



## **Preneed**

### **Title 1: Secretary of State**

### **Part 12: Regulation and Enforcement – Preneed Funeral Service and Mdse. and Perpetual Care Cemeteries Regulation**

#### **Subpart: 1: Mississippi Preneed Cemetery and Funeral Registration Act Rules**

*Repeal of Prior Rules.* Upon their effective date, these rules and regulations supersede and repeal all previous rules and regulations promulgated under the Preneed Cemetery and Funeral Registration Act.

#### **Part 12 Chapter 1: Definitions**

*Rule 1.1 Act.* As used herein, all references to “Act” or “the Act” shall mean the “Preneed Cemetery and Funeral Registration Act” and any amendments thereto.

Source: *Miss. Code Ann. § 75-63-67 (Rev. 2009).*

*Rule 1.2 Contract Beneficiary.* As used herein, all references to “Contract Beneficiary” shall mean the person upon whose death will initiate the performance of a preneed contract.

Source: *Miss. Code Ann. § 75-63-67 (Rev. 2009).*

*Rule 1.3 Division.* As used herein, all references to “Division” or “the Division” shall mean the Regulation and Enforcement Division of the Mississippi Secretary of State’s Office.

Source: *Miss. Code Ann. § 75-63-67 (Rev. 2009).*

*Rule 1.4 Establishment.* As used herein, all references to “Establishment” or “Preneed Establishment” or “Registered Establishment” shall mean the funeral home, cemetery, or other providers of preneed merchandise and/or services that sell and shall be required to perform a preneed contract.

Source: *Miss. Code Ann. § 75-63-67 (Rev. 2009).*

*Rule 1.5 Rules.* As used herein, all references to “Rules” or “these Rules” shall mean the “Mississippi Preneed Cemetery and Funeral Registration Act Rules.”

Source: *Miss. Code Ann. § 75-63-67* (Rev. 2009).

*Rule 1.6 Secretary of State.* As used herein, all references to “the Secretary of State” or “Secretary of State” shall mean the Mississippi Secretary of State.

Source: *Miss. Code Ann. § 75-63-67* (Rev. 2009).

## **Part 12 Chapter 2: Registration**

*Rule 2.1 Establishment Registration.* Any establishment or organization which engages in the business of selling preneed merchandise and/or services shall register with the Secretary of State by filing a completed Preneed Establishment and/or Agent Registration Form (Form 10PN001) with the Division. The form shall be marked in the space designated “Initial Registration” and shall be accompanied by a registration fee of Two Hundred Fifty Dollars (\$250). This “Initial Registration” shall only be completed once for each establishment registration; therefore, the Two Hundred Fifty Dollar (\$250) registration fee shall only be paid once by each establishment that registers with the Division. The only reason an establishment would have to pay the Two Hundred Fifty Dollar (\$250) registration fee on more than one occasion would be if, for any reason, the establishment has to re-register. **All registrations expire on March 31<sup>st</sup> of each year and must be renewed.**

Source: *Miss. Code Ann. § 75-63-67* (Rev. 2009).

*Rule 2.2 Agent Registration.* Any person who engages in the business of selling preneed contracts shall register with the Secretary of State by filing a Form 10PN001 with sections A, D, and E completed. All agent applications must be sponsored by a registered establishment.

Source: *Miss. Code Ann. § 75-63-67* (Rev. 2009).

*Rule 2.3 Annual Report Filing.* Every registered establishment shall annually submit a written report to the Secretary of State of its preneed contract sales and performance of such contracts. This report shall be filed with the Secretary of State on or before March 31<sup>st</sup> of each year for the calendar year ending the preceding December 31<sup>st</sup>. Annual reports shall be submitted to the Secretary of State on Form 10PN001 that is marked in the space designated “Renewal Registration & Annual Report.” A Fifty Dollar (\$50) renewal of license fee shall also accompany the filing and shall be made payable to the Mississippi Secretary of State's Office.

Source: *Miss. Code Ann. § 75-63-67* (Rev. 2009).

*Rule 2.4 Trustee Annual Report Filing.* Every trustee for a preneed funeral and/or cemetery services and merchandise trust shall annually submit a written report to the Secretary of State containing the trust activity for the previous ending calendar year. This report shall be filed on

or before March 31<sup>st</sup> of each year for the calendar year ending the preceding December 31<sup>st</sup>. Trustee Annual Reports shall be submitted on the Annual Trustee Report Form and marked in the space designated “Preneed Funeral/Cemetery Services & Merch. Trust.” No fee shall be submitted with this report.

Source: *Miss. Code Ann. § 75-63-67* (Rev. 2009).

*Rule 2.5 Change in Establishment or Agent Information.* Any changes in the information provided by the establishment or agent in a registration shall be supplied to the Secretary of State in writing by completing the appropriate sections of Form 10PN001. Notice shall be supplied to the Secretary of State within thirty (30) days after such change has occurred.

Source: *Miss. Code Ann. § 75-63-67* (Rev. 2009).

*Rule 2.6 Change in Ownership or Control.*

- A. The seller shall apply for change of ownership or control when:
- 1) The seller transfers all or a portion of the interest in any contract for prepaid funeral merchandise and services;
  - 2) The seller transfers one or more of its establishments for providing funeral merchandise or services;
  - 3) All or a portion of the equity ownership of a seller has been transferred that will result in a change of:
    - a. The sale of more than fifty percent (50%) of the interest of a seller when the seller is a corporation;
    - b. Ownership of a seller when the seller is other than a corporation;
  - 4) The seller transfers all of its business assets relating to providing funeral merchandise or services; or
  - 5) The seller terminates its business of providing funeral merchandise or services.
- B. At least fifteen (15) days before the proposed occurrence of an event described in subsection A of this rule, the seller shall file a verified change of ownership application with the Division, which shall contain the following:
- 1) The name and address of the seller;
  - 2) The name and address of the organization proposing to acquire property of the seller, hereinafter referred to as the “transferee”;
  - 3) A description of the property and of the proposed transaction, as set forth in subsection A of this section;
  - 4) An accounting of the trust fund and all outstanding contracts, which accounting shall contain all the information required in the annual report, prepared as of a date within thirty (30) days of the required application filing date above;
  - 5) Any required documents or amendments thereto relating to the trust fund;
  - 6) A copy of any notice proposed to be sent to the contract buyers after the transfer;
  - 7) A filing fee of One Hundred Dollars (\$100.00); and
  - 8) Any other information that may reasonably be required by the Division by rule or order.
- C. The Division must approve the change in ownership or control. The Division shall approve the seller’s application for change of ownership by written authorization if:

- 1) The transferee set forth in the application holds a valid, current registration under the provisions of this article;
  - 2) The accounting required is complete, accurate, and reflects the trust fund whole and intact; and
  - 3) All required information and documents are filed with and approved by the Division
- D. The Division shall have the authority by rule or order to waive or reduce any of the requirements contained in subsection B of this rule as not being necessary or appropriate in the public interest or for the protection of the contract beneficiaries.
- E. The seller, or its interest therein, shall remain liable for all funds and transactions to the effective date of the transfer. The buyer shall be liable for all funds and transactions thereafter.
- F. Any shortages in the trust fund due to the failure to properly capitalize the trust in accordance with Section 75-63-59 shall be funded by the preneed seller or new owner before closing. Nothing provided in this section shall alleviate or excuse the purchaser from exercising due diligence in the transaction before closing.

Source: *Miss. Code Ann. § 75-63-67 and 77 (Rev. 2009).*

*Rule 2.7 Change in Trustee or Trust Institution.* In the event of any change in the investment composition of the assets of a preneed trust reflecting a redistribution of Twenty-Five percent (25%) or more of trust assets or a change in the trustee or trust institution, the Secretary of State shall be notified in writing no less than thirty (30) days after the time of such change occurs.

Source: *Miss. Code Ann. § 75-63-67 (Rev. 2009).*

*Rule 2.8 Termination of Agents.* Establishments shall notify the Secretary of State in writing within thirty (30) days after an agent has ceased employment with that establishment.

Source: *Miss. Code Ann. § 75-63-67 (Rev. 2009).*

*Rule 2.9 Notarization.* All registration forms and annual reports must be notarized.

Source: *Miss. Code Ann. § 75-63-67 (Rev. 2009).*

*Rule 2.10 Certificate.* An establishment and/or agent shall not be considered registered under the Act until the establishment and/or agent receives a certificate from the Division stating that it has satisfied the registration requirements of the Act and these Rules.

Source: *Miss. Code Ann. § 75-63-67 (Rev. 2009).*

*Rule 2.11 Filing Dates.* Any filing required by the Act or these Rules is considered timely filed by reference to the postmark when filed along with the appropriate forms, filing fee, and all other documents required by the Act or these Rules.

Source: *Miss. Code Ann. § 75-63-67 (Rev. 2009).*

*Rule 2.12 Deficient Filings.* Any filing made pursuant to the Act or these Rules may be deemed deficient if any of the following exist:

- A. The application is not on the proper form;
- B. The application is not in compliance with the Act or these Rules;
- C. The application is incomplete;
- D. The application is not signed and notarized; and/or
- E. The associated fee is not submitted.

When a registration application or filing is found to be deficient, the Division shall send a deficiency letter stating the grounds for noncompliance. If following the transmission of a deficiency letter, no communication is received by the Division for a period of thirty (30) days, the application or filing will be deemed abandoned and returned to the applicant.

Source: *Miss. Code Ann.* § 75-63-67 (Rev. 2009).

*Rule 2.13 Addresses.* For all correspondence to the Division **including payment of fees or penalties**, please mail to this address:

Secretary of State  
Regulation and Enforcement Division  
Post Office Box 136  
Jackson, Mississippi 39205

The physical address is:

Secretary of State  
Regulation and Enforcement Division  
125 South Congress Street  
Jackson, Mississippi 39201

Source: *Miss. Code Ann.* § 75-63-67 (Rev. 2009).

## **Part 12 Chapter 3: Contracts**

*Rule 3.1 Contract Forms.* All preneed contracts sold shall be evidenced in writing on forms approved by and on file with the Secretary of State. No contract form can be used unless approved by the Division. Said contract forms must be accompanied by all documents required by the Act and these Rules to be provided to a contract beneficiary.

All preneed contract forms filed with the Secretary of State shall be reviewed in order to ensure compliance with the Act and these Rules. If the contract meets all of the requirements of the Act and these Rules then it shall be marked “Accepted” and a copy shall be returned to the preneed establishment. If the contract fails to meet the requirements of the Act and these Rules, it shall be marked “Rejected” and it shall be returned to the preneed establishment along with the reasons for rejection.

It is the Establishment's responsibility to obtain approval of a contract form that complies with requirements of the current Act and the current Rules. Outdated contract forms, even if previously approved by the Division, cannot be used if contract language is in conflict with the current Act and the current Rules.

Source: *Miss. Code Ann. § 75-63-67* (Rev. 2009).

*Rule 3.2 Complaints.* All preneed contracts shall contain the following clause: "Consumer complaints may be filed with the Secretary of State by calling (601) 359-9055 or in writing at Post Office Box 136, Jackson, MS 39205."

Source: *Miss. Code Ann. § 75-63-67* (Rev. 2009).

*Rule 3.3 Certain Terms in Bold Type.* The following terms of a preneed contract that is funded by trust shall be in bold face type:

- A. The percentage of funds the seller is required to trust
- B. The name of the trust officer; and
- C. The name, address, and phone number of the trust institution.

These terms must also be set forth in a separate space on the contract and initialed by the contract beneficiary.

Source: *Miss. Code Ann. § 75-63-67* (Rev. 2009).

*Rule 3.4 Contract Portability.*

- A. For Trust-funded contracts: If, for any reason, the original contract seller does not service the final needs of the contract beneficiary, no less than the amount remitted to trust with associated earnings, interest, and income shall be paid to the substitute provider or the estate of the deceased. In the event the principal with interest, earnings, and income exceeds the retail contract price owed a substitute provider, then such excess or overage may be paid to the original contract seller. Such payment shall be made within ten (10) days by the original provider's trustee upon receipt of documentation of death and documentation of the substitute provider's services and merchandise furnished to the deceased.
- B. For Insurance-funded contracts: If, for any reason, the original contract seller does not service the final needs of the contract insured but the policy proceeds are disbursed to the original contract seller, then the original contract seller shall remit all policy proceeds to the substitute provider or the estate of the deceased within ten (10) days of the receipt of policy proceeds.

Furthermore, all preneed contracts sold in Mississippi must contain the portability language stated above before the contract can be approved and used in this State.

The effective date for Rule 3.4 shall be July 1, 2012.

Source: *Miss. Code Ann. § 75-63-67* (Rev. 2009).

*Rule 3.5 Merchandise Description Specificity.* All preneed contracts must provide a sufficient, detailed description of funeral or cemetery services purchased as well as the make, model, and quality of the merchandise covered by the contract. No contract form will be approved for use if the format does not capture specific information regarding the consumer's purchase.

Source: *Miss. Code Ann. § 75-63-67* (Rev. 2009).

*Rule 3.6 Retention of Documents.* The preneed establishment or its successor shall maintain a copy of all preneed contracts entered into by the establishment for a period of the lifetime of each contract and for two (2) years after the death of a contract insured. These documents shall be maintained on the premises of the establishment and shall be maintained in an auditable format. The Secretary of State's Office recommends that these records be kept indefinitely in electronic format.

Source: *Miss. Code Ann. § 75-63-67* (Rev. 2009).

*Rule 3.7 Conversion of Funding Type.* No contract that is funded by trust may be converted to an insurance policy funded contract without the prior approval of the Division.

Source: *Miss. Code Ann. § 75-63-67* (Rev. 2009).

## **Part 12 Chapter 4: Examination and Enforcement.**

*Rule 4.1 Trustee.* The preneed trustee must be a financial institution unrelated to the preneed provider, the seller, or a member, officer, or director of the contract provider if the contract provider is a corporation or LLC.

Source: *Miss. Code Ann. § 75-63-67* (Rev. 2009).

*Rule 4.2 Pre-Installation of Vaults.* No grave space may be opened for the sole purpose of installing a vault. Any vault purchased must be installed in the grave space at the time human remains are interred. Lawn crypts are exempt from this rule.

Source: *Miss. Code Ann. § 75-63-67* (Rev. 2009).

*Rule 4.3 Trusting requirements.* Not later than the fifth day of the following month from when funds are received, the contract seller shall place in a trust account in a financial institution as defined by this article at least eighty-five (85%) of the funds received for funeral and cemetery services and merchandise.

Source: *Miss. Code Ann. § 75-63-59(3) and 67* (Rev. 2009).

## **Part 12 Chapter 5: Administrative Hearing Procedures.**

*Rule 5.1 Hearing Procedure Variance.* The Secretary of State may grant variances from these Rules if it is determined that application of the Rules would, in the particular case, be

unnecessarily burdensome, and such variance would not be inconsistent with the public policy purposes of the Act.

Source: *Miss. Code Ann.* § 75-63-67 (Rev. 2009).

*Rule 5.2 Severability.* If any one or more of these Rules, or any part of any Rule is found to be invalid by any court of competent jurisdiction, such finding shall not affect the validity of any other Rule or the remaining content of any part of a Rule that is not found to be invalid. Further, if any one or more of these Rules, or any part of any Rule, is superseded, amended, or contradicted by subsequent legislation, such amendment or change by subsequent legislation in no way invalidates any other part of a Rule or any other Rules not addressed or impacted by subsequent legislative action.

Source: *Miss. Code Ann.* § 75-63-67 (Rev. 2009).

*Rule 5.3 Oral opinions.* Oral or informal opinions by the staff of the Division as to the applicability of the Act and oral or informal representations by the staff of the Division concerning the status of filings made with the Division are not binding upon the Division. Requestors can obtain a written declaratory opinion from the Division by following the procedures described in the Secretary of State's Rule on Declaratory Opinions. A non-refundable fee of One Hundred Fifty Dollars (\$150.00) must accompany each request.

Source: *Miss. Code Ann.* § 75-63-67 (Rev. 2009).

*Rule 5.4 Administrative Hearing Procedures.*

- A. Written notice shall be provided to any preneed establishment or other person against whom the Attorney General or Secretary of State intends to institute an administrative hearing pursuant to the Act or these Rules. At least twenty (20) calendar days of notice shall be given to the establishment or other person prior to the hearing unless the establishment or other person notified consents or the Division has authority to do so under applicable statute. Notice is effective on date of issue.
- B. Such notice shall be by certified mail, return receipt requested, and shall set forth the date, time and place for the administrative hearing and shall also designate a Hearing Officer.
- C. Any Party wishing to appear or introduce evidence or other testimony at the administrative hearing shall, no later than four (4) business days prior to the hearing date, file with the Hearing Officer and the opposing party a list of witnesses which it intends to call to testify or to otherwise give evidence. The list shall contain for each witness:
  - 1) Name;
  - 2) Residential and business address, if known;
  - 3) Residential and business telephone number, if known;
  - 4) A brief summary statement indicating the substance of the person's expected testimony.
- D. Upon request by any Party, any documents, papers, or tangible things to be introduced by any Party at the hearing shall be made available for inspection and copying by the requesting Party no later than four (4) business days prior to the hearing date.



- E. The Hearing Officer, or his or her designee, shall have the authority to administer oaths and affirmations. Each Party may be represented by an attorney or other authorized representative. The Hearing Officer may clear the hearing room of witnesses not under examination.
- F. The Hearing Officer shall have the authority to maintain the decorum of the hearing and shall take reasonable steps to do so when necessary, including clearing the hearing room of any person who is disruptive.
- G. The hearing shall be informal and technical rules of evidence shall be relaxed. All witnesses who appear and testify under oath shall be subject to cross-examination.
- H. The Hearing Officer shall have the authority to admit into the record any evidence which, in his or her judgment, has a reasonable degree of probative value and trustworthiness. The Hearing Officer shall have the authority to exclude evidence which is irrelevant, immaterial, lacking in probative value, untrustworthy or unduly cumulative.
- I. Documents received into evidence by the Hearing Officer shall be marked by him or her, or under his or her direction, entered into evidence and made a part of the record in the cause.
- J. Rebuttal and surrebuttal evidence may be heard at the discretion of the Hearing Officer.
- K. At the hearing, the Attorney General or the Secretary of State or the Division shall be the first to present evidence.
- L. The Attorney General or the Secretary of State or the Division shall have the burden of proving its allegations by a preponderance of the evidence. Fraud must be proven by clear and convincing evidence.
- M. A record of testimony at the hearing shall be made.
- N. A true and correct copy of said stenographic recording shall be made available to any Party requesting it, provided such Party agrees to pay the expense of such copy.
- O. After all evidence is heard or received and the hearing is completed, the Hearing Officer shall, within a reasonable time thereafter, issue a report and recommendation that details the findings of the hearing officer. All parties (including the Division) shall be served with the Hearing Officer's Report and Recommendations. Within fourteen (14) days following service of the findings, either party may present a written response to these findings to the Secretary of State. The Secretary of State will review the Hearing Officer's Report and Recommendations, all exhibits entered into evidence, all written responses to the Report and Recommendations and, if desired, order a transcript of the hearing. Thereupon, the Secretary may issue a Final Order adopting and accepting the Hearing Officer's Report and Recommendations; or reject the report and recommendations in whole or in part and issue findings of fact and conclusions of law with a Final Order; or, remand the case to the Hearing Officer for additional findings or clarification of key issues. A case is not concluded until issuance of a Final Order by the Secretary of State. All reports and recommendations and final orders shall be sent via certified mail, return receipt requested, to all Parties who appeared at the administrative hearing or their attorney or authorized representative.
- P. Continuances requested by any Party will be granted within the discretion of the Hearing Officer only for good cause shown.
- Q. In computing any period of time prescribed or allowed under these Rules, the Hearing Officer and all Parties shall be guided by the Mississippi Rules of Civil Procedure.

Source: *Miss. Code Ann.* § 75-63-67 (Rev. 2009).