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BULLETIN

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

Endowment care cemeteries

FROM: Walter A. Bell
Commissioner of Insurance 

DATE: July 29, 2008

RE: Sale of interment rights

The Department of Insurance has given careful consideration to whether a contract for the sale of "interment rights" only is a "preneed contract" for purposes of the Alabama Preneed Funeral and Cemetery Act, Ala. Code §§ 27-17A-1 *et seq.* Your attention is drawn to the following, which may represent a change in positions taken by the Department in the past:

1. The Act defines an "interment right" as "[t]he right to inter human remains in a particular interment space in the cemetery." Ala. Code § 27-17A-2(40). An "interment space" is likewise defined by the Act as "[a] space intended for the final disposition of human remains including, but not limited to, a grave space, mausoleum crypt, niche, and below-ground crypt." Ala. Code § 27-17A-2(41). An "interment right" is thus a right purchased by a buyer to use a designated grave space or designated space in a mausoleum, columbarium, or other above- or below-ground crypt for the interment or inurnment of human remains.

2. Under the Department's reading and interpretation of the Act, a written contract for sale of an "interment right" only is not a "preneed contract" as defined in the Act even if the sale occurs "preneed" (before death). A "preneed contract," for purposes of the Act, is "[a] written contract to purchase funeral merchandise, funeral services, cemetery merchandise, or cemetery services from the seller on a preneed basis." Ala. Code § 27-17A-2(56). The Department believes its interpretation necessarily follows from the fact that an "interment right" is neither tangible personal property nor a "service," and is thus not within the Act's definitions of "funeral merchandise," "funeral service," "cemetery merchandise," or "cemetery service" [Ala. Code §§ 27-17A-2(13), -(14), -(35), -(36)] referred to in the Act's definition of "preneed contract."

3. The acts of selling "preneed contracts" and receiving funds paid for "preneed contracts" require that the seller hold a certificate of authority from the Department of Insurance. Ala. Code § 27-17A-10(a), -(b)(1). Given the Department's interpretation, a provider is not required to hold a certificate of authority to engage only in the preneed sale of "interment rights."

4. If a preneed provider engages only in the preneed sale of "interment rights" and does not hold a certificate of authority, that provider's employees or agents engaged in such sales are not required to register as preneed sales agents. An employee or agent of a provider that does hold a certificate of authority must be registered as a preneed sales agent even if the activities of that employee or agent relate only to sale of "interment rights."

5. Sale of an interment right does not require a deposit into a cemetery merchandise and services trust. As noted below, however, the endowment care fund deposit requirements in Ala. Code § 27-17A-49 must be complied with.

6. A contract, written on a preneed basis, which combines sale of an "interment right" with sale of other specified funeral or cemetery merchandise and services is a "preneed contract." By way of example (but not limitation), a contract for sale of an "interment right" which also sells a vault or outer burial container, or urn, and specifies services such as opening and closing or cremation is a "preneed contract." A seller which otherwise engages in the business of selling, on a preneed basis, funeral or cemetery merchandise and services must hold a valid certificate of authority regardless of whether a particular contract sold is a "preneed contract." A seller shall not "split" agreements or contracts for merchandise and services into "preneed" and non-"preneed" contracts or otherwise employ any artifice or scheme to evade the requirements of the Act.

7. The Department's position on "interment rights" does not affect certain legal requirements and obligations otherwise imposed by the Act, including:

(a) A cemetery authority operating an endowment care cemetery must still comply with Ala. Code §§ 27-17A-47 and 27-17A-49 through 27-17A-54 concerning an endowment care fund.

(b) A provider engaged only in preneed sale of "interment rights" must still comply with Ala. Code § 27-17A-49(a) concerning timely payment of an amount equal to fifteen percent (15%) of the sale price of a "grave or lawn crypt space" or five percent (5%) of the sale price of "each mausoleum crypt or niche" into the cemetery's endowment care fund.

(c) Any cemetery authority engaging in the preneed sale of "interment rights" in an unconstructed mausoleum or bank of below-ground crypts must still comply with Ala. Code § 27-17A-55.

8. Providers that do not sell "preneed contracts" are not required to have a certificate of authority. Current certificate holders that may consider restructuring their operations in light of the Department's construction of the Act and in order to dispense with having a certificate are strongly cautioned to contact the Department before surrendering or non-renewing their certificates. Continuing receipt of payments on previously sold preneed contracts requires a certificate of authority [Ala. Code § 27-17A-10(b)(1)] and a certificate holder which becomes inactive by surrender or non-renewal must collect and deposit in trust all funds paid toward preneed contracts sold prior to becoming inactive [Ala. Code § 27-17A-16(b)].