



BOB RILEY
GOVERNOR

STATE OF ALABAMA
DEPARTMENT OF INSURANCE
201 MONROE STREET, SUITE 1700
POST OFFICE BOX 303351
MONTGOMERY, ALABAMA 36130-3351
TELEPHONE: (334) 269-3550
FACSIMILE: (334) 241-4192
INTERNET: www.aldoi.gov

JIM L. RIDLING
COMMISSIONER
ASSISTANT COMMISSIONER
REN WHEELER
DEPUTY COMMISSIONER
D. DAVID PARSONS
CHIEF EXAMINER
RICHARD L. FORD
STATE FIRE MARSHAL
EDWARD S. PAULK
GENERAL COUNSEL
REYN NORMAN
RECEIVER
DENISE B. AZAR
LICENSING MANAGER
JIMMY W. GUNN

Bulletin No. 2009-05

TO: Preneed providers holding certificate of authority under
the Alabama Preneed Funeral and Cemetery Act

FROM: Jim L. Ridling
Commissioner of Insurance *JLR*

DATE: May 4, 2009

RE: Status of preneed merchandise and services trusts and cemetery
endowment care trusts during economic downturn

Use of preneed contract and cemetery property sales logs

Preneed sellers of funeral or cemetery merchandise and services and endowment care cemeteries are requested to furnish a copy of this bulletin to trustees of the sellers' preneed merchandise and services trusts and cemetery endowment care trusts or direct the trustees to the Department's web-site for access to the bulletin (www.aldoi.gov - Legal/Bulletins).

The Alabama Preneed Funeral and Cemetery Act, Ala. Code §§ 27-17A-1 *et seq.*, requires sellers of funeral and cemetery merchandise and services on a preneed basis to create, maintain, and properly and timely fund merchandise and services trusts unless preneed contracts are to be funded by life insurance or a seller has an approved alternate method of security – a surety bond or letter of credit – in place. The intent of these requirements is to assure that, when contracts turn at need, a preneed seller has access to funds that will offset the then-incurred cost to deliver and perform the contracted-for merchandise and services. This furnishes some level of economic protection for the seller and protection for consumers in the sense that a seller has financial ability to deliver and perform, at the time of need, the merchandise and services the consumers purchased on a preneed basis.

The Act requires each endowment care cemetery to have in place and to properly fund a cemetery endowment care trust. This trust, which is not limited to preneed sales, is intended to generate funds to defray the costs of the cemetery's endowment care.

Depending on the nature of an individual trust's investments and investment strategy, current economic conditions may have caused a significant devaluation of the trust's principal. Improvement in the economy will hopefully have the effect of restoring some or most of that devaluation but it is difficult to predict when a significant economic turnaround will begin. Given the state of the economy and its probable effects on trusts, the Department believes it appropriate to remind preneed sellers relying on trust funding and endowment care cemeteries of several points:

1. The minimum amounts to be trusted for merchandise and services described in a preneed contract entered into after April 30, 2002, and the time limits for the required trust deposits are specified in Ala. Code §§ 27-17A-31(a) and -(b) [funeral contracts] and in §§ 27-17A-42(a) and -(b) [cemetery contracts]. The minimum amounts to be trusted for cemetery endowment care and the time limits for the required trust deposits are specified in Ala. Code §§ 27-17A-49(a). The Department acknowledges that some funeral and cemetery providers may have elected or contracted to trust more than the applicable statutory minimums and/or to periodically trust on installment payments before final payment (when the trust obligations become mandatory under the statutes).

2. Every preneed seller using a merchandise and services trust and every endowment care cemetery should be maintaining a record-keeping system from which the seller or cemetery can readily determine, with reference to the particular preneed contracts sold or cemetery property transactions, (1) the aggregate amount that should have been in trust at any particular time under the trusting method the seller or cemetery follows (whether the statutory approach or trusting in excess of the statutory minimum and/or before the statutory time) and (2) the aggregate amount actually held in trust, based upon fair market value of the trust assets, according to the records of the trustee. **See following paragraphs (7) and (8) concerning use of preneed contract and cemetery property sales logs.**

3. Every preneed seller using a merchandise and services trust and every endowment care cemetery will be expected to produce the information described in paragraph (2) to the Department (i) on not less than an annual basis in connection with renewal of a certificate of authority or (ii) in connection with an examination or other Department request. To the extent a seller's trustee is maintaining the information on the seller's behalf, the seller must obtain the information from the trustee for delivery to the Department or give appropriate direction and consent to the trustee to permit the trustee's disclosure of the information directly to the Department.

4. Financial statements submitted to the Department should reflect the current market value of the trusts.

5. Due to the possible negative effects on the value of trust investments caused by current poor economic conditions, the Department strongly recommends that preneed sellers, endowment care cemeteries, and their trustees closely monitor trust performance and agree between themselves about the advisability of withdrawals and/or such adjustments in the amount or timing of withdrawals or otherwise as may be required to assure continuing economic stability and viability of the trusts during the current economic downturn. The Department expects preneed sellers, endowment care cemeteries, and trustees to analyze the status of the trusts in light of assets available for distribution and anticipated withdrawals

and, as necessary, recognize gains and losses, if any, in the trusts in deciding whether and in what amount withdrawals can or should be made at any particular time.

6. Withdrawals from a merchandise and services trust and an endowment care trust must otherwise strictly comply with the applicable requirements of the Preneed Act. Cemetery providers are reminded that: (a) withdrawals for performance of contracts must be determined with reference to the current wholesale cost of the merchandise delivered and services performed (cash advance items paid to third parties can be withdrawn at their cost); and (b) distributions from an endowment care trust, if made, are limited to net income and must be used exclusively for covering the costs of the cemetery's endowment care.

7. The Department has developed a spread-sheet type preneed contract log form to assist sellers in tracking what should be in trust from time to time. **The sample spread-sheet preneed contract log form will be posted in the Preneed section of the Department's website (www.aldoi.gov).** It is acceptable for a seller to contract with its merchandise and services trustee (or the trustee's third party administrator) for the trustee to track this information for the seller. The contract log should include in sequential numerical order all contracts written since April 30, 2002. The log must be updated on at least a quarterly basis. **Effective April 1, 2010, an up-to-date copy of the contract log in this form or its equivalent, with information current as of the end of the previous calendar year, must be available for inspection by the Department on request.**

8. The Department has developed a spread-sheet type cemetery property sales log form to assist cemeteries in tracking what should be in the endowment care trust from time to time. **The sample spread-sheet property sales log form will be posted in the Preneed section of the Department's website (www.aldoi.gov).** It is acceptable for a cemetery to contract with its endowment care trustee (or the trustee's third party administrator) for the trustee to track this information for the cemetery. The log must be updated on at least a quarterly basis. **Effective April 1, 2010, an up-to-date property log in this form or its equivalent, with information current as of the end of the previous calendar year, must be available for inspection by the Department on request.**

JLR/JFM/bc