

RS 37:861

PART II. PRENEED FUNERAL PLANS

§861. Preneed funeral plans

It shall be unlawful for a firm, partnership, corporation, an association of individuals, or anyone to enter into a preneed funeral contract other than a duly licensed funeral establishment.

Added by Acts 1974, No. 5, §1. Amended by Acts 1982, No. 592, §1; Acts 1983, No. 454, §1; Acts 2008, No. 799, §1, eff. Jan. 1, 2009.

RS 37:862**§862. Preneed funeral contracts**

A. The preneed funeral contract shall:

(1) Be in writing and printed in not less than ten point typeface.

(2) State the name, address and telephone number of the funeral establishment.

(3) State the name, address and telephone number of the buyer and the funeral recipient, if the funeral recipient is not the buyer.

(4) Contain or be accompanied by a statement of funeral goods and services which meets the requirements of the Federal Trade Commission Funeral Rule, 16 CFR Part 453, and LAC Title 46, Part XXXVII, §111. If a separate statement is used, it shall be attached to the preneed funeral contract and incorporated by reference into that contract.

(5) State whether the contract will be funded by a preneed insurance policy or annuity or a funeral trust account.

(6) If funded by a preneed insurance policy or annuity, state the name, home office address, and telephone number of the insurance company. A copy of the policy application with any medically related information expurgated shall be attached to and incorporated by reference into the contract and shall include a statement that the amount to be refunded if cancelled prior to the death of the funeral recipient will be determined by the provisions of the preneed insurance policy or annuity and a statement as to who is responsible for paying the income tax on any earnings generated by the preneed insurance policy or annuity.

(7) If funded by a deposit in a funeral trust account, provide the identity of the financial institution in which the money delivered to the funeral establishment by the buyer is to be deposited, and a statement as to who will be responsible for paying the income tax on any earnings generated by the funeral trust account.

(8) State the amount of the money initially deposited into a funeral trust account and give a description of any preneed insurance policy or annuity, used to fund the preneed funeral contract.

(9) State the effect on the contract benefits resulting from the failure to make any future payments required to fully fund the contract.

(10) Recite clearly and conspicuously whether the preneed funeral contract or the funding is revocable or irrevocable.

(11) Specifically identify which funeral goods and services are guaranteed funeral goods and services and state when the guarantee becomes effective if other than upon execution of the contract and the term of the guarantee if the term is other than for the life of the funeral recipient.

(12) State that the price to be paid for any funeral goods and services not designated as guaranteed will be the prevailing retail prices as listed on the general price list and casket price list of the funeral establishment at the time of the death of the funeral recipient.

(13) Include a description of any casket, alternative container or other funeral merchandise, burial vault or urn included in the preneed funeral contract. The description of a casket shall include the exterior color, the material the casket is constructed of, including but not limited to, the type and thickness of metal expressed in gauge or ounces per square foot, type and color of wood or other material and type and color of interior fabric; with respect to an urn, the description shall be of the material of which it is constructed.

(14) Contain the signature of the buyer and the date the buyer signed the contract.

(15) Contain the signature of a funeral director authorized by the funeral establishment to enter into a preneed funeral contract, and the date signed.

(16) Clearly and conspicuously state that unless waived as provided in R.S. 37:864(B), the preneed funeral contract may be cancelled and the buyer receive a full refund of all monies

delivered and a return and cancellation of the assignment of all policies transferred or assigned in connection therewith anytime within ten days after the buyer signed the contract.

(17) Include the name, address, and telephone number of any refund designee designated by the buyer.

B. Until signed by a funeral director authorized by the funeral establishment, the contract signed by the buyer shall be considered as an offer to purchase. Upon acceptance of the offer, signified by the signature of its duly authorized funeral director, the funeral establishment shall furnish a complete, fully executed copy of the preneed funeral contract to the buyer.

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

RS 37:863

§863. Substitution of guaranteed funeral goods and services

If any guaranteed funeral goods or services which were selected by the buyer in a preneed funeral contract are unavailable at the time of the death of the funeral recipient of that contract, the funeral establishment shall offer a similar casket or other funeral goods or services of equal quality, value and workmanship as the unavailable funeral goods or services.

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

RS 37:864**§864. Cancellation of preneed funeral contracts**

A. Unless waived as provided in Subsection B of this Section, any buyer of a preneed funeral contract may cancel that contract and receive a full refund of all monies connected with that contract at any time within ten days after the buyer signed the contract. After the expiration of this ten day period, a preneed funeral contract may be cancelled as hereinafter provided.

B. Where an application by the buyer or funeral recipient for government benefits is pending, the buyer may waive his or her right to cancel the preneed funeral contract as provided in Subsection A of this Section by signing a written waiver of that right.

C.(1) If a preneed funeral contract is revocable, the buyer, or his legal representative, may cancel the preneed funeral contract at any time by sending written notice of such cancellation, via certified mail, return receipt requested, to the funeral establishment.

(2) If a funeral trust account has been established to fund that preneed funeral contract, the funeral establishment shall within ten business days after the notice of cancellation is received forward a copy of said notice of cancellation to the financial institution holding on deposit the funeral trust account, and take all necessary steps to ensure that all funds contained in that funeral trust account are refunded to the buyer, less any charge for early withdrawal imposed by the financial institution.

(3) If a preneed insurance policy or annuity was purchased or provided to fund a preneed funeral contract, the funeral establishment shall forward a copy of the notice of cancellation of that preneed funeral contract to the insurance company which issued the preneed insurance policy or annuity.

D. If a preneed funeral contract is irrevocable during the life of the funeral recipient the contract shall not be revocable by either party nor shall the buyer be entitled to a return of the monies or any preneed insurance policy or annuity delivered to the funeral establishment except by order of a court of competent jurisdiction.

E. No funeral establishment shall impose any surcharge, fee, or other penalty, monetary or otherwise, when any person seeks to exercise his right to cancel a preneed funeral contract.

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

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.

RS 37:866

§866. Penalties

A. Whoever violates the provisions of this Part shall be fined not less than five hundred dollars, nor more than five thousand dollars and costs of the court reporter and attorney for the board for each offense, or by imprisonment for not less than thirty days nor more than one hundred eighty days for each offense, or both such fine and imprisonment.

B. If a firm violates the provisions of this Part, all the members of the firm who knowingly violate such provisions shall be subject to the penalty. If a corporation violates the provisions of this Part, the members of the board of directors and the officers of the corporation who knowingly violate such provisions shall be subject to the penalty.

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

RS 37:867

§867. Applicability

Anything in this Part contained to the contrary notwithstanding, this Part shall not apply to any person, firm, corporation, trustee, partnership, association or other legal entity who now or hereafter exclusively engages in, owns, operates, controls and manages a cemetery authority located in the state of Louisiana, unless it sells, or attempts to sell, or contracts for merchandise or services commonly furnished by a funeral home such as caskets, embalming, funeral directing, use of funeral home facilities and use of a hearse or transportation of a dead human body.

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