

1-27-2010

**Fla Division of Funeral, Cemetery, and Consumer Services
Issue paper -- Non-Guaranteed Preneed contracts**

(1) The FCCS Division has received several requests for processing of proposed preneed contract forms wherein the prices for goods and services are not guaranteed; instead, the contract states to the effect that the prices stated are just current prices as of when the contract is entered into, and that actual final prices charged will be the prices in effect at time of fulfillment.

(2) To the best of the knowledge of FCCS Division staff, there has only been one non-guaranteed preneed contract form presented to the Florida Board of Funeral, Cemetery, and Consumer Services, and that was a contract presented at the 6-27-07 Board meeting. That contract was intended for insurance funded preneed sales, and at multiple places refers to the insurance policy that would fund the preneed contract.

- The FCCS Division made no recommendation to the Board concerning that 6-27-07 proposed preneed contract, and instead stated to the Board that "*The Department presents the agreement to the Board for discussion and consideration.*"
- The minutes of that 6-27-07 board meeting reveal no discussion. Ms Zippay moved approval, Ms. Hubbell seconded, and the form was approved without discussion or comment.
- The FCCS Division understands that the form, although currently approved, has not been put into use yet.

(3) Ch. 497 does not expressly address the concept or issue of non-guaranteed preneed contracts.

(4) Some of the ch. 497 provisions that arguably are pertinent, are set out below.

(5) Definition of Preneed Contract.

497.005 Definitions.--As used in this chapter:

(54) "Preneed contract" means any arrangement or method, of which the provider of funeral merchandise or services has actual knowledge, whereby any person agrees to furnish funeral merchandise or service in the future.

(6) Requirement that amounts charged be itemized.

497.468 Disclosure of information to the public.--

A preneed licensee offering to provide burial rights, merchandise, or services to the public shall:

- (5) Provide to the customer, upon the purchase of any burial right, merchandise, or service, a written contract the form of which has been approved by the licensing authority pursuant to procedures specified by rule. The written contract shall:
- (a) Be completed as to all essential provisions prior to the signing of the contract by the customer.
 - (b) Provide an itemization of the amounts charged for all services, merchandise, and fees, which itemization shall be clearly and conspicuously segregated from everything else on the written contract.
 - (c) Provide a description of the merchandise covered by the contract to include, when applicable, model, manufacturer, and other relevant specifications.

(7) Preliminary FCCS Division Position. It preliminarily appears to FCCS Division that, per the plain language of the statute, a non-guaranteed preneed contract does not, and cannot by its nature, comply with s. 497.468 (5)(b).

- Under a non-guaranteed preneed contract, the amounts to be charged for the goods and services selected, will not be known until time of death.
- Whereas s. 497.468(5)(b) requires that the amount charged for each item of goods and services be itemized in the preneed contract at time upon purchase.

- Notably, s. 497.468 (5)(b) states without qualification that “the amounts charged” shall be stated. The statute does not, for example, state that “an estimate of amounts to be charged” shall be stated.

It preliminarily appears that this is true even of insurance funded preneed contracts, so that the prior approval of a non-guaranteed contract (referred to above) may need to be re-visited.

(8) The FCCS Division invites written comment on this issue from any interested parties. Please submit such comment by not later than March 1, 2010. Address comments to:

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