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Narrative Summary of Alabama's Preneed Funeral and Cemetery Act

This memorandum was prepared to provide interested parties with a summary or synopsis of Alabama's Preneed Funeral and Cemetery Act (the "Act"). Terms that are defined under the Act appear in bold type the first time they are used in this memorandum.¹ Every effort has been made to ensure the accuracy of the information provided in this document. It is important to note, however, that **this document should not be used as a substitute for reading the Act in its entirety and obtaining competent legal advice concerning the Act's meaning and application. This document does not necessarily reflect the opinion of the Alabama Department of Insurance concerning the Act's interpretation or meaning and should not be so construed.**

I. Overview

Generally speaking, the Act seeks to regulate the conduct of business of certain individuals or entities selling **funeral merchandise**², **funeral services**³, **cemetery merchandise**⁴, or **cemetery services**⁵ on a **preneed**⁶ basis. Before providing such services or merchandise pursuant to a **preneed contract**⁷ and before receiving any funds for payment on a preneed contract, a **person**⁸ offering to make such a sale or

¹ The definitions of defined terms whose meanings are material to an understanding of this memorandum will be set forth in the footnote associated with each such term. Defined terms that appear, for the first time, within such a footnote, will, where convenient and material to an understanding of this memorandum, also be set forth in that footnote.

² Personal property offered for sale in connection with **funeral directing**. "Funeral merchandise" includes, but is not limited to, **alternative containers, caskets, outer burial containers, and urns**. "Funeral directing" means the act or service of conducting funerals, counseling with survivors, and preparing **human remains**, other than by **embalming**, for **interment** or other means of disposition.

³ Services provided by a **funeral establishment** in connection with funeral directing. A "funeral establishment" is a place of business used in the care, planning, and preparation for **final disposition** or transportation of human remains, or any place where one or more people are engaged and represent themselves to be engaged in the business of embalming or funeral directing.

⁴ Personal property offered for sale in connection with the **burial**, final disposition, **memorialization**, interment, **entombment**, or **inurnment** of human remains. "Cemetery merchandise" includes, but is not limited to, outer burial containers and **memorials**.

⁵ Services provided by a cemetery authority for interment, entombment, inurnment, and installation of cemetery merchandise.

⁶ Before death.

⁷ A written contract to purchase funeral merchandise, funeral services, cemetery merchandise, or cemetery services from the seller on a preneed basis.

⁸ Any individual, firm, corporation, partnership, joint venture, limited liability company, association, trustee, government, governmental subdivision, governmental agency, or other entity or any combination thereof.

intending to receive such funds must have a certificate of authority from the Commissioner of Insurance (the "Commissioner"). A certificate of authority can be issued only to licensed **funeral directors**⁹, licensed funeral establishments, **cemetery authorities**¹⁰, or **third-party sellers**¹¹. It is worthy of note that third party sellers can offer only funeral and cemetery *merchandise* on a preneed basis; only funeral directors, funeral establishments, and cemetery authorities can sell funeral and cemetery *services* preneed.

It is important to note that certain individuals or entities are not subject to the Act, nor are certain activities prohibited by it. Cemetery authorities owned or operated by governmental agencies or religious institutions need not obtain a certificate of authority before providing services or merchandise on a preneed basis. The Act does not prohibit funeral directors or funeral establishments from offering for sale cemetery services or merchandise, nor does it prohibit cemetery authorities from offering funeral merchandise or, if properly licensed, funeral services.

Legal reserve insurance companies, trust companies, national banks, state banks, and/or savings and loan associations with trust powers that receive money in trust pursuant to the sale of a preneed contract are not required to obtain a certificate of authority to do so. The funding of preneed contracts with life insurance is not prohibited by the Act provided that such insurance conforms with all provisions of Alabama's insurance code and covers (either as a single contract or as multiple contracts combined) whose coverage, at a minimum, equals at least the purchase price of the preneed contract.

II. Certificates of Authority

Certificates of Authority to sell funeral and cemetery merchandise and funeral and cemetery services on a preneed basis will be issued by the Commissioner. A person desiring to obtain such a certificate will submit to the Commissioner an application in a form prescribed by the Commissioner. An initial application for a certificate of authority shall be accompanied by an application fee of \$150.00. Annual applications for the renewal of certificates of authority shall be accompanied by a fee of \$75.00.

An application for a certificate of authority shall be accompanied by a statement setting forth, among other things, the types of preneed contracts that will be sold, the funding vehicles for those contracts, the name and address of the place of business of the person offering to write such contracts, and evidence that the person submitting the statement:

- (1) has the ability to pay his or her liabilities as they become due during the normal course of business;

⁹ One authorized by law to engage in funeral directing.

¹⁰ Any person who owns or controls a cemetery or conducts cemetery business.

¹¹ Any person, who is not a funeral establishment or a cemetery authority, engaged in the sale of preneed funeral merchandise or cemetery merchandise.

- (2) has sufficient funds available during the calendar year to perform his or her obligations under the contract;
- (3) has complied with all trust requirements set forth in the Act;
- (4) has disbursed interest, dividends, or accretions earned by funds in trust in accordance with the Act; and,
- (5) has complied with the Act and any rules adopted by the Commissioner.

The statement to be submitted with the original or renewal application must be sworn to by an appropriate representative of the business entity submitting the application.

Annually and within three months after the end of a certificate holder's fiscal year, each certificate holder must file with the Commissioner a statement of its financial condition in a form prescribed by the Commissioner. Certificates of authority expire annually on June 1st.

A person who is part of a common business enterprise that holds a certificate of authority and who chooses to operate under a name other than that used by the certificate holder may submit an application to become a "branch registrant". The proposed branch registrant must satisfy all the requirements set forth in (3) through (5) above, but *not* those set forth in (1) and (2) *so long as* the certificate holder can satisfy those two criteria. Branch registrants are considered to operate under the certificate of authority issued to the common business enterprise/certificate holder. The fee for a branch registrant application shall be \$150.00. Applications for operation as a branch registrant must be filed annually by April 1st.

The Commissioner can allow certificates of authority to be transferred for a transfer fee of \$100.00. The Act allows the Commissioner to grant a 60 day temporary certificate of authority to the proposed transferee pending final approval of such an application.

III. Preneed Sales Agents

The Act provides for the registration of "preneed sales agents" ("PSA's"). All individuals who offer preneed contracts to the public or who execute contracts on behalf of a certificate holder must be registered with the Commissioner as PSA's. PSA's shall be "affiliated with" the certificate holder they represent. Once registered and affiliated, a PSA may act on behalf of *all* entities owned or operated by the sponsoring certificate holder. PSA's may serve as sales agents for more than one certificate holder if that PSA has the written consent of all certificate holders which he is affiliated.

The certificate holder is responsible for the activities of all affiliated PSA's and funeral directors performing any type of preneed-related activity on its behalf. Certificate holders, as well as the PSA's affiliated with them, are subject to discipline under the Act for misconduct of PSA's. If a PSA is terminated, the certificate holder

with which he was affiliated shall notify the Commissioner of such termination within 30 days.

The minimum qualifications of a PSA are that he:

- (1) be at least 18 years of age;
- (2) be in "good standing" with the Commissioner; and,
- (3) not have any felony or misdemeanor convictions relating to any activity regulated by the Act.

Applications for registration as a PSA must be submitted to the Commissioner along with a \$25.00 application fee. That application, in a form to be prescribed by the Commissioner, shall contain, at a minimum:

- (1) the name, address, Social Security number, and birth date of the proposed PSA;
- (2) the name, address, and license number of the sponsoring certificate holder;
- (3) a representation that the proposed PSA meets the requirements set forth in (1) through (3) above;
- (4) a representation, signed by the certificate holder, that the applicant is authorized to offer, sell, and sign preneed contracts on the certificate holder's behalf and that the certificate holder has trained the applicant in the provisions of the Act relating to preneed sales, the provisions of the holder's preneed contract, and the nature of the merchandise and services sold by the certificate holder; and,
- (5) a statement concerning the relationship, if any, the proposed PSA has with any other certificate holder or insurance company.

The proposed PSA may begin acting in his or her capacity when the completed application is sent to the Commissioner. Upon receipt of the application, the Commissioner shall register the applicant. The applicant's registration is renewable annually for a fee of \$25.00.

IV. Security Requirements

The Act provides that certificate holders must, by using any of three vehicles, provide security that, at the death of the **beneficiary** of a preneed contract, there will be sufficient funds available for the certificate holder to perform its obligations under that contract. The three vehicles for providing such security are (1) surety bonds, (2) letters of credit, or (3) trusts.

A. Surety bonds

With the Commissioner's prior approval, a certificate holder may purchase a surety bond in an amount not less than the aggregate value of its **outstanding liabilities**¹² for undelivered preneed contracts for merchandise, services, and **cash advances**¹³. The surety bond shall be made payable to the State of Alabama for the benefit of the Commissioner and all purchasers of preneed merchandise, services, and cash advances. The bond must be issued by an insurance company that has been approved by the Commissioner and that is licensed to issue such bonds in the State of Alabama.

The amount of the required bond shall be determined based on a report prepared by the certificate holder. That report, compiled using generally accepted accounting principles, shall be signed by the CEO or CFO of the preneed provider. The report shall be compiled at the end of the provider's fiscal year and must be updated annually.

The amount of the bond shall increase or decrease to reflect changes in the certificate holder's outstanding liabilities. The Commissioner may order the amount of the bond to be increased to reflect changes in the outstanding liabilities due under bonded contracts because of increases in the Consumer Price Index. The bond cannot be cancelled without 60 days' written notice to the Commissioner. Cancellation of bonds shall be prospective only and shall not apply to liabilities incurred and bonded prior to the bond's cancellation. If a bond is cancelled, the preneed provider has 30 days from the filing of that notice to provide the commissioner with a replacement bond or other evidence that it is satisfying the security requirements of the Act. If such proof is not provided, the certificate holder's license will be suspended until it demonstrates such compliance to the Commissioner.

B. Letters of Credit

With the Commissioner's prior approval, a certificate holder may provide a letter of credit to comply with the Act's security requirements. That letter must be in a form and subject to terms and conditions approved by the Commissioner. The party issuing the letter of credit must be financially responsible (as determined by the Commissioner), and must be for an amount equal to the certificate holder's outstanding liabilities under preneed contracts.

C. Trusts

The Act allows certificate holders to comply with its security requirements by placing into trust certain percentages of funds paid pursuant to preneed contracts.

¹² The original retail amount of services and cash advances and the actual cost to the certificate holder to provide the undelivered merchandise sold under the preneed contract.

¹³ Any item of service or merchandise described to a purchaser as a "cash advance", "accommodation", or "cash disbursement". A cash advance item is also any item obtained from a third party and paid for by the seller on the purchaser's behalf. Such items include, but are not limited to, cemetery or crematory services, pallbearers, public transportation, clergy honoraria, flowers, musicians or singers, nurses, obituary notices, gratuities, and **death certificates**.

The precise requirements of these trust arrangements and the technical characteristics of the trusts themselves varies depending on whether the funds received are for funeral merchandise and services or cemetery merchandise and services. Reports concerning the activities of a trust (be it for funeral merchandise and services or for cemetery merchandise and services) must be filed with the Commissioner annually on or before April 1st.

1. Funeral Merchandise and Services Trusts

a. Deposits

A seller of preneed funeral services or merchandise who chooses to use a trust arrangement to satisfy the Act's security requirements must deposit an amount equal to

- (1) 75% of the **purchase price**¹⁴ collected for funeral merchandise and services sold and facilities rented other than outer burial containers,
- (2) 60% of the purchase price for outer burial containers, and
- (3) 100% of the purchase price collected for cash advance items

The deposits to trust called for by the Act must be made within 30 days after the calendar month in which the preneed contract is paid in full.

With regard to funeral merchandise, the trust requirement can be avoided if such merchandise is placed in bonded and insured storage with a responsible third party. The receipt for such storage must identify the item stored, the preneed contract to which it relates, and the identity and address of the insuring and bonding party. Only merchandise that is comprised of materials that are designed to withstand prolonged, protected storage without deterioration may be so stored. If funds for funeral merchandise have already been deposited in a qualified trust account, the certificate holder may withdraw the funds deposited there for the funeral merchandise now being stored pursuant to the Act. Under the Act, caskets and alternative containers may not be stored to satisfy this requirement and can be delivered only at death.

b. Characteristics

Any funeral merchandise and services trust must be created by a trust agreement approved by and filed with the Commissioner. The trustee of the trust will take title to the property conveyed for the purpose of investing, protecting, and

¹⁴ The amount paid by the purchaser for merchandise and services purchased under a preneed contract, excluding finance charges, sales tax, charges relating to interment rights, **arrangement conference fees**, or charges for credit life insurance. An **arrangement conference** is a meeting occurring either at need or preneed between the seller and the purchaser during which funeral or cemetery merchandise and services are discussed. The arrangement conference fee is the charge to the purchaser for the arrangement conference.

conserving it for the benefit of the certificate holder. Beyond appointing an adviser to the trustee, the certificate holder is specifically prohibited from sharing in this discharge of the trustee's duties. The trustee as the power to:

- (1) invest the trust proceeds and exercise necessary investment powers; the trustee, however, must liquidate or dispose of any investment within 30 days after notice from the Commissioner to do so;
- (2) borrow money from any individual, bank, insurance company, or other source, up to an aggregate amount of 10% of the trust assets, at prevailing interest rates;
- (3) create security interests in no more than 10% of trust assets by mortgage, pledge, or otherwise; and,
- (4) commingle property of the trust with property of any other preneed funeral or endowment care trust established pursuant to the Act and to make corresponding allocations and divisions of assets, liabilities, income, and expenses.

The trustee must value the trust's assets and provide, at a minimum, quarterly reports of such valuations to the certificate holder at least quarterly. The trustee's exercise of these powers is in some regards restricted by the Act. Trust funds may not be loaned to the holder of a certificate of authority, any affiliate of such a certificate holder, or any person directly or indirectly engaged in the burial, funeral home, or cemetery business.

Legally, the certificate holder is both the settlor and beneficiary of the trust. The Act, however, provides that the funds in the trust are exempt from the claims of the certificate holder's creditors and that the certificate holder cannot pledge any interest in those funds. The Act states that while the contract purchaser whose funds have been deposited into the trust has "no interest in or power over" those funds, he does have a "claim as to" them. The Act also grants the Commissioner a "claim as to" the trusted money.

c. Disbursement of Increases

Certificate holders may withdraw from the trust any funds representing an increase in the value of the trust's assets. When a certificate holder satisfies its obligations under a preneed contract or when a preneed contract is validly cancelled, the certificate holder can withdraw the pro rata portion of the increased value attributable to that particular preneed contract. Such a withdrawal imposes no additional liability on the certificate holder.

A certificate holder may also withdraw the increased value in the trust's assets on any occasion *other than* the fulfillment or cancellation of a preneed contract. If such a withdrawal is made, however, the certificate holder shall be liable to deposit into the trust any money necessary to bring the value of the trust's assets up to the amount of

the funds deposited into the trust. In addition, to the extent that the trust's income is not sufficient to pay the operating expenses of the trust, certificate holders shall be liable to third parties for the shortfall.

d. Disbursement On Performance or Default

Upon receipt of a certification from a certificate holder that a preneed contract has been fulfilled in whole or in part, the trustee of an FMS trust shall distribute that portion of the trust funds attributable to that portion of the contract that has been performed. The Act allows the trustee to rely on the certification received from the certificate holder and is released from any liability that might otherwise arise from such reliance.

If the purchaser defaults under a preneed contract or the certificate holder does not provide the funeral merchandise or services called for by the contract, the trustee shall disburse 100% of the funds paid on account of the contract along with the income accrued thereon to the certificate holder. The disbursement shall take place within 30 days after the trustee's receipt of written request for such a disbursement.

If the particular preneed contract so provides, the trustee may annually distribute the trust income allocable to that contract to the certificate holder.

2. Cemetery Merchandise and Services Trusts

a. Deposits

A **seller**¹⁵ of preneed cemetery services or merchandise who chooses to use a trust arrangement to satisfy the Act's security requirements must deposit an amount equal to

- (1) 110% of the wholesale cost of cemetery merchandise,
- (2) 60% of the purchase price specified in the preneed contract of outer burial containers,
- (3) 60% of the purchase price specified in the preneed contract of cemetery services, and,
- (4) 100% of the purchase price specified in the preneed contract of all cash advance items

¹⁵ The party contracting to deliver cemetery merchandise or services or cash advances, whether or not a preneed **provider**. A "provider" is a person who may or may not be the seller who will actually provide the merchandise and services under the terms of the preneed contract. The term "seller" is also defined by the Act as any person offering or selling merchandise on a preneed basis including, but not limited to, funeral establishments, cemetery authorities, **crematory authorities**, **memorial retailers**, direct disposers, and so on.

into a trust. The deposits called for by the Act must be made within 30 days after the calendar month in which the preneed contract is paid in full.

With regard to cemetery merchandise, the trust requirement can be avoided if such merchandise is placed in storage, bonded and insured for the wholesale value of such merchandise, with a responsible third party. The receipt for such storage must identify the item stored, the preneed contract to which it relates, and the identity and address of the insuring and bonding party. Only cemetery merchandise that is comprised of materials that are designed to withstand prolonged, protected storage without deterioration may be so stored. If funds for cemetery merchandise have already been deposited into a trust, the seller of the cemetery merchandise may withdraw the funds deposited there for the cemetery merchandise now being stored pursuant to the Act.

b. Characteristics

The trustee shall take title to the property conveyed to the Trust. The trustee is directed by the Act to invest and reinvest the funds held in the trust. The trustee must, at least quarterly, make regular evaluations of the fair market value of the assets held in the trust and the liabilities, if any, of the trust. The contract purchaser whose funds are deposited into the trust shall have no interest in or power over the funds that are deposited in the trust. Sellers who deposit funds into the trust are the trust's beneficiaries.

c. Disbursement of Increases

The value of the assets in the trust must be evaluated according to specific criteria set forth in the act before a seller can make withdrawals from the trust. First, all calculations with regard to withdrawals shall be made with regard to the wholesale cost of cemetery merchandise and retail price of cemetery services and cash advances at the time of withdrawal.

Second, the trustee must calculate the value of the trust's assets and determine if those assets exceeds 110% of the total of

- (1) 110% of the current wholesale cost of the liability to deliver all cemetery merchandise,
- (2) 60% of the current retail price for all cemetery services, and
- (3) 100% of the current retail price of all cash advances

for the total of all preneed contracts for which the purchasers have paid in full.

With regard to preneed contracts for which the purchasers have not paid in full, the trustee must calculate whether the Trust's assets exceed 110% of 25% of

- (1) 110% of the current wholesale cost of the liability to deliver all cemetery merchandise,
- (2) 60% of the current retail price for all cemetery services, and
- (3) 100% of the current retail price of all cash advances.

If the calculations with regard to fully-paid and partially-paid preneed contracts reveal that the value of the trust's assets exceeds 110% of the sum of the fully and partially paid totals, the seller that has deposited those funds shall be entitled to withdraw the excess.

Under the Act, sellers are required to make the valuations with regard to merchandise, services, and cash advances due under contracts written by them and certify those analyses to the trustee. If the certification discloses that the assets of the trust are less than 100% of the aggregate calculated amount set forth above, the sellers shall, within 12 months following the annual certification, remit from its own funds sufficient money to restore the Trust to a value not less than 100% of the aggregate calculated amount.

d. Disbursement On Performance or Default

Upon receipt of a certification from a seller that a preneed contract has been cancelled or transferred to another seller, the trustee will disburse to the seller an amount equal to the funds contributed to the trust on account of that contract. The Act allows the trustee to rely on the certification received from the seller and is released from any liability that might otherwise arise from such reliance.

Upon receipt of a certification from a seller that it has discharged all its duties under a preneed contract, the trustee will disburse to the seller an amount equal to the then-current wholesale cost of the merchandise and services provided with regard to that particular contract.

If a seller has satisfied *all* its obligations under all preneed contracts for which funds were deposited into the trust and certifies to the trustee that it has done so, the trustee shall disburse to the seller all remaining assets of the trust attributable to preneed contracts under which the seller was previously obligated.

3. Preexisting trusts

The Act and its security requirements do not apply to preneed contracts entered prior to the Act's effective date. However, preneed providers who established trust funds prior to the Act's effective date may, if they believe such trusts comply with the Act's requirements, provide the Commissioner with proof of such compliance. If the Commissioner finds that the requirements of the Act are, in fact, satisfied with regard to the preexisting trust, the assets of the prior trust may be merged with those of the trust established pursuant to the provisions of the Act. At that time, all preneed

contracts whose assets are in trust – both pre-Act and post-Act – shall be governed by the provisions of the Act.

V. Preneed Contracts

Preneed contracts must be on forms submitted to and approved by the Commissioner. If a contract form is submitted to the Commissioner, that contract is deemed approved unless, within 30 days following its submission, the Commissioner notifies the person submitting the contract that approval has been denied. Preneed contracts must specifically disclose that the certificate holder is required to place a certain portion of the payments made pursuant to that contract into trust.

A. Funeral Merchandise and Services

The purchaser under a preneed contract for funeral merchandise and services may, within 30 days after its execution, cancel that contract upon written notice to the certificate holder. Once such notice is provided, the purchaser is released from all obligations under the contract and is entitled to a refund of all funds paid less any amounts allocable to funeral merchandise or services that have been used.

After 30 days from the execution of a preneed contract, the purchaser may, by written notice, cancel the funeral services, merchandise, facilities, and cash advance items of that contract. The refund due the purchaser, if any, shall be that called for by the contract. Any earnings on that portion of the funds paid pursuant to the contract and placed in trust shall be property of the certificate holder.

If a certificate holder breaches the preneed contract by failing to provide the funeral merchandise or services called for by that contract, the purchaser shall be entitled to a refund of all funds paid on the contract. Such refunds must be made within 30 days after the certificate holder's receipt of the purchaser's written request for that refund.

B. All Preneed Contracts

A purchaser who is 90 days past due making payments due under a preneed contract shall be in default under that agreement. Upon default, the certificate holder shall provide the purchaser with 30 days' written notice that it intends to cancel the contract and withdraw from trust all funds that have been so deposited. Upon such withdrawal, the certificate holder shall refund to the purchaser any funds due under the terms of the preneed contract.

Generally speaking, all preneed contracts are cancelable and revocable during the lifetime of the purchaser. However, a purchaser who is a qualified applicant for or recipient of SSI, temporary cash assistance, or Medicaid may elect to make his or her contract irrevocable. If the purchaser elects to make the contract irrevocable, the purchaser shall have the right to appoint a provider other than the seller. In the event of such an election, the amount paid for the preneed contract (less a reasonable

transfer fee) shall be paid to the new provider. The new provider must consent to any such transfer.

VI. Endowment Care Cemeteries

A. General Requirements

The Act provides that all cemeteries (both existing and subsequently established) shall be **endowment care** cemeteries with three exceptions:

- (1) cemeteries operated by governmental agencies;
- (2) cemeteries operated by religious institutions; and,
- (3) cemeteries that do not charge fees.

Each cemetery authority must maintain at its business office a list of the name and address of its owners and directors. This list must be available for public inspection. Each cemetery must also maintain a record of the name and address of each property owner, a list of merchandise, and the location of burial lots, crypts, and niches. The cemetery must keep at the cemetery location a plat map. The Act provides that a book or file concerning the date, location, and space number of each person interred or entombed at the cemetery. A written copy of the cemetery's rules and regulations must be kept at the cemetery and must be made available to the public.

Cemetery authorities must begin construction of any section of a mausoleum or bank of belowground crypts within the earlier of five years from the first such sale or when 75% of such crypts are sold. Construction shall be completed within 6 years after the date of the first sale unless, for good cause shown, the Commissioner extends the time for not more than one year. If a unit has not been completed by the time of need, unless otherwise provided for in the preneed contract, all money paid plus interest shall be refunded at the customer's request.

B. Endowment Care Trust Fund

All cemetery authorities operating endowment care cemeteries must establish an **endowment care trust fund** for each such cemetery. The fund must be placed with a bank, trust company, savings and loan association, or other financial institution authorized to provide trust services. In the alternative, the trust fund may be placed with a board of trustees consisting of at least three members residing in the State of Alabama. At least one of the trustees must be engaged in outside cemetery management. Each trustee of such a board must obtain a bond, in the minimum amount of \$25,000.00, guaranteeing the honest performance of his or her duties as trustee. The cemetery authority may hire a person to advise the trustee in the management of the trust fund. The cemetery authority may contract with the trustee to pay fees from the fund for the trustee's management of the trust assets.

No cemetery authority may require the investment of trust funds in any asset or business in which the cemetery authority or any of its officers, directors, owners, partners, or employees has any more than an insubstantial or immaterial financial interest.

To the extent any fund transferred to the trust includes assets or investments that the trustee believes are not in the best interest of the trust, the trustee shall dispose of such assets as soon as is practicable but in any event prior to May 1, 2004.

The net income from the trust shall be used exclusively for covering the endowment care of the cemetery. The trustee of the fund is not required to inquire into the expenditures made by the cemetery authority for the endowment care of the cemetery and is not, in any manner, responsible for payments from the fund made to the cemetery authority.

The trustee shall, at least annually, file with the cemetery authority a disclosure of all trust activity since the previous accounting and a statement setting forth the trust's investments. The trustee shall also file with the Commissioner an annual report concerning the endowment care fund setting forth that names of the trustees, the bond numbers of any individual trustees, the name and address of the financial institution where the trust is maintained, and an affidavit of the cemetery authority affirming compliance with the Act.

C. Trust Fund Deposits

1. Existing Cemeteries – Initial Deposit

Within 90 days from the effective date of the Act, existing endowment care cemeteries must place all of their existing endowment care funds into the trust called for by the Act. If the total of the funds so deposited is not, at a minimum, \$25,000.00, the cemetery authority shall deposit 25% of the amount received from each of its future sales, with a minimum of \$5,000.00/year, into the endowment care fund until the \$25,000.00 requirement is satisfied. After reaching the \$25,000.00 minimum, existing cemeteries must meet the minimum deposit requirements (discussed below) with regard to subsequent sales.

Any deposit previously made to an existing endowment care fund that exceeds 10% of the gross selling price of all plots, crypts, and niches since “representation of endowment care” shall be a permanent part of the endowment care fund and shall be transferred to the trustee.

Once the initial deposit has been made, a cemetery authority may be relieved of additional payments for a time if certain criteria have been met. Under the Act, if the amount of the initial deposit is greater than the amount that, taking into account all sales of plots, crypts, and niches in the cemetery, would be due using the formula in 3 below, no additional deposits need be made until the amount initially deposited equals the amount that would be due using that formula.

2. Newly-Established Cemeteries – Initial Deposit

Any cemetery authority organizing a cemetery after May 1, 2002 or having its first burial after that date shall deposit into trust cash in the amount of \$25,0000.00 prior to making its first burial.

Once the initial deposit has been made, a cemetery authority may be relieved of additional payments for a time if certain criteria have been met. Under the Act, if the amount of the initial deposit is greater than the amount that, taking into account all sales of plots, crypts, and niches in the cemetery, would be due using the formula in 3 below, no additional deposits need be made until the amount initially deposited equals the amount that would be due using that formula.

3. Existing and Newly-Established Cemeteries – Continuing Deposits

In addition to the initial deposit requirements set forth above, each cemetery authority shall deposit into trust the following percentages from the sale price of each plot, crypt, or niche:

- (1) 15% of the sale price of each grave or lawn crypt space;
- (2) 5% of the sale price of each mausoleum crypt or niche; and,
- (3) 100% of the amount received for special care funds, gifts, grants, contribution devises, or bequests made with respect to the special or separate care of a particular lot, grave, crypt, niche, mausoleum, monument, or marker or that of a particular family (as distinguished from the general endowed care of a cemetery or garden).

Payment of these sums must be made within 4 months following the month in which the total or final payment is made on the sale in question.

A cemetery authority may receive and transfer to the trustee any real or personal property that is bequeathed, devised, given, or otherwise transferred to it for endowment care purposes.

VII. Examinations

At his discretion, the Commissioner may order the examination of the business of any person writing preneed contracts. The examination will be made by representatives or examiners of the Department of Insurance, and the person examined shall pay all costs associated with the examination. The written report of any such examination shall be filed with the Commissioner, but it *will not* become a public record. The person being examined shall produce, on request of the Commissioner, all records required by the examiner. The Commissioner may waive the examination requirement if the certificate holder submits audited financial statements to the Commissioner.

VIII. Violations and Penalties

The Act states that no person shall engage in any activity prohibited by Alabama's Deceptive Trade Practices Act. To the extent that a certificate holder does engage in unfair or deceptive trade practices or fails to comply with the trust and other requirements of the Act, the Commissioner is given the authority to file charges against that certificate holder and to hold hearings concerning such alleged violations.

Under the Act, it is a Class B misdemeanor for any person to

- (1) fail to make deposits to trusts as set forth in the Act;
- (2) improperly withdraw from a trust any funds deposited there;
- (3) make any false statement to the Commissioner with regard to his duties under the Act; and,
- (4) violate any other provision of the Act.

The Act also gives the Attorney General the authority to bring a civil action for violations of its provisions. The Act specifically provides for the recovery of actual and punitive damages in any such action.