

NEWS FROM SCDCA

South Carolina Department of Consumer Affairs



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FOR IMMEDIATE RELEASE

SCDCA INFORMS ABOUT PRENEED CONTRACTS & LICENSES

Columbia, SC.....On July 1, 2006 the South Carolina Department of Consumer Affairs (Department) assumed regulation of Preneed Burial Contracts from the Board of Financial Institutions. Since that time, the Department has been made aware that a number of banks throughout the state have questions about handling preneed funeral contracts. To address these questions, the Department contacted the South Carolina Banker's Association for their input and guidance on the information provided below. Preneed funeral contracts are regulated under the *South Carolina Code of Laws* §§ 32-7-10 *et. seq.* and § 40-19-290(E). The funeral home must be licensed with the Department to sell preneed funeral contracts, and the seller must be a licensed funeral director in South Carolina.

Funding

Preneed funeral contracts may be funded by money or a burial insurance policy. If it is funded by money, the funeral home (provider) has thirty days to deposit the funds after the contract is executed. When depositing the funds the funeral home must furnish the payment and a copy of an approved contract to the financial institution, as well as any additional forms required by that financial institution (for tax purposes, etc.). The account must be a trust account.

Section 32-7-20 (B) states "the provider receiving the payments is declared to be a trustee of the payments, and shall deposit the payments in a financial institution. All of the interest, dividends, increases, or accretions of whatever nature earned by the funds deposited in a trust account must remain with the principal of the account and become a part of it, subject to all of the regulations concerning the principal of the fund contained in this section." In addition, "All taxes on the fund must be paid in accordance with the Internal Revenue Code and applicable rules and regulations."

The trust account can be established as an individual trust for each contract or as a common trust fund. The financial institution would maintain accounting for each individual deposit and furnish a quarterly report to the funeral home, as well as the Department. The trust account must be carried in the name of the provider, but accounting records must be maintained showing the amounts deposited

About the South Carolina Department of Consumer Affairs:

Established by the Consumer Protection code in 1974, The South Carolina Department of Consumer Affairs represents the interests of South Carolina Consumers.

Our mission is to protect consumers from inequities in the marketplace through advocacy, mediation, enforcement and education.

For more information, visit www.scconsumer.gov.

and invested, and interest, dividends, increases, and accretions earned on them, with respect to each purchaser's contract.

All earnings accrue to the trust but the provider may withdraw ten percent of the annual earnings of the trust to cover trust administration.

Revocable vs. Irrevocable Contacts

A preneed contract can be revocable or irrevocable. If the purchaser chooses to make a preneed contract revocable, he or she has the right to revoke it at any time with a written demand to the funeral home. The funeral home has thirty days from receipt of the demand to notify the financial institution to authorize the refund of the trust and income, less any amount due to pay taxes or trust administration. The funeral home has the right to retain ten percent of the earnings in the portion of the final year before termination.

If a purchaser chooses to make the preneed contact irrevocable, the purchaser has thirty days to consider the decision and reverse it. After thirty days the funds must stay in trust until the contract is performed.

If the purchaser fails to make payments as provided in the contract, whether revocable or irrevocable, the contract is voidable at the option of the funeral home and may retain ten percent of the amount paid on the contract as a fee and return the remaining funds to the purchaser.

Transfers

A preneed funeral contract may be transferred to another provider only upon the prior written request of the purchaser or the beneficiary of a deceased purchaser. The selling funeral home must be paid a fee equal to ten percent of the contract face amount and ten percent of the earnings in that portion of the final year before transfer.

Performance and Payout of a Preneed Funeral Contract

The funds must not be paid by the financial institution until a certified death certificate and a certified statement that all of the terms and conditions of the agreements have been fully performed are furnished by the funeral home to the financial institution.

For more information, you may contact the South Carolina Department of Consumer Affairs at (800) 922-1594 or www.sccconsumer.gov and go into filings.

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