

RS 37:865

§865. Restriction on use or disposition of funds

A. No funeral establishment, or any agent or employee thereof, shall borrow from, convert to another policy or surrender any preneed insurance policy or annuity, nor use or pledge any funds or insurance policy or annuity which is received in connection with any preneed funeral contract for any personal use, payment of funeral goods and services prior to the death of the funeral recipient, payment of the operating expenses of a funeral establishment, issuance of a loan to any person, as collateral for any loan, or for any purpose other than those expressly authorized by that preneed funeral contract and this Section. There shall be no commingling of funeral trust accounts.

B. All funds delivered by a buyer to a funeral establishment in connection with any preneed funeral contract shall be either:

(1) Deposited in a trust account with a financial institution not later than five business days after the expiration of the ten day right of cancellation period provided in R.S. 37:864(A). Such deposit shall be made in individual accounts or certificates of deposits which name the funeral establishment and the funeral recipient and shall be for the exclusive use and benefit, including all earned interest, of the funeral recipient.

(2) Delivered to an insurance company for the purchase of a preneed insurance policy or annuity not later than five business days after the expiration of the ten day right to cancel period provided in R.S. 37:864(A).

C. A funeral establishment shall not be allowed to avoid the requirement of Subsections A and B of this Section by constructive delivery of funeral goods to the buyer, storing the funeral goods in a warehouse or other location, posting of any type surety bond or other security or in any other manner or form.

D. Each funeral establishment shall file an annual report of funeral trust accounts with the Louisiana State Board of Embalmers and Funeral Directors as a prerequisite for licensing as a funeral establishment. The report shall list the name of the funeral recipient, contract number, financial institution account number, principal amount, and accumulated interest of each funeral trust account outstanding. This report shall be in the form of a sworn affidavit certifying that the report is true and correct, that all funds received were deposited in a financial institution or delivered to an insurance company as required under Subsection B of this Section and that the funeral establishment has no other funds or deposits for funding prepaid funeral goods and services effective as of the date of the report. All records used to complete the report shall be made available to the board which shall make an inspection of such records at least once annually.

E. A funeral establishment shall not have access to or use of any of the funds in connection with a preneed funeral contract for any purpose other than the following:

(1) If funded with a funeral trust account:

(a) Obtaining payment for providing funeral goods and services, upon presentation of the documents required by Subsection F of this Section.

(b) Transferring those funds to another funeral trust account, or to a preneed insurance policy or annuity, upon written authorization to do so from the buyer of the preneed funeral contract, or the duly authorized representative of the buyer.

(c) Refunding those funds to the buyer upon receipt of a written notice of cancellation of the preneed funeral contract from the buyer or the duly authorized legal representative thereof, to the extent permitted by R.S. 37:864.

(2) If funded with a preneed insurance policy or annuity, obtaining payment for providing funeral goods and services, upon presentation of the documents required by Subsection F of this Section.

F. Before obtaining or receiving payment for funeral goods and services rendered to the funeral recipient of any preneed funeral contract, the funeral establishment shall present a certified copy of the death certificate of the funeral recipient to the financial institution with whom any funeral trust account has been deposited and the insurer of any preneed insurance policy or annuity which was used to fund that preneed funeral contract.

G. At the time of the funeral recipient's death, the funds available in any funeral trust account established in connection with that preneed funeral contract or from any preneed insurance policy or annuity purchased or provided in connection with that preneed funeral contract shall be apportioned between the guaranteed funeral goods and services and the nonguaranteed funeral goods and services provided on the statement of goods and services contained in the preneed funeral contract in accordance with the applicable percentage pursuant to Subsection H of this Section. The preneed funeral contract funds shall be allocated as follows:

(1) With respect to guaranteed funeral goods and services, if the amount of apportioned funds to be applied to the costs of the guaranteed funeral goods and services provided by the funeral establishment exceeds the current retail price of those guaranteed funeral goods and services at the time of the funeral recipient's death, the licensed funeral establishment may retain the resulting surplus funds unless the preneed funeral contract provides otherwise. If the amount of the apportioned funds to be applied to the current retail price of those guaranteed funeral goods and services provided by the funeral establishment is not sufficient to cover the current retail price of those funeral goods and services at the time of the funeral recipient's death, the funeral establishment shall bear the resulting loss and shall not bill the estate of the funeral recipient or any other person for the deficiency.

(2) With respect to funeral goods and services which are not guaranteed, if the amount of the apportioned funds to be applied to the cost of those funeral goods and services exceeds the current retail price of such funeral goods and services at the time of the funeral recipient's death, the licensed funeral establishment shall refund the resulting surplus to the refund designee or, if none has been designated in the contract or the refund designee predeceased the funeral recipient, to the estate of the funeral recipient. If the amount of the apportioned funds to be applied to the current retail price of those funeral goods and services provided by the funeral establishment which are not guaranteed are not sufficient to cover the current retail price of those funeral goods and services at the time of the funeral recipient's death, the funeral establishment may charge the responsible party or the estate of the funeral recipient for the deficiency.

H. The "applicable percentage" means either of the following:

(1) The percentage of the total cost of the funeral which is attributable to the guaranteed funeral goods and services shall be calculated by dividing the total cost of the guaranteed funeral goods and services, as set forth in the statement of funeral goods and services in the preneed funeral contract, by the total cost of the funeral set forth in that statement.

(2) The percentage of total cost of the funeral which is attributable to the nonguaranteed funeral goods and services shall be calculated by dividing the total cost of the nonguaranteed funeral goods and services, as set forth in the statement of funeral goods and services in the preneed funeral contract, by the total cost of the funeral as set forth in that statement.

(3) The percentages so calculated as provided above shall be rounded off to the nearest whole number and the sum of such percentages shall in all cases equal one hundred percent.

I. If a funeral establishment which is a party to a preneed funeral contract does not provide the funeral goods and services for the funeral recipient of the contract upon his death, the contract shall be deemed null and void except for the designation of the refund designee and, upon receipt of a certified copy of the death certificate of such funeral recipient, the funeral establishment shall comply with all of the following:

(1) Take all necessary and appropriate steps to relinquish all of its rights and claims to any

preneed insurance policy or annuity funding the preneed funeral contract.

(2) Pay or cause to be paid the funds of any funeral trust account, up to the amount available as follows:

(a) To the funeral establishment that provided the funeral goods and services for the funeral of the funeral recipient in an amount equal to its total charges as shown on the statement of funeral goods and services for the funeral net of any proceeds to be received from any preneed insurance policy or annuity.

(b) Any balance to the refund designee and if none is designated in the preneed funeral contract or if the refund designee predeceased the funeral recipient, then to the estate of the funeral recipient.

Acts 2008, No. 799, §1, eff. Jan. 1, 2009.