

Group 2 rules

#1 Rule re: single premium annuity contracts

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Title: Replacement single premium annuity contracts

Purpose: This rule states that while only single premium annuity contracts can fund an insurance-funded preneed contract, purchasers may purchase replacement single premium annuity contracts during the contract period.

- (1) An insurance-funded preneed contract may be funded by an insurance policy or a single premium annuity contract.
- (2) An insurance-funded preneed contract may not be funded by an annuity other than a single premium annuity contract.
- (3) If a purchaser funds an insurance-funded preneed contract with a single premium annuity contract, the purchaser may replace the single premium annuity contract with another single premium annuity contract at any time in the duration of the preneed contract.
- (4) Any replacement single premium annuity contract must meet all the requirements of the initial annuity contract, Chapter 333, Sections 436.400 to 436.520, RSMo and any other requirements under state or federal law.

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Authority: 333.340 and 436.405

#2 Rule re: activities that do not constitute preneed under Sections 436.400 to 436.520, RSMo

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Title: Activities that do not constitute preneed under Sections 436.400 to 436.520, RSMo

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Purpose: This rule identifies activities that do not constitute preneed under Chapter 436 and do not require regulation for preneed under Sections 436.400 to 436.520, RSMo.

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The following activities do not constitute a preneed contract under the terms and conditions of Sections 436.400 to 436.520, RSMo:

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- (1) Sale of funeral merchandise where the purchaser takes immediate possession of the funeral merchandise;
- (2) The preplanning of funeral arrangements with where there is no exchange of payment or anything of value for the future services; and
- (3) Naming a funeral establishment as the beneficiary to a life insurance policy outside a preneed contract as defined by Section 436.405.1(7).

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Authority: 333.340 and 436.405

#3 Rule re: types of financing available; other financing still preneed

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Title: Prenneed contracts with non-compliant financing mechanisms are still subject to the provisions in Sections 436.400 to 436.520, RSMo.

Purpose: This rule identifies the acceptable funding mechanisms for preneed contracts.

(1) Prenneed contracts shall only be funded by:

- (a) A preneed trust as defined by 436.405.1(8);
- (b) An insurance policy or single premium annuity contract as defined by § 436.405.1(3); or
- (c) A joint account as defined by § 436.405.1(4).

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(2) Prenneed contracts funded by any other mechanism shall be non-compliant with the requirements of Sections 436.400 to 436.520, RSMo. All non-compliant preneed contracts shall still be subject to regulation by the Board under Sections 436.400 to 436.520, RSMo.

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Authority: 333.340 and 436.405

#4 Rule re: meaning of final disposition

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Title: Final disposition shall be used consistently with definition in § 193.015(3)

Purpose: This rule explains the use of the term final disposition as it relates to preneed contracts under Sections 436.400 to 436.520, RSMo.

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For purposes of Chapter 333 and Sections 436.400 to 436.520, RSMo, the definition and use of the term final disposition shall be consistent with the definition of the term final disposition contained in Section 193.015(3):

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Deleted: Sections 436.400 to 436.520, RSMo, the use of the term final disposition shall be consistent with the use of the term final disposition contained in Section 193.015(3) ¶

Authority: 193.015, 333.340 and 436.405

#5 Rule re: Cemetery exception

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Title: Endowed care cemetery exception.

Purpose: This rule describes the exception to preneed contract requirements under Sections 436.400 to 436.520, RSMo for endowed care cemeteries.

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(1) The provisions of sections 436.400 to 436.520 shall not apply to contracts or other arrangements sold by a cemetery operator for which payments received by or on behalf of the purchaser are required to be placed in an endowed care fund, as defined by Chapter 214, or for which a deposit into a segregated account is required under Chapter 214.

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(2) The provisions of Sections 436.400 to 436.520, RSMo shall apply to the contract sold by the operator as described in (1) above if the contract or arrangement includes services that may only be provided by a licensed funeral director;

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(3) This exception to the requirements of Sections 436.400 to 436.520, RSMo shall be contract specific.

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Authority: 333.340 and 436.410

#6 Rule re: seller obligations

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Title: Provider and seller obligations under Sections 436.400 to 436.520, RSMo

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Purpose: This rule clarifies the duties of the seller of a preneed contract.

Except as otherwise provided in Sections 436.400 to 436.520 and any rules validly promulgated pursuant to those sections:

- (1) The seller shall be obligated to collect and properly deposit and disburse all payments made by, or on behalf of, a purchaser of a preneed contract;
- (2) Alternatively, the preneed contract may permit the purchaser to make payment directly to the trustee or insurance company named in the contract in lieu of making payment to the trustee;
- (3) All sellers of preneed contracts in the State of Missouri shall designate an individual manager in charge within the seller's business at a Missouri address who will accept notice regarding any actions of the Board on behalf of the seller. The designation shall be made in writing and provided to the Board. If the designee changes, the seller shall make the Board aware of the change in writing five (5) business days prior to the change in designee becoming effective, or if the seller does not have notice five (5) days prior, then within three (3) business days of the change in designee.

Authority: 333.340 and 436.415

#7 Rule re: clarification on pre-August 28, 2009 and post-August 28, 2009

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Title: Grandfather clause

Purpose: This rule clarifies the treatment of contracts made prior to August 28, 2009.

- (1) Violations of Chapters 333 and 436 occurring prior to August 28, 2009 shall be governed by the law as it existed at the time of the violation;
- (2) Violations of Chapter 333 and Sections 436.400 to 436.520 occurring after August 28, 2009 related to a contract that existed prior to August 28, 2009 shall be governed by the law as it existed on August 28, 2009;
- (3) Violations of Chapter 333 and Sections 436.400 to 436.520 occurring after August 28, 2009 related to a contract executed on or after August 28, 2009 shall be governed by the law as it existed on August 28, 2009;
- (3) All preneed contracts executed on or after August 28, 2009 must meet all requirements contained in Chapter 333 and Sections 436.400 to 436.520 as the law existed on August 28, 2009.
- (4) Preneed contracts entered into prior to August 28, 2009 remain valid after August 28, 2009 to the extent they were valid under Sections 436.005 to 436.071 prior to August 28, 2009.

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Authority 333.340, 436.412 and 436.415

#8 Rule re: Provider and Seller requirements under the preneed contract

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Title: Requirements for notice by provider under preneed contract

Purpose: This rule sets out the requirements for notice by a provider under a preneed contract.

- (1) A provider shall notify the Board within 15 days of authorizing or agreeing to allow a seller to designate himself or herself as the provider under a preneed contract. Such notice shall be in writing and shall include:
 - (a) Name and address of the seller;
 - (b) Name and address of the provider;
 - (c) License number of the seller;
 - (d) License number of the provider;
 - (e) Effective date of the authorization or agreement;
 - (f) Signature of the seller, provider, purchaser, and, if applicable, the seller's agent;
 - (g) Notice with the Board may be filed electronically but the original document shall be provided to the Board by mail following the electronic filing.
- (2) The effective date of any preneed contract or agreement necessary to a preneed contract shall be the date of the last signature on the agreement;
- (3) The contract must be signed by the purchaser, provider and seller or seller's agent of the preneed contract;
- (4) If an agent of the seller signs the contract, the seller must also sign the contract but need not be present at the time it is signed with the purchaser;
- (5) The purchaser of the preneed contract shall receive either a copy or original of the contract and upon request a copy of any agreements or contracts between the seller and provider regarding the purchaser's contract.
- (6) If the provider and seller are the same legal person, the provider must still provide notice as required by this Rule to the Board that he or she is the provider for the seller. However, a contract between the seller and provider, if the seller and provider is the same legal person, is not required.
- (7) If the provider and seller are the same legal person, the preneed contract and any other contracts or agreements necessary to the preneed contract must contain:
 - a. One signature line indicating that signature belongs both to the seller and provider; or
 - b. Separate signature lines for the seller and provider.

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Authority: 333.3.40 and 436.420

#9 Rule re: Contract requirements

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Title: Consumer contract requirements

Purpose: This rule identifies requirements of all preneed contracts.

- (1) All preneed contracts and any agreements necessary to the preneed contract shall be in writing in Times New Roman or similar font in at least 8-point font size;
- (2) A preneed contract can contain both guaranteed and non-guaranteed items. Any preneed contract containing both guaranteed and non-guaranteed items shall clearly identify in writing in the contract that the contract contains both guaranteed and non-guaranteed items;
- (3) A preneed contract is voidable by order of a court of competent jurisdiction. Upon order of the court, the contract is voidable. Notice of the voidable contract must be provided to the seller and provider. The purchaser, upon notice, may then exercise the right to void the contract. Upon a valid court order and notice, a preneed contract is void.
- (4) All money under the preneed contract, including but not limited to payments, interest payments, and fees, is recoverable by the purchaser only if the purchaser elects to void the contract following receipt of a valid court order and notice to the seller and provider;
- (5) The effective date of any preneed contract or agreement necessary to a preneed contract shall be the date of the final signature of the provider, purchaser, seller's agent or seller on the agreement;
- (6) The seller, or his agent, must provide the purchaser with a fully executed original or copy of the preneed contract within five business days of the effective date of the contract;
- (7) All preneed contracts executed in the State of Missouri shall be accompanied by a disclosure sheet containing all necessary consumer disclosures on a form prescribed by the Board;
- (8) Preneed contracts can be cancelled or rescinded pursuant to Sections 436.400 to 436.520, RSMo. The process for concluding the affairs of the preneed contract that is rescinded or cancelled shall be the same and the purchaser, seller and provider shall have the same rights and obligations under cancellation and rescission.
- (9) PUBLIC ASSISTANCE STAFF WILL CHECK
(10) In addition to all other requirements set out in Chapter 333 or Sections 436.400 to 436.520, RSMo, including but not limited to § 436.425 and any validly promulgated rule, all preneed contracts executed on or after August 28, 2009 shall:
 - (a) Be in writing;
 - (b) Be executed by a seller who is in compliance with Chapter 333 and Sections 436.400 to 436.520, RSMo;

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(c) Identify the contract beneficiary and set out in detail the final disposition of the dead body and funeral services, facilities and merchandise to be provided;

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(d) If the contract is trust funded, identify the preneed trust into which contract payments shall be deposited, including the name and address of the trustee thereof;

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(e) If the contract is trust funded, identify the terms of the trust and related agreements among two or more of the contract seller, provider and trustee of the trust and that those individuals are in compliance with Chapter 333 and Sections 436.400 to 436.520;

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(f) Contain the name and address of the seller, his or her agent, the provider and the purchaser.

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(11) All preneed contracts shall be compliant with Chapter 333 and Sections 436.400 to 436.520 on or before December 31, 2009.

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(12) Any contract that does not comply with the requirements of Chapter 333 and Sections 436.400 to 436.520 after December 31, 2009 shall be voidable.

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DISCLOSURE SHEET AND REQUIREMENTS

Authority: 333.340 and 436.425

#10 Rule re: trust funded contract requirements

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Title: Requirements for deposit of and verification of payments

Purpose: This rule identifies what payments must be deposited into the preneed trust under a trust funded preneed contract and the seller's reporting requirements for deposits.

- (1) The seller of a preneed contract funded by a trust shall deposit all payments received pursuant to the terms of the preneed contract into the trust within sixty days of receipt of the funds by the seller, his agent or designee.
- (2) Within 30 days of request by the purchaser, the seller shall provide to the purchaser under a preneed contract, a written statement of all deposits made to the trust. The written statement shall include a detailed description of all deposits made by type of deposit and date of deposit. The written statement shall also include the principal and interest paid to date for the trust. The written statement shall be signed by the seller.

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Authority: 333.340 and 436.430

#11 Rule re: Trustee investment restrictions

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Title: Trustee investment restrictions under a trust funded preneed contract

Purpose: This rule identifies the investment restrictions of a trustee under a trust funded preneed contract.

- (1) A trustee shall not make decisions to invest any trust fund under a preneed contract with those individuals or entities contained in §§ 436.445(1) through (4), who are, or may be, related to the parties to that preneed contract or trust;
- (2) The trustee investment restrictions contained in §§ 436.445(1) through (4) shall not apply to those individuals or entities related to the parties to other preneed contracts or trusts.

Authority: 333.340 and 436.445

#11 ½ An additional potential emergency rule re: independent financial advisor is an agent of trustee

Title: Independent financial advisor is an agent of the trustee

Purpose: This rule clarifies that an independent financial advisor is an agent of the trustee in a trust funded preneed contract.

An independent financial advisor, as provided in section 436.440.6, is an agent, as provided in section 436.440, of the trustee.

Authority: 333.340 and 436.440.6

#12 Rule re: Insurance funded contracts

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Title: Insurance funded contracts

Purpose: This rule identifies payment issues in insurance funded preneed contracts.

- (1) Payments collected by or on behalf of the seller which must be promptly remitted to the insurer or the insurer's designee do not include administrative or other fees built into the preneed contract;
- (2) The purchaser of an insurance funded preneed contract, may, upon agreement with the seller and provider, submit payments directly to the insurer or insurer's designee;
- (3) For any overages under the preneed contract that exceed the costs under the contract, the overages shall be distributed:
 - a. To the estate of the beneficiary named in the insurance policy; or
 - b. If the policy holder received public assistance to the State of Missouri if the State of Missouri was named as beneficiary or to the estate of the beneficiary if the State of Missouri was not named.

Authority: 333.340 and 436.450