Item C(2) Resolution of Any Discrepancies Between Section 69K-8.005, F.A.C., and Section 497.459, F.S., Involving Refunds on Insurance Funded Preneed Contracts

Statutes and Rules Relating to Issue

FLORIDA STATUTES:

497.459 Cancellation of, or default on, preneed contracts; required notice.—

(1) CANCELLATION BY CUSTOMER WITHIN 30 DAYS.—A purchaser, by providing written notice to the preneed licensee, may cancel a preneed contract within 30 days of the date that the contract was executed provided that the burial rights, merchandise and services have not yet been used. Upon providing such notice, the purchaser shall be entitled to a complete refund of the amount paid, except for the amount allocable to any burial rights, merchandise or services that have been used, and shall be released from all obligations under the contract. This subsection shall apply to all items that are purchased as part of a preneed contract, including burial rights, regardless of whether such burial rights are purchased as part of a preneed contract or purchased separately.

(2) CANCELLATION BY PURCHASER AFTER 30 DAYS.—

(a) A purchaser, by providing written notice to the preneed licensee, may cancel the services, facilities, and cash advance items portions of a preneed contract at any time, and shall be entitled to a full refund of the purchase price allocable to such items. Any accumulated earnings allocable to such preneed contract shall be paid to the preneed licensee upon such cancellation.

(b) Subject to subparagraphs 1. and 2., a purchaser may cancel the merchandise portion of a preneed contract by providing written notice to the preneed licensee, and shall be entitled to a full refund of the purchase price allocable to the specific item or items of merchandise that the preneed licensee cannot or does not deliver in accordance with this subsection.

1. Such refund shall be provided only if at the time that the preneed licensee is required to fulfill its obligations under the preneed contract the preneed licensee does not or cannot comply with the terms of the contract by actually delivering the merchandise, within a reasonable time, depending upon the nature of the merchandise purchased, after having been requested to do so.

2. In order to fulfill its obligations under the preneed contract, a preneed licensee may elect either or both of the following options:

a. Subcontract with a person located outside the preneed licensee's market area to provide the merchandise; or

b. Provide other items of equal or greater quality.

(3) REQUIRED DISCLOSURE.—Each preneed licensee shall provide in conspicuous type in its contract that the contract purchaser may cancel the contract and receive a full refund within 30 days of the date of execution of the contract. The failure to make such provision shall not impair the contract purchaser's right to cancellation and refund as provided in this section.

(4) BREACH OF CONTRACT BY SELLER.—Upon breach of contract or failure of the preneed licensee to provide funeral merchandise or services under a preneed contract, the contract purchaser shall be entitled to a refund of all money paid on the contract. Such refund shall be made within 30 days after receipt by the preneed licensee of the contract purchaser's written request for refund.

(5) DEFAULT BY PURCHASER.—If a purchaser is 90 days past due in making payments on a preneed contract, the contract shall be considered to be in default, and the preneed licensee shall be entitled to cancel the contract, withdraw all funds in trust allocable to merchandise items, and retain such funds as liquidated damages. Upon making such withdrawal, the preneed licensee shall return all funds in trust allocable to services, facilities, or cash advance items to the purchaser, provided that the preneed licensee has provided the purchaser with 30 days' written notice of its intention to exercise any of its rights under this provision. The board may by rule specify the required format and content of the notice required under this subsection and the manner in which the notice shall be sent.

(6) OTHER PROVISIONS.—

(a) All preneed contracts are cancelable and revocable as provided in this section, provided that a preneed contract does not restrict any contract purchaser who is the beneficiary of the preneed contract and who is a qualified applicant for, or a recipient of, supplemental security income, temporary cash assistance, or Medicaid from making her or his contract irrevocable. A preneed contract that is made irrevocable pursuant to this section may not be canceled during the life or after the death of the contract purchaser or beneficiary as described in this section. Any unexpended moneys paid on an irrevocable contract shall be remitted to the Agency for Health Care Administration for deposit into the Medical Care Trust Fund after final disposition of the beneficiary.

(b) The amounts required to be refunded by this section for contracts previously entered into shall be as follows:

1. For contracts entered into before October 1, 1993, the refund amounts as amended by s. 7, chapter 83-316, Laws of Florida, shall apply.
2. For contracts entered into on or after October 1, 1993, the refund amounts as amended by s. 99, chapter 93-399, Laws of Florida, shall apply.

(c) Persons who purchase merchandise or burial rights pursuant to this chapter shall have the right to sell, alienate, or otherwise transfer the merchandise or burial rights subject to and in accordance with rules adopted by the licensing authority.

(d) All refunds required to be made under this section to a purchaser who has canceled a contract must be made within 30 days after the date written notice of cancellation is received by the preneed licensee.

(7) NOTICE TO PURCHASER OR LEGALLY AUTHORIZED PERSON.—

(a) To ensure the performance of unfulfilled preneed contracts, upon the occurrence of the earliest of any of the following events, a preneed licensee shall provide to the purchaser or to the beneficiary's legally authorized person written notice of the preneed licensee's intent to distribute funds in accordance with the terms of the preneed contract, if any obligation of the preneed licensee remains to be fulfilled under the contract:

1. Fifty years after the date of execution of the preneed contract by the purchaser.
2. The beneficiary of the preneed contract attains the age of 105 years of age or older.

3. The social security number of the beneficiary of the preneed contract, as shown on the contract, is contained within the United States Social Security Administration Death Master File.

(b)1. The notice in paragraph (a) must be provided by certified mail, registered mail, or permitted delivery service, return receipt requested, to the last known mailing address of the purchaser or the beneficiary's legally authorized person, whichever is applicable, as provided to the preneed licensee. If the notice is returned as undeliverable within 30 calendar days after the preneed licensee sent the notice, the trustee shall perform a diligent search and inquiry to obtain a different address for the purchaser or the beneficiary's legally authorized person, whichever is applicable. For purposes of this subparagraph, any address known and used by the purchaser or the beneficiary's legally authorized person, whichever is applicable, for sending regular mailings or other communications from the purchaser or the beneficiary's legally authorized person, whichever is applicable, to the preneed licensee or any address produced through a current address service or searchable database shall be included with other addresses produced from the diligent search and inquiry, if any. If the trustee's diligent search and inquiry produces an address different from the notice address, the trustee shall mail a copy of the notice by certified mail, registered mail, or permitted delivery service, return receipt requested, to any and all addresses produced as a result of the diligent search and inquiry.

2. If the purchaser or the beneficiary's legally authorized person, whichever is applicable, fails to respond to such notice within 120 days after delivery of the last mailed notice under subparagraph 1., the funds held in trust must be distributed in accordance with the terms of the preneed contract, the trust agreement, and any applicable provisions of chapter 717.

(c) This subsection does not affect a purchaser's rights to cancel the preneed contract and receive a refund or a preneed licensee's obligations to refund established by this chapter.

(d) The licensing authority shall have authority to adopt rules for the review and approval of notice forms used by preneed licensees to provide notice under this subsection.

History.—s. 8, ch. 28211, 1953; s. 10, ch. 65-393; s. 6, ch. 77-438; s. 1, ch. 78-276; s. 2, ch. 81-318; s. 2, ch. 82-159; ss. 7, 31, 32, 33, ch. 83-316; s. 10, ch. 88-139; ss. 99, 122, ch. 93-399; s. 105, ch. 96-175; s. 23, ch. 96-400; s. 1150, ch. 97-103; s. 151, ch. 2000-165; s. 108, ch. 2004-301; s. 60, ch. 2006-1; s. 22, ch. 2016-172; s. 11, ch. 2019-140.

Note.—Former s. 639.13; s. 497.419.

FLORIDA ADMINISTRATIVE CODE:

69K-8.005 Preneed Contracts Funded by Life Insurance.

(1) A preneed contract may be funded by a life insurance policy payable upon death of the preneed contract beneficiary, provided that no such policy may be sold if its maturity value is less than the amount of the services, merchandise or burial rights to be provided under the preneed contract. For purposes of this rule, maturity value shall mean the amount payable on the policy when all premiums for the policy have been paid, or all conditions for full payment of the policy amount have been met, and must at least equal the cost to the preneed purchaser of the services, merchandise, or burial rights established at the time the preneed contract is executed.

(2) Preneed contracts funded by life insurance may be sold only by persons holding a valid preneed license pursuant to section 497.452, F.S.

(3) Any insurance policy used to fund a preneed contract must be sold in a manner that complies with section 626.785, F.S.

(4) All preneed contracts funded by insurance must meet the requirements of section 497.282, F.S., and with regard to section 497.282(8), F.S., the contract must contain the following provisions:

(a) Disclosure of the purchase price, itemized to reflect the specific costs allocated to each service, cash advance or merchandise purchased. Where applicable, merchandise specifications shall be included;

(b) Disclosure that a life insurance policy has been purchased to fund the monies needed for some or all of the purchase price and will be used to fund the contract at the time of the purchaser's death in one of the following ways:

1. The life insurance policy proceeds will constitute the full payment for the contract purchase price at purchaser's death; or

2. Where the insurance will constitute only a portion of the full payment for the purchase price at purchaser's death, the contract shall clearly disclose that the purchaser has an obligation to pay the difference between the proceeds of the life insurance and the purchase price of the prearranged funeral.

(c) A clear disclosure that no funds are being paid into trust under the preneed contract and that the funding of the contract is through the payment of premiums to purchase life insurance;

(d) What penalties will occur in the event purchaser fails to make premium payments on the funding insurance policy;

(e) A clear disclosure of the impact upon the preneed contract and any penalty to be incurred or monies to be received as a result of cancellation or surrender of the life insurance policy;

(f) That all purchasers are entitled to terminate or cancel their preneed contract at any time and that all purchasers are entitled to terminate or cancel the funding insurance policy within 30 days of purchase and receive a full refund of all monies paid for the contract or funding insurance policy;

(g) The following statement in bold print: The Board of Funeral, Cemetery, and Consumer Services regulates preneed contracts in Florida. Should you have a complaint, you should contact the Board at the Division of Funeral, Cemetery, and Services, 200 East Gaines Street, Tallahassee, Florida 32399-0361 or by calling 1(800)323-2627.

(5) All preneed contracts shall be sequentially prenumbered.

(6) Each preneed licensee shall identify all insurance products currently used in connection with the sale of its preneed contracts. Such identification shall be provided in list format to be kept on file at the Board office. The identification shall include the following information for each insurance product listed:

(a) Name and address of insurer;

(b) Form number of master insurance policy;

(c) Form number of any accompanying endorsements, riders, and application forms.

(d) Evidence of approval by the Florida Office of Insurance Regulation.

(7) The Board may request for reference purposes a sample copy of any insurance policy or accompanying forms it does not currently have on file.

Rulemaking Authority 497.103 FS. Law Implemented 497.282, 497.451, 497.452, 497.454 FS. History–New 2-15-96, Formerly 3F-8.005.