August 24, 2009

Group 2 Rules

Bill Stalter Comments

Single Premium Annuity Contracts

This issue does not merit an emergency rule. There have been conflicting reports as to why SB1 was revised to reference single pay annuities. The Board should seek input from legislators before adopting a rule that prohibits multiple pay annuities.

Preneed contracts with non-compliant financing

This proposal attempts to restate the statute, and does not merit an emergency rule.

Definition of Final Disposition

Reference to Section 193.015(3) [set out below] does not adequately address the jurisdiction questions that will arise from preneed programs that are based in bordering states. For example, what if an Iowa cremation society solicits Missouri residents. It would be better to address this issue through a permanent regulation.

> "Final disposition", the burial, interment, cremation, removal from the state, or other authorized disposition of a dead body or fetus;

Cemetery Exception

This proposed emergency rule does not reflect the Board's discussions on August 5th. There was a consensus that cemeteries should be exempted from Chapter 436 if the vault sale was made in conjunction with the sale of a burial space. If the Board is to provide an emergency rule for the Chapter 436 cemetery exemption, it should also do so for the Chapter 333 cemetery exemption. The following is offered as the emergency rule for RSMo. Section 333.310:

> Pursuant to RSMo. Section 333.310, a cemetery shall be exempt from the licensure requirements of RSMo. Sections 333.315 and 333.320 when all of the following conditions are satisfied:
>
> > 1) The cemetery has a current and valid license issued pursuant to RSMo. Section 214.275;
> >
> > 2) All sales of merchandise made by the cemetery that would otherwise be defined as a preneed contract for funeral merchandise are made pursuant to a contract whereby such merchandise is either i) purchased in conjunction with an interment right or grave space subject to RSMo.

> Section 214.320, or ii) is to be delivered to an interment right or grave space subject to RSMo. Section 214.320 that is owned by the purchaser and identified within the contract;
>
> 3) The cemetery has not been found to be in non-compliance with RSMo. Section 214.385 or RSMo. Section 214.387 by the Office of Endowed Care Cemeteries pursuant to a completed examination or audit; and
>
> 4) The cemetery does not offer for sale caskets or services that may only be provided by a Missouri licensed funeral director or embalmer.

The following is offered as an emergency rule for RSMo. Section 436.410:

> Pursuant to RSMo. Section 436.410, a preneed contract for the sale of funeral merchandise by a cemetery shall be exempt from the requirements of Chapter 436 when the sale is made pursuant to a contract whereby such merchandise is either i) purchased in conjunction with an interment right that is subject to RSMo. Section 214.320, or ii) is to be delivered to a grave space subject to RSMo. Section 214.320 that is owned by the purchaser and identified within the contract. However, if the contract includes caskets or services that may only be provided by a Missouri licensed funeral director or embalmer, the contract shall clearly set forth the application of payments and provide for administration pursuant to Chapter 436 for those payments applied to the casket or funeral services.

<u>Grandfather clause</u>

The proposed emergency rule is confusing. If a pre-8/28/09 contract breached the 'old' Chapter 436, would this regulation 'bless' the contract for compliance with the new Chapter 436?

Instead, the Board discussed an emergency rule to allow sellers to use existing preneed contract forms so long as an addendum was provided to the consumer that explained provisions/rights that were changed by SB1. The following is offered for that purpose:

> Entities that possessed a valid preneed seller's registration with the State Board as of August 27, 2009, may continue to use their existing contract forms until October 1, 2009, provided such entity i) files a Notice of Intent to Apply for Certification/Licensure as a preneed seller, and ii) provides to each purchaser an addendum that explains the purchaser's rights regarding cancellation and portability under Chapter 436, as revised on August 28, 2009.

Provider and Seller requirements under the preneed contract

Much of the subject matter of this emergency regulation will be addressed through the application process for sellers and providers. Accordingly, would it not be better to defer this to the permanent regulation process?

Consumer contract requirements

If the Board is to allow sellers to continue use of existing contracts until permanent regulations are passed, is this emergency regulation necessary? If so, paragraph 7 is a problem. Paragraph 8 also contradicts the Board's discussion that a purchaser's rescission should be treated the same as a cancellation.

Requirements for deposit and verification of payments

The emergency rule does not provide a mechanism for sellers to follow when segregating fees and costs from a purchaser's payment. In lieu of the proposed, consider the following:

> For compliance with RSMo. Section 436.430.2, a seller may establish with a banking institution located within Missouri an account that shall be maintained exclusively for seller's receipt of purchaser payments for preneed contracts sold subsequent to August 28, 2009. The seller shall be responsible for accounting for all fees and costs that are in addition to the purchaser payments made towards a preneed contract. The seller may accumulate purchaser payments in the clearing account until they are required to be deposited to trust pursuant to RSMo. 436.430.2. The seller may not withdraw any fees or costs from the clearing account until the purchaser payments associated with such fees or costs are deposited to trust.

Trustee investment restrictions

The proposed rule is not consistent with comments made on August 5th regarding investment advisors being governed by RSMo. Section 436.440. Perhaps this issue would be better addressed by permanent regulations.

Insurance funded contracts

Paragraph 3 is confusing. Is the reference to the preneed contract or the at need contract? This may be a controversial issue for some sellers and providers, and may be a better issue for permanent regulations.