

INTERNATIONAL CONFERENCE OF FUNERAL SERVICE EXAMINING BOARDS

106th Annual Convention

<h3>PRENEED: HOW DOES YOUR STATE RATE!</h3>
--

February 26, 2010

T. Scott Gilligan
Gilligan Law Offices
3734 Eastern Avenue
Cincinnati, Ohio 45226
(513) 871-6332

1. NFDA MODEL PRENEED GUIDELINES
2. NFDA PRENEED REPORT CARD
3. GUIDELINES FOR EVALUATING PRENEED INSURERS
4. GUIDELINES FOR EVALUATING PRENEED TRUSTS

FACTS ABOUT NFDA STATE PRENEED GUIDELINES

- The Guidelines are the work product of a preneed summit meeting conducted by the National Funeral Directors Association in June, 2000, in Chicago, and attended by representatives of 37 state funeral director associations. The Guidelines were later refined and adopted by the NFDA Executive Board and Policy Board. The Policy Board subsequently amended the Guidelines in 2001, 2003, and 2007.
- The Guidelines are designed to ensure that consumers who purchase funeral services in advance make informed decisions, deal with ethical and licensed preneed sellers and agents, and have the right to cancel contracts or transfer preneed funding from one funeral service provider to another.
- The Guidelines are focused at the state level because that is where preneed laws and regulations are written and enforced.

PRENEED CONSUMER CONTRACT DISCLOSURES

- Preneed contracts shall be written in clear and understandable language, identify all of the parties, and list all of the funeral goods and services provided for by the contract.
- Each preneed contract shall disclose whether it is funded by an insurance policy, trust fund, annuity, or some other method.
- If funds are used to purchase insurance, a copy of the policy application should be attached. The contract shall also disclose that the insurance policy, except for the initial "free look period," is not refundable, but may be surrendered for less than face value or may be transferred to another funeral service provider. The contract shall further disclose whether a commission was received from the sale of the insurance policy.
- If funds are to be trusted, the contract shall disclose the institution receiving the trust funds, when the funds will be deposited, the percent or amount of the funds that will be deposited, the percent or amount that will be retained by the seller and how much of the interest or accrual will remain in trust or be paid to the seller.
- If funds are to be trusted, the contract will disclose trustee fees or other administrative costs that will be deducted from the trust and who will be responsible for taxes on earnings of the trust account.

- The contract shall disclose whether the price of the funeral contract is guaranteed, and if so, what goods and services are covered by the price guarantee and what goods and services are not. If the price of the funeral contract is not guaranteed, the contract shall disclose that the actual costs of goods and services shall be determined at the time of death.
- The contract shall disclose the conditions under which a purchaser can exercise the initial right of cancellation or revocation of the contract, the rights to a full refund within specified cancellation periods, circumstances under which a revocation fee can be imposed and how much those fees may be.

PRENEED TRUSTING REQUIREMENTS

- 100% of the preneed funds paid by the consumer, plus all interest and accruals thereon, shall remain in trust. The only permissible expenditures from the trust funds shall be taxes, trustee fees and trust administration expenses.
- State laws should not permit sellers to warehouse or store pre-purchased funeral goods in lieu of trusting pre-paid funds from the consumer. Nor should state laws allow sellers to post surety bonds as a substitute for trusting.

CONFIRMATION OF DEPOSIT

- The depository institution receiving trust funds or the insurance company receiving premiums shall be required to confirm in writing to the consumer the amount of funds that were received.
- The preneed contract shall inform consumers that if the consumer does not receive written confirmation of deposit within a specified period of time, the consumer should notify a designated government agency.

LICENSING OF PRENEED SELLERS AND AGENTS

- Only licensed funeral directors should be permitted under state law to arrange or sell funeral services on a preneed basis.
- To receive a license to sell funeral goods on a preneed basis, a seller or agent must successfully pass an examination administered by the state licensing agency on preneed laws and regulations.
- Any individual with a felony conviction shall be ineligible to receive a preneed sales agent license.

- With the application for a preneed sales agent's license, the agent must provide a copy of the agreement by which the preneed seller certifies that the agent will represent the seller, identifies the preneed goods the agent will sell, and certifies the agent has been trained by the preneed seller.

SOLICITATION OF PRENEED CONSUMERS

- Within 30 seconds of initiating a solicitation by telephone, or upon entering the residence of a prospect, the solicitor must identify him or herself, the preneed seller on whose behalf the solicitation is being made, and provide general description of funeral goods and services to be offered.
- The solicitor must present to the consumer a copy of the General Price List of the preneed seller, as required by the federal Funeral Rule, and any other preneed disclosure information that the state requires to be distributed to the consumer.
- The solicitation must present to the consumer any preneed disclosure information that is required by state or federal law when making a solicitation.
- The direct or indirect solicitation of an individual in a hospital, rest home, nursing home, or similar health care facility, without having been expressly requested to do so by that individual or their representative is prohibited.
- Preneed sellers who solicit consumers by telephone are required to maintain a "do not call" list that includes any consumer who does not wish to be called.

REVOCATION OF PRENEED FUNERAL CONTRACTS

- Every preneed consumer who enters into a preneed funeral contract shall be permitted to cancel that contract within seven days of its execution and receive 100% of the funds the consumer paid for the contract.
- A consumer, or their representative, has the right to revoke a revocable contract with the original preneed seller. The original preneed seller shall be permitted to retain a reasonable revocation fee, the payment of which is established by state law. The trust funds or insurance policy established to fund the contract shall be returned to the consumer after deducting applicable taxes, trust expenses, and revocation fees permitted by the law.
- If the preneed contract is irrevocable, the consumer, or their representative, shall have the right to transfer the trust funds, or the insurance policy that will be used to pay the preneed contract, to another

funeral provider. The original preneed seller shall be permitted to retain a reasonable transfer fee, the payment of which would be established by state law.

PRENEED GUARANTY FUNDS

- Each state should establish a preneed consumer guaranty fund to provide restitution to preneed consumers in case of a default by a seller.
- The preneed guaranty fund shall be funded by fees paid by sellers and collected from consumers each time a preneed contract is sold. The fees shall be paid into a segregated state fund that is administered by a state agency that is empowered to use the fund to compensate preneed consumers in the event of a default.

ENFORCEMENT OF PRENEED LAWS

- All preneed sellers must maintain separate records for each preneed contract which includes detailed records on the investment of the preneed funds and annual reports on those investments. Records should be maintained for three years after the performance of the preneed contract.
- Preneed sellers should be required to send an annual report to the responsible state agency listing all preneed contracts that it holds which includes the name of the contract beneficiary, the date of the preneed contract, the name and address of the trustee or insurance company holding the preneed funding, and any amount of the preneed funds or insurance policy.
- State agencies should have the authority to conduct regular audits of preneed sellers.
- Violations of preneed law involving theft, embezzlement or any intentional misappropriation of preneed funds should be felonies.

GUIDELINES FOR EVALUATING PRENEED INSURERS

Your responsibility as a prudent and ethical funeral business owner is to research the financial strength and business practices of any preneed insurer whose products you are considering to make available to customers.

Preneed insurance, which may also be called funeral or burial insurance, is a specialized form of life insurance specifically used to fund the predetermined expense of a funeral, cremation or burial. Your funeral home (generally) is the beneficiary or assignee of the insurance policy proceeds, contingent upon your delivery of the funeral. Proceeds are not taxable, but you should always consult your tax advisor about possible tax implications in your specific situation.

Follow these steps before making a decision about a preneed insurer for your families.

- 1. Check with the department of insurance in your state (your best resource) to locate information about the specific laws and regulations that govern preneed insurance agreements and that protect consumers, to determine if the insurer is licensed with the state, and to check on the insurer's complaint record.**

Most state insurance departments provide this information online. You may also inquire to determine if the insurer is in good standing, in compliance with all applicable federal and state actuarial standards, statutory provisions, and administrative rules. You may also find information about the company's financial strength, its history, management and control practices, current financial statement data, and other business practice and performance data, if available.

You also need to verify that the policies issued by the insurer are guaranteed by your state's insurance guaranty fund association. Some insurers, such as fraternal or benevolent organizations, may be issuing policies that are not covered by the state guaranty fund. In the event that such an insurer becomes insolvent, there will not be a guaranty fund that will pay the face amount of the policy. The funeral home needs to use an insurer that is issuing policies that are backed up by the state guaranty fund association.

State insurance department web sites are accessible through the following link, created by the National Association of Insurance Commissioners (NAIC):
www.naic.or.state.web.ma..htm.

- 2. Ask the insurer for detailed, current information about its balance sheet strength, operating performance, business profile and practices, management history, and compliance with all state and federal laws and regulations.**

You have the right and the responsibility as a business owner to determine that an insurer is able to meet its ongoing obligations to its policyholders - who are the families you serve. You can also check the insurer's website for information about its policies, practices, and performance. Examine the features and benefits of the company's insurance products to be sure they meet your long-term business needs and the needs of your families. Get verifiable answers to every question you have.

If your state association endorses a preneed insurance program, ask the same questions and expect verifiable answers about program operations and financial stability as you would with any other insurer.

Administration and Management

- What is the reputation and track record of the insurance company? What is the insurance company's specific experience with preneed insurance policies?
- Does the insurance company have legal counsel that is available to advise on state preneed issues and Medicaid issues?
- In how many states is the insurance company licensed in to sell preneed insurance? Is this a side business for the insurance company or is it a major block of business?
- What are the insurance company's business standards and strategies, privacy policies, service philosophies, ethics and quality control initiatives?
- Will the insurance company provide you with sample insurance policies that you can review to see if they address issues such as growth rates, coverage, ownership of the policy, etc.

Financial Stability

- What is the insurer's balance sheet strength?
- Where are the funds invested?
- What is the overall portfolio rating?
- What is the ratio of capital and surplus to total assets?
- Does the company show growth in key areas (assets, premiums, capital, surplus)?
- Does the insurer have a history of stability through various economic cycles?
- If the insurance company becomes insolvent and the business is placed in receivership, will the full amount of the policies be paid by a state insurance guaranty fund? Will any growth be paid on the policies if the state insurance guaranty fund takes over?
- Who owns or controls the policy? These should remain under the control of the consumer unless there are specific reasons for making changes, such as Medicaid qualification.

Growth Rate and Commissions

- What has been the growth rate for each year over the past five years?

- Who or what determines the growth rate and how often can it be changed? Are the changes based on an index or formula, or are they discretionary with the insurance company?
- Is there a written guaranty on the growth rate for future years?
- Is there any floor that the growth rate cannot go below? Can the growth rate be reduced to 0%?
- Is the growth rate part of the insurance policy (which would be covered by state insurance guaranty funds) or is it provided by a separate non-insurance company that would not be guaranteed by the state insurance guaranty fund?
- What is the commission structure? What are commissions based on?
- When and how are commissions paid?
- Is the commission structure comparable, better, or worse than commissions paid by other preneed insurance companies?

Features

- How does claims processing work?
- What is the turnaround on claims payments?
- How are claims payments made?
- What is the free-look period policy of the insurer? (period in which family may cancel and receive all premiums paid)
- What options are available if the family wants to pay off the policy early?
- Is the insured provided a copy of the policy?
- How are transfers and cancellations handled?
- Does the company offer free services such as training and customer and marketing support?

3. Check insurer's scores with independent rating services.

A number of independent rating services make financial strength evaluations that examine profitability, debt, liquidity, credit rating, and other insurance company performance measures.

The top three insurance-rating companies are A.M. Best, Moody's (rates only publicly-traded companies), and Standard and Poor's. Each of these services uses slightly different rating criteria - so views of a given company may vary. Only Standard and Poor's rates most life insurance companies without having been asked to do so through an application by the insurance company; so, not all insurers are necessarily graded by all agencies.

In general, ratings are based on official annual and quarterly (if available) financial statements that insurers must file with regulators, as well as on supplementary data such as Securities and Exchange Commission (SEC) filings and Generally Accepted Accounting Principles (GAAP) statements. Because ratings companies do not conduct formal audits of company financial records, the ratings scores represent opinion and are not warranties of performance.

- All three services provide ratings over the phone at no cost. Online ratings are free to registered users. Your local library should have one or more of the insurance ratings or registers on file.

What to look for in the ratings:

- A good investment portfolio mix.
- Investment quality.
- A good total return on the investment portfolio.
- A strong balance sheet.

National Association of Insurance Commissioners (NAIC) -

While NAIC does not rate insurance companies, through its online Consumer Information Source (CIS) it does provide insurer licensing information, detailed financial reports and profiles, and closed consumer complaint reports through a simple to use search feature. Complaints can also be made via CIS; reports of suspected insurance fraud can be made to the NAIC Online Fraud Reporting System (OFRS). NAIC is an organization of insurance regulators from all 50 states, D.C. and the 5 U.S. territories, whose primary responsibility is to protect the interests of insurance consumers. NAIC's mission is to protect the public interest and to support and improve state regulation of insurance, among other aims.

RATINGS COMPANIES

A.M. Best Company
908-439-2200 (Free ratings)

Free basic access with online registration.

Based on financial conditions and performance. Intended to evaluate a company's ability to meet its ongoing obligations to policyholders. The criteria to evaluate a company are based on in-depth analysis of both quantitative and qualitative measures, including balance-sheet strength, operating performance and business profile. Does not charge a fee for its basic ratings.

Moody's Investor Services. 212-553-0377
(Free ratings)

Free basic access with online registration.

Uses rating system based on claims-paying ability. Provides debt ratings and financial strength ratings that reflect ability of a company to meet its obligations to punctually repay its senior policyholder claims and obligations, analyzing a company's business fundamentals including financial factors, franchise value, and organizational structure and ownership. Rates publicly traded companies only.

Standard & Poor's
212-438-2000 (Free ratings)

Free basic access with online registration.

Uses rating system based on claims-paying ability. Provides financial security ratings of current performance characteristics of a company, including the company's ability to pay under its policies and contracts in accordance with the terms of the policies. Rates general creditworthiness or specific financial obligations.

Common preneed insurer product and service features. A number of preneed insurers currently rated **B+ and above by A.M. Best include most of these features and benefits in their service mix:**

- *Simple applications; quick processing*
- *Choice of gross rates (depending on the policy)*
- *Flexible payment options for families - single pay and multi pay (3, 5, 7, 10 year)*
- *Death benefit options*
- *Simplified health questions*
- *Simple claims processing (with a phone call; within 24 hours, 3 business days, etc.)*
- *Counselor training*
- *Managers training*
- *Field support*
- *Customer service support*
- *Competitive commissions*
- *Marketing programs and support*
- *Monthly policy updates on each contract in force*
- *Online financial reports and reviews*
- Annuity options (for those who do not qualify for insurance due to age or health reasons)*

GUIDELINES FOR EVALUATING PRENEED TRUSTS

Your responsibility as a prudent and ethical funeral business owner is to research the financial strength and business practices of any preneed trust whose products and services you are considering to make available to customers.

Once the business decision is made to establish or participate in a trust program, beginning with the implementation process you are subject to specific standards of conduct because you are acting on behalf and solely in the interest of trust plan participants and their beneficiaries.

Follow these steps before making a decision about choosing a preneed trust program for your families.

1. **Contact the department in your state that regulates preneed trust programs** to locate information about the specific laws and regulations that govern preneed trust agreements and that protect consumers in your state. You need to know the preneed trusting requirements in your state, including the percent of trust funds that must be deposited.

Most states provide this information online. You need to know that a trust fund program is in compliance with all applicable federal and state laws, reporting standards, statutory provisions, and administrative rules in order to protect your business and the families you serve. You need to know that the trust invests all funds in accordance with state laws and that all federal and state financial reports on time.

2. **Ask the trust administrator for detailed information about the trust and its operations, including its management history and current performance and business practices.**

You have the right and the responsibility as a business owner and potential fiduciary to determine that the trust fund can meet its obligations. You can also check the trust fund program's Internet site for information about its policies, practices, and performance. Examine the features and benefits of the company's services to be sure they meet your longterm business needs and the needs of your families. Get verifiable answers to every question you have about the trust fund's financial strength, history, management and control practices, current financial statement data, and other business practice and performance information.

If your state association has a state preneed master trust, ask the same questions and expect verifiable answers about program operations and financial stability as you would with any other trust program you are researching.

What to look for:

- Good net investment growth.

- 100% investment and financials transparency.
- A strong balance sheet.

Administration and Management

- What is the reputation and track record of the trustee? What is the trustee's specific experience with preneed trusts?
- What are the qualifications, experience and competencies of the trustee's investment managers? What type of turnover has there been with the managers?
- If the trustee does not administer the trust, what company does administer the trust and what is their experience in administering preneed trusts?
- How big is the trust and has it been increasing, decreasing, or holding steady the past five years?
- Can the trust handle the volume and nature of trust accounts and assets to be serviced?
- How often do the trust's investment managers meet in order to prudently fulfill their responsibilities?
- Who is the board's legal counsel regarding preneed matters? Is the legal counsel available and able to advise you on the preneed laws of your particular state?
- Is the trust subject to an annual audit; who performs it and are audited financials provided each year to funeral homes?
- What are the trust program's business standards and strategies, privacy policies, service philosophies, ethics, and quality control initiatives?
- Are there trustee fees and what do they cover?
- Are there administrative costs separate from the trustee fees and what do they cover?
- Who handles 1099s or QFT tax returns?
- Are there separate tax preparation fees or is it included in the trustee fees?

Rate of Return

- What is the rate of return for the trust each year over the past five years?
- For each of these years, what rate of return is a gross rate of return (before fees) and the net rate (after deduction of fees).
- Who or what determines the rate of return paid on trust funds and how often can it be changed? Are the changes based on an index or formula, or are they discretionary with trust administrators?
- Where and how are the funds invested?
- What is the investment mix?
- Is the principal guaranteed or is there a risk it could be reduced?
- Is there any guaranty on the rate of return?
- Is there any floor that the rate of return cannot go below? Can the rate of return be reduced to 0%?
- Are there detailed monthly reports available showing the balance of each preneed account, earnings and losses, and fee deductions?

Financial Stability

- Do the funds remain with the trustee or does the trustee invest the funds with other institutions?
- For each institution holding preneed funds, are those funds in a segregated trust account that is not considered an asset of the depository institution, and therefore, not subject to the depository institution's creditors?
- If the funds are considered to be assets of the depository institution, are they insured by the FDIC and to what dollar limitation?
- Is there a reserve account?
- Is there a disaster recovery plan?

Features

- How are trust funds deposited?
- Can preneed contract payments be made through installments?
- Are there any cancellation or transfer fees or penalties if the funeral home transfers the trust to a different trustee?
- Are there revocation fees if the consumer cancels and removes funds from a revocable account?
- Are there cancellation fees if a consumer chooses to move a preneed account to a different funeral home that uses a different trust?
- Are preneed contract account balances available to the funeral home over the telephone and/or the internet?
- What is the turnaround on claims payments?
- How are claims payments made? Is there electronic fund transfer available?
- Does the trust offer free services other than as a depository for preneed funds, such as training and customer and marketing support?