUNN: If somebody needs a copy, I
have extras from two weeks ago. It looks like
this. Like this, Jim?
MS. GRINSTON: Yes. The suggestion is that we define market value as laid out.

CHAIRMAN: Bill?

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

CHAIRMAN: Linda?

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

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

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

MR. STALTER And that's fine. I would
have to go back and take a look at what the
banks take, you know, as far as that value,
you know. They're out there looking for some
-- a market, as well, and we just need to
kind of reconcile that, but it's going to have
a universal-type definition.

CHAIRMAN: Don?

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

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

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

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

CHAIRMAN: Don, do you --

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

UNIDENTIFIED: That doesn't count for you.

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

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

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

CHAIRMAN: Linda?

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

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

MS. BOHRER: Pardon?

MR. OTTO: The protections -- I don't
we haven't gotten to it yet, but I think the protections cover that. But this definition was for that situation where I'm buying -- the consumer is buying a Prudential policy that is going to pay for their preneed contracts.

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

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

MS. BOHRER: Right. And I think we talk about that in our recommendation. I'm
just saying that if you're narrowing the scope
of this definition, you want to make sure that
you've not narrowed the scope of protections
in the context of the full provisions of these
laws to eliminate a protection that needs to
be there.

CHAIRMAN: Mark?

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

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

MR. STUART: I just wanted to ask --

CHAIRMAN: You've got to come up here,

Bill.

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

CHAIRMAN: Bill Stuart.

MR. STUART: And I'm Bill Stuart with
Cater Funeral Home. The question that I had
was Kim passed over the joint account and went
to market value. And I was curious if you
wished to discuss that, if the split that you
talked about for the trust -- 80-20, 90-10, or whatever -- if it becomes, in fact, what happens, 90-10 or 80-20, would that be applicable or have you all discussed that for the joint-held CD accounts that would be in your local bank by your local funeral director under local control, easily audited, and my comment would be I hope that we can have the same level playing field and have that split available to us. But that's all. I just wanted to go back and ask about that discussion.

CHAIRMAN: Okay. Thank you, Bill.

MS. GRINSTON: Bill, you are correct that I did skip over joint funded, and that was purely unintentional, but we should probably go back and look at that definition. But the handling of joint accounts, we're probably going to discuss in a little bit, but we probably do need to discuss if the definition of joint account is acceptable and/or if there are any concerns on that one. But, Bill, I think we're going to get back to some of your issues in just minute. On the issues that Don raised on insurance-funded
preneed contract, I've got a note of the language. We want to distinguish it from the second option. But as Linda said, as we get to the protections page, let's make sure that that definition or redefining that would not be inappropriate and that they're still covered under all of the protection issues. All right. In market value, my understanding, definition of market value, Department of Insurance is going to do some checking with us on that and probably get back to us to see whether that needs to be considered. Nonguaranteed contract, that would be -- that definition, to me, would just be the opposite of --

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

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

(Numerous people answer yes.)

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

MR. OTTO: Well, if we're going to
reduce the definition of funeral merchandise
on the previous page, we do need to extend
other merchandise, making clear that it can
include other merchandise. Because right now,
it says --

   MS. EULER: It's in there.
   MR. OTTO: Well, no. I don't see it.
   MS. EULER: Merchandise.
   MR. OTTO: No.
   MS. EULER: Funeral merchandise for
such disposition --
   MR. OTTO: Funeral merchandise.
   MS. EULER: Yeah. We can add
something. I'm fine with that.
   MR. OTTO: Yeah. I'm talking about we
just took stuff out of funeral merchandise, so
we need funeral or other merchandise. Yeah.
Funeral or other merchandise solves the
problem.

   MS. GRINSTON: Okay. Adding more
other after funeral. Any objections on that?
Again, you'll take a look at this before it's
finalized. We had a suggestion -- well, we
had a question about the language that says
"including, but not limited to an agreement
providing for a membership fee." This is something that, of course, has become more popular where you have these groups that are doing -- they are, for all intents and purposes, a preneed seller. Sharon could probably speak to this better than I.

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

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

MR. CLINE: Yes. George Cline, Kutis. Preneed sales agent, that's not really an all-inclusive descriptive term since a lot of your folks are already funeral directors. They're
not necessarily sales agents. I would recommend that we would change it to something like preneed licensee since we are going to be licensing these people as opposed to sales agent.

CHAIRMAN: Does everybody like that?

MR. MEIERHOFER: I agree. I think that's great.

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

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

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

MR. CLINE: Well, because you've got to
realize -- I mean, I don't know what other folks in here are in the funeral business. They don't deal with people every day. And a lot of times, you're not selling them anything. They're coming to you to buy something and your job is to just help them along. So, there's a misconception that everybody is out there knocking on your door and calling you on the phone and everything else, and I just don't feel that sales agent is fair to the people who aren't sales agents like FPS and the people who did put the time in to become a licensed funeral director.

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

MR. CLINE: I would go for that.

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

MR. WARREN: Well, I mean, my only thought would be, you know, agent tends to have a specific legal definition, and you
could have somebody selling preneed who is not
really --

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

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

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

MR. WARREN: Ma'am?

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

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

MR. OTTO: You've got insurance agents
and you've got preneed agents. You don't say
insurance sales agents.
CHAIRMAN: Todd?

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

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

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

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

MR. OTTO: I like preneed agent. You
have insurance agents, you have real estate
agents, and now you've got preneed agents.

(Numerous people answer yes.)

MS. GRINSTON: Don said preneed agent.

Anybody object to preneed agent? I understand
if you want to make a concern.

CHAIRMAN: George?

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

MR. OTTO: That's already in here.

You don't have to --

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

CHAIRMAN: Go ahead.

MR. MOORE: John Moore, Moore Funeral
Homes. I haven't been here for a while. I'm
sorry for that. I've got a small business to
run and it's, at this point, in the negative
of about $16,000 a month due to a preneed
company. I have since let two employees go
and made some major changes to my business.
Was hoping to retire in about 13 years, but I
have $2.1 million on the books of preneed, so
my business is really not worth diddly crap. I don't blame the State Board, I don't blame anybody but myself. I chose to use that company. And I'm afraid third-party companies from the past, it's proven where we're at. Funeral Security Plans, several others, all the way down the list, it doesn't work. You guys are busting your tails, you're doing a great job. Preneed should be outlawed in Missouri, but that's not going to happen. The people of this state won't let it happen; third-party owners won't let it happen. So, the funeral home, me, my staff, all of the other independent funeral homes are going to sit back and pick up the pieces. Without 100-percent trusting, nobody cares about us. When it goes under, the third-party company is not there making arrangements with that family. They're not there going to my banker saying I can't make my payments. They're not there helping with my payroll, with my insurance, my electric, nothing. I had an example the other day where a contract was wrote in 1982. I got $2,360. The inflation on it was $2,100. I don't know where that
inflation amount is at. It's not in my pocket. Does anybody care? Honestly?
Honestly, does anybody care that I lost that money? No. The banker doesn't, the utility company doesn't, my insurance company doesn't, the county collector that wants my taxes doesn't, my employees don't. Nobody cares. It's not going to work. We've been there for how many years? How many companies have went under and the independent funeral home, nobody else, helped us. We had to do it on our own. Had to take money out of college fund for a child, had to take money from your mom and dad to make the bills. Who cares? The third-party company doesn't because they're gone. They could care less. And if that's not true, where are they at? If a company doesn't want to invest 100 percent of somebody else's money, what's fair? I go down to Edward Jones to invest money, I give them 100 percent. Fair is fair. The consumer is the person to worry about. If 200 funeral homes in the state of Missouri go out of business this year, what is the State Board going to do with those contracts, sir? What are you going
to do about them? Who's going to handle those contracts, sir? Are you going to go around to the independent funeral homes in that town like we did when it happened in Salem, Missouri, and beg other funeral homes? I felt sorry for those people. I took 11 of those contracts that were earmarked by NPS, cut a deal with NPS. Where does that put me now? Further in the hole because I tried to help the consumer. I'm an independent funeral home. Nobody cares about me. The proof is on the table, the proof is in the last 80 years of this great state that we have allowed third-party companies that don't get up at 2:00 in the morning and go on that death call, that don't worry about that, okay, that contract was with AB Funeral Home, now it's with your funeral home, but I'm not going to give you any of that interest, and I'm going to keep 20 percent of Mr. Moore; you only get 80 percent of it. Darn, I'm sorry, you're doing such a good job, you're picking up business. Did me good to bust my butt with that family and acquire business when I can't get the money, didn't it? We need licensed
funeral directors, licensed embalmers to run
the funeral industry. Everybody is governed
by a Board that does a fabulous job. They
have a way to track these people. They have
a way to trace it. We need to give the
independent funeral home the right to take his
money to his local bank, invest it with the
guy that's walking on the street meeting these
people, and his tail end is at risk as much
as the funeral home, not somebody that lives
in a nice home somewhere else and when they
decide they're done, they walk off with $100
million, $300 million, $500 million, and
they're having fun. And the local funeral
director is picking up the pieces again. We
did it and we continue to do it. I hear
people say that the average life of a preneed
is seven to ten years. Something is wrong.
I'm still servicing preneeds from 1966.
That's a little more than seven to ten years.
If it's just seven to ten years, then
guarantee that price for only seven to ten
years. After that, the price goes up. Better
yet, outlaw preneed. Let somebody look at you
and say that's restriction of trade. Let's
stand up to them. Let's show them it's not.
Let's go with 100 percent. If it's such a

good idea and it's such a grand thing for the
consumers of Missouri, then put 100 percent of
the money up, let the third-party people and
the funeral home figure out how they pay their
taxes, how they pay their payroll by investing
people's money correctly and standing up where
it doesn't go under a few years down the road.
We've got to protect the people of this state,
and you all can do it. Thank you.

CHAIRMAN: Thank you.

MS. EULER: I don't know if everybody
in this room has heard the latest on NPS.
We're not here because of NPS, but I think Mr.
Moore might like to hear the latest news on
NPS, and I don't know if everybody else in
this room has heard it, either, so if we could
take just a few minutes, I'll give everybody
just a quick update. Yesterday, about noon,
the special deputy receiver filed a
liquidation plan with the receiver court in
the court in Texas, and that includes a plan
of a settlement agreement between the National
Organization of Life and Health Guarantee
Associations and the special deputy receiver for the Guarantee Associations of the various states to provide payment on NPS contracts. There are going to be some contracts that aren't covered, but what we are being told is that the vast majority of the Missouri preneed contracts, there will be some money for. There will not be inflation, there will not be growth, but the Guarantee Associations, assuming this plan is approved, will be paying out to funeral homes the amount of the face value of the life-insurance policy that was purchased on the preneed-contract beneficiary. We don't know for sure, you know, how much that amount will be as of yet, but there will be some money and that's what we're hearing. Our office and Department of Insurance and the State Board has been working very closely with Texas on this. We had a conference call with them yesterday. I have asked if they can provide to the Missouri funeral homes some information about how much contracts will be covered so you all will have something to go on, so you'll know how much money on your book of business that's with NPS you can
potentially look to recover. Like I said, there will be a few contracts that won't be paid, but what I'm -- what they're telling us is that virtually all of the Missouri contracts, there will be some money on, but we don't know how much.

MS. BOHRER: And I will just add that there are -- we have been told there are about 45,000 contracts in Missouri that were issued by NPS, the preneed contract. Of those, there about 5,000 without insurance involved, so it's a fairly small percentage of contracts that don't have some type of an insurance contract standing behind them. The Guarantee Association is standing behind not the NPS contracts, but the insurance contract issued by Lincoln Memorial to -- that were supposed to be the funding mechanism for those preneed contracts. And I will just also caveat this with the plan needs to be -- the plan has been approved by the National Organization, the receivership, and the special -- or, excuse me -- the Texas Department of Insurance and the special deputy receiver, but each individual guarantee association for those
states affected by this have -- those Boards
have to approve and agree to accept that plan
of rehabilitation. And the Missouri Guarantee
Association has not voted on that yet, so they
will be voting on that within a week. So, we
should know within a week whether or not
Missouri's Guarantee Association has accepted
and agreed to that rehabilitation plan. I
will tell you that the executive director of
the Guarantee Association of Missouri has been
very actively involved with the National
Organization in developing the plan, but it is
not up to him as to whether or not Missouri
agrees to accept that; it is the Board of the
Guarantee Association, and Missouri has the
biggest exposure relative to the number of
people. And I can't remember, was it 49,000
Missourians or was it 49,000 in total across
all of the states?

MS. EULER: No. Missouri.

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

MS. EULER: There are 44 state
guarantee associations that are sharing this
risk. The guarantee associations have gone
far above and beyond what we expected them or
anybody else, I think, expected them to do, to
step up to make sure that these policies are
covered and supported. So, I think what the
guarantee associations have done and what the
special deputy receiver has negotiated with
the guarantee association, while it's not what
everybody was hoping for, it is far better
than anybody ever expected.

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

MS. EULER: Right.

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

MS. EULER: And how this is going to be
handled administratively is that the
purchaser, the beneficiary, the insured will
be the owner of these policies, and the
beneficiary of the policies will be the
funeral homes. And so, NPS, Lincoln, all of those people are completely cut out of this process. So, when you have an NPS contract, the person dies, you provided the services, you make the claim to the special deputy receiver who will then process the claim and send the check directly to you. So, all of the NPS stuff is being completely cut out of it.

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

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

MR. OTTO: Have they moved it up?

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

MR. EULER: Right.

MS. BCHMER: If they receive no objections by August 22nd, the plan goes in front of the special master on the 25th who will make a recommendation to the -- hopefully, to the district court that day. If
there are objections filed, the date for the
hearing is September 15th.

MR. OTTO: September 15th.

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

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

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

MS. ERICKSON: That's correct.

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

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

MR. MOORE: It sounds very generous,
ma'am. I've got 55 of those noninsured
contracts, ma'am -- $193,000. It sounds
fabulous.

MS. EULER: I spoke yesterday with the
Texas Department of Insurance attorney who is working on this. And the way the plan is worded, it's not who has insurance, it's who -- for any contract for whom there is any indicia of insurance or any intent in the agreement. And what they told us yesterday was that the number of people who will not be covered is shrinking, and as of yesterday, it was a very small number, and it had been cut in half.

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

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

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

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

MS. ERICKSON: I would like to further respond to your last question. I think that
everyone has already heard that the records
that have been at NPS and Lincoln Memorial are
rather confusing and mixed up. The special
deputy receiver has been working very
diligently to learn not only who is covered
and who is not, but, as Sharon indicated, if
there was an indicia of insurance, meaning if
it was supposed to go to insurance, that
probably will be covered, and these details
are being fleshed out and they're doing right
now all of the investigation necessary to
learn who those people are and to get Sharon
and Missouri and then the funeral homes that
specific information. They're still working
on it, but they have very high hopes that they
can get that together and then the number is
decreasing. We have been assured that as they
continue to investigate each individual
consumer, their policy, their contract, the
numbers are decreasing, so --

MS. BONNER: And I will also tell you
that even though the guarantee association in
Missouri through Chuck Wren has really no
obligation to the pure preneed contracts with
no insurance involved at all, he is trying to
work out some type of an agreement with a
third party to take over those contracts that,
in the end, through the Texas DOI and the
special deputy receiver, will be determined to
have no protection under this plan whatsoever.
He's talking to a third party to try to work
out something for protection of those plans,
as well. Whether that will materialize has
yet to be decided, but they are looking out
for your interests as much as is possible over
the entirety of this problem.

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

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

MR. MEIERHOFER: Okay.

MS. ERICKSON: Those are actually --
by law, they are stayed because the matter is
in receivership. There's a -- every state has
different time periods, but there is an
automatic stay, very much like in bankruptcy.
So, those actions are not, per se, objections to the plan, although it is certainly conceivable whoever brought those actions may wish to file an objection which, as Sharon indicated, the guarantee association, you know, will -- they could walk, and then there is nothing. So, these are tough choices right now, Mike.

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

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

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

MS. EULER: No. But we are talking
with Texas about clarifying that so that the
funeral home that provides the services can
make the claims. And if you want to look at
the plan itself and the liquidation, they are
posted at lincolnmemoriallife.com under the
legal docs.

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

MS. BOHRER: You said Lincoln Memorial
Life?

MS. EULER: lincolnmemoriallife.com

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

MS. EULER: I saw it there yesterday.

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

MS. GRINSTON: We are looking at the
definitions from preneed trust, the
trust-funded preneed contract. We had very
minor revisions, I think, across the board.
The only one that we probably need to reserve
is the definition of seller, but removing the
definition of seller, any objections to
anything else in that section except the
definition of seller?

CHAIRMA: Todd?

MR. MAHN: Well, just back up for a
second. I don't think we ever gave people
selling prearranged funerals a title, and
these are folks that are sitting down making
final arrangements with the family. Most of
the time, a lot of the ones that I've seen
that's worked out in the field usually screws
it up because the funeral director has to
straighten it out when it gets back in-house
because they don't know what they're talking
about. And I'm thinking at a minimum -- and
I think we need a show of hands here at this
roundtable or a yes or no or whatever we want
to do. At a minimum, they ought to be an
apprentice funeral director. If they can't
afford that investment, I don't think they
ought to be doing it. Now, if they want to
sell just the merchandise -- caskets, vaults,
or something like that, they can go to
Wal-Mart and sell those or Sam's Club or...
whatever. But I'm talking about actually
making a prefuneral arrangement -- they're
arranging a funeral. And, I mean, if we're
just sending up the -- you know, how we feel
on things, why can't we send them?

CHAIRMAN: Sharon?

MS. EULER: Because it violates
federal law.

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

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

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

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

MS. GRINSTON: And, Todd, what I'm
hearing is a recommendation that you all
reconsider the vote earlier because originally
you guys said you didn't want a required
funeral-director or
apprentice-funeral-director license. I think
I'm hearing Todd say do you all want to
reconsider that vote and instead require that
sales counselors have a funeral-director or
apprentice-funeral-director license? I share
Sharon's FTC concerns, but if that's the
recommendation you would like to make, then I
throw that open to the group as to whether you
would like to reconsider that.

MS. EULER: No.
MR. MEIERHOFER: No.
MR. OTTO: I wish we could, but it's --
CHAIRMAN: Who wants that? Hold up
their hand.
MR. CLINE: That the preneed seller be
licensed -- the individual person?
MS. GRINSTON: As a funeral director
or as an apprentice funeral director.
CHAIRMAN: One, two, three. How many
don't?
MR. BAKER: State it again, please.
MS. GRINSTON: That a preneed seller's agent must be licensed as a funeral director or an apprentice funeral director.
CHAIRMAN: Those that don't.
MS. EULER: You can sell preneed without being a licensed funeral director. That's what we're voting on.
MR. MOORE: How come I can't do surgery as a doctor without a medical license? How come I can't sell life insurance without a life-insurance license?
CHAIRMAN: Well, I think we're trying to narrow the field. They're saying, like, Todd is wanting to make an apprentice funeral director or a funeral director to sell preneed.
MR. MOORE: Very good.
CHAIRMAN: Okay. But we've got a bigger pot is the federal government is going to say, well, that's a restriction of trade, and then we've been through that before.
MR. MOORE: Then how come the federal government makes me have a license to do surgery?
CHAIRMAN: Well, they've got a pretty heavy hand, and they like to use it. So,
anyway; -- I mean, yes, I see what you're saying. I would like to do it, but I've been there, I've been subpoenaed. We had to go through the whole thing on this other deal we just got done with on funeral directors selling merchandise in a funeral home, which that was funeral directors selling merchandise in a funeral home, not selling caskets in a casket store. And you just got noticed on that. Did everybody read the big letters and all that, and we had to do certain things. When they say jump, you jump pretty damn fast and pretty damn high, and that's -- and we're under that for ten years, so --

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

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

CHAIRMAN: Thank you, Linda.

MS. GRINSTON: I agree.

CHAIRMAN: Okay. Now vote. Now,
we're going to go back to the program, and then we're going to get to break.

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

CHAIRMAN: No, let's do this.

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

MS. EULER: I have a suggestion.

MS. GRINSTON: Yes.

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

MS. GRINSTON: To the provider?

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

CHAIRMAN: Don, have you got a comment?

MR. OTTO: Yeah. No, that's -- yeah.

I agree with you.
CHAIRMAN: Mark?

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

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

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

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

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

MS. GRINSTON: Okay. Seller, the person who executes a preneed contract with the purchaser and who is obligated under such
preneed contract to provide payment to the
provider?

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

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

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

MS. GRINSTON: And the seller?

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

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

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

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

MR. OTTO: Okay. That's -- okay.

That -- never mind then.

MS. GRINSTON: Would that remedy your
concern?
MR. OTTO: Never mind.

MS. GRINSTON: But as I understand.

Any concerns, objections with that? Mr. Cline?

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

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

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

MS. GRINSTON: Yeah, it does.

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

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

CHAIRMAN: We'll take a break.

(Off the record)

CHAIRMAN: All right. Go ahead.

MS. GRINSTON: Okay. Well, then let's
go to the applicability section. The chairman
told me to start. One of the concerns, and
this is one of the concerns that Bill has
raised, is with the inclusion of cemetery
operators and some of their definitions. I
think that on the good -- when you read 214
and 436 together, there is a potential for
some overlap. What you see in the
applicability section, that first section is
not the language you all looked at. That is
my suggestion to you because I think it may be
of some value to clarify where cemetery
operators fall. They're either under 436 or
under 214. Right now, if you read both
provisions, there's a concern from both the
Office of Endowed Care Cemeteries as well as
from through 436 that cemetery operators may
be regulated right now technically by two
different entities and operations. And so, I
would like to submit the applicability
language in subsection one under the
applicability section as a possible way of
clarifying what cemetery operators are
required to comply with.

CHAIRMAN: Comment?

MS. CRINSTON: Hearing no comments on
that. Subsection 2 which is the language of a
contract of insurance. I think we wanted to
clarify what 436 now would apply to. And so, that is subsection 2. We didn't get any comments on that specifically. So, I'll open that -- the applicability section open to the floor for any questions or concerns.

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

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

MS. BOHRER: Okay.
MS. GRINSTON: But I think the assignment-of-beneficiary language is probably, I think, addressed a little bit later.

MS. BOHRER: Okay.

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

MS. BOHRER: Okay.

MS. GRINSTON: Hearing nothing.

Preneed-provider licensing -- and, of course, these headings are just -- really, were for my benefit. They are not intended for anything else, just so that I could tag where I'm going. You all looked at the requirements for preneed-provider licensing. The language that you see here, the changes that you see here without a name attached to it we believe is what you all said that you wanted to see.

First, in subsection 2 -- well, no. First, in subsection 3, I think, was the consensus vote that you've got to be registered with the Secretary of State. Becky and the Board asked that we clarify that. We got some comments on this section, and I'll just go through them by
the common area. Subsection 2, I wanted to
add something that said that nobody would be
exempt from complying with the
funeral-establishment licensing requirements.
It's unnecessary, but I just -- it's not
absolutely necessary, but I thought it would
be a good idea just to clarify that
registering as a provider doesn't mean that
you get out of being registered as a funeral
establishment if you have to be. That's
actually been raised as a question.
Subsection 3 is the language that says they
have to be authorized and registered with the
Missouri Secretary of State to conduct
business in Missouri. Subsection 6, and I
have to clarify this. Six, seven, and eight
-- I think Sharon said this before -- these
are not recommendations from the AGs office,
these are recommendations that Sharon just
gave us as we were walking through, so it's a
little bit different. But it was suggested
that we add something in subsection 6 that
would require applicants, as well as their
officers and directors, to be of good moral
character, and that should be moral and not
morale. I do know the difference. But that
is some language that is standard for most of
the division's boards and professions, or
several of them, and so, I'd submit that out
there for your review. It was also
recommended that we require a high school
diploma.

MS. EULER: If you're an individual.

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

CHAIRMAN: Don?

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

MS. EULER: Right. I just --

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

MS. EULER: Yeah. Yeah.
MR. OTTO: And then on 8, meet all requirements for what licensure.

Ms. EULER: For the preneed-provider license.

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

CHAIRMAN: Linda?

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

Ms. EULER: Yeah. One of the things
we had talked about maybe at another section
is that each officer, director, manager, and
controlling shareholder be eligible for
licensure on their own, and that didn't make
it in here, but something along those lines
for that very reason.

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

MR. OTTO: And what you're licensing in
subsection 8 on page 5.

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

CHAIRMAN: Seeing no other concerns.

MS. GRINSTON: Then I think we can
move on to page 5. Looking at subparagraph 4.
One of the things that I want to know on this
is you'll see that the renewal fee says of
blank dollars. Depending on what the final
product is, the office, the Board, the
division, they're going to have to go back and
really run some very strong numbers to get a
better idea of what that fee should be. And
so, right now, we don't have an express fee
that we can recommend to you. We're going to have to look at the numbers to see what may be reasonable. We hope to have that out and e-mailed out to everyone so that you'll know what we're thinking may be reasonable for a preneed-provider fee.

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

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

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

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

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

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

MR. MEIERHOFFER: Is that what they have?

MS. EULER: Yeah.

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

MR. MEIERHOFFER: Sure.

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

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

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

MS. DUNN: Pardon me?

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

MS. DUNN: Okay. I'm sorry.

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

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

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

MS. GRINSTON: No. We're in the
provider section.
MS. EULEF: I had moved on to the seller section.

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

MS. DUNN: Okay.

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

MS. EULEF: I thought we had moved on.

MS. GRINSTON: No. I'm sorry.

MS. EULEF: Okay.

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

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

MS. DUNN: No. No. Because the provider is covered under establishment. So, an establishment's license with one DBA, and establishment is a provider. So, we shouldn't have discussed that right now.
MS. COLLINS: Oh, okay. That was premature.

MS. DUNN: Yes.

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

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

MS. DUNN: Okay.

MS. GRINSTON: Again, we're on page 5, we're looking at lines 2 through 22. This is for renewal of a provider license -- renewal of a provider license. Anyone have concerns with renewal of a provider license? And you'll see the comments that were suggested.
Hearing none, let's move to page 6, which is preneed-seller licensing.

CHAIRMAN: Todd?

MR. MAHN: Yeah.

CHAIRMAN: Do you have a comment?

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

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

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

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

MS. COLLINS: Yes.

MS. GRINSTON: If you look at page 6 of that draft that says "HLC comment," you'll see Homesteaders suggestions. And the first suggestion was to -- right now, it says a seller is obligated to administer all payments. The suggestion was to add
"excluding insurance premium payments made by a consumer." And we'll take comments on any concerns with that. Sharon?

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

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

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

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

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

MS. BOHRER: Because does the consumer make payments to the preneed seller after they're sold?
MS. EULER: Yes.

MS. BOHRER: So, then --

MS. EULER: Currently.

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

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

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

CHAIRMAN: Mark?

MR. WARREN: We weren't worried about the consumer making payments to the company, we were worrying about the consumer making further payments to the seller after the initial premium, and then for whatever reason, those premiums not being remitted further up to the company. I mean, in most cases, I think you would envision they might make the
initial premium payment to the seller and then
it would be a payment directly to the company
from that point on.

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

MR. WARREN: Exactly. Exactly.

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

MS. EULER: Right.

MS. BOHRER: The consumer.

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

MS. GRINSTON: So, I'm hearing two
concepts out here. Number one, the language
that excludes premium payments made directly
by consumer to for insurance in trust, or a
trust or a joint account, and then the second
issue of whether all subsequent life-insurance
premium payments should be made directly to
the insurance company. I think, if I read
your suggestions correctly, those are two
different things. The charge to excluding
payments directly made to the insurance
company, trust, or joint account, does anyone
have any problematic issues with that?

MS. EULER: I have a suggestion.

MS. GRINSTON: Yes, Sharon?

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

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

MS. EULER: No.

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

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

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

MS. GRINSTON: I think that's her
suggestion.

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

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

MS. EULER: And as provided by the
contract.

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

MS. EULER: Yeah.

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

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

MR. OTTO: I don't think that's
currently in the law, and I'm saying -- if
what we're saying is the seller -- what the
seller is obligated to do is to pay the people
the money they're supposed to pay them?

UNIDENTIFIED: Yes.

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

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

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

MS. GRINSTON: No. No. Not for a
seller to go back and say, "Dear Provider, why
are you selling them a contract that's
different than what's in our contract?"
MR. OTTO: Well, the seller's obligation -- we talked about this in the definition section. What the seller's obligation is is to pay people money. Whether it's the provider or the consumer, that's what the seller's obligation is.

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

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

MS. GRINSTON: I don't believe so.

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

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

MS. BOHRER: I think that the language you're talking about is in the current law because if you look at Kim's copies, the only thing she has revised is what's in red, and insure the preneed contract is managed and
fulfilled is not in red in Kim's copy.

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

CHAIRMAN: Bill?

MR. STUART: Clarification to Sharon.

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

MS. EULER: No.

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

MS. EULER: No. No. The seller's
obligation is to, if it's trust funded, to
make sure the money is timely placed in trust.
If it's insurance funded, to make sure that
the consumer knows -- gets their information
about their insurance and how to make the
payments, and to make sure that the payments
are made out at the time of need and that the
preneed contract is fulfilled from the
seller's point of view.

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

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

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

MS. GRINSTON: What you get is not my
responsibility?
MR. MEIERHOFER: I think there is a disconnect here. Just turn it into insurance, and I should go back to the insurance company and say the same thing. I should say to Homesteaders, they didn't provide it. Really, the dilemma is with the provider and then they'll come to the State Board. That's where the circuit breaker hits at that point.

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

MR. MEIERHOFER: Yeah, you do. You have a contract with the provider.

MS. GRINSTON: The purchaser has a
contract with the provider?

MR. MEIERHOFER: Yeah, that's the key there. You do have a contract with the provider.

(Numerous people answer no.)

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

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

MR. MEIERHOFER: Wait. Wait. Isn't there a master agreement that exists between the provider and the --
MR. STALTER: Well, and the seller,
yeah, but that's what I sue you on. That's --

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

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

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

MS. DUNN: Am I provider or a
purchaser?

MS. EULER: You're a person.

MS. DUNN: Okay.

MS. EULER: And John then says or puts
in the contract that Mike is going to provide
the funeral. Becky and Mike, there isn't a
document that Becky and Mike have both signed.
Mike's contract is with John. And so, Becky
dies -- sorry -- and Mike goes, "You know, this preneed contract, it called for, you
know, a metal casket, but I've got this really
nice pine box that, you know, my son made in
shop class." The contract with Mike is not
between Mike and Becky, it's between Mike and
John. And the question is: Does John have
an obligation to say, "Mike, it says metal
casket. I sold Becky a metal casket. You
need to provide a metal casket." And if not
with John, then with whom?

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

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

MS. GRINSTON: Against whom?

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

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

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

MS. GRINSTON: Yes. Which is the insuring, not I have to do it, I've got to
insure that this contract is fulfilled.

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

MS. EULER: And that may be.

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

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

MS. GRINSTON: So, if that's your only obligation, why would I sue you if it's not fulfilled? If it's not fulfilled, why would the consumer ever sue you because your only obligation is to pay the provider? You have no other obligation. So, my suing -- the
purchaser suing you should never be an option
as long as you write a check to a provider.

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

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

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

MR. MOORE: And steals money.

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

MR. MOORE: And you want the funeral
home to say we've got to guarantee you where
those payments are going? Somebody comes in
and pays me $50 a month for their payments.
I send it to you guys and you guys don't have
to prove nothing where it goes and then you're
missing? Good plan.
MS. GRINSTEIN: Well, under 725 -- I
don't know. As we break for lunch, my
suggestion would be let's think about that,
but I think we need somehow, Don, to capture
the language that if the purchaser -- if this
contract isn't fulfilled, my right of remedy
is against you, the seller, and not the
provider.

MS. EULER: Yes.

MR. MEIERHOFER: Before we break --

MS. GRINSTEIN: Which I think everybody
agrees on.

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

MS. GRINSTEIN: Should we leave it as
is and then just move on then?

MR. MEIERHOFER: I mean, we -- or Don
drafts some language or something to get back
and we can pass because we're trying to solve problems and we really need to just get through the information here.

CHAIRMAN: Gerry?

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

CHAIRMAN: All right. Lunch.

(Off the record)

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

MS. GRINSTON: Connie and I went back and had some discussion over lunch about where we are and we revisited what we believed we were originally tasked with doing for the general assembly. For those of you who have been involved in legislation, and I know a lot
of you have, for the lobbyists and everyone else here, legislation is a very detailed process. It is -- when we do legislation for this Board or we do legislation for any other Board or for the division, it is, literally, a line by line, page by page to make sure that what we're suggesting or that what we're gathering together really reflects the intent. Sometimes, Don -- a lot of people can speak to this, you know, you are literally relooking at commas and ands and ors, or, you know, does this really reflect what we want to do. That process is extensive; it is painstaking; it is exhausting -- trust me -- and a lot of you have experienced it. But that is the way -- the only way to make sure that the language that you come to is what it is you, indeed, intend to suggest or propose. I think our original understanding was that we were being asked as a group to attempt to come up with some suggested language for the general assembly to start with. I understand from the comments today, from the comments we have received, and from just taking a poll informal around the room, that this process is probably
one that, with this group, that kind of
vetting and screening process is probably
going to be very difficult to do in this
setting, especially since, you know, Mr.
Meierhoffer pointed out, we are, you know, on
page 6 of a very lengthy draft. I understand
that -- you know, that you all have things to
do. As we talk about doing 436, we've met,
what, five times. I don't think anybody
envisioned that we could come in, discuss the
topics, rewrite it and get it done in five
days, you know, on partial days, you know,
with lunches and everything built in, but I do
understand that this process has been a bit
lengthy. So, having said that, we've done
some thinking about what it is that we would
like to suggest to you all. To the extent
that we do have the topic areas that we have
discussed and/or reached a consensus on, it
may be a good suggestion to submit to the
Joint Committee a list of the topics that we
agreed on and what we agreed on. And, of
course, we would submit that and circulate
that to everyone so that you know by topic
what it is that we agreed on. Maybe the idea
of pulling together draft language on paper is just unrealistic for this setting and for the time that we are able to devote right now. Having said that, Connie and I visited, and what we think may be a reasonable alternative, we'd like to throw this out as a suggestion for the group. Again, that we submit the topic listing, which, of course, we would get to everyone to approve to make sure that it reflects the consensus based on our notes and the transcripts. For those areas where we disagree, we will mark the disagreement. In the proposed draft that you see now, Connie is envisioning that we do a document that is maybe on legal-size paper that has two columns where we have the language, and we'll represent that this is not language that has been uniformly agreed on, but we just include your comments, you know. We'll send it out on a document, we include your comments on the sections, and we just cut and paste your objections, your comments, your notes, on some of the language on paper and we send that over, as well, as two separate documents instead of trying to vet through and come up
with language on paper that we can say we
agree upon because, again, that is going to be
a painstaking and very detailed, exhaustive
process. If we did it that way, I think our
suggestion would be from the division and
office, is that we send you a document and
that we ask that comments be made in the text
of the document itself. So, literally, all we
need to do is a cut and paste, and so that
all comments are coming over in the same
format. I think that that may be probably a
more reasonable alternative for the time that
we have now and, apparently, some of the
issues that we have left so that as we finish
up, there are probably -- I know we have seen
-- a lot of people have asked about some of
the things that we haven't discussed. As I
sit here today, there are probably four major
topics that we need to discuss left on the
original topic list which were included in the
draft for review, but we probably could just
discuss by topic area for purposes of doing a
listing. That we finish those four major
topic areas today, let us send out the topic
agreement listing for your approval, let us
send out this language for you to comment on, and, again, we won't be doing any editing; we'll just be cutting and pasting your comments onto one document. Let us do that and then conclude this process today with the exclusion of sending in comments to the proposed language and everything else because, again, I don't know -- the process of trying to agree on language and to get something that we can agree on is probably going to be much more detailed and take a lot more time than what we have probably in front of us right now. I'd like -- and, Connie, I don't know if you have anything you would like to add to that?

MS. CLARKSTON: The only other important thing I would like to add is that the comments come to the e-mail address that was just handed out to you. We've got comments coming into Becky, some on fax, and some to me. So, in order to help us keep organized, and the short time frames that we are dealing with, if you could direct those to my e-mail. I will assure you that I will share those with the board office. We are not
housed in the same office suite within the
division. Becky is down the hall from me a
little bit, so we're not immediately available
to each other. So, if you can, again, send
that to that e-mail address that you have just
received, it would be very, very helpful to us.

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

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

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

MS. COLLINS: Today is the 12th.

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

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

MS. GRINSTON: After the 18th.

MS. COLLINS: Okay.

MS. GRINSTON: Which would be August the 22nd, which would give Connie and I from the 23rd all the way through the 31st to try to get everything done and formalized and, hopefully, maybe even submitted back out to you for one last time to look at. Again, my thought is that as we go forward, the process
of really formulating and drafting language is
-- it is an extensive process, and I don't
know that right now -- and I can see the
faces around the room. This is -- and just
so that you know, when people always call the
Board and say, you know, "Why don't you guys
draft it," this is the process that the Board
goes through sometimes with four, five, six,
seven bills a year. Every 436 bill that we
go through, we generally go through this line
by line, comma -- and we're not the only ones.
Don, the lobbyists in the room, this
line-by-line. comma-by-comma, and/or semicolon
review for every single bill. I understand
that that is a process that we are used to,
but that may not be a process that is probably
particularly suited to this group, especially
with the time frames that you're looking at.
Anybody have any --

MR. OTTO: The only thing I even have
a slight concern about, and I don't think --
know if there's a good way around it. If you
have in this column here, here is the
language, whatever we came up -- and over here
is people's comments to it, it kind of makes
It sound like that language was -- has some kind of status or that was the consensus and now I'm over here complaining about what ten -- the consensus wanted when it may be that that might not be something that we even discussed.

MS. GRINSTON: Got you.

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

MS. GRINSTON: And, Don, I think you raise a good point. To that extent, the best way we could fend that off would be to do some type of education, but will that -- you know, as it gets passed around the halls of the Capitol, will that be carried through? I don't know if that will be a good thing to
carry through. My understanding -- and
everyone can correct me if my understanding is
wrong. My understanding of what we were
originally going to do is that we were going
to give them some language as a starting point
and that they would be building on our
starting point, not necessarily agreeing, but
building on our starting point. I don't know
if for the type of language that we need to
do, since I understand, you know, that this is
becoming an exhaustive process. And we've
heard the comments in the halls, outside the
halls, in the room, about, you know, the way
the process is going. To the extent that that
may be an exhaustive process, it may be -- I
don't know. Would it be advisable not to have
that draft language at all? I mean, I'm not
saying that rhetorically at all. I am not
saying that rhetorically. I really -- I am
asking the question honestly about how we best
do this because I don't know which other way
to look at language other than looking at the
language and walking through that process. If
this is not something that we think we can get
done in this time frame -- and I know we
talked about another meeting next Wednesday or
during the Board's meeting or at some other
time. If this is not a process, then maybe
we do need to look at just giving a listing
of topics because when it comes to language,
there is no other way to get joint language
other than walking, literally, through the

MR. MEIERHOFFER: Comment?

CHAIRMAN: Yes.

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

MS. GRINSTON: I do.

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

MS. GRINSTON: We can.

MR. MEIERHOFFER: Or are other areas
of more importance? I guess we've got time that we need to use judiciously, and I'm just asking, what's the best way to do that?

MS. GRINSTON: We probably could. Some of these on this list, we have already discussed and disposed of. For example -- and I'll just skip to page 2 -- a document requiring standard forms for preneed contracts, we talked about that, I believe, last time; forty-one, we have discussed; forty-two, we have discussed; forty-three, we have discussed; forty-eight, we haven't; forty-nine and fifty, we have pretty much discussed and reached some agreement/consensus on; number two, I believe, we have discussed; number nine, ten, eleven, twelve, and thirteen, I think those are all under one topic, just trustee's responsibilities; rule-making for the board, we have discussed; licensing requirements for preneed registrants, we started providers today, we did sellers already, we did agents. I don't know if we have any other -- I think that's probably all we have. We've done cemetery sellers, providers, and agents, and I think
that was it. And so, thirty-five we probably
have done, as well. Thirty-nine may be the
other one topic that we haven't discussed.
So, having said that, I think that probably,
once you break it down, it probably falls into
about three or four major areas that we
haven't. But I need to know, as we discuss
these topics, what are we going to do in a
going-forward basis, because if we're just
going to do the topic areas, then let's finish
the topic areas, which I think we could do in
about maybe half an hour, forty-five minutes,
or maybe an hour, and conclude and do
everything else by comments with that
suggested plan, because, again, some of these
issues, unless we walk through the language,
there is no way we're going to be able to
walk through the language.

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

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

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

MS. GRINSTON: Okay.

MR. CLINE: I'll second that.

CHAIRMAN: All right. Go ahead.

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

So, I would like to come back to that for
just a minute -- in just a moment. Number
eight, payment to providers for services
rendered. There was something that -- the
suggestion from Mr. Meierhoffer was not to
require a certified copy of the death
certificate. We'll throw that out on the
floor. If there are any other issues under
payment to providers for services rendered,
timeliness or anything of that sort that you
guys would like to discuss.

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

(Numerous people answer yes.)

MR. MEIERHOFFER: Okay.

MS. GRINSTON: Go ahead, Sharon.

Ms. Euler: I don't have Mr.

Meierhoffer's suggestions in front of me
because I'm a loser. But the -- as far as
the death certificate goes, from a regulatory
viewpoint, we have had problems with simply
having a certificate of performance with no
death certificate because it's easier for
people to falsify deaths and collect payments when there has been no death. We've also had courts -- one decision that I know of in the circuit-court level rule that a contract with a -- I think it was a third-party seller that required a death certificate before they paid out, the Court said no, you can't require a death certificate because the statute says certificate of performance and that's it, so your contract that says you have to provide a death certificate is invalid. So, I would suggest requiring a copy of the death certificate before payment is made.

MR. MEIERHOFER: I disagree, respectfully.

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

MR. OTTO: I'm neutral on the death-certificate part, but under the current law with a joint account, the certificate of performance must be signed by the funeral home, a witness, and the purchaser or the purchaser's heirs. With a trust, it's just the funeral establishment and a witness. I certainly would like to see those match up and
be the same. And, particularly, if there's
ever going to be any implication that the
seller has some duty to insure -- I'm not
going to bring that up again -- the contract,
I would like to see that the purchaser has
signed off on the goods and services because
that's required under -- for joint accounts,
but it's not required for a straight trust.

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

MR. OTTO: For the -- yes.

MR. MEIERHOFFER: Are they in there?

MR. OTTO: Yes. For a trust, before
the seller pays the provider in a trust, a
certificate has to be delivered to the
provider saying that the goods and services
were provided or that alternate goods and
services were selected. That form is signed
by the funeral -- the provider and a witness,
without the witness being defined. In a joint
account, before the bank is supposed to
release the money to the funeral home, it must
present to the bank -- how many times has this
happened. It must present to the bank a certificate that says the same thing, but, in that case, it's signed by the provider, a witness, and the purchaser, so there's -- that's not it.

MR. MEIERHOFFER: Yeah. We can fix that.

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

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

MR. OTTO: Under the -- yeah.

MS. EULER: Yeah.

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

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

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

MS. NEUMANN: I don't like the idea of
the witness being the same person.

CHAIRMAN: George?

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

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

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

MS. GRINSTON: Because what if the
purchaser is gone?

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

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

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

MS. GRINSTON: What happens in instances where you can't find the purchaser?

Not that I don't --

MR. MEIERHOFFER: No, we're not talking about that. We're talking about the person signing the funeral contract, the one that makes himself responsible -- the same person.
MS. EULER: Oh, then you're saying the same thing that Kim is.

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

MR. MEIERHOFER: Well, the purchaser isn't the person that's deceased necessarily.

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

MR. MEIERHOFER: And I understand --

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

MR. MEIERHOFER: Right.

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

MR. MEIERHOFER: Then we're fine.

Then we're fine.

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

MR. MEIERHOFER: Yeah. That makes sense.

MS. GRINSTON: Just in case the person who bought the preneed contract is no longer speaking to them, but the contract is out there and not come to the funeral, I don't have to go chase them down to get paid --
MR. MEIERHOFFER: That's right.

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

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

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

MS. GRINSTON: Yeah.

MR. OTTO: Yeah. I don't have a problem with that if that signature now alleviates the seller of responsibility of answering to the purchaser. Follow me?

Because let's say the purchaser says, "That wasn't an 18-gauge." Remember, I've got to insure that the contract was provided. My contract is with the purchaser. And so, I have no problem with your suggestion, but that certificate of completion now has to relieve me, as a seller, of my contractual -- that has to say my contractual obligations have been completed with that.

MS. GRINSTON: Yeah, but I've got issues with that, too, Don.
MR. OTTO: Well, then you've got to have the purchaser signing it.

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

MS. EULER: What if the purchaser is dead?

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

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

UNIDENTIFIED: Exactly.

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

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

MS. GRINSTON: Then what do you do?

Do you just hold it in limbo?

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

MR. MEIERHOFER: Public administrator --

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

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

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

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

MS. EULER: Right.

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

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

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

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

(Numerous people answer yes.)

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

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

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

MR. MEIERHOFFER: The same thing.

MS. GRINSTON: The other thing is, we
used this term "certificate of performance."
Certificate of performance is never fully
declared or identified in the statute, it just
says that you certify in writing that you have
provided and/or performed. To the extent that
you guys want to officially adopt this term
"certificate of performance," since I
understand that's what's in use, the statute
came before the Board and we said, "Show me in
the statute where it says certificate of
performance," and it doesn't say certificate
of performance.

MR. MEIERHOFER: That's what I
thought.

MS. GRINSTON: So, I would make a
suggestion if we're going to require a
certificate of performance, we call it a
certificate of performance. Any objections?
MR. STALTER: Now, let me raise an
issue with that. Now, would that be a form
that the Board approves? This is an issue in
Indiana at the current time.

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

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

MS. EULER: Yes.

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

MS. GRINSTON: I thought I heard no.

Certificate of performance is fine.

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

MR. MEIERHOFFER: Perfect. Fine.

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

MR. MEIERHOFFER: Okay. I agree.

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

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

CHAIRMAN: Jim's got a comment.

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

MS. EULER: We're not going to use death certificates.
MR. MEIEZHOFFER: We're not even using then.

MS. GRINSTON: Just a certificate of performance.

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

MR. STROUD: This is Larry Stroud. I won't come up there. You guys know me. A certificate of performance is fine. We have this anyway in our firm, you know, but if you really want to avoid fraud or you're concerned about fraud, then I have to think that you would have to have a certified death certificate. If you're concerned about fraud -- if you're really concerned about fraud, then I think you need a certified death certificate. And it's real easy to tell a family that, hey, this is the law. They require a certified death certificate because your money is in trust and it's protected, and nobody can take that money out unless I present this or if you want to cancel it or something else, but you know what I'm saying. The death certificate, is a great piece of
paper and you eliminate a lot of headaches.

Good Lord.

CHAIRMAN: Thank you, Larry.

MR. STROUD: You're welcome.

MS. GRINSTON: Okay.

CHAIRMAN: So --

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

CHAIRMAN: Or a death certificate.

MS. GRINSTON: Or the death certificate.

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

MS. GRINSTON: Okay. Let's talk about trustee responsibilities, and I'm using this as a broad topic. It will include #9 through probably #13 of Mr. Meierhoffer's list, but you guys saw in the draft, and I am not asking for anyone to comment on the language, but you guys saw in the draft some of the language that we thought we heard some of you
talk about and some of the suggestions we had on what a trustee is responsible for doing. Instead of doing a list of what the trustee is responsible for doing, outside of independent investment advisors, can we talk about trustee responsibilities. In the language that was proposed, it begins on page 14 of your copy, and goes through a course, we are going to remove language that talks about income and the distribution of income because I think that goes back to the 80-20 and the income split. But that language on the trustee's duties, is there anything -- or trustee's responsibilities -- that anybody would like to add or amend or change? Again, we're not going to use the language, we'll use the concepts when it comes to a trustee's responsibilities.

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

MS. GRINSTON: Oh. What we started out with this morning. On page 14 of that, there are some suggestions in there that include -- well, some language in there on the
trustee requirements. One of the things that you guys asked me to do, and this is on page 17, is to draft things about investment of preneed trust funds. I pulled some of this from 469, some of it from 456, but I was sort of careful in pulling over some of the provisions that were objectionable. To the extent that we're talking about the responsibilities of a trustee -- and this is something that we could do by comments. If you disagree with anything, you could always notify us and let us know and we won't list that as a part of the agreed-on trustee responsibilities. Or if there's anything you would like to talk about under the responsibilities of trustees, why don't we do that now?

MR. STALTER: And there's a lot of things I'll address and comment. It's just basically to avoid ambiguity. Once we say that there is a prudent-investor rule imposed upon the trustee, then be careful about we don't double back and there's provisions, I think, that were copied in that said unless there are other circumstances that warrant it.
I mean, that kind of thing is what's gotten us in trouble. And, basically, once we set a standard, you know, let's avoid any kind of issue or language that creates -- you know, where there's discretion for the trustee. So, I had several comments, but I think it would be better for me just to address those in writing to you all. And part of them I tried to address in the letter to Linda's office, but it -- and it just -- they have a little different concept than you did and, basically, it was how to try and reconcile these and how to -- that's investment. And the other should get back to, unless we're talking about what is the trustee's duty for oversight on distributions. And in Indiana, the issue came down to should the trustee be going through every contract to see whether it's performed or not. And the issue there was the class-action suit involved one of the consolidators about whether or not they're delivering the kind of vaults described in the contract. I mean, is that the trustee's responsibility, or do we say -- you know, once we get a form approved by the -- whether it's
by the Board or whoever, I mean, are we then
done? Can we just -- and write the check, or
do we have to go in and confirm whether or
not that contract has been performed according
to its terms?

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

MR. STALTER: Yeah. Yes, you are.

MS. GRINSTON: Because they were
concerned that trustees, especially in light
of things that were happening, may begin to
pull out in bulk, if you will, if they believe
that they're going to be on the hook for
something other than just administering the
trust. With that concept, again, the concept that a trustee, you're responsible for what you get, you're responsible to make sure you're paying out in accordance with the law. After that, there is no additional duty for you to monitor the activities of the seller. Does anyone have any objection to that? Sharon?

MS. EULER: I don't have an objection.

I think the trusts' duties begin when the money is paid into the trust and their obligation is to safeguard and try to grow those assets the best they can and to pay out.

MS. GRINSTON: And I think that's the same thing that we heard in the 214 side. Your responsibility kicks in when you get the money, it lifts once the money is paid out appropriately. Does anyone have any objection to that as a concept for trustees? Okay.

Your first comment, Bill, if I may, deviation from the prudent-investor rule. There are provisions in 456 and 469 which govern trusts, and one is the Uniform Trust Act and, Bill, help me with the other one. But it does establish a prudent-investor rule for
trustees; however, there are provisions that
would allow them to deviate from the
prudent-investor standard by agreement. And
what we heard suggested from the 214 side is
that we include something that says you have
to follow the prudent-investor standard, no
exceptions, no changes, no deviations. That
way, for those who don't know, the
prudent-investor rule basically says that you
have to exercise reasonable skill or prudent
skill, diligence, you know, and diligence in
investing and handling trust funds. It is a
standard of investment that, again, is the
standard of Missouri law, standard across the
states. It is well entrenched in the law, so
there's a good body of case law to support it.
It prohibits conflicts of interest. It
prohibits a lot of the things that we have
talked about under the standard. And so, I
think the suggestion is that we bring that
over. Some of that is in here, but we also
added language that says that you cannot
deviate from that by agreement or otherwise.
Anyone have any concerns about that?

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

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

MR. STALTER: Yeah. Endowed care is a different thing, but on preneed, the thing would be if we implement the prudent-investor rule, almost by definition, it would exclude insurance. What we'd almost have to have by
statute, would it be an exception if they did
a trust rollover. I mean, basically, some
states, we do that and say, you know, prudent
investor, diversification, but create an
exception where it's approved either by -- you
know, the procedure is set out by statute, but
then usually it has to be approved by a
regulator in terms of each kind of rollover.
And there's circumstances where that might be
approved, but it would have to be -- it would
have to actually come through the State Board
before --

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

MR. STALTER: Yeah.

MS. GRINSTON: Yes. You guys voted
that no term life insurance and that the
investment would have to be -- increase in
value or have a reasonable potential of
increasing in value. And I don't think -- you
guys did not take a final vote on whether it
needed to be tied to the life of the
beneficiary alone. You all did not vote that
out, and I think you thought you wouldn't do
that restriction, if I remember the
discussion, if the other restrictions were in place. Is that still the way you want to go -- no term life insurance, it must be able to reasonably gain in value, and you must follow the prudent-investor rule? I see nods. I'll take objections. Okay.

CHAIRMAN: Gerry has got an objection or a comment.

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

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

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

MS. GRINSTON: Got it.

MR. OTTO: Over the life of whatever
it is.

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

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

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

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

MS. GRINSTON: Okay.

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

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

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

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

MR. STALTER: Well, this is one of
those abuses that -- where the preneed funds turn into a loan. I mean, it just --

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

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

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

MS. GRINSTON: And I think as we bring up the investment advisors, that brings us to our next issue is the allowance of investment advisors. I think that originally the recommendation was that we not allow -- from the department that we not allow investment advisors. We asked finance to take a look at this, and I think he reported back from his banking people that they -- there were some favorable ideas or concerns about allowing
independent investment advisors in certain circumstances. This is something we were
going to bring back to the group as to whether
you wanted to prohibit and/or otherwise
restrict independent investment advisors by
use of -- well, designated by the seller.
Yeah, I think I'm saying that right. Or use
of independent investment advisors at all, and
I think this is probably a good time to open
it up for discussion.

MR. STALTER: I mean, I'll start. I
mean, the problem with 436, I think, is where
the seller gets to dictate to the trustee this
will be your investment advisor. Once it's
over $250,000, it's the seller who gets to
designate to the fiduciary. And, I guess, the
way to address that issue is to take that
authority away. The trustee should always
have the ability to veto appointment of an
investment advisor. I mean, they cannot
forsake their obligation for the investments,
but they can delegate that authority. And,
truthfully, here is that they can appoint an
advisor that's independent of the bank. Now,
we kind of look at those as being independent
of the seller, but the fact is that if the
fiduciary uses their discretion and approves
the appointment, they'll remain responsible.
Just a matter of not tying their hands and
allowing the seller to designate buying into
that investment advisor.

CHAIRMAN: Mike?

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

MS. ERICKSON: I'm going to go the
outlandish route and say that if the
provisions allow for an independent investment
advisor, there can be no affiliation of the investment advisor with the seller in any capacity. We must avoid all conflicts of interest. If the fiduciary is the one to choose and decides it is prudent to use an independent investment advisor, as Bill said, the fiduciary is still ultimately responsible. If the investments go bad, it's the fiduciary or the trustee who is held responsible, but there cannot be input by the seller. There cannot be any business affiliation between the independent investment advisor and the seller, or the trustee, for that matter. It must be truly an independent investment advisor.

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

CHAIRMAN: Sharon?

MS. EUER: I'm going to echo what Mike and Bill have been saying in that I think it's okay to have an independent investment advisor. But the trustee, the financial institution, ultimately, is responsible to make sure that the assets are properly
managed, and I think the bank should
absolutely have to sign off on who that person
is --

MR. MEIERHOFFER: And they would do
nothing else.

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

MR. MEIERHOFFER: Sure.

CHAIRMAN: Don?

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

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

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

MS. GRINSTON: But, Don, I'm concerned
about the possibility for, you know, undue
influence. If I've got millions of dollars in
this bank and I come in and say, "Don't you
want to use this person," I am concerned that your smaller banks will say, "Oh, yeah, that's who I want to use." I think if we use a defining line that says it's picked by the -- if the trustee decides you need one, let the trustee pick whomever he wants to, he has to be truly independent, like Mary said. But I think that there's a concern for overreaching when -- because the seller then, if something goes bad, is not going to be, you know -- this is going to be the trustee's responsibility. And if it's my responsibility, let me choose. I shouldn't be taking recommendations from the same person who is paying me.

CHAIRMAN: Mike?

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

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

MR. STALTER: Well, what usually happens with these, they'll go in and look at Mike's portfolio and see what ages the folks are and what -- they're going to look at the liquidities and so forth. And, typically, what the fiduciary will say, I mean, they'll talk to my firm and say, "Do you have recommendations?" And then -- but the fiduciary has to go out and interview them, you know, determine whether that's a prudent selection or not. And then it's the fiduciary who contracts directly with that independent advisor. I think what we see now is that the independent advisor contracts with the seller, and it's just a matter of -- okay. I mean,
if we contract -- if the contract goes through
the fiduciary and it's a fiduciary expense and
there's more disclosure, more requirements,
and you have other regulators looking over
your shoulder, as well, so --

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

CHAIRMAN: Bob?

MR. BAKER: The only thing I can see
is -- we have run up against this with the
Missouri Funeral Trust -- everybody wants to
be the investment advisor, including the
trustee. So, if you've got a big trust,
that's one situation. If I've got a small
trust with my funeral home, then the
investment advisor, if they're chosen by the
trustee, is going to be that financial
institution, they're going to probably put it
in an investment that maybe makes him a little more money because of the fees involved in it, and you don't have the arm’s-length transaction for one looking over the other’s shoulders to make sure that the investments are proper because I think you have to really have a lot of money in a trust before we even talk about independent investment advisors.

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

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

MS. GRINSTON: Well, they're ultimately responsible for the contract, but not the trust. I just think, honestly, and I can say this without stepping out on a limb, the situation that you're proposing would have
encouraged what we see today. Not only would it have encouraged it, it would have given it a stamp of approval. I have a problem with putting that stamp on anything going forward.

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

CHAIRMAN: John?

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

MS. GRINSTEAD: You guarantee a return on your investment for your provider?
MR. McCULLOCH: To our funeral homes that we represent, yes.

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

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

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

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

MR. McCULLOCH: Well, to some degree. And when you get into a larger amount of money, then you're looking at, you know, a difference in a tenth of a basis point or two-tenths of a basis points can be a lot of money. And depending on how you're directing the trustee to invest or the help that you're asking to be given to the trustee, that's what I'm talking about. And I understand where you're coming from, but you're basically
restricting the person like John or myself or
anybody else that is trying to guarantee or to
generate an income not to be able to have the
help if there is available out there in the
market -- these people who are niche players
who can help you.

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

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

MS. GRINSTON: Yeah. And I could see
someone saying I identify this independent
person, I say no. You identify that
independent person, I say no. I identify
Wolfe & Bates, and you say yes.
No. It comes from -- if you say it comes
from the bank or the trust, that's fine, but
I've got to have an ability to approve it, not
have them say this is who you're going to have.

MS. GRINSTON: Again, and let's put
this out for a consensus of the group because
we could go back and forth. I think the
regulators probably would all voice a very
strong objection because -- and I say this
from being inside on the regulator side of NPS
that from the regulators -- and maybe I'm not
the only regulator in here that thinks that --
that is fraught for abuse. Not only have we
seen it, we've seen it in epic proportions,
and if we do it, I am telling you it will
happen again. But let's put it out on the
floor for the consensus of the group, and if
the consensus of the group is to allow
independent investment advisors with the
approval of the seller, then we will put that
in the document and the regulators will just
-- we'll just note, as will everybody else,
our strong objections because of what we've
seen in the market. How is that? Let's take
it out there. Independent investment advisors with the approval of the seller, how many people agree with that? And for the record, maybe you could say your names?

MR. McCULLOCH: John McCulloch.

MR. CLINE: George Cline.

MR. WARREN: Mark Warren.

MR. BAKER: Bob Baker.

MR. MEIERHOFER: Michael Meierhoffer.

MS. COLLINS: Norma Collins.

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

UNIDENTIFIED: (Inaudible.)

MS. NEUMANN: Barb Neumann for Representative Meadows.

MS. RUSSELL: Darlene Russell, CFL Preneed.

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

MS. ERICKSON: Mary Erickson, Department of Insurance.
CHAIRMAN: Jim Reinhard.

MS. GRINSTON: Well, Mark?

MR. WARREN: Yeah.

MS. GRINSTON: Okay. Mark Warren. All right.

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

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

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

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

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

MR. MEIERHOFER: Exactly right. You can't force them.

MS. GRINSTON: Yeah. But if I have to
approve it, I withhold my approval until you
get one, and now you're for it. And, again --

MR. STALTER: No. At that point, you
just go find yourself another trustee.
Basically, that's always the trustee's out is
if we could -- if it's going to be forced, go
find somebody else that would do it.

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

MR. MEIERHOFER: But in that world,
it'll happen anyhow. It'll happen anyhow.

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

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

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

MR. MEIERHOFER: No, but it'll happen anyhow. That's my point.

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

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

MS. GRINSTON: Sorry?

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

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

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

MR. STALTER: Okay.

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

MS. ERICKSON: Spencer Turner.

MS. GRINSTON: Right -- who are you writing for or who are your purchasers. We may need to notify your purchasers of
something unusual or we need to know, you
know, for some reason, the Board may need to
contact them, and that happens quite often.
You wouldn't believe how often that actually
comes up, to allow us to at least have a
contact number where we can start. One of the
things that happened not just with Spencer
Turner, but in successor issues, people,
including regulators, said, "Can you tell us
who they sold to? How do we contact them,"
and there was just no way for us to even give
them a name or anything else.

MS. ERICKSON: I want to follow up on
that and say that I think this information is
critical to be in the Board's possession. I
might mention before that I was the civil
attorney at the AG's office handling Jane
Spencer Turner's mess, and to say her
record-keeping was poor is an understatement.
We literally took every piece of paper from
her funeral homes and tried to compile lists
of consumers to try to understand who bought
anything from her. It was a nightmare and Don
Otto can attest to that, John. And I was
just talking to John earlier and he just said
another consumer came out of the woodwork just recently that we had never known about. There was no written record. And if this is a reporting requirement and a funeral home shuts down and their records are in as woeful shape as we found them with Salem, this -- well, it might not mean we know exactly what contract they had, but at least we know we can contact the consumer or their family and say, "Do you have any paperwork left," you know. "Please" -- you know, "this is what you need to do next." But we were at such a disadvantage and had to rely only on press releases because we simply could not understand who the universal consumers were, so I would advocate strongly for this information.

MS. GRINSTEIN: Thoughts on names, address, and contact numbers for purchasers?

CHAIRMAN: Gerry?

MR. KRAUS: Gerry Kraus, Homesteaders. We do contracts around the country, and about five states require numbering. All of them have found out after the fact that it's really not worth the effort to try and number them because number becomes as meaningless as a --
or as useful -- or useless as any other
criteria in a contract like the name or the
date or some other thing that -- it just
becomes another identifying factor that is
more difficult to administer than it's often
worth.

MS. GRINSTON: Any thoughts on
prenumbering -- requiring prenumbering?
CHAIRMAN: John?
MR. MCCULLOCH: Well, I've been doing
it for a long time, but he's totally correct.
It doesn't really fix anything. It's a
feel-good-type thing. It's an, "Oh, we really
did something," but using Ms. Spencer, she
would just take our application and just make
copies of it. And I certainly didn't know
about those. And even after we had cut her
off and said we don't want to do business with
you any longer, she continued to do that. So,
how does that fix anything? It doesn't.

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

MR. MEIERHOFER: But you're not going
to get them.

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

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

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

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

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

MR. McCULLOCH: Not if they're trying to deceive us and not turn them in, certainly.
If she wants to get a commission and she wants to have it come into us, certainly, we would get those. But the family is not going to know to do those things. We're cut out of the process.

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

MR. MCCULLOCH: Exactly. You never know about those.

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

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

MS. GRINSTON: So, what about a
contract number, if any?

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

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

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

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

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

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

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

MR. WARREN: Just say from the
regulator standpoint, you don't really care
what the number is. If you've got to enforce
one, if you've got to put on the evidence,
it's not going to be based on a number, it's
going to be based on a name and a person,
because having a number on it doesn't really
make -- amount to a hill of beans.

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

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

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

MS. GRINSTON: Oh, a unique number.

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

MR. STALTER: Unique number.

MS. GRINSTON: Yeah. You mean, so
that every contract has a distinct number as
opposed to --
MR. STALTER: Has a distinct number.

In other words, that you -- you know how to track them.

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

MR. STALTER: Huh?

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

MR. STALTER: Yes. Exactly.

MS. ERICKSON: We'll know --

MS. GRINNELL: Got it.

MS. ERICKSON: Yeah.

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

MR. WARREN: Yeah. I'd voice the same objection that Gerry made. I don't really see what purpose it serves in the grand scheme of things. Because you could -- you know, you can give some company -- funeral home a sheaf of contracts each that has a unique number and they lose those or they're copied. And then,
you know, you're already bogged down in trying to figure out where they went. You have a gap, and you can have a reporting gap. Now, if you're going to have numbered contracts, then when these companies do these reports that we're talking about, by golly, they better all be sequential or you've immediately got a regulatory issue about, well, where is contract, you know, #3 and #4 and -- so --

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

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

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

MR. WARREN: -- I would rather -- all right. So, you don't have to have one?
MS. GRINSTON: No.

MR. WARREN: But you can have one?

MS. GRINSTON: Right.

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

MS. GRINSTON: Bill?

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

UNIDENTIFIED: Yeah, how do you?

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

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

CHAIRMAN: Hold it. Gerry?

MR. KRAUS: From the other states that we help with reporting on, they most commonly
ask how many preneed contracts did you have at
the beginning of the period and what is their
value, how many were performed or completed
during the period and what is their value,
what did you add and what is their value, and
what's left.

MS. GRINSTON: Right.

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

MS. GRINSTON: Right. And I think
that that's the total face number and total
face value of the contracts sold since the
filing of the report. I think later on we
talk about what's been added and what's been
deducted and everything else from there.
Anyone have a problem with the total number
and total face value of preneed contracts sold
since your last report? I think they're
filing it now. Contract amount of each
preneed contract; anyone have a problem with
that? No. Number 4, it's deleted, but I
think I'm going to read it. The amount of
funds received as a payment for each contract
since your last annual report -- how much you
got in on each contract. Concerns? How much
you retained for administrative expenses --
the seller -- since the last report. Concerns?

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

MS. GRINSTON: Okay.

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

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

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

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

MR. MEIERHOFFER: Here it is. This is
what you're going to get, right there, and
you're going to have to get through --
MS. GRINSTON: But that's what all annual reports look like.

MR. MEIERHOFFER: I know, but that's a lot -- you're going to have -- you're going to have 600 of these things, you know, coming at your from various -- and it's burdensome. This becomes burdensome when we start doing all this intricate detail.

MS. GRINSTON: And I'll tell you where some of this came from, again. From the consumer standpoint and the Board and looking at information and seeing what's there, it would be nice to match what, you know, you tell us or tell the consumer with what you have reported to the Board and what you have received in the last year so that if you have a consumer who shows up at the final time of death and this funeral home has been purchased over and over again, we can look at it and say, according to annual reports, $3,000 was paid on this contract, and the funeral home is saying, no, it was $1,500. We have a report so that we can compare those numbers in cases of a complaint or something else. This was purely a consumer-protection issue. Now
burdensome would it be to you, since you're
going to have to list out the names anyway,
you're going to have to list out the contract
numbers anyway, and you're going to have to
list out all of that anyway, you're just
adding another column on the end.

MR. MEIERHOFER: Well, it's actually
more than that, but, I mean, it -- this is
CYA is what this is. This is what ends up
taking the time and administrative material to
get done, and that's what we're trying to do.
We're generating volumes and reams of stuff
which end up going in the corner someplace,
and it just -- it's becoming overwhelming for
businesses to do this stuff.

MS. GRINSTON: Well, since it's not a
requirement now, I don't know how overwhelming
it is right now since it's not required.

MR. MEIERHOFER: It's where it's
going, though. It's where it's going.

MS. GRINSTON: But, again, this was a
consumer-protection issue on the amount of
funds. We could take this up for a consensus
of the group. Mark?

MR. WARREN: One thing the Department
of Insurance does if they have a complaint --
I mean, I don't think they get information to
the effect of how much premium was received on
each contract. What they do, if there's a
complaint that says I've paid X, the company
says I've paid Y, they send the company a
letter and say send me a copy of what you
got. And if they are not satisfied with that,
they subpoena them in. And that way, you
don't have -- it would be a huge -- I mean,
you're going to have to have somebody sitting
there doing data entry, you know, 365/24
trying to keep up with all this stuff, and as
soon as it goes out the door, it's inaccurate
because somebody could make a payment, you
know, the day after it goes out --

MS. GRINSTON: Which, of course, we
wouldn't know --

MR. WARREN: -- which, of course, skews
everything, so --

MS. GRINSTON: Well, when you deal
with a trustee, let's say someone has
canceled, how does the trustee ever figure
that out? Like, how does the trustee ever
figure out how much someone has paid on a
cancellation since it's -- I mean, if it's --

MR. McCULLOCH: They look at the

report that you send them.

MS. GRINSTON: So, it's in a report?

MR. McCULLOCH: In my case, it is.

MR. WARREN: I assume --

MS. GRINSTON: So, it's in a report, so the question is who the report goes to.

If you're giving it to the trustee, give it to the Board, too. Just copy it -- photocopy.

MS. EULER: Not everybody does that kind of report.

MR. MEIERHOFFER: Yeah. It's not that simple, though. I mean --

MR. OTTO: Just, I mean, our trust can handle -- can do that as long as we use our computer program and you don't mandate that we type it into a form.

MR. MEIERHOFFER: Exactly.

MR. OTTO: But just from your perspective, how many contracts are alive out there right now? We know 46,000 NPS ones; okay? So, let's double that and say in the state of Missouri, just there's 100,000 -- so, that's 100,000 line-item entries that you're
going to get every year.

CHAIRMAN: We're hiring Stroud and
he's going to go through it.

MR. KRAUZ: As a halfway step, maybe
we want to do this not from an income
statement, draw a picture of the whole fiscal
period, but, rather, from a balance-sheet
standpoint. At the end of the year, ask your
licensees how many contracts they have, what
their liability is on that -- the amount of
those contracts, and how much funding is
available so you know if there's a difference.

MS. GRINSTON: And I think that's sort
of the same question. To figure out how much
money is available will require you to do the
same calculation. But let's -- the amount of
funds that you received, this is no consensus.
Do you guys agree that it should be or
shouldn't be? If you say no, we'll scratch it.

MS. NEUMANN: I guess I have a
question. You talked about if the consumer
said I paid $3,000 and the company says
$1,500, are they not getting a receipt when
they pay each time, so they can come back and
say here's my receipts, you're lying, I did
pay $3,600? Is there something the consumer
has to back them up? If not, there's the
hole. This guy could take $1,500 and walk out
the door and spend it, and you think you've
paid on your account.

MS. GRINSTON: Yeah. We have nothing
right now that requires a receipt.

CHAIRMAN: Sharon?

MS. EULER: Perhaps let me make a
suggestion. We could require that each
preneed seller maintain these records, and if
they don't have them, then we could -- I mean,
if we went out to investigate and they didn't
have them, it would be cause for discipline.
I understand the desire to have all this
information -- trust me, I do. I'm concerned
about how the Board is going to store that
information in terms of will you get boxes of
information from people? I don't know.

Because I --

MS. GRINSTON: I don't know how many
contracts you write. I mean, a listing, would
it be -- would you send as a box of a list of
things that you have? I don't know. What
about that; just maintain the records?
Maintain records of what you're getting in and what you have deducted for your administrative expenses, just you have to maintain them.

(Several people talking simultaneously.)

MS. GRINSTON: Does anyone have a concern with just maintaining those?

CHAIRMAN: Bill does.

MR. STALTER: Yeah. We prepare these kind of reports in Nebraska, and some of these reports are 700 pages long. Usually, what we do is we give them a summary. And if they want to come in and look at it in detail, they can do that. But often, we produce them in a PDF format so that -- nobody wants that paper. I mean, that was one of the first things the bank said, you're not going to send that paper anymore, no. I mean, basically, so -- we just -- we have to get worked out what the auditor, what kind of format they want to see it in and then just create the PDF and -- you know. In fact, I had the telephone call last week with the auditor, you know, about the reports, so --

MS. GRINSTON: So, am I hearing you say yes on maintaining, but no on reporting?
MR. STALTER: No. I think what you want to do it -- I think, basically, what I'm hearing is it's the individual reporting that's really the difficult part, but I think what you'll see, when you get the summary report, you assume that they're doing the individual part of it. So, you need to see some kind of a summary report and they'll just know, at some point, somebody will come out and take a look at it to see whether they're doing the individual reporting.

MS. GRINSTON: I get it. Again, let's talk about that because the records would have to be there. You would have to be required to keep those records in order for us to look at them. So, can we just require you to keep those records and not include them in the annual report? Any objections? Okay. Maintenance only. Is that for #4 and #5, as well? I think we did those together.

MS. EULER: Do you also want to talk about what goes in the annual report since it's not going to be as extensive? Do you still want an annual report?

MS. GRINSTON: Well, this is -- my
understanding is that all of this will be in the annual report. So, do you mean -- help me.

MS. EULER: There are two issues. One is what records the preneed seller is required to keep, and, two, does the Board want an annual report, and, if so, what information should be contained in that annual report if it's not all the information?

CHAIRMAN: I think Gerry had the answer.

MS. GRINSTON: I don't know. I thought we were at going through the list of what is contained in the annual report. Am I right about that? We're going through a list of what will be in the annual report. Those two things they asked us to pull out and make that maintenance only and not in the annual report. My understanding is we're doing a list of what is in the annual report.

MR. MEYERHOFFER: Now, is that #4 and #5 you're talking about the plan?

MS. GRINSTON: And that's #4 and #5.

MR. MEYERHOFFER: Okay.
MS. GRINSTON: Six is all your sales agents, and, of course, we're going to change that definition. Any objections? The date of the report, the number of preneed contracts fulfilled during the last year. Anyone have concerns about that? Your providers?

MR. OTTO: Well, what's -- yeah. What's the purpose of that one?

MS. GRINSTON: Which one?

MR. OTTO: The number -- to put in an annual report the number of contracts fulfilled?

MS. GRINSTON: I think it was the same thing, allow -- so that when you have a complaint, a consumer issue, we can figure out how --

MR. OTTO: I think it's another one you just ought to keep track of. I mean, I don't see how it would help -- I don't see how it helps you guys at all, and it's just another --

MS. GRINSTON: It does, but --

MR. OTTO: Although we have space for rent, by the way, if you've got a lot of boxes.

MS. GRINSTON: No. There's this weird
thing called microfilming and electronics now. They've got optical imaging; it's real cool.

MS. EULER: And it's a number.

MS. GRINSTON: Yeah. And it's on a little computer that big.

MS. EULER: It's a number on a column.

MS. GRINSTON: But #8, do you guys want to switch that to maintenance only?

MS. EULER: I think the Board -- it's a number in a column.

MR. MEIERHOFFER: So, what does it mean to you. I guess is the question?

MS. GRINSTON: Again, when we get it --

MS. EULER: So, that we know how many outstanding contracts. When Don Otto's pr-eenest seller puts a lock on the door and Don goes to Jamaica or some Cayman Island, the Board office can know how many contracts have been fulfilled, how many contracts he has sold, so he knows how many outstanding contracts there were.

MS. GRINSTON: Because, if not, we have your last annual report. We don't know what happened during the middle of that year, so if you cease doing business and walk away,
we can say, again, this is how many he
fulfilled this last year, this is where we
are, this is what we have. But what is the
consensus; to move that to maintenance only or
to include it in the annual report?
MS. EULER: No. It should be on the
annual report.
MS. NEUMANN: Annual report.
MS. GRINSTON: I hear people saying
annual report, annual report. Any objections
to it being in the annual report? Number
two, the name and address of providers.
Number ten, your custodian, and then the
written consent authorizing the Board to do
what it does.
MR. OTTO: Don't say that A word.
MS. GRINSTON: Excuse me?
MR. OTTO: Don't say that A word.
MS. GRINSTON: Yeah, I'll get in
trouble. Number fourteen, Josh suggested a
copy of each preneed contract sold. I can
tell you strongly on behalf of the Board, we
strongly don't want your contracts.
MS. EULER: But that could be
something to be required. You have to
maintain it.

MS. DUNN: They have to maintain it, I hope.

MR. MEIERHOFER: We do that now.

MR. WARREP: Yeah.

MS. ERICKSON: Is there a separate section here for maintaining? Is it coming?

Record retention. Thank you.

MS. EULER: We're creating that. Not everybody does, Mike.

MR. MEIERHOFER: Oh, I'm sure that's true. Nobody does a lot of this stuff.

MS. GRINSTON: The next two pages are annual-report requirements for trust-funded versus insurance-funded accounts. That's spilling over to #24 and #25. What I'd like to do is if there are any objections or additions to this list, please include that in your comments because this may be a little bit more detailed because that's more information relating to the trust, relating to -- I'm sorry -- trust or joint-account funded products and insurance products. So, that'll take you through #26. Comments or suggestions, changes, disagreements, or
additions, please let us know, and we'll include it under the entire -- page 26 is record retention, sc, Mr. Chairman, I'm suggesting we take a break before we do that. CHAIRMAN: Let's take a break. (Off the record) CHAIRMAN: Kim, you'll go ahead and start.

MS. GRINSTON: Okay. I think that we were at the end of trustee responsibilities. Does anyone have anything additional when it comes to trustee responsibilities? Oh, I did have one other thing that was brought up during the break. Reporting requirements to purchasers, it has been suggested that we require the trustee and/or the seller to report to purchasers at least some information about what is being held in trust or what has been deposited. I think what I hear the common suggestion being from different places is at least the amount that's been received over, you know, the last calendar year, sort of like an annual report, where the trustee is, the amount that's been received over the last calendar year, and giving purchasers that
information without a request -- having an
annual requirement for that. I'd like to open
up the floor for suggestions on that issue.

MR. OTTO: The Missouri Funeral Trust
wants to be able to do that; however, under
the current law, we're concerned that that
might arguably breach the fiduciary duties
that the trustee has to the seller or
provider, so -- because under the current law,
you know, the contractual relationship is not
to the purchaser from the trustee, it's to the
other people. So, although we would like to
do that, we would like a CYA on sending that
report out.

MR. NEIERHOFER: Why don't you send
it to the funeral home, let them do it?

MS. GRINSTON: Not mandatory, but
permission, is what you're saying, Don?

MR. OTTO: That's what I would prefer.

MR. GRINSTON: Okay.

MS. EULER: And, Kim, to clarify, are
you talking about a report from the trustee of
the amounts received in trust or are you
talking about a report from the seller?

MS. GRINSTON: I don't know. We've had
suggestions both ways; trustee and seller. I
guess we can discuss --

MS. EULER: Because when I hear
trustee, I hear report from the bank as
opposed to a report from the seller.

MS. G2INSTON: Right. I think we're
hearing trustee and seller -- or seller --
and/or seller. It's really what's your
pleasure.

MR. OTTO: Yeah. That's why I would
like it -- I don't think -- if you get it
mandatory, then it gets complicated as to who
is doing it, what you do it, and all that. I
would just like to make it clear that if the
seller and/or trustee wishes to send a report
annually to the purchaser about payments made,
that that is permissible.

MS. EULER: I think that the purchaser
ought to be entitled to receive some notice
from the bank indicating that their money has
been received, whether that's a one-time
notice. I don't know that it's required to be
annually, because if you pay in full, you
know, you pay -- the trustee received your
$10,000 in 2003. It seems not useful to have
the bank send you a notice every year saying,
yeah, $10,000 in 2003, but any new money
received --

MS. GRINSTON: So, I hear, again, not
mandatory, but permissible upon request?

MS. FULER: I think it should be
mandatory.

MR. STALTER: It's going to be
difficult for the banks to be able to send
those kind of reports without full cooperation
from the seller. Basically, I mean, you know,
we won't have addresses and so forth.

MS. EULER: Right. Cooperation from
the seller would be required, but I think the
people need to hear from the bank that their
money is where it's supposed to be.

MS. GRINSTON: Let's open the floor
for that discussion and let's separate those
discussions into two different things: Number
one, a report of what is -- you know, what
has been paid in by the purchaser during the
year. Should that be mandatory or should it
be permitted for specifically in law?

CHAIRMAN: Mary?

MS. ERICKSON: I want to echo Sharon's
comments. I believe that it's very important
for the purchasers to get this information and
I also agree -- so, I believe it should be
mandatory, number one, and, number two, as
Sharon indicated, if it's a paid in full, they
don't need to receive reports every year
succeeding that, so the first time, one-time
report to the consumer with the notation you
will receive no other reports as you are -- we
have all your money, that's sufficient. So, I
believe it should be mandatory and, of course,
the seller will have to cooperate with the
trustee to make that happen.

MR. OTTO: And I'm operating under the
assumption of our earlier vote that all the
money was going to go to the trust first. If
that would change, that would complicate
things, but based upon my assumption that the
earlier vote was that all money would go into
the trust first, and then you pull out whether
it's the 10 percent or the 20 percent, that's
what makes it possible.

MS. GRINSTON: So, again, maybe we can
call that issue. Should it be mandatory for
that report or just permitted, and are there
any objections to it being mandatory?

MR. CLINE: Just make it permitted.

MS. GRINSTON: Okay. I hear one just permit. Again, how many people want it to be mandatory that the report be provided? And let's do a hand vote -- a voice vote if you can, for the record.

MS. ERICKSON: Mary Erickson.

MS. COLLINS: Norma Collins.

MS. EULER: Sharon Euler.

MS. NEUMANN: Bark Neumann.

MS. RUSSELL: Darlene Russell.

MR. TRIX: Bill Trimm.

MS. GRINSTON: Not mandatory, but permitted? And if we could do a voice poll again.

MR. McCULLOCH: John McCulloch.

MR. CLINE: George Cline.

MR. BAKER: Bob Baker.

MR. OTTO: Don Otto.

MR. MEIERHOFFER: Michael Meierhoffer.

UNIDENTIFIED: (Inaudible.)

MR. MEIERHOFFER: Just remember, all of these requirements end up with a cost, and it costs administratively and postagewise, and
they never go away. They just get to become more and more. That's the only thought there. It's not free. The trustees are going to charge you.

MS. GRINSTON: Okay. I think the next issue that we had was record retention, and we promised to get to this on Mary's comments. On #27 to #28, you see some very -- I'm sorry. I'm looking at the wrong draft -- #26 to #27, you see some very general comments on record retention. And we talked about some other things that we were going to require preneed sellers to maintain. Right now, it reads just adequate records and that the records have to be maintained for no less than two years after the disposition or after the contract is canceled/transfered. Mary?

MS. ERICKSON: Can you tell me what the origin of the word "adequate records" is and what do you mean by "adequate"?

MS. GRINSTON: I think the word "adequate" actually is in our current statute, and I don't think it has a definition.

MS. ERICKSON: Well, I think it needs to be removed. I think we have to have
records, not adequate, because that leaves discretion to the -- you know, whoever is holding the records that what's adequate.

MS. EULER: I agree with Mary, but from a regulator viewpoint, it's sometimes nice to have that wiggle room because --

MR. MEIERHOFFER: Yeah, that's really helping, I think -- (inaudible.)

MS. EULER: Because we can argue dictionary definition of what it means to be adequate and it gives us some flexibility because if you just say records, Jane Spencer Turner had records for preneed contracts, but they were horribly inadequate. So, I like the wiggle room on that particular statute.

MS. ERICKSON: I will defer to my compadre on this suggestion.

MS. GRINSTON: That one should be easy then.

MR. MEIERHOFFER: Well, we've got the bureaucrats agreeing.

MS. EULER: And lawyers on top of that.

MS. GRINSTON: Anything else on records? We talked about some other things that were going to be maintained when we were
going through the annual-reports information.
Anything else that you would like to add to
the maintenance of records? Hearing no
objections, let's just move on. Rule-making
authority for the Board, this was something
that was an issue last year. I know that
there are several people who are of the
opinion that the Board has rule-making
authority. I can tell you that -- to a
certain extent. I can tell you that legal
minds have strongly disagreed that that
authority is clear. And to the extent that
there is even a question, the Board would like
to very much clarify --

MS. COLLINS: Where did you go?
MR. MEIERHOFFER: Where are you?
MS. COLLINS: Because I have

investigations and inspections. Did you just
skip over that?

MN. MEIERHOFFER: Yeah, I think you
did.

MS. GRINSTON: No. Everyone asked me
to go through -- we were going through Mike
Meierhoffer's suggestions --

MR. MEIERHOFFER: Okay. So, you --
MS. GRINSTON: -- on topics, and when we had a topic that was on the paper, I just brought you to the specific section because we asked not to go through the proposed draft anymore.

MS. COLLINS: Okay.

MS. GRINSTON: That we were going to do this on the first page after record-keeping for trustees, trust disbursements -- I'm looking at Meierhoffer's listing now -- trust disbursements, we did. Rule-making for the Board was the next section. And so, while -- and it starts -- on the proposed draft, it starts on page 41, generally, but it's not in sequential order because my understanding was that we were ready. We're not going to do the language review, we're just going to do a topic review for right now or to finish up. Sharon?

MS. EULER: Yes, absolutely, the Board needs explicit rule-making authority.

MS. GRINSTON: And one of the battles that we fought last year was they wanted to give the Board rule-making authority, but the question was the scope of the Board's
rule-making authority. And I think if we 
discuss rule-making, let's talk about what 
scope you're looking at because a lot of the 
things that, you know, that we're talking 
about, we would have to give the Board some 
really good discretion. Sharon?

MS. EULER: Everything the Board deems 
just and proper, they should have rule-making 
authority to do.

MR. MEIERHOFER: Whoa. What do you 
want to do, Kim?

MS. GRINSTON: Which is the way it is 
in 333, I think, to a large extent. So, the 
Board already has an authority for funeral 
directors. A lot of the boards do, so it's 
not unusual language.

MS. EULER: And that's consistent 
language with most state agencies.

MS. GRINSTON: That's true.

MS. ERICKSON: All rule-making 
authority for the agencies?

MS. EULER: Yes. All rule-making 
authority available.

MR. MEIERHOFER: And that's what 
you're going to say?
MS. GRINSTON: Barb?

MS. NEUMANN: Explain that why in the field -- I went back and did some history on this. When this chapter was set up, you all made the decision that they were not to have any rule-making decisions, so it was out of their hands the minute the chapter was written, and I think that was a mistake. I was not here, though, I was still in Maryland. But having read that area, somebody got really smart and took care of -- took you out of everything practically, from what I'm seeing, and I think we need to put you back in there to make it -- we wouldn't be where we are with NPS if you had the authority. You should be able to go out there and audit all the sellers and see what they've got in their contracts and not wait till NPS happens. And I'm understanding there were two that have not been audited anyway, and I don't know why they haven't been just to make sure they're on the up-and-up and not next week find out we've got problems someplace else, too.

MS. GRINSTON: Question and comments on rule-making? All right. Does anyone
object to that rule-making authority for the
Board? Jim?

MR. MEIERHOFFER: You don't want it?

CHAIRMAN: No, we don't need -- no.

We need it. We need it.

MR. MEIERHOFFER: I think it would be
good to hear from the Board, though, to some
degree, what's your thinking in this respect.

CHAIRMAN: oh, no. It needs it. It
truly does. I've served on it nine years and
it would have made a difference.

MR. MEIERHOFFER: Well, the think the
answer to your question, Barb, is it was
stripped from the Board early on because of
the concern that numbers of people had that
the Board would probably not act properly, and
I don't think that's the right thing to be
thinking at all.

MS. NEUMANN: No.

MR. MEIERHOFFER: But, I think that's
part --

MS. NEUMANN: Other agencies have
them. I don't understand why this Board --

MR. MEIERHOFFER: Well, yeah. But
that was the petty work with the funeral homes
here -- funeral directors.

CHAIRMAN: Exactly, Mike. That's a good statement, yes.

MR. MEIERHOFFER: Is that not right, saying it the way it really was? I think we're beyond that. We've got to get -- I mean, that's what these people are doing their work for.

MS. GRINSTON: We are doing very good.

I want to go back and we have to clarify something on investigations, examinations, and audits. I am pulling of a -- and this is #43 on Mr. Meierhoffer's listing. And I would also like to cross-reference insurance's section. One of the questions that we've had issues with is the Board's ability to do a random audit. Right now, we are essentially complaint driven. We have been legally advised that that is what the Board's process is. If we don't have a complaint, we can't do an examination, we can't do an audit, we can't do an investigation. There is some wiggle room there -- very little wiggle room there. Insurance has suggested random examinations, audits with cause,
investigations as the Board deems necessary.
And I'll do that again.

MR. MEIERHOFFER: And that's pretty much what I was stating in that draft you have here -- exactly.

MS. GRINSTON: I'll state it again:
Investigations as the Board deems necessary,
examinations randomly, audits with cause. Do I have any --

MR. BUCHHOLZ: Jim Buchholz, Buchholz Mortuary in St. Louis. You're talking about random audits. I say the hell with it.
Let's have audits every three years -- all funeral homes. How we -- and I submitted this to Ms. Clarkston and -- because we can't count on anyone to really do the job for us because I go back to 1990 and '91, I was one of ten funeral homes that tried to get these people out of business. Our illustrious attorney general at the time said he'd take the case.
What did he do? He sealed the case up. it went from one county to another county, nothing. We couldn't find out anything. They sealed the case. So, I'm under the aggression factor to let's have everybody audited once
every three years. And I say to pay for this audit, we have actuaries. Everybody looks at me when I say an actuary because they cost money, but they're bonded, they're insured. Your CPAs, they can put their front page on your sheet and they're not responsible for anything. Well, if you've got an actuary, it's -- they're bonded, they're insured. So, if something gets out of hand within three years, you can go to them, you know, we're safe on our money. There's a lot of money put into preneed today and it's been going on like this. So, every three years, it's nothing, but everybody gets inspected from the seller, insurance trust, and we get this money to pay for the actuaries by raising the fees off of certified copies and so forth. And Ms. Clarkston can read some of the stuff that I put down, how we come up with some of those figures, and they could be reviewed every three years, too.

Ms. CLARKSTON: Could you resend your comments, because I never received those.

MR. BUCHHOLZ: Oh. Well, I have a copy.
MS. CLARKSTON: Okay. That would be great.

MR. BUCHHOLZ: Just in case.

MS. GRINSTON: And I want to paraphrase some on the comments. This is something that we slightly talked about a little bit earlier. You all talked about audits, so you guys know an audit is very expensive, very extensive. I think that what probably is closer to what he's suggesting is an examination of books and records. The last vote you took was once every three years. We started talking about the numbers back in the office. Once every three years may be quite expensive for the Board -- well, not for the Board, for you all because that's where the fees are going to come from. And so, I think that -- and they are still going to run numbers on once every three years. We are thinking preliminarily that once every five years is probably more fiscally feasible because, you know, we ran the numbers of, what, 600 sellers, I think it was, Lori? Six hundred sellers, once every three years, that's two hundred sellers a year. Two
hundred sellers a year at $1,000, which is an extremely conservative number for even an examination. Two hundred sellers at $1,000 a year, just look at the numbers and how that will begin to add up. That doesn't even touch investigations, audits, all the other expenses of the Board in 436. And so, I personally would say that if we allow random examinations, that I think, fiscally, that we at least start at the number five years, and then allow the Board to run the numbers because, again, I don't know if the industry will be able to afford examinations through the Board at that price.

MR. MEIERHOFFER: You know, Jim, I'm all for what you're saying. I think that the fiscal responsibility of it would be -- I don't know. Were you here when I was talking about Sarbanes-Oxley -- one of the names --

MR. BUCHHOLZ: No.

MR. MEIERHOFFER: You know, beware of what you ask for because you might get it, and that's exactly what happens with Sarbanes-Oxley. It's gotten to the point where it's so expensive, nobody can afford it,
and now the SEC is going back and telling the
accounting places, the accounting firms to
reduce their amount of charge, but, yet, they
didn't realize what they were asking for. I
would love to have an actuary. I used to pay
an actuary. I couldn't afford him anymore,
and that's the dilemma we get into.

MR. BUCHHOLS: Well, now, if you've
got a CPA guy, a CPA doesn't have any -- look
at what happened to Exxon -- not Exxon --

MR. MEIZRHOFER: I just -- I think
what you ought to do, though, is just check
with your own actuary and CPA and see what it
would cost to audit yourself every three
years. Just find that out.

MS. GRINSTON: But if the Board did the
examination, the examination would be done
through our auditors, which we have authority
to contract with, and you guys suggested
language that we could use the examiners at
insurance and/or finance who have more of a
financial background, and you guys have
already approved that. I would, again,
suggest that you guys consider random
examinations at least once every five years
and/or randomly.

MS. EULER: Could you give the group an idea of how much an audit costs?

MS. GRINSTON: Wow.

MS. EULER: And I know it varies, but

MS. DUNN: An audit for ten years would be approximately $35,000 to $40,000.

MS. EULER: For a small --

MS. DUNN: For a small firm, and then an examination of books and records for five years is about $5,000.

MS. EULER: For a small firm?

MS. DUNN: Yes. And I will tell you the Board itself right now with, as you know, our fees haven't changed since '82. We are just maintaining a level with what we take in and what we're putting out for mandatory investigations, audits, and examination of books and records because I don't know -- and we're going to hopefully change that, but I don't know how we would withstand random audits or examinations right now with the load that we have that are mandatory by complaints, so it would substantially have to increase the
fees.

MR. MEIERHOFER: Well, I would say in an organization our size, if I was seeing $35,000 audits, I would just shut it down. Those are major impactful events, and our would be more, I'm sure.

MS. GRINSTON: Uh-huh. Which is the reason why we would suggest if we do anything, do an examination. That's closer to probably $5,000, $2,500 maybe if we cut it down. But, still, $2,500 on 200 people once every three years, look at those numbers. And that's going to have to come out of your fees which would, again, not include the audits we do, the complaints we do, staff, time, and everything else.

MR. MEIERHOFER: And then you're asking for 100 percent trusting or 90 percent trusting, and then you want us to pay for audits? I mean, it just won't work.

MS. EULER: The audits are paid by the Board staff.

MR. MEIERHOFER: Well, they'll end up coming to us before --

MS. EULER: Right. Right. But what
I'm saying is that they don't charge -- it's not like insurance. They don't charge you back. If they come out and audit your place and it costs the Board $50,000, they don't send you, Mike Meierhoffer, a bill for $50,000. Indirectly, you'll pay for it, but you don't get a bill.

MS. DUNN: At the end of the day, you'll pay for it through fees.

MS. GRINSTON: But that's something we need to address because that was one of the recommendations that came over that possibly audits and/or examination costs be charged back to the person -- the auditee or the person being examined. I would like to throw that out there to see what the vote is or thought is on receiving those costs back to you, then we wouldn't have to worry about costs of the Board.

MS. EULER: Assuming you collect it.

MS. GRINSTON: Assuming -- you know.

MS. EICKSON: As Sharon indicated with insurance companies, that's exactly how it happens whether it's a market-conduct examination or a financial examination. Our
examiners go in, conduct the examination. Sometimes it could take a few weeks, sometimes it takes months depending on the size of the insurer, and that is all charged back -- all of their time, their expenses is charged back to the insurance company, and there are certain funds dedicated by statute that the payment for these employees and their expenses comes out of, and from what I'm hearing, it is not economically feasible for the industry that you all have. It just not feasible. These are insurers. Hopefully, they're large enough to -- and if they want to do business in Missouri, they better be willing to accept these not just random audits, but they do have periodic audits, three, five years, whatever the time frame is. So, I do not think that having -- charging it back to you all is the right answer.

MR. OTTO: Yeah. I mean, I don't know how many mom-and-pop insurance companies we have in Missouri. Dad is 80 years old, has got a son that's taking over the business, and that's it. You can put somebody out of business real quick.
MS. ERICKSON: Well, that's an insurance company, not an agency.

MR. OTTO: I know.

MS. ERICKSON: Yeah.

MR. OTTO: But, yeah. But if we're talking about the 200 -- we're talking about auditing, some of them are very small business.

MS. ERICKSON: Well, they can be, but then, again, in those situations, Don, the audits are usually very small, too -- for those insurers, if they're that small. But it is a cost, yes.

MR. BUSCH: You're saying cost. What's it costing us now? I'm out $60,000 since the 1st of January, so what the hell?

MS. GRINSTON: Well, let me open the first one. Audit costs, examination costs, charge back to the seller. Anybody disagree with that?

MR. McCULLOCH: About the charge-back, yes.

(Several people talking simultaneously.)

MS. GRINSTON: Disagree. Let's do disagree. I think we're going to see this is going to be monumental. Anybody disagree with
charging the seller for the cost of the audit exam?

(Numerous people answer yes.)

MS. GRINSTON: All right. I think that one has failed. Now, let's talk about examinations every three years, every five years. The last time, you guys talked about every three years. Can I suggest, again, for financial reasons, that we at least look at a minimum of five years? Anybody have any objections to five years? I hear no objections. Larry, did you -- Mr. Stroud, did you have?

MR. STROUD: I was just going to make a comment. Larry Stroud. Why don't we just up our preneed sales -- this is going to be in effect, hopefully, next year. Why don't we increase that dollar amount on each preneed contract so that when our five years comes around, then we have -- I'm not saying raise it $1,000, but we'll have some -- but we would have some money there. And I think you talk to your consumer and you explain to them, which we do, about this is their protection; okay? This is so the State can come in and
audit our books or whatever is necessary to
make sure that these funds are there. And if
we charge $30 or $40 — I'm just giving you a
--

MR. MEIERHOFER: I'm going to tell
you what really happens after you're through,
though. Go ahead. What really happens to
that money.

MR. STROUD: Well, it better damn well
stay in the pot.

MR. MEIERHOFER: It goes in the
general account.

MR. STROUD: I know they do.

MR. MEIERHOFER: They sweep these
things --

MR. STROUD: But it's time they got
their act together.

MR. MEIERHOFER: Well, but you're not
going to change it. You're not going to
change that, Larry.

MR. STROUD: It's like she said, money
grows on trees. I'm sorry. I -- you know, I
didn't know that.

MR. MEIERHOFER: That's the dilemma.

If we could keep our money --
MR. STROUD: But what I'm saying is, yes, and that money cannot go any place except in, by gosh, our auditing.

MS. GRINSTON: And, Larry, I think that's one of the suggestions that's been talked about in talking about fees.

MR. STROUD: Well, I'm tired of the government taking our money and government takes our money. It's our State Board of Embalmers and Funeral Directors, why should the State come in and sweep our funds?

MS. GRINSTON: Well, Connie fixed that for us.

MS. CLARKSTON: I did.

MS. GRINSTON: They voted that out last year so that we could stay out of sweep a little bit. But -- a little bit. Pretty much it allows us to lower fees.

(Several people talking simultaneously.)

MS. CLARKSTON: It's a lot better than you had.

MS. GRINSTON: Before, they were going to do a general sweep. Have you guys noticed, this year, you didn't fight the sweep fight at the Capitol? Connie was able, in talking with
MS. CLARKSTON: Representative Wasson and Senator Nodler.

MS. GRINSTON: -- Representative Wasson and Senator Nodler, she was able to suggest give us the ability to lower our fees by emergency rule if we're headed towards a sweep, that way, we can avoid the boards getting swept. That language went through this year and was passed as opposed to you guys having to fight out the sweep language. So, we did sort of save you guys from that fight -- not we. Connie did with the work of Senator Nodler and Representative Wasson. But on your charging per contract, that's probably an interesting suggestion. One of the concerns we have is that if the fees are too high, that charge by contract may go up incredibly high. For example, you know, what -- it's $2 now. That charge to cover all expenses may go up, you know $10, $15, $20, depending on how often we go in and how much we charge, or it could even go up higher than that. If we're doing 20 audits a year, you know, that could very clearly exhaust a huge
amount of funds all at one time. But I do
think it's a mechanism that they probably
could consider.

MR. STROUD: To me, it's a very fair
mechanism to -- we're all going to be on the
same playing field if we've got the same
charge on every preneed that we sell, whether
you're big or small. The big guy that sells
500 preneeds a year, and he pays that $20,000
-- let's say $40 a contract, but he knows
there's going to be $20,000 up there that --
in case he gets audited, and he does that over
five years, there's $100,000 let's say. He
shouldn't have to foot a big bill; read me?

And it would apply to everybody in the funeral
business. So, I -- to me, it's a fair way of
going and not overcharging a family for a
death certificate. Some people want death
certificates and they don't have a bit of
preneed; they could care less about it. So,
let's don't gouge them in order to,
unfortunately, take care of our preneed
people. If a person wants a preneed, we can
put that right in there, preneed charges, just
like the $2 today, we could do $40. And that
money will stay in the State Board's account under a separate auditing dollars, and not to be swept away or played with.

Ms. CLARKSTON: Well, and that concept is new. We're going to have to work on that language to protect that fund. It's not your general State Board fund.

MS. GRINSTON: But as far as fees go, we're going to ask that you give us a chance to run the numbers better so that we are working with the real numbers so you know what everyone is looking at. A couple of tie-up things that we haven't done. Forty-eight, allowing the Board to hire legal counsel. That is another one of the suggestions that we heard, and I'd like to open the floor for discussion on that.

MR. MEIERHOFER: Okay. I think we need more lawyers. Why in the world would the Board hire another attorney? I guess that's -- and where would you get the money?

CHAIRMAN: Becky, how many boards are over there and how many have lawyers?

MS. GRINSTON: If I could, Connie is going to explain.
MS. CLARKSTON: Well, let me -- well, I'm not going to explain probably what you all want me to explain, but there -- you know, we have different types of boards within the division; we have autonomous boards and admin boards. The admin boards, obviously, use the division's legal counsel which is Kim and David Barrett. We have boards that are autonomous that have the ability in statute to hire a staff which includes legal counsel. We have four boards right now that are autonomous that do not have the ability to hire legal counsel, which includes this Board. There was a period of time -- and, Sharon, I'm sorry --

MS. EULER: That's okay.

MS. CLARKSTON: Okay. -- that this Board was not represented by the attorney general's office which left them without legal counsel. Now, we have been very fortunate that resources have allowed the division's attorneys to assist this Board along with the attorney general's office right now. But there is some concern about the amount of legal services this Board requires. You have two huge issues going on in this industry
right now. Resource is a problem. Kim services 15 boards. That's huge. So, there -- we are requesting some consideration to alleviate some of the burden on this Board to hire their own legal counsel. It may not be full-time staff; it may be contract as some of our other boards work under.

MS. EULER: I'd just like to clarify that the attorney general's office right now provides litigation services to all of the State boards including the Embalmers Board. At one point a few years ago, the attorney general's office provided litigation services as well as general counsel services, and that is what changed. The AG's office continues to provide litigation services and other special projects as requested. That's why I'm here. So -- and to clarify that.

MS. CLARKSTON: (Inaudible) -- the division obtained the internal counsel that we have. So, up until that point when that changed at the attorney general's office, we didn't have legal counsel that serviced the boards within the division. That since has come upon us, but it's a resource issue for us.
MS. DUNN: So, Mike, there was a period of time that the Board had no day-to-day legal counsel. So, the Board members themselves were concerned about making decisions on items that they had no legal advice to attain on items, so it's not like we would -- it would be a choice. We weren't exactly asking for an FTE, we were asking for the option to be able to retain a contractual outside legal counsel if we needed it.

MR. MEIERHOFFER: And, of course, the logical follow-up is how do you pay for it.

MS. DUNN: We could sustain that with the -- we've used Kim and Mr. Barrett over 500 hours the last fiscal year.

MS. CLARKSTON: Now, the Board is charged back for those services. They're allocated time. So, right now, the Board is paying for those types of services.

MR. MEIERHOFFER: Through the State?

MS. CLARKSTON: Yes.

MS. DUNN: Through the fees that we have.

MS. CLARKSTON: For the setup that we have as a division through funding.
MR. MEIERHOFFER: I see.

MS. CLARKSTON: Now, one thing I think that Kim wanted to mention was the delays, and I guess I'll let you get into that.

MS. GRINSTON: And I say this respectfully, the other thing that has been a concern, because I work for Boards who have authorities to hire legal counsel and I work with their legal counsel, and Boards who don't. One of the concerns that has come up, also, and this is something you all have heard me say again, is the process for handling complaints. The AG's office represents, like Sharon said, all of the boards and divisions out -- boards and professions out at the division. To the extent that there's -- if there is an issue, like, I'm just going to throw out a name, NPS, and staff at the AG's office is dedicated to a task, there may be a problem with getting things prioritized and/or getting things through the AG's office because the AG's office's resources are dedicated somewhere else. That was one of the things that I think was a concern, that when we are in the situation where the AG's office may not
be able to handle something that may be more
of a priority for the Board, that the Board
have the ability to say, "Let's hire outside
counsel. Can you handle this for us," even
though they recognize that they are working in
conjunction with the AG's office and everyone
else to handle the services of the Board.
And, again, I represent boards who are in both
positions. They have authority to hire
outside counsel and they also don't.

MS. CLARKSTON: And they utilize you
on a regular basis.

MS. GRINSTON: Yes. Both --

MS. CLARKSTON: So, there's a
combination of the two.

MS. GRINSTON: And there's a
difference. For example, my boards who have
the ability to hire outside legal counsel,
they may do litigation of certain other
issues, and then when it comes back to
rule-making or legislation or personnel, I do
all personnel stuff while they do all the
litigation stuff. Some of the boards that I
have, their attorneys do board meetings and I
don't. Some boards, I do the board meetin-
and they don't. It's really sort of handoff on how the board wants to use resources.

MS. ERICKSON: I guess I want to ask a direct question is: What would the Board and you, Kim, like to see happen? Would you like that authority to hire outside counsel or to contract?

MS. CLARKSTON: I think that from the division standpoint, and I'm sorry to speak ahead of the Board, we would like to see this Board have the ability to hire legal counsel or the staff that they need to administer these chapters. Right now, I believe it's a resource issue. The Board, obviously, can't afford any delays in any of the situations that they're readily dealing with right now. That's from the division. I hope I --

MS. DUNN: We've asked for it for several years.

CHAIRMAN: And the Board would really like it, so --

MR. MEIERHOFFER: Well, what's the downside then? I guess I should ask this: What's the downside?

MS. CLARKSTON: I think it's probably
an education issue, that if we put something
like that in a legislative proposal, that
there is not a brick wall that we hit at the
Capitol. So, this was providing an
opportunity and a forum for us to discuss what
we need.

MR. MEIERHOFFER: Okay.

MS. DUNN: Consumers do ask the Board
why it takes us so long to pursue a case.
And in defense of the attorney general, they
have a great deal of workload. We go into
almost a three-year statute of limitations on
some cases because that's how long it takes to
-- for them to work with a consumer case.
So, if you had the ability to use an outside
legal counsel, you could possibly utilize them
and possibly speed up the process. And this
is nothing negative against the attorney
general, but you have the workload, too.

MS. CLARKSTON: Someone just asked me
about cost. Obviously, that's something we
would have to evaluate, but we've just simply
not had the time to do. What my proposal
would be, with the Board's permission, is to
work with Becky and Kim, and to look at a
board of similar size that has contracted out
a similar number of hours to see what those
transfer costs were, what their contract hours
were, and kind of come up with an estimate of
what those legal fees would be and how this
Board would be impacted, which would,
obviously, affect our fiscal numbers.

CHAIRMAN: Anybody got any problems

MS. GRINSTON: Okay. No problems.

Last major topic I think that we had out there
was the treatment of joint accounts. Well,
before I do joint accounts, let me back up to
something that I did forget. One of the
issues that is a continuing problem with the
Board is the ability -- is what happens when
the Board ceases -- when a company ceases
doing business. I'd like everyone to look at
the proposals that are on -- let me get the
right draft -- pages 36 through 40. And,
again, look at any suggestions you may have to
that language, if you could e-mail those in.
I think everyone -- from our earlier
discussions, everyone appeared to be okay with
the Board having a process for ceasing to do
business and being able to actually go in and
look at the books and records before you
cease. And I think that we just played with
some language, but let us know if that is in
line with what you -- what I believe you
authorized was the ability of the Board to go
in and actually look at the books and records
prior to someone ceasing doing business.

CHAIRMAN: Sharon?

MS. EULER: I'd like to add a comment
that I think this is all fine when we have a
deal orderly process, but I get involved in
cases when things have gone south. And I
think that the statute needs to provide the
Board with some authority on how to handle a
situation when a preneed seller or a preneed
provider locks the doors and walks away.
Because this process is good when you've got
an orderly sale, but if you've got somebody
whose funeral home has been foreclosed upon,
or you've got somebody who simply walks away,
closes the door, funeral director dies, things
happen, and I think the Board needs to have
some authority when that happens to take
charge of books and records or has -- I'm not
sure what the answer is, but that needs to be addressed.

MR. MEIERHOFER: What are you asking for, essentially?

MS. EULER: What I'm asking for is for the Board to be given some authority to step in and take action when there's not a sale, where the funeral home just closes, where they walk away, so somebody can go in and make sure that those contracts are transferred, the records, you know, the files are maintained, something.

MR. MEIERHOFER: Okay. I'm going to ask a silly question. I don't know what the Board's legal ability is. Realizing the problem, say, okay, we need to get in there, then what happens from there? I mean, I can understand -- but they're not going to be able to order -- maybe the sheriff can go in there or the public administrator or -- no? So, you're looking for legal language here to --

MS. GRINSTON: But can I echo your comments because it may be a good idea for the -- since we're talking about an entity that's already ceased doing business and not going
through the process, that that authority be
given to the AG's office or someone who can
actually go in and get into the books and
records, to go in and audit or to take actions
necessary when we have someone who just goes
out of business, locks doors, and doesn't do
anything.

MR. MEIERHOFER: So, the Board is
notified and turns it over to the AG and they
do it; right?

MS. GRINSTON: Yeah.

MS. FRICKSON: I was going to
recommend that any such authority to enter a
premises and remove any items would belong to
the AGO. There is the attendant risk that the
property may be owned by someone else and it
is a trespass. And if you remove property,
that's theft. And if the AGO has the
authority, well, as the chief law-enforcement
officer, to go in and protect consumers, he
can use that authority, where the Board -- it
should not really be risking itself in that
situation.

MR. MEIERHOFER: I agree to that
wholeheartedly.
MS. EULER: We've had situations where the State Board has been called and, you know, the sheriff or the landlord or the bank is going to take all the funeral-establishment files and records and put them out on the curb. And somebody needs to have the authority to step in in that situation.

MR. MEIERHOFER: In a timely manner.

Quickly.

MS. EULER: In a timely manner.

MS. GRINSTON: I'm seeing nods, giving the attorney general's office --

CHAIRMAN: Everybody agrees to that.

MS. GRINSTON: -- authority to seize and/or capture books and records to determine obligations and take any action necessary and vest it in the attorney general?

MS. EULER: That's fine.

MS. GRINSTON: Does anyone have an objection with that? That was very quick.

The last thing, and this is the last discussion, joint accounts. Joint accounts has been the one subject that we really haven't talked about too much.

MR. OTTO: I've got my one little
thing.

MS. GRINSTON: Oh, yeah. Don has got

one little thing.

MR. OTTO: I've got one little thing.

I'm sorry. But in the last three-quarters of

a second when we were talking about death

certificates and their certificate of

performance, the word "or" got thrown in

there, that you would do a death certificate.

I've got a problem with that because Warren

Funeral Home could have sent in a lot of death

certificates and they never performed the

funerals. So, a seller, I don't think, should

be obligated to pay the funeral home without a

piece of paper saying that they did the

funeral because the death certificate just

says the person has died, it doesn't say that

the funeral home did the funeral. And,

unfortunately, we have a very nasty example

this last week where, arguably, a person

wasn't -- I mean, at least you'd have a piece

of paper saying that they did the funeral. If

all it is is the death certificate, you don't

know if the funeral home has provided the

goods and services that the purchasers paid
MR. MEIERHOFFER: Well, they're warranting, they don't necessarily provide it; right?

MR. OTTO: What?

MR. MEIERHOFFER: They can warrant it, but they may not necessarily have done it.

MR. OTTO: Yeah. Yeah. But then at least you have -- you've got a cause, you've got something to go against.

CHAIRMAN: Good point.

MS. GRINSTON: So, are you suggesting, Don, that we go back to the certificate of performance --

MR. OTTO: Well, I don't mind -- I don't even require -- I don't mind both, but the death certificate, I don't think, is enough in and of itself.

MS. FILER: Why don't we add a provision that the preneed seller may require a copy of the certified death certificate so that that's covered.

MR. OTTO: That's fine. That's works good.

MS. DUNN: What did you say, Sharon?
MS. EULER: That the predecessor seller may require copies of the death certificate before paying out.

MS. ERICKSON: In addition to the certificate of performance. Thank you.

MS. GRINSTON: Any objections to that?

I think that was a good point made. Joint accounts, we haven't really talked about joint accounts much. When we originally started our discussions, I think that the thought was that joint accounts would pretty much be maintained the same way they are now because of the nature of a joint account and some of those issues. I'd like to open the floor to discussion on any issues with joint accounts, and this doesn't have to be very long at all.

MR. MASN: I'd leave them alone.

MS. GRINSTON: Todd says leave them alone. Don?

MR. OTTO: I just know there's questions from the membership as to why it's different on 80-20 versus 100 percent on joint accounts. There are people out there that feel it should be the same, that if it's 80-20 for a trust, it should be 80-20 for a joint
account; if it's 90-10, 90-10, or whatever,
but they should match up.

CHAIRMAN: Sharon?

MS. EULER: I think joint accounts
should be 100 percent because there aren't any
administrative expenses like we're being told
there are with trust accounts. You go down to
the bank, you put your money in the bank, it
sits there until they die.

CHAIRMAN: Well, they've got the
lights on, they've got the contract they've
got to get all on the computer and put it on
there. That takes the secretary a few hours
to do that. There's some costs to it.
You've got to spend an hour or two with the
family.

MS. EULER: Do you have a rubber band
for him?

CHAIRMAN: Todd?

MR. MAHN: I reiterate. I say we move
-- leave it alone. We've got one less monster
we've got to deal with next year.

MR. NEIERHOFFER: In retrospect, yeah,
Todd is right because you have the opportunity
to do the 80-20, 90-15 trust insurance. Those
are opportunities that the funeral director has. If he elects to go that way, then he needs to go 100 percent with his bank accounts.

MS. GRINSTON: The recommendation is not to change joint-account provisions. Any objections?

MR. STALTER: Now, let me just ask a question, though. Isn't it an issue about whether they're complying with the joint-account contracts? I mean, what we're hearing about is that everybody is putting them into a single CD or putting them into a single account as opposed to separate CDs for each joint account. I mean, that's -- I mean, basically, that's just the rumors out there right now.

MS. GRINSTON: So, are you suggesting that we clarify no commingling?

MR. STALTER: Well, I think it's clear, it's in there now, but I think it's a matter of just finding out whether they're in compliance or not.

CHAIRMAN: Well, let me ask this: If you're not going to change them, and a guy is going to do joint accounts, and you're going
to penalize him the 10 percent or whatever
you're going to penalize him, then why do you
need to audit him if he's got joint accounts
and he can send the face sheet of the contract
and the CD in and the bank, why do you want
to audit him every five years?

MR. TODD: We don't.

MS. EULER: I don't see any reason to.

(Several people talking simultaneously.)

MS. GRINSTON: So, are we saying
exempt the joint-account people from the
auditing -- I mean, the five-year examination?

CHAIRMAN: I think you need to set up a
different kind of --

MS. GRINSTON: Audit?

CHAIRMAN: -- audit.

MR. STALTER: Or report.

CHAIRMAN: Or report. Right.

MR. STALTER: Different kind of, yeah,
report.

MS. GRINSTON: Okay. A report from the
seller?

CHAIRMAN: Right.

MS. GRINSTON: As opposed to a full
examination? The recommendation is have some
type of financial report from the seller as opposed to a full examination or audit for joint-account people.

MR. OTTO: Well, no. I mean -- no. No. It's just different reporting requirements each year. But you can steal somebody's money just as easy with a joint account as you can with a trust. If you exempt people that do just joint accounts from auditing, guess where all of NPS's money would have been.

CHAIRMAN: So, let me get this straight. There's how many funeral homes in the State of Missouri? Seven hundred -- six hundred and something. How many under 75 calls a year, and you're going to get those guys to pay every five years $5,000 or $6,000 for their audit?

MR. OTTO: Well, we just said that you weren't going to pay individually.

CHAIRMAN: Oh, yeah, we're going to pay individually.

MR. MEIERHOFFER: Somebody is going to pay. That part we know.

CHAIRMAN: You know, there's no song
and dance you don't pay for. Bob?

MR. BAKER: I want to play devil's advocate for a minute. I just came into the funeral service. I see all of this problem with NPS because of a trust. I want to keep my money locally, I want to know where it is, I want to control it, but, yet, I want to have some people out representing me to sell it, I just don't want to deal with a third party somewhere in a trust. I can't afford my own. What's wrong with having it the same way that we have the trust? You just choose that as the funding mechanism versus a third party where your own trust costs you too much money and your CDs, if you can live with that, you know where the money is.

CHAIRMAN: Todd?

MR. MAHN: I say we're just opening up a can of worms to tap the money in joint accounts. It's not happening now, leave it alone. The funeral homes have done it for years, you know. We have put them in joint accounts. If a funeral home can't afford it, to stay in business because they can't tap it out of their joint accounts, they don't need
to be in business.

MS. GRINSTON: Okay. The recommendation was that we leave joint accounts alone and maintain the status quo. All those in favor of that for joint accounts, say aye. Opposed? Maybe we can register anyone who is opposed to that.

(Unanimous voice vote for approval.)

MS. GRINSTON: Hearing none, the chairman's suggestion that we do get a financial report from joint-account people, anyone opposed to that? Hearing none, then I think we've put that to bed. Those are the major issues that I can identify, I think, that were left and outstanding for us. Again, we're going to go back and do the process that we looked at and we'll give Connie a chance to have any comments about the way your comments come in.

MS. CLARKSTON: Again, if you'll send it to the e-mail that was handed out, that would be extremely helpful.

MR. OTTO: So, what is the -- are we having a meeting on the 20th? Are we not? I mean, we skipped over one major huge section
on page 19, the insurance-funded preneed
contracts. Are we just ignoring that one?

MS. GRINSTON: Yeah. I thought we --
what do you mean?

MR. OTTO: We didn't talk about it.

MS. GRINSTON: I thought that we did
have a discussion that insurance-funded
preneed contracts would be allowed. We would
limit the type of insurance-investment options
that could apply, and I think we were going to
clarify what the preneed law applied to, and
that was generally about all that we agreed
with on insurance-funded preneed contracts.
Is there something else in insurance-funded
preneed contracts, because, again, remember,
we're not looking at this language anymore.
We're just looking at agreed-upon concepts.
If you want to send comments on the
insurance-funded section, because we are not
going to be giving them this language as our
official proposal by itself. We are going to
be giving them a list of agreed-upon topics,
and so, for insurance funding, we're going to
list what we agreed upon on insurance funding.
Is there something specific on insurance
Mr. Otto: Well, yeah. I mean, there's a lot -- I don't think we have time, probably. I mean, there's all the issues that we talked about the disclosure statements, we talked about the -- with the consumers. We talked earlier about making sure the -- like I said, there was a ton of stuff that can't -- you know, does the consumer get notified as to what happens when the insurance policy is canceled? Are we going to require that under 333 or 436 or whatever it is? Does -- I mean, does the consumer know -- you know, what kind of reporting requirements are going to be required for the insurance-funded premeed contracts that are or are not different from a trust?

Ms. Grinston: And I think that on your question about reporting to the purchaser, I think that you all said that you did want that disclosure on cancellation issues to be disclosed, and we had some discussion about who should disclose it because we didn't know...
if we wanted the seller to disclose it or the 
insurer to disclose the cancellation 
requirements on that contract. And then we 
talked about the model disclosure 
requirements, I think, that insurance had in 
place. Some of the remaining part of that 
about disclosures by the insurance, by someone 
selling an insurance-funded preneed contract, 
I don't know. We had some suggestions that 
were in here on language, but they pretty much 
modeled what a trust-funded person was 
required to sell. My suggestion would be that 
if -- that you allow Connie and I to list out 
what you have agreed on and then if there are 
additional suggestions and/or comments to 
discuss, that we all submit it in the form of 
a comment unless -- you know, unless there is 
something else specifically by topic that you 
would like to discuss?

CHAIRMAN: Todd is saying no? Is that 
a no, you don't want to --

MR. MANN: No, that's a no.

MR. GRINSTON: Todd said yes.

MR. OTTO: The last thing is -- again, 
we don't have to discuss it, but I just want
to throw it out there. I'm going to put it
on my comments if nobody else does, but this
is on page 8. This is the requirements to be
what we're now calling a preneed agent. We've
got a list of things there that you have to
have. This is real easy if it's in Chapter
333. You'd have to have better wording if it
were out of it. But I think there should be
added a #7 under there -- it goes #1, #2, #3,
#4, #5, #6. I would just say that the
preneed agent shall have successfully
completed the Missouri law examination.

MS. GRINSTON: And I think that was
one of the issues that we had as a comment.
I think that the last consensus vote we had
was no testing, but, again, as far as a
comment, please -- as you guys submit them
into us, we will reflect it as a comment to
them, but I think that the last vote that we
had as a consensus was no testing on that
issue.

MR. MAHN: Hey, Kim. That is a pretty
good one. Can we -- I don't think -- can we

--

UNIDENTIFIED: We didn't vote on that
one.

MR. OTTO: I call for a revote on that one.

MR. MAHN: Let's just put it to a revote.

CHAIRMAN: I agree.

MS. GRINSTON: Okay. Okay.

CHAIRMAN: All in favor of a funeral -- what is it -- counselor --

MR. OTTO: A preneed agent --

CHAIRMAN: Preneed agent.

MR. OTTO: -- having successfully completed the Missouri law examination.

CHAIRMAN: All in favor of that?

(Several people answer aye.)

CHAIRMAN: All opposed?

MR. MCCULLOCH: Opposed. Get me down on that one.

CHAIRMAN: That was a bunch. That was everybody against one.

(Several people talking simultaneously.)

MS. GRINSTON: All right.

MR. MEIERHOFFER: Mr. Chairman, question about the next meeting. Is this going to --
CHAIRMAN: Folks, I mean, I know this has really been painstaking. I mean, God, I'd rather go to the dentist. But, anyway --

MR. MEIERHOFFER: I did that yesterday.

CHAIRMAN: yeah. Do you want to come back? I mean, if you all want to go to the Lake, we'll be more than glad to entertain you down there, buy you a few drinks, watch the fight in the bar we're going to have.

MS. ERICKSON: Who's fighting, Jim?

CHAIRMAN: Come and see. Becky is going to weigh us in. I mean, if you think you're uncomfortable with some of this and would like to readdress some of the issues, we'd be more than glad to do that.

MS. ERICKSON: I'd like to say that I thank all of this committee for all of their hard work, and we've had difficult discussions, but it's been very enlightening.

I think that Becky, Kim, and Connie are going to be commended when we see the final product with all of our comments. And I, for one, do not feel a driving need to go to another meeting to look at the same comments that we've talked about for the last six weeks, but...
it's been a pleasure to meet with all of you, and if you all need anything, please don't hesitate to call me, but I vote we do not have another meeting.

MR. MEIERHOFER: Could I have a time line of where we're going with this? When will we see the comments back as you're going to get them together, Connie?

MS. CLARKSTON: We are hoping by this Friday to be able to take this draft and the comments we have received thus far and send those out to everyone -- by this Friday. Given that everybody behaves and we have no major issues to deal with; okay? That caveat being said, and if you could get your comments back to us by Friday, the 22nd. Okay.

MS. DUNN: Why don't you explain to them what -- like the legislation we got last week, because these -- not everyone may have known what we went through.

MS. CLARKSTON: Okay. Are you talking about the legislative process as a whole?

MS. DUNN: Yes.

MS. CLARKSTON: Okay. When a piece of legislation is introduced, our typical process
as a State agency is we receive what's called
a fiscal note, so they ask us what it's going
to cost us as a State agency to administer
that chapter. The other part of the process
is is that we also inquire of the Board what
impact is this going to have, maybe not
monetarily, but how would they implement it.
So, that's when we get into a line by line,
and that's what this Board got into last year.
When the first preneed bill came through, we
went and sat down and went line for line and
talked about the effects of the language. The
process that's kind of happening now is this
will not be a Board proposal, it's a
recommendation that will be given to the Joint
Committee. I expect, in some fashion, it will
come back to us asking for fiscal input and
the Board's -- if they have any changes or
concerns about implementing that process. But
where we go from here is we give a draft --
two draft documents to the Joint Committee.
The draft language with the comments, and then
the topics of discussion that were agreed upon
or that still need to have some discussion
that occurs. I'd like to report off kind of
who's saying what, who has what opinion so
they have some idea. Now, what happens after
the 22nd, I guess that needs to be left up to
this group how you want to handle it after we
get the draft out, the comments received back,
put back into the document. I'm assuming we'd
send that back out to you, but, Becky, where
do you want to go from there? Once we get to
the 22nd, and I have their comments back in
the draft, do we stop there or do you want to
go to the Joint Committee with it or do you
want --

MS. DUNN: We could possibly, if the
Board agrees and this committee, we could
possibly schedule a meeting the week of August
28th or 29th or whatever that week is.

MS. GRINSTON: And that may actually
even be done by conference call because, by
then, you'll have a document in front of you
with comments and everything else suggested
in. You'll be able to give us any revisions,
and maybe that week, possibly schedule a
conference call for maybe a half an hour or so
just to hear if there are any last lingering
comments.
MR. STALTER: Kind of like rebuttal;
just a final chance of rebuttal.

MS. GRINSTON: Twenty minutes, yeah.
Seventeen minutes at the max -- I'm joking --
for the conference call, and then maybe once
that draft is done, then get something
approved that we could submit to the Joint
Committee as a product of what we've worked on
the week of the 29th.

MS. NEUMANN: Kim, Tim wanted me to
thank everybody for their time and effort in
this, and we hope to help him in session to
get this thing out -- the House and the
Senate, and signed by the governor, and he's
going to need those -- (inaudible) -- to get
this out. Without your help, it's not going
to go anywhere. We've tried it for two years
and it's died. We need the help. We really
appreciate all that you have done, your time
and your effort. And since he won't send me
to the Lake, I'm not in favor of the Lake,
either.

MS. GRINSTON: Connie had one last
thing.

MS. CLARKSTON: The other thing that
you'll see coming from the division will be
Chapter 214. We had some -- a meeting last
week and we'll have another one Thursday
coming out with a similar type of product to
give to the Joint Committee. If you are
interested in receiving that, as well, if you
will send me an e-mail, I will assure you that
you will get that once that committee has
signed off on it -- committee meeting
roundtable.

MS. DUNN: Connie, could you make sure
everybody provides their comments to you so
that -- because it --

MS. CLARKSTON: Okay. I've said that
about three times, so if you could provide
your comments to me so that I can help Becky,
because we're getting them -- you know, if
they're coming into here, she's dealing with a
tremendous amount in her office. If we could
just organize that they come to us, it would
be very, very, very helpful to the process
both on 214 and 436.

(Several people talking simultaneously.)

CHAIRMAN: Todd?

MR. MAHN: I would just like to say --
I'd like to reiterate and thank everyone on this panel. We've had some heated discussions, but I respect everybody on this panel. And, you know, it's all -- everybody's interest in the public and seeing everything, you know, gets taken care of. And I would also like to mention that the 6th and 7th district over in St. Louis, we're having a, well, second annual barbecue at my house on September 20th, Saturday evening, and everyone is invited. Calvin, our president over there, will be getting that information out to everyone and he'll be communicating with Don and we're to RSVP and stuff like that so we know how many to cook for, but we're going to have a barbecue that evening on Saturday, the 20th.

CHAIRMAN: Okay. All right. Thank you all.

(Off the record)
I, Kristy B. Bradshaw, a Certified Court Reporter, within the State of Missouri, do hereby certify that the foregoing transcript constitutes a full, true and correct record of said proceedings that were held on August 12, 2008; that said proceedings were recorded by me and afterwards transcribed under my direct supervision.

Given at my office this 12th day of September 2008.

[Signature]

KRISTY B. BRADSHAW, CCR
August 11, 2008

Members of the Chapter 436 Review Committee

c/o Connie Clarkston
Missouri State Board of Embalmers and Funeral Directors
3905 Missouri Boulevard
P.O. Box 423
Jefferson City, MO 65109

Dear Members of the Chapter 436 Review Committee:

AARP appreciates the opportunity to comment on several weeks of discussions relative to revisions of Chapter 436. While the past several weeks’ discussions/debates have been enlightening, it is incumbent upon every member of this committee to make thoughtful and equitable decisions that reflect support for consumers. AARP realizes the impact the outcome of this committee will have on consumers for many years to come. It is our belief many of the proposed changes can strengthen or relieve much ambiguity in the current statute.

As stated in previous meetings, AARP supports recommendations submitted by the Funeral Consumers Alliance and the Silver-Haired Legislature. Several issues rated as priorities in our premed survey include: licensing/registration; reporting/notifications; preneed funds; trust issues; complaint/discipline. Therefore, because these issues were highlighted as top priorities by other members of the committee, AARP is hopeful the committee can do the right thing in terms of reaching agreement on issues important to our members.

Sincerely,

Norma J. Collins
Associate State Director-Advocacy
2008-08-12 Bill Stalter Letter to Connie Clarkston 436
Recommendations
August 7, 2008

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

Re: Chapter 436 Review Committee Recommendations

Dear Connie:

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

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

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

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

We have had substantial dissent on several key issues because there has been an insistence upon an up or down vote on a single proposal. I would suggest that the Committee be allowed to present two, perhaps three positions, with the advocates of each position providing a short statement of support. To facilitate this, I would recommend that discussion of the "Proposed Draft" be deferred until the Committee has addressed the five or so issues that the Division and the Attorney General
identify as our priorities for which no clear consensus exists. Clearly, the trusting requirements, portability, seller licensing and cancellation rights should be on the list.

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

**Trusting/Income Accrual - Cancellation/Portability**

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

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

I would offer the following two options for discussion:

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

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

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

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

Considerations:

- Basing the consumer’s cancellation/transfer rights on deposits plus accrued income exposes the funeral home to market variances. If consumers are to be afforded greater rights in the trust account, they need to share in the market risk.

- If the consumer’s cancellation rights are less than the transfer rights, sellers will be encouraged to favor cancellation over a transfer.

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

Sincerely,

William Stalter
August 7, 2008

Linda Bohrer
Acting Director
Missouri Department of Insurance,
Financial Institutions & Professional Registration
301 West High St, Room 530
PO Box 690
Jefferson City, MO 65102

Re: Missouri Division of Finance (MDF)
Death Care Trust Oversight

Dear Ms. Bohrer:

The attached legislative proposals have been submitted to the Chapter 436 Review Committee on behalf of the Department. While I do have dissenting comments, I believe that the legislature should give consideration to expanding upon your proposals.

Transfer of Fiduciary/Trust Oversight

With regard to insurance funded preneed contracts, the Chapter 436 Review Committee agreed that oversight of insurance companies should be handled by the Missouri Division of Insurance. I would suggest that oversight of financial institutions that provide fiduciary services for preneed trusts (funeral or cemetery) and prepaid care funds be transferred to the Missouri Division of Finance ("MDF"). This would give rise to a jurisdictional issue for federally chartered institutions. However, Missouri could follow the course adopted by other states in allowing for special consents of process that limit the institution's submission to jurisdiction to specified trust accounts.

There is little doubt that Chapter 436 reforms will impose greater requirements upon death care fiduciaries. The MDF will be better equipped than the State Board of Embalmers and Funeral Directors ("State Board") to assess whether financial institutions are fulfilling their obligations to consumers and death care companies.

Trust funded preneed differs from the insurance funded transaction in that the fiduciary is dependent upon the funeral home/cemetery for individual consumer data. This will remain an issue after reform, and thus, would require the MDF and State Board to coordinate more than what is contemplated for the insurance funded transaction. Accordingly, funding for enforcement procedures will have to be provided to both agencies.
Rulemaking Authority

While the Chapter 436 Review Committee has agreed that the State Board should be afforded rule making authority for the proceeds transaction, that authority should be restricted to licensed Chapter 335 entities and preneed sellers. I would anticipate similar provisions to be established under Chapter 214. With regard to death sure fiduciaries, the MDF should be afforded rulemaking authority to ensure proper oversight of the preneed fiduciary.

While certain trust issues need to be addressed by statute (the required trusting percentage and income accrual/rights), other fiduciary related requirements would be better addressed by regulation:

- Pooling administration
- Income/expense allocations
- Trust expenses
- Service provider arrangements
- Reporting and certifications
- Classifications for civil penalties

NPS Abuse Remedies

Missouri’s regulators have been guarded when releasing information about the NPS abuses. The public has come to understand that the NPS preneed trusts invested in insurance issued by a related insurer, and that those policies were improperly administered. However, it is difficult to debate provisions intended to preclude NPS abuses when the public is not fully informed as to those abuses.

I agree that RSMo §436.031.2 should be revised to ensure that the trustee is ultimately responsible to provide investment oversight. However, the fiduciary must be afforded a more definitive investment standard. Accordingly, I would recommend that the Prudent Investor Rule be expressly incorporated instead of the isolated references to “prudence”.

In addition to the Department proposals, there have been comments made during the Chapter 436 Review Committee meetings that the trustee must always have ‘control’ over the trust assets. This term is somewhat nebulous with regard to investment delegated to an independent investment advisor. I would suggest that the fiduciary must have title over the assets, and the responsibility for determining compliance with the Prudent Investor Rule.

Specific MDF Proposals

436.027.1 (and 436.032.1) (3)(b) – Trusting Percentage and Income Disbursements

The 85% trusting requirement may represent a fair compromise in the absence of industry evidence of actual sales expense. A sales expense of 15% would allow trust-based programs to compete with the commissions paid by insurance companies. Because the 85% requirement is lower than that sought by consumers, the industry should concede the income accrual requirement. However, regulators cannot
impose on the fiduciary the responsibility of determining how much income needs to be accrued. All income should be accrued, leaving the question of the consumer’s rights to income upon a termination or transfer.

436.032(1)(a) - trust administered solely in the interests of the purchasers and beneficiaries

This provision could create irreconcilable conflicts for the fiduciary with regard to any issue that is not expressly addressed by statute or regulation. Defined contribution pension plans contemplate funding by trusts that must be administered solely in the interest of the plan participant. The statutes and regulations known as ERISA are voluminous. To dictate the fiduciary’s duties are owed solely to purchasers/beneficiaries without comprehensive guidelines will force reputable institutions to decline the death care account.

436.032(1)(c) - prohibition of investment advice by seller agent

If the fiduciary contracts with an independent investment advisor, it should make no difference whether the advisor has a relationship with the seller as long as the fiduciary remains responsible for the trust’s compliance with the Prudent Investor Rule and retains title of the assets.

436.032.3 - Cease and Desist Orders

While the Division of Finance will need enforcement powers (perhaps civil penalty provisions similar to those discussed for Chapter 333 licensees), this provision is too vague.

436.032.4 - Fiduciary Reporting and Seller Suspension

Some form of progressive discipline is needed in lieu of program suspensions. Mutual accountability should be required of the death care company and the fiduciary. Transferring preneed (endowed care) fiduciary oversight to the MDF would negate the need for drastic license actions against funeral homes or cemeteries when the deficiency is solely the fault of the fiduciary.

436.057.2 - Trust Exams/Audits

While individual contract sub accounting records are the cornerstone to determining a preneed trust’s financial status, funeral directors have a legitimate concern about turning sensitive consumer data over to the State Board. This concern could be addressed by trust reports to the MDF that can be disclosed in situations where cause is shown. However it will be necessary for State Board inspectors to access trustee reports for purposes of reconciling the funeral home’s preneed accounts.

436.057.2 - Trust Deficiencies

As today’s markets will demonstrate, a 90% threshold of the amount paid is too high for new contracts. A benchmark may be needed for identifying distressed trusts, but this may be a standard that needs to be set by regulation.
I appreciate your consideration of these issues.

Sincerely,

William Stalter
Preneed Trust Legislation

1. “Random” or comprehensive audits are often ineffective. Just expanding the frequency of examinations without better standards will not prevent the problems. The law should allow random examinations and require “cause” for audits with “cause” based upon reasonable suspicion of either violation of 436 or imprudent or unaccounted investment of trust assets. It should not require a complaint and may be based upon activity in the Trust that appears to be detrimental to the preneed contract holders or contrary to their interests.

2. Require Trustee to file annual report with a listing of assets (a Trust balance sheet). If the preneed contract deposits (currently 80% of preneed contract sale receipts—which should be raised to 85–90%) exceed $3,000,000, the Trustee should be required to file a certified annual report.

3. Require Trustee (or trust officer) to attest to “market value” in the annual report.

4. Define “market value”—a valuation principle that includes transferability of ownership—“market” means you can sell it.

5. Require Trustee to attest that it controls the assets in annual report—It is not problematic for the Trustee to engage the services of an investment adviser, 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 §436.631.2: “The trustee shall be relieved of all liability regarding investment decisions made by such qualified investment advisor.”

Amended Section
§ 436.605 Definitions

(d) “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 is 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(2)(c), 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.

1. 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 expenses in financial position of the prepaid trust for the preceding calendar year; and
   (3) A signed and notarized statement by the trustee, or its officer, attesting that the trustee during the preceding calendar year has:
      (a) administered the trust solely in the interests of the purchasers and beneficiaries;
      (b) taken all reasonable steps to control all assets derived from deposits made to it by the seller;
      (c) prudently invested and protected all property in the 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 proceeds trust only; absent本人 under the limitations of section 436.031.3, RSMo; and
(e) not in connection with the investment of property in the trust, received any advice or been influenced, directly or indirectly, by the seller, any agent of the seller, or any other person with whom the seller has a prior business relationship or has paid or promised to pay any money or other benefit for any purpose.

2. Every trustee that has accepted more than three million dollars in deposits from the seller shall file a certified balance sheet of the trust as of December 31 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 issue an order in such order to cease and desist and all other relief pursuant to the provisions of sections 361.250 through 361.296, RSMo.

4. It is unlawful for any seller to continue to sell preneed contracts in this state, if a financial institution designated as trustee by the seller under section 436.021.2(e) has failed to file the annual statements with the board as required by this section.

New Section
§ 436.857

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 436.033, or the market value of assets in trust is less than equal to ninety percent of the total amounts paid by the purchasers of the preneed contracts, the board in its discretion may order an audit of the preneed trust, and such decision by the board does not require a complaint and may be based upon detected activity in a preneed trust that appears to be detrimental to the purchasers or beneficiaries or contrary to their interests.

3. When making an examination or audit under this section, the board may appoint and retain appraisers, independent certified public accountants or other professionals and specialists to examine, 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 licensed 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 licensed trust transacting business in this state.
TRUSTING

333.800.1 One-hundred percent of all payments received for a trust-funded preneed contract shall be deposited into trust within forty-five days of receipt by the seller or the seller's authorized agent. For the purpose of covering administrative expenses, the seller may request from the trustee an amount not to exceed twenty percent of the face value of the contract for the purpose of covering his selling expenses, servicing costs, and general overhead. Such funds may be deducted by the trustee from the initial preneed fund payments.

2. Within thirty days after a provider and a witness shall certify in writing to the seller that the provider has provided the disposition or the services, facilities, and merchandise described in the contract, or has provided alternative funeral benefits for the beneficiary pursuant to special arrangements made with the purchaser, the seller shall pay to the provider a net amount equal to all payments required to be made to the provider pursuant to the written agreement between the seller and the provider. Upon delivery to the trustee of the provider's receipt for such payment, the trustee shall distribute to the seller from the trust a sum equal to the amount held in trust for the contract all deposits maintained into the trust for the contract with any income authorized by sections 333.700 to 333.900.

[3.] 4. All expenses of establishing and administering a preneed trust, including, without limitation, trustee's fees, legal and accounting fees, investment expenses, and taxes, may be paid from the trust, provided that payment shall not be authorized to the extent that such fees payment will reduce the principal of the preneed trust.

CANCELLATION

333.800.1 A signed copy of the completed preneed contract must be provided to the purchaser within thirty days after the contract is executed by all parties. Within thirty days of the
purchaser’s receipt of the executed contract, the purchaser may cancel the contract with or without cause by delivering written notice to the seller or the provider. If written notice is received by the provider, the provider shall forward the notice from the purchaser or their purchaser’s legal representative to the seller within two (2) business days. Within thirty days after receipt of the notice of cancellation, the seller shall refund one hundred percent of all payments made on the contract to the purchaser. Notice of the purchaser’s right to cancel as provided in this provision and the appropriate addresses for notice of cancellation shall be designated on the face of the contract in no less than thirteen point bold type.

2. At any time after the thirty day cancellation period provided in section 1 of this section, and before the disposition or services, facilities, or merchandise described in a preneed contract are provided, a purchaser may cancel a preneed contract with or without cause by delivering written notice thereof to the seller or the provider. If written notice is received by the provider, the provider shall forward the notice from the purchaser or their legal representative to the seller within two (2) business days. Within fifteen days after its receipt of the notice of cancellation, the seller shall pay to the purchaser a net amount equal to eighty one hundred percent of all payments made under the contract plus ten percent of any income earned [a suggestion was made that this should be changed to a flat percentage, less any allowable administrative expenses of the seller. Upon delivery of the purchaser’s receipt for such payment to the trustee, the trustee shall distribute to the seller from the trust an amount equal to all amounts held in trust for the contract.

3. In no instance shall a seller charge, assess or collect any cancellation fee or penalty to a preneed contract purchaser under any circumstances.

CHANGE OF PROVIDER- (PRE-NEED)
333.900.1. At any time before final disposition, or the services, facilities, or merchandise described in a preneed contract are provided, the purchaser may change the provider identified in the contract without penalty by delivering written notice thereof to the seller or the provider. The seller shall change the provider as requested by the purchaser if the new provider submits written notification to the seller agreeing to assume all of the obligations of the original provider and to accept the remaining payments owed to the original provider, as agreed upon by the seller and the original provider. Nothing in this section shall be construed to prohibit the seller and the newly designated provider from negotiating or agreeing to alternate payment arrangements. A seller shall not fail or refuse to change a provider as requested by the purchaser if the newly designated provider files written notification with the seller as provided herein.

2. In no instance shall a seller charge, assess or collect any fee or penalty to a preneed contract purchaser for transferring or changing the provider designated in a preneed contract as described herein.

CHANGE OF PROVIDER (AT-NEED)

333.000.1. If the disposition or services, facilities or merchandise are provided to the beneficiary by any person other than the provider designated in a preneed contract, then the seller shall pay over to the person providing the disposition, services, facilities or merchandise a net amount equal to all payments required to be made to the original provider designated in the preneed contract, as agreed by the seller and the original provider. Upon seller’s full performance under the provisions of this section, the trustee of the preneed trust for the contract shall distribute to the seller from the trust an amount equal to all deposits made into the trust for the contract.
2. In no instance shall a seller charge, assess or collect any fee or penalty to a preneed contract purchaser for transferring or changing the provider designated in a preneed contract as described herein.

333.001 A seller may cancel a preneed contract if the payments payable under the preneed contract are more than three months in arrears. Prior to such cancellation, the seller shall provide written notification of intent to cancel to the purchaser ___ days before cancellation. The written notice shall provide that, which shall provide that the purchaser has ___ days to remit the payment in arrears to avoid cancellation. If the payments are not received as provided in the notification of intent to cancel, the seller may cancel the contract by delivering written notice thereof to the purchaser and the provider, and by making payment to the purchaser of a net amount equal to eighty percent of the payments made under the contract. Upon delivery of the purchaser’s receipt of such payment to the trustee, the trustee shall distribute to the seller from the trust an amount equal to all deposits made into the trust for the contract.

2. If the payments payable under a preneed contract are in arrears at the time of disposition or the services, facilities or merchandise described in the contract are requested for the beneficiary, the seller shall allow the purchaser to remit the payments in arrears. If the purchaser fails to remit payment, the seller may cancel the contract by making payment to the purchaser of a net amount equal to eighty percent of the payments made under the contract. Alternatively, at the purchaser’s option, the seller may credit the amount held in trust for the preneed contract towards any disposition or funeral or burial services, facilities or merchandise provided by any entity owned or operated by the.

OUR NOTES ON THIS SECTION ARE UNCLEAR.
July 31, 2008

To the members of the 436 Preneed Review Committee:

I understand from Barbara Neumann of Rep. Meadows' office that the Committee voted to retain the 80/20 trusting scheme. What a terrible choice, and how disappointing for you to miss the opportunity to make the most important, substantive change to better protect consumers and preserve funeral business stability.

To those of you who voted against this decision, you have my thanks. I sincerely hope that whatever legislation is drafted will not include this wrongheaded trusting scheme. FCA National and FCA of Greater Kansas City would have to consider publicly campaigning against any bill that does not increase trust deposit requirements.

I appreciate the work everyone has put into this process from all sides. I especially appreciate the support for positive change from AARP, the members of the state board, and many fair-minded, upstanding funeral directors. However, I was disturbed to notice last week that some at the table who are outside the funeral industry seemed all too credulous when the MFGEA made their claims. I was unpleasantly surprised to see that arguments from industry with a clear economic stake in preserving their profitable sales practices seemed to be given more credence by some than the arguments put forward by FCA and AARP, nonprofit organizations with no financial stake in the matter. The state's job is to protect the *consumer*, not facilitate his fleecing by enabling unethical and unsound business practices to continue.

Joshua Slocum
Executive Director
Funeral Consumers Alliance
800-765-0107

www.funerals.org
PROPOSED DRAFT

(HLC Comment – Homesteaders does not have a trust option so Homesteaders will not comment on trust provisions of this proposal except to the extent that we have overall concerns that are apparent though trust operations are not an area of broad experience.)

333.700. The provisions of sections 333.700 to 333.900 shall be referenced as the “Missouri Preneed Funeral Contract Act.”

333.705. As used in sections 333.700 to 333.900, unless the context otherwise requires, the following terms shall mean:

(1) “Audit”

(2) “Funeral Beneficiary”, the individual who is to be the subject of the disposition or who will receive funeral services, facilities or merchandise described in a preneed contract;

(HLC Comment – This should be funeral beneficiary so there is no confusion with the life insurance term “beneficiary” which has a completely different meaning.)

(27) “Board,” the Missouri State Board of Embalmers and Funeral Directors;

(34) “Division”, the division of professional registration of the department of insurance, financial institutions and professional registration;

(45) “Examination of books and records”

(6) “Guaranteed contact”

(7) “Funeral merchandise”, caskets, grave vaults, or receptacles, and other personal property incidental to a funeral or burial service, and such term shall also include grave lots, grave space, grave markers, monuments, tombstones, crypts, niches or mausoleums;

(Meierhoffer)
“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. (Euler)

(5) "Funeral service" (Meierhoffer)

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

(10) "Investigation"

(611) "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 with the Seller/Provider and the consumer; (HLC Comment – Need to say who the joint-account is held.)

(712) “Market value” – See DIFP Comment

(13) “Non-guaranteed contract”

(14) "Person", any individual, partnership, corporation, cooperative, association, or other entity;

(815) "Preneed contract", any contract or other arrangement which 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; (Meierhoffer) (HLC Comment -- What is the membership that is being talked about in this paragraph?)
(916) "Purchased Counselorsales agent," any person authorized to sell a preneed contract on behalf of a preneed seller; (Solocum)

(1017) "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;

(1118) "Provider", the person designated to provide the disposition, merchandise, facilities or funeral services, facilities, or merchandise described in a preneed contract; (Euler)

(1219) "Purchaser", the person who is obligated to pay under a preneed contract;

(1320) "Seller", the person who sells executes a preneed contract to with a purchaser and who is obligated to collect and administer all payments made under such preneed contract; (HLC)

Comment – Under a life insurance funded preneed contract the Seller should only collect the initial premium and the policyowner will then remit any remaining premiums directly to the insurance company. This eliminates the possibility of the premiums not being remitted, or not being remitted in a timely manner. Any responsibilities the parties may have respective to the collection or administration of payments should be detailed in a place other than the definitions, as you appear to have already done in 333.725.)

(1421) "Trustee", the trustee of a preneed trust, including successor trustees.

(1522) "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
Revised 7/28/08 at 10:10 PM

1. For which a deposit into a segregated account is required under Chapter 214, RSMo, provided
2. that a cemetery operator shall comply with sections 333.700 to 333.900 if the contract or
3. arrangement sold by the operator includes services that may only be provided by a licensed
4. funeral director or embalmer;
5. (2) A contract of insurance, provided that sections 333.700 to 333.900 shall apply to any
6. preneed contract sold with a preneed contract of insurance. (Molicherfer)

PRENEED PROVIDER LICENSING

333.720. 1. Except as provided herein, the provider designated in a preneed contract shall
2. be obligated to provide the funeral or burial services, facilities, or merchandise as described in
3. the preneed contract.
4. 2. No person shall be designated as a provider, or agree to perform the obligations of
5. a provider under a preneed contract unless, at the time of such agreement or designation, such
6. person is licensed as a preneed provider by the Board. Nothing in this section shall exempt any
7. person from meeting the licensure requirements for a funeral establishment as provided in this
8. chapter. (Grinston). A preneed provider shall be authorized and registered with the Missouri
9. Secretary of State to conduct business in Missouri and shall be licensed as a funeral
10. establishment by the Board. A funeral establishment license shall not be required if the person is
11. the owner of real estate situated in Missouri which has been formally dedicated for the burial of
12. dead human bodies and the contract only provides for the delivery of one or more grave vaults
13. and is in compliance with the provisions of chapter 214, RSMo; (Euler)
14. 3. An applicant for a preneed provider license shall:
15. (1) File an application on a form promulgated by the Board and pay a licensing fee of
16. ______ 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 preseed contracts;

(34) Identify the name and address of each vendor authorized by the provider to sell preseed contracts in which the provider is designated or obligated as the provider;

(45) 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 preseed contracts sold for or on behalf of a preseed seller or in which the applicant is named as a preseed 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 requirements for licensure. (Euler)

4. Each preseed provider shall apply to renew his or her license on or before October thirty-first of each year on 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) Be authorized and registered with the Missouri Secretary of State to conduct business in Missouri; (Euler)

(4) 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, excluding insurance premium payments made by a consumer, 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. (Euler) (HLC Comment -- Under a life insurance funded preneed contract the Seller should only collect the initial premium and the policyowner will then remit any remaining premiums directly to the insurance company. This eliminates the possibility of the premiums not being remitted, or not being remitted in a timely manner.)

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 $______ 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; (Euler)

(4) Have obtained a high school diploma or equivalent thereof; and (Euler)

(5) Meet all requirements for licensure; (Euler)

(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 eachlicensed 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 as 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; (Meierhoffer)

(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;
(710) 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 prorogulated by the
Board by rule.

PRENEED COUNSELORS/SALES AGENTS

COMMENT: Licensed funeral directors or apprentices need not be designated as pre-
need sales agents. They should not have to pay extra fees nor need to file extra paperwork. They
are already qualified. (Katie) (HLC Comment – This should be codified, see 333.730.1.)

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, except licensed funeral directors or
apprentices, shall be registered with the Board as a preneed counselor/sales agent. The Board
shall maintain a registry of all preneed counselors' 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 counselors' 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, and;

   (3) Each applicant, or if a corporation, each officer, director, manager, or controlling

       shareholder, shall be of good moral character; (Euler)

   (4) Have obtained a high school diploma or equivalent thereof; and (Euler)

   (5) Meet all requirement for licensure; and (Euler)

   (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 counselors' agent 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 preneed sales
agent is authorized to sell, negotiate or solicit the sale of preneed contracts for or on behalf of the
seller; and

(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 counselor 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 delinquent fee as promulgated by the
Board.

6. Notwithstanding any other provision of law, the Board may remove a preneed
counselor sales agent from the registry if the counselor 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 counselor 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 counselor 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 counselorsales agent as required by this section.

SELLERS & PROVIDERS

333.738. 1. No seller or preneed counselperson shall be designated 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. (Euler)

2. The written agreement required by this section shall include:

(1) Consent written consent from the provider authorizing the seller to designate or obligate the provider under a preneed contract; (Meierhofer)

(2) Procedures for tracking preneed contract funds or payments received by the provider in association with trust-funded preneed contracts or joint-account funded preneed contracts, 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; (HLC Comment – Under a life insurance funded preneed contract the Seller/Provider should only collect the initial premium and the policyowner will then remit any remaining premiums directly to the insurance company. This eliminates the possibility of the premiums not being remitted, or not being remitted in a timely manner.)

(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 so 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 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. (Molerhoffy)

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; Shall be numbered, but only after all
Revised 7/28/08 at 10:10 PM

1 conditions are met and the contract completed. (Footie) (HLC Comment – Preneed contract
2 numbering sounds great but it is an exercise in futility which provides no great advantages or
3 benefits to anyone. Contact Iowa’s regulator, Dennis Britson 515-281-4441, for a discussion
4 about this numbering “gift” he was given by the Iowa legislature.)

5 (2) Identify the name, address, phone and license number of the preneed provider and the
6 preneed seller;
7
8 (3) Set out in detail the final disposition arrangements for the beneficiary or the funeral or
9 burial services, facilities and merchandise to be provided;
10
11 (4) Identify on its face whether the contract is trust-funded, insurance-funded or joint-
12 account funded;
13
14 (5) Designate whether the costs for the final disposition or the funeral or burial services,
15 facilities or merchandise are guaranteed or non-guaranteed. If only a portion of the costs are
16 guaranteed, the contract shall clearly and separately identify the costs that are guaranteed and the
17 costs that are non-guaranteed;
18
19 (6) Prominently identify how the contract may be revoked is revocable or irrevocable;
20 (HLC Comment – Preneed contracts should not be made irrevocable, only the funding should
21 be made irrevocable to qualify for government aide. Making a preneed contract irrevocable
22 appears to impair the consumers freedom of choice as to funeral service providers and also gives
23 the appearance to the consumer that their funding may not be portable.)
24
25 (7) Set forth the terms for cancellation by the purchaser or by the seller on default of
26 payment, and transfer of the contract or reassignment of the funding; (Meierhoffer).
27
28 (8) Identify the preneed trust or joint account into which contract payments shall be
29 deposited, including the name and address of the trustee or the financial institution thereof; (HLC
Comment – This section should be moved to the trust funding section and the joint account funding section since it is directly related to them.)

(10) Include the name, address and phone number of any insurance company issuing an insurance policy used to fund the preneed contract; (HLC Comment -- This should be placed in the Insurance-Funded Preneed Contract section since it is related directly to insurance.)

(11) Identify the type of insurance that will be used to fund the insurance policy, including the number of such policy, if available; (HLC Comment -- You have excluded term insurance later in the statutes. All other types of insurance should be permissible. Why list the type?)

The policy number is not known until the life insurance policy has been issued so why propose this language to make it seem like the policy number is known before it is issued.

The consumer will know the type of policy and the policy number when they receive the actual policy since the policy is delivered directly to the consumer.)

(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; (Meierhoffer).

(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; (HLC Comment -- This section should be moved under trust-funded preneed contracts since none of the other types will have expenses or taxes deducted.)

(14) Include the name and signature of the purchaser, and the individual responsible for the sale of the contract which will be either the preneed counselor/sales agent responsible for the sale, or any agent of the seller, or its duly authorized representative, or the preneed provider, or its designee;
Revised 7/28/08 at 10:10 PM

1. (1514) Include the signature of the preneed provider or their designee, if the preneed contract is sold to the purchaser by the provider; and (Meierhoffer).

   (HLC Comment -- In regards to subsections 13 and 14, it should be limited to the signatures of those who are immediately present at the sale of the contract. The preneed sales agent has the authority to sign on behalf of the seller who hired them and the seller has a contract with the provider that allows them to enter into the preneed contracts on their behalf. Looking for other signatures will delay the transaction for everyone.)

2. (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; (Meierhoffer).

3. (1415) Comply with the provisions of section 333.700 to 333.900 or any rules 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, together with
interest at the rate of ten percent per annum and all reasonable costs of collection, including
attorneys' fees (Meierhofer).

4. After the seller retains any amount authorized by sections 333.700 to 333.900, (HLC
Comment – This portion of the paragraph only applies to trust-funded preneed contracts and
should be moved to be under the trust section. It should not be in this section as it makes it look
like the seller may retain fees for contracts funded by life insurance or monies placed in a joint-
account.) 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. (Solocum)

TRUST FUNDED PRENEED CONTRACTS

333.745.1. A trust-funded preneed contract shall comply with sections 333.700 to
333.900 and the specific requirements of sections 333.745 to 333.750. A seller shall deposit
payments received on a trust funded preneed contact into a trust designated by this section within
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 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 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 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 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 ¾ of 1%. (Sol Lucum)

7. (a) The seller of a guaranteed 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 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 services of facilities or funeral merchandise to or for the benefit of the beneficiary.

(b) The seller of a non-guaranteed preneed contract shall be entitled to all income up to the cost of the services and merchandise provided at the time of need. If there is excess income after payment to the seller, the trustee shall distribute the excess income to the estate of the funeral beneficiary. If the cost of the services and merchandise are greater than the income of the trust, the seller may request those responsible for the funeral pay the difference between the
trust income and the funeral bill. (HLC Comment – need to distinguish between guaranteed and
non-guaranteed preneed contracts and what happens with the funding.)

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.

333:47:1 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 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, preeed seller, preeed provider or preeed counsel/sales agent to procure or accept a loan against any investment or asset of or belonging to a preeed 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 descendants, siblings, parents, or spouses of a preneed seller or an officer,
manager, director or employee of a preneed seller, provider or counsel or preneed sales agent;

(3) An agent, preneed sales 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.
333.751.1. If a preneed contract is funded by a trust, the preneed contract shall set forth
the terms for cancellation by the purchaser or by the seller on default of payment and transfer of
the contract.

INSURANCE-FUNDED PRENEED CONTRACTS

SEE DIFP document.

333.750751.1. 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 the initial premium
payment what is required to pay the premiums on the insurance policy as assessed or required by
the insurer or premium payments for the insurance policy. In no instance shall a preneed seller
receive or collect any administrative or other fee from the purchaser for or in connection with an
insurance funded preneed contract other than those fees or amounts assessed by the insurer.
(HLC Comment – the seller/provider should only collect the initial premium payment that gets
sent in with the application form. All other premium payments should be made by the
policyowner directly to the insurance company. Insurance companies do not charge any fees or
assessments.)

3. Initial premium 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 counsel preneed sales agent for more than thirty days from the date of
receipt. (HLC Comments – as stated in earlier comments, the seller/provider should only collect
the initial premium and that should be remitted immediately. Allowing them to collect successive insurance premium payments is ripe for problems including but not limited to:
premises not being remitted, remitting them too late and the policyowner receives a double billing notice since the last payment was not received in time, etc.)

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 for the sale of the insurance product used to fund the contract. (Meierhoffer)

A preneed seller or any preneed sales agent authorized to sell an insurance funded preneed contract on behalf of a seller shall disclose, in either oral or written format, 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 and the amount or percentage of any such payments or commissions. (Soleum). (HLC Comments – the NAIC Model for insurance funded disclosures should be used for the sake of uniformity. The percentage of commissions is not required in the NAIC Model.)

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 or beneficiary of an insurance policy used to fund a preneed contract. (HLC Comment – allowing the provider to be named owner or beneficiary of the policy appears to impair the consumers right to freedom of choice of providers. The funeral home as beneficiary would allow the funeral home to receive the proceeds whether they provided the goods and services or not. The
assignment of the policy proceeds allows the funeral home to receive the death benefits if they
perform and still allows the consumer the freedom of choice to assign the proceeds to another
funeral home of their choice.

6. It is unlawful for a preneed seller, provider or counselor 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 327.700 to 327.900 (HLC Comment – having this section in would
eliminate the ability to have a non-guaranteed contract, which many providers now prefer. If the
Board intends to control or eliminate final expense life insurance assignments we need more
discussions about this topic.)

9. Laws regulating insurance shall not apply to preneed contracts, but shall apply to
any insurance sold with a preneed contract.

10. If a preneed contract is funded by a life insurance policy, the preneed contract shall
set forth:
(1) The terms for cancellation by the purchaser or by the seller on default of payment and transfer of the contract; and

(2) Cancellation of the preneed contract will not cancel the life insurance policy funding the preneed contract. The purchaser must cancel the insurance policy with written notification to the insurance company; and

(3) The purchaser will only receive the cash surrender value of the policy, which may be less than the amount paid in, if the policy is cancelled after 30 days; and

(4) The purchaser has the right to reassign the life insurance policy to another funeral home at any time.

(HLC Comment – these items are specific to a life insurance funded preneed contract and need to be set forth in the contract.)

11. (a) The provider of a guaranteed life insurance funded preneed contract shall be entitled to all death benefits of the life insurance policy upon providing evidence satisfactory to the insurance company that all services and merchandise were provided at the time of need.

(b) The provider of a non-guaranteed life insurance funded preneed contract shall be entitled to all death benefits of the life insurance policy up to the cost of the services and merchandise provided at the time of need upon providing evidence satisfactory to the insurance company that all services and merchandise were provided at the time of need. If there are excess death benefits after payment to the provider, the insurance company shall pay the excess to the named beneficiary of the insurance policy or to the estate of the funeral beneficiary if no beneficiary is named in the policy. If the cost of the services and merchandise are greater than the death benefits available in the policy, the provider may request those responsible for the funeral pay the difference between the death benefits available and the funeral bill. (HLC
Revised 7/24/08 at 10:10 PM

Comment – need to distinguish between guaranteed and non-guaranteed preneed contracts and
what happens with the funding.)

JOINT ACCOUNT-FUNDED PRENEED CONTRACTS

***NOTE: THIS SECTION IS STILL IN THE DRAFTING PROCESS***

333.755.1. 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 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, 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 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 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:
(1) The name and, addresses and contract number of all purchasers with preneed funeral contracts in-force at the time of the report; as reflected in any preneed contract sold since the filing of the last report; (HLC Comment – The Board should collect information about contracts that are in-force at the time of the report, not just those that were sold since the last report.)

(2) The total number and total face value of preneed contracts in-force at the time of the report sold since the filing of the last report; (HLC Comment – again you want those reported that are in-force, not just new ones that have been sold.)

(3) The preneed contract amount of each preneed contract in-force at the time of the report sold since the filing of the last report, identified by contract; (HLC Comment – see previous two comments.)

(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; (Meierhofer)

(6) The name, address and license number of all preneed counselors/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, and;

(14) Certification that a copy of each preneed contract sold is contained in files kept by
the seller, which may be kept as provided by a scanned electronic copy; and (Solocium) (HLC
Comment – there is no need to include copies of each preneed contract sold with the annual
report since the Seller can be audited at any time with the auditor reviewing these files for
compliance. Also note that under section 333.762 they must keep a copy of the contract in their
files.)

(14a) 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;

(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;

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(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 affiant 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; (HLC Comment – this information would be included in the seller’s files which the
auditor can review. There is no term insurance allowed so therefore it will be regular life
insurance or annuities that are sold.)

(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. (HLC Comment – Subsections
3 and 4 are items that are controlled by the insurance regulators and should not be subject to
reporting to the Board. In addition, the seller should not be collecting any premiums other than
the initial premium.)

(5) The status and total available death benefit face-value-and-total-cash-surrender
value of each policy in-force at the time of the report, and; (HLC Comment – the cash surrender
value is not a pertinent number to have on a report. To get current value you need to have the
default benefit that is available at the time of the report.)
(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 affiant 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 333.706 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. (Euler)

INVESTIGATION/INSPECTIONS

333.765.1. The Board shall have authority to:
1. Conduct inspections of preneed providers, sellers and counselors preneed sales agent
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 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 probable violation of sections 333.700 to 333.900 or upon receipt of a
complaint filed with the Board or by the Board staff. (Ruler)

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 [three/five] years, as financially permissible
pursuant to the funding of the board. (Kutis and Meierhoffer) COMMENT: Conducting a
random sampling annually. (Solecum). SEE DIFP 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. (Euler)

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, 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 preneed sellers, providers, and counselors, 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 preneed investigation, examination or audit. (Euler)

89. 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 or 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; (Euler)
(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
333.700 to 333.900 or sections 333.700 to 333.900, or of any lawful rule or regulation adopted
pursuant to Chapters 333, 194 or sections 333.700 to 333.900; (Euler)
(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; COMMENT: Is this needed? (Euler)
(11) Assisting or enabling any person to practice or offer to practice as a preneed seller, 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; (Euler)

(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 preneed contract which is false, misleading or deceptive to the general public or persons to whom the advertisement or solicitation is primarily directed, and;

(1617) Willfully and through undue influence selling a preneed contract, or;

(18) Violating any provision of the Federal Trade Commission’s funeral rule. (Solocum)

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 penalty/fines. (Solocum)
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 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 elder abuse, violence, sexual misconduct or involving the stealing, misappropriation or theft of funds. (Grinstein/Euler)

5. A person whose license was 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. (Meierhofer)

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.

233.775. 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
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, other than proceeds payable under a life insurance contract, shall be paid to that person. (HLC Comment—life insurance policies can only be paid out to an assignee or the named beneficiary of the policy.)

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 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) 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;

(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 or to Cole county. (Euler

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 final annual report containing the information required by section 333.060;

(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;

(g) 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 and the new provider shall notify the purchaser that a new assignment of proceeds is
required; (HLC Comment – just transferring the preneed contract does not transfer the funding of
that contract to another provider.)

(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. If the purchaser elects to cancel a life
insurance funded preneed contract, the consumer must also notify the insurance company in
writing of their election to cancel the life insurance policy. If cancelled, the purchaser will only
receive the cash surrender value of the life insurance policy. Nothing in this section shall be

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
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 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 333.000;

(b) The name, address and phone number of a custodian for the books and records of the seller that contain 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 to do business; (Meierhofer)

(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 (8), 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 preeed 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 preeed contract assured 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. (Meierhoff)

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 preeed 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. (Meierhoff)

5. A preeed seller not subject to subdivision 1 of this section may only transfer its obligations as a seller under a preeed 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 does not want to transfer their
life insurance funded preneed contract to the new seller, the purchaser may:

(1) Execute a new preneed contract with another provider or seller and reassign the life
insurance policy to that provider for funding, however any contract guarantees that were under
the old preneed contract will be forfeited by the purchaser; or

(2) The purchaser may cancel the life insurance funded preneed contract. To cancel the
life insurance policy the consumer must notify the insurance company in writing of their election
to cancel the life insurance policy. The purchaser will only receive the cash surrender value of
the life insurance policy.

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. The purchaser must reassign the funding policy to the new seller/provider to secure the
 guarantees (if any) under 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.

331.830. 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, other that proceeds payable under a life insurance contract, shall be paid to that person. (HLC Comment – life insurance policies can only be paid out to an assignee or the named beneficiary of the policy.)

333.840. Each seller shall remit an annual reporting fee in an amount of ____ dollars for each preneed 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 preneed 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 rulemaking authority and any rule proposed or adopted after August 28, 2008, shall be
invalid and void.
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", a systematic examination of financial statements, records and related
operations to determine adherence to generally accepted accounting principles, management
policies, or stated requirements as required by statute. Audit for this purpose will be initiated by
the Board after examination and investigation if deemed necessary. (Meierhoffer August 4,
1. 2008)

(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;

(23) "Board," the Missouri State Board of Embalmers and Funeral Directors;

(34) "Division", the division of professional registration of the department of insurance,
financial institutions and professional registration;

(45) "Examination of books and records" – For the purposes of the statute, the review by
the Board and its staff of the annual reporting as specified in this chapter. After Examination or
for cause the Board may initiate and investigation. (Meierhoffer, August 4, 2008)

(6) "Guaranteed contract"

(7) "Funeral merchandise", caskets, grave vaults, or receptacles, and other personal
property incidental to a funeral or burial service, and such term shall also include grave lots,
grave space, grave markers, monuments, tombstones, crypts, niches or mausoleums;
Revised 7/28/08 at 10:10 PM

(Meierhofer) “Funeral merchandise”, casket, grave vaults, or receptacles, and other personal property incidental to a funeral service. (Notes: Items such as grave lots, grave space, grave markers, monuments, tombstones, crypts niches or mausoleums are covered by Chapter 214, Missouri Revised Statutes, and are under the purview of the Office of Endowed Care)

(Meierhofer, August 8, 2008)

“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. (Euler)

(8) “Funeral service” (Meierhofer) — Conducting of the ceremony as related to the final disposition of the deceased as contracted between a licensed funeral establishment and next-of-kin of the deceased. (Meierhofer, August 4, 2008)

(59) “Insurance-Funded” Preneed Contract- A preneed contract which is designated to be fun defunded by payments or proceeds from an insurance policy;

(10) “Investigation”—The process initiated by the Board after an Examination of Books and Records has shown cause for further review of a funeral establishment, provider or seller’s financial records. After investigation, or for cause, the Board may initiate an audit. (Meierhofer, August 4, 2008)

(611) “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;

(712) “Market value” – See DIFP Comment

(13) “Non-guaranteed contract”

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(14) "Person", any individual, partnership, corporation, cooperative, association, or other
entity;

(815) "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; (Meierhoffer)

(916) "Preneed Counselors sales agent," any person authorized to sell a preneed contract
on behalf of a preneed seller; (Solocum)

(1017) "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;

(1118) "Provider", the person designated to provide the disposition, merchandise,
facilities or funeral services, facilities, or merchandise described in a preneed contract; (Euler)

(1219) "Purchaser", the person who is obligated to pay under a preneed contract;

(1320) "Seller", 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;

(1421) "Trustee", the trustee of a preneed trust, including successor trustees.

(1522) "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 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 of insurance. (Meterhoffer)

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 licensure requirements for a funeral establishment as provided in this
chapter. (Grinston) 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; (Euler)

3. An 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) 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;

(45) 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;
(3) Be authorized and registered with the Missouri Secretary of State to conduct business
in Missouri; (Euler)

(4) 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, and payments remitted, in compliance with sections
333.700 to sections 333.900 and as provided by the contract. (Euler)

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
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; (Euler)

(4) Have obtained a high school diploma or equivalent thereof; and (Euler)

(5) Meet all requirement for licensure. (Euler)

(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;

(47) 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;

(58) Has Have 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; (Meierhofer)

(69) 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;

(710) 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 COUNSELORS/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. (Kurtis)

Comment: In addition to the above comment, licensed insurance producers in the State of Missouri should have the same arrangement. Licensing for this purpose should be for those without funeral director licenses, apprentice funeral director registrations or insurance licenses. (Meierhoffer, August 4, 2008)

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
2. An applicant for a preneed couselorsales 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, and;

(3) Each applicant, or if a corporation, each officer, director, manager, or controlling shareholder, shall be of good moral character; (Euler)

(4) Have obtained a high school diploma or equivalent thereof; and (Euler)

(5) Meet all requirement for licensure; and (Euler)

(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 couselorsales agent 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 preneed sales agent is authorized to sell, negotiate or solicit the sale of preneed contracts for or on behalf of the seller; and

(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 counselorsales 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 delinquent fee as promulgated by the Board.

6. Notwithstanding any other provision of law, the Board may remove a preneed counselorsales agent from the registry if the counselor 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 counselorsales 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 counselorsales 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 counselor/sales agent as required by this section.

SELLERS & PROVIDERS

333.738. 1. No seller or preneed counselor/person shall be designated 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. (Euler)

2. The written agreement required by this section shall include:

1. Consent Written consent from the provider authorizing the seller to designate or
obligate the provider under a preneed contract; (Meierhoffer)

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 so 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 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. (Meierhofer)

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; Shall be numbered, but only after all conditions are met and the contract completed. (Kutis)

(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 non-guaranteed;

(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; (Meierhoffler).

(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; (Meierhoffler).

(1312) 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;

(1413) Include the name and signature of the purchaser, the preneed counselors/sales agent responsible for the sale of, if any, and of the seller, or its duly authorized representative;

(1514) Include the signature of the preneed provider, or their designee, if the preneed contract is sold to the purchaser by the provider.; and (Meierhoffler).
(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; (Meierhofer).

(1415) 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. (Meierhofer).

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, together with interest at the rate of ten percent per annum and all reasonable costs of collection, including attorneys' fees (Meierhofer).

4. 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. Comment: as discussed earlier in our sessions, 100% of the contract amount would be deposited in the trust and 20% would be reimbursed to the seller for administrative expenses, commissions, etc. (Meierhofer, August 4, 2008)
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. (Solucum)

TRUST FUNDED PRENEED CONTRACTS

333.745.1. A trust-funded preneed contract shall comply with sections 333.700 to 333.900 and the specific requirements of sections 333.745 to 333.750. A seller shall deposit payments received on a trust funded preneed contact into a trust designated by this section within forty five days of receipt of such funds by the seller or its designee. (Grinstoa)

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 policies of a person, whether through the ownership of voting securities, by contact other than the power is the result of an official position.
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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 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 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 ¼ of 1%. (Solocum)
7. 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 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 services of 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) (Strike Slocum's addition, Meierhofer, August 4, 2008)

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
counselor/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.

333.759.1 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 descendants, siblings, parents, or spouses of a preneed seller or an officer,
manager, director or employee of a preneed seller, provider or counselor/preneed sales agent;

(3) An agent, preneed sales 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

SEE DIFP document.

333.750751.1. 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 counsel preneed sales agent 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 for the sale of the insurance product used to fund the contract. (Meierhoffer)
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 and the amount or percentage of any such payments or commissions, (Solocum). Comment: Are there other regulated disciplines that have to adhere to such onerous rules? Insurance agents—brokers? Investment advisors? Bankers? Car Salesmen? Anyone? (Meierhoff, August 4, 2008)

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 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***

333.755.1. A joint account-funded preneed contract shall comply with sections 333.790 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 institutions 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, 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 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 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:
(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/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.
11. (12) Written consent authorizing the state board to order an investigation, examination
12. and if necessary an audit of its books and records relating to the sale of preneed contracts;
13. (13) The annual status report shall be certified under oath as complete and correct by an
14. officer of the preneed seller. The preneed seller or officer shall be subject to the penalty of
15. making a false affidavit or declaration, and;
16. (14) A copy of each preneed contract sold, which may be provided by a scanned
17. electronic copy; and (Solocum)
18. (1415) Any information deemed necessary by the Board to ensure compliance with
19. sections 333.700 to 333.900.
20. 2. A preneed seller that sells or has sold trust-funded preneed contracts shall also include
21. in the annual report required by section 1 of this section:
22. (1) The name and address of the financial institution licensed to do business in the State
23. of in (Meierhoffer, August 4, 2006) Missouri in which it maintains a preneed trust account and
24. the account numbers of such trust accounts, and;
25. (2) The trust fund balance as reported in the previous year's report;
26. (3) The current trust fund balance;
27. (4) Principal contributions received by the trustee since the previous report;
28. (5) Total trust earnings and total distributions to the preneed seller since the previous
29. report;
30. (6) A statement of all assets and investments of the trust listing cash, real or personal
31. property, stocks, bonds and other assets, showing cost, acquisition date and current market value
32. 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 number 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 affiant 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 (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 (2) The type of insurance purchased to fund each preneed contract, identified by
3 contract;
4 (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;
5 (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;
6 (5) The status, total face value and total cash surrender value of each policy, and;
7 (6) The information required by subsections (1) to (5) of this section shall be certified to
8 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.
9 5. All reports required by this section shall be filed by the thirty-first day of October
10 of each year or by the date established by the Board by rule. Annual reports filed after the date
11 provided herein shall be subject to a late fee of ________ dollars for every month past the
12 renewal deadline or in an amount established by rule of the Board.
13 6. A seller who fails to file their annual report on or before the thirty-first day of
14 October shall be prohibited from selling any preneed contracts until the annual report, and all
15 applicable fees, have been paid to the board.
16
17 RECORD RETENTION
18 333.762. A preneed seller shall maintain:
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(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 333.760 to 333.900;

(2) Records of preneed contracts, including financial institution statements and death
certificates, certificate of performance signed by the next-of-kin or responsible party for the
deceased (Meierhofer, August 4, 2008) 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. (Euler)

INVESTIGATION/INSPECTIONS

333.765.1. The Board shall have authority to:

(1) Conduct inspections of preneed providers, sellers and counselors preneed sales agent
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 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 probable violation of sections 333.700 to 333.900 or upon receipt of a
complaint filed with the Board or by the Board staff; (Euler)

(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 [three/five] years, or for cause as determined by the Board (Meierhoffer, August 4, 2008) as financially permissible pursuant to the funding of the board; (Kutis and Meierhoffer) COMMENT: Conducting a random sampling annually (Solocum). (Strike random sampling, Meierhoffer, August 4, 2008) SEE DIFP 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. (Euler)

Comment: What is the purpose of the added language? If there is a statute providing for the other departments or the attorney general’s assistance, should this be necessary? (Meierhoffer, August 4, 2008)
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 subpoenas 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 preneed sellers, providers, and counselors sales agents, or trustees 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 preneed investigation, examination or audit. (Euler)

89. If an investigation, audit or examination finds

Comment: Please clarify what "finds a violation" means. Does this mean an
investigation/audit has led to a ruling by the AG's office and a decision has been rendered by the
attorney general? (Meierhoffer, August 4, 2008)

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; (Euler)
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(3) Use of fraud, deception, misrepresentation or bribery in securing any license or registration pursuant to sections 333.790 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 333.700 to 333.900 or sections 333.700 to 333.900, or of any lawful rule or regulation adopted pursuant to Chapters 333, 194 or sections 333.700 to 333.900; (Euler)

(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; 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;
(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; (Euler)

(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 preneed contract which is false, misleading or deceptive to the general public or persons to whom the advertisement or solicitation is primarily directed, and;

(1617) Willfully and through undue influence selling a preneed contract, or;

(18) Violating any provision of the Federal Trade Commission's funeral rule. (Solocum)

If the Federal Trade Commission finds a violation, the remedy will be determined by the FTC and no lesser authority or state should have any penalty. (Meierhoff, August 4, 2008)

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 penalty/fines. (Solocum)

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 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 elder abuse, violence, sexual misconduct or involving the stealing,
and misappropriation or theft of funds. (Grinston/Euler)

5. A person whose license was 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. (Meierhoffer)

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 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) 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;

(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 or in Cole county. (Euler

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

333.900.1 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 purchaser 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 final 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 sections 333.000 or to cancel the contract if an alternate provider is not accepted by the purchaser.
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(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 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 333.000;
(b) The name, address and phone number of a custodian for the books and records of the
seller that contain 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 to doing business; (Moserhofer)

(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 (8), 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 end 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. (Meierhoff)

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. (Meierhoff)

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 preneed 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 preneed 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.
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.

2. The board shall promulgate and enforce rules for the transaction of its business and
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 rulemaking authority and any rule proposed or adopted after August 28, 2008, shall be
invalid and void.
Notes on topics not discussed to date from Michael Meierhoffer (August 6, 2008)

2. Collection of funds by preneed providers: Kim inserted language requiring funds to be deposited within 45 days.

3. Record keeping for preneed fund payments: The trustee, as recipient of 100% of the funds should be responsible for keeping records of payments.

8. Payments to providers for services rendered: Do not require a certified copy of the death certificate. This is not consumer friendly as the cost of the death certificate will only be passed on to the family. Insurance companies and trust companies currently require a certificate of performance signed by the family.

9. Trustee responsibilities: New language in 436 as proposed spells this out.

10. Independent Advisors: I think we are waiting on language from banking department.

11. Reporting/notification requirements for trustees: The Board should be notified with the annual reporting; consumers will be notified at the time of the contract (Trustee should be listed on the contract). Sellers are aware based upon the seller/provider agreement they should have entered into to do business together; the provider and the trustee should be aware of their relationship as well since their payment comes from the trustee and there is no reason for additional reporting to the Attorney General’s office (if an investigation/audit is called for, the AG should be able to review annual reports.

12. Record keeping for trustees: Is this not a function of the banking/financial institutions statutes?

13. Trust disbursements: Is this not a function of the banking/financial institutions statutes?

22. Rulemaking for the Board: All for it.

35. Licensing requirements for preneed registrants: All discussion seems to be leading to licensure of preneed sellers. As discussed earlier, licensed funeral directors, apprentice funeral directors and licensed insurance producers should be exempt from this requirement. Persons employed by an establishment, provider or seller, or third-party sellers, who do not hold one of the aforementioned licenses or registrations should be required to apply for licensure to sell preneed trust agreements or joint accounts agreements and should pass a test as designed by the Board based upon the statutes governing preneed trust and joint account agreements.

39. Changing/clarifying basic requirements for preneed contracts: Proposed language covers these items fully.
40. Adopting/requiring standard forms for preneed contracts: No. Contract should be devised to fit the business needs of individual sellers. One size does not fit all with contracts. The details and items that would have to be included to encompass all items currently provided throughout the state would be burdensome and confusing to the consumer.

41. Requiring the filing or approval of preneed forms & contracts with/by the Board or other agency: Too much oversight. A contract doesn't break the law. A dishonest person does with or without an approved contract on file. Contracts should be drafted and approved by the businesses attorney which would provide oversight and adherence to contract law.

42. Definitions of a "preneed contract": Proposed language addresses this point fully.

43. Changing/clarifying the Current Chapter 436 investigative/examination/audit process: Refer to Meierhofer's proposed changes from August 4, 2008. Examination would be the first step as conducted by the Board or its staff during the annual reporting process. If deemed necessary by the Board and investigation may be initiated after this point for further review. This process could include other agencies as requested by the Board. If the investigation merits, the Board could call for an audit which would be a more comprehensive review conducted by certified professionals.

48. Allowing the regulatory agency for Chapter 436 to hire legal counsel: Why? Is legal counsel not already provided to the Board? Is the Attorney General's Office not available if needed? What cause is there for another level of attorney's and more importantly, their fees?

49. Expanding/modifying investigative, audit or examination powers of the Board/Attorney General's Office/Missouri Department of Insurance, etc.: Refer to Item 43.

50. Expanding/modifying criminal/civil authority of the Board/Insurance/Attorney General's Office: This item may have already been discussed and resolved at an earlier meeting.

NOTES:

- Nobody has clearly explained why it is necessary to attach this proposed language to Statute 333. Do we run the risk of opening this statute when we do this?
- Do the new statutes apply only to contracts entered after the effective date of the new law, if passed? If so, what law to older contracts fall under if the current 436 is repealed? It is mandatory that changes in Chapter 436 do not affect contracts entered before the effective date of the new law.
- There is a great need to keep funeral service/law and cemetery service/law separate. Although it may seem that the two industries are one in the same they do have very different business cycles, revenue streams and practices that should differentiate them from each other enough to keep them governed by separate statutes (333 and 436 for funeral service and 214 for endowed care cemeteries). Pre-need statute as described in the proposed language could cripple cemeteries. Trusting requirements and disbursements for cemetery property would potentially
take generations to recognize revenue, if at all in some cases. Keep funeral and cemetery separate.
2008-08-12 Missouri Funeral Trust Comments to Funeral Consumer Alliance 436 Committee
Josh, I am not sure what your reference to MFDEA was refering to, but I hope you are aware that, on behalf of MFDEA, I both stated our view and voted to increase the trust amount to more than 80% on guaranteed-price contracts, which is what the majority of our members support (although there is some disagreement among us on, for example, if it should be 90, 95 or 100% etc.). While it is disappointing that this was not changed, there are going to be a number of very important items in the recommendations from the group that will greatly improve the current law for consumers including:

- Allowing portability
- 100% Trusting on non-guaranteed contracts
- Requiring that all funds be deposited into the trust then any % for expenses paid out
- Requiring that all income earned stay in the trust
- Increasing reporting and disclosure requirements
- Giving the State Board clear investigatory and auditing powers and rulemaking authority
- Streamlining the discipline process
- Providing for civil penalties for violations
- Licensing/registering pened salespeople, "real" licensing of preneed sellers
- Increasing the duties regarding investing and preventing some dangerous investment choices
- Increasing the fiduciary responsibilities of the Trustee
- 10% of income to consumer on cancellation of guaranteed contract, 100% on non-guaranteed contracts.

Given this, even at the 80% level with guaranteed contracts, the consumer is in a far better position than if they wish to cancel an insurance policy where they are lucky to get pennies on the dollar -- if anything at all. There is, in effect, a "charge" to the consumer in exchange for the huge benefit of locking-in prices but, with proper disclosures, why should that not be the consumer's choice? They also get the full value of the money paid into the trust unlike many insurance options where the consumer can very easily wind up paying $12,000 for a $6,000 funeral.

Although I feel the group's recommendations could be stronger in some areas and may even go too far in others, what I expect to be the final proposal will be much better than the current 436, I would hate to see it defeated because your group or others did not get everything you would like. Given the realities of the legislative process, as Representative Meadows clearly stated on several occasions, if there is significant opposition to any legislation that comes out of the joint committee, the likelihood is that nothing at all will get passed leaving us with the current 436 language that has so many flaws.

One example that you missed is that, under the current law, if the previous owners of NPS came to the State of Missouri today to start up a new trust to be run the same way as their old one, the State would be powerless to do anything. They would have to give a license to the new company. It can also take up to three years to discipline anyone under Chapter 436 because the enforcement language is so bizarre and the state can't fix the problem or clarify things as it has so rulemaking authority. If nothing else these kind of situations need to be changed and the recommendations that have been approved would do that. If no bill is passed, the current very bad 436 would stay in effect and we would have
lost perhaps our only chance in years to improve the situation.

Lastly, I must also take exception to your phrase "fleeceig the consumer." Even with all of the recent problems with preneed, to my knowledge no consumer has failed to recieve the funeral that they have paid for because of the chapter 436 provisions, as flawed as they may be. If anyone was "fleeced" in the past several years it was funeral homes who are providing the funerals to the consumers regardless of how much they are receiving from insurance companies, trusts or third-party sellers. Even when a funeral home has gone out of business, the state and the industry has stepped in to protect the consumer. Many of the positions many of us took at the meetings would acturally hurt our "bottom line" but we did so because we felt they were best for the consumer while still being workable for the industry.

In short, the State's "job" is to ensure that, when regulation of any industry is necessary, it creates a system that is fair and equitable to all parties and that, whatever the rules and regulations may be, that they are clearly understood and properly enforced. The recommendations of the working group, although not perfect, will make that process much easier and will benifit both the consumer and the funeral homes that serve them.

I hope that neither your group, AARP or any other interest will prevent needed changes to the law from going into force just because any proposed legislation is not "perfect." An "all or nothing" approach is going to get us nothing.

As I mentioned at the meeting, please feel free to call me at any time to discuss the matter in more detail.

Don Otto
Executive Director
Missouri Funeral Directors and Embalmers Association