MINUTES
BOARD OF FUNERAL, CEMETERY AND CONSUMER SERVICES
VIDEOCONFERENCE MEETING
MAY 4, 2023 - 10:00 A.M.

V. Contract(s) or Other Related Form(s)

(1) Recommended for Approval with Conditions

(a) Preneed Sales Agreement

1. Great Western Insurance Company (Iowa)

Ms. Simon – GWIC submits the attached revised preneed sales agreement for approval titled Standard Contract of Funeral Goods and Services Selected. If approved, this agreement will be used for the sale of preneed by various preneed main establishments and their related preneed branches. The Division recommends approval subject to the condition that two (2) full sized print-ready copies are received by the Department within sixty (60) days of this Board meeting.

Is there a representative from Great Western insurance company on the call today?

Mr. Brian Lindquist – Yes, this is Brian Lindqvist.

Ms. Simon – Thank you, sir.

Chair Peeples – Board members?

Mr. Jensen – Question for the Department.

Chair Peeples – Yes, Mr. Jensen?

Mr. Jensen – Looking on Page 5 here under the cancelation part, does it not need to say that services are 100% refundable in the State of Florida, at any time? It does not say that. It says something about thirty (30) days. I understand that's the case on merchandise in Florida, but nowhere on here do I see anything that talks about the services being 100% refundable at any time.

Ms. Simon – If I may?

Chair Peeples – Yes, Ms. Simon?

Ms. Simon – It would be difficult for me to go through the contract right now in order to answer that question. If the Board members are concerned, it can be made part of the motion, or Mr. Lindquist can speak to that if he is able to.

Chair Peeples – Mr. Lundquist, can we swear you in, please?

Mr. Lindquist – Sure.

Ms. Simon – Please raise your right hand to be sworn in. Do you swear to tell the truth, the whole truth and nothing but the truth, so help you God?

Mr. Lindquist – I do.

Ms. Simon – Thank you, sir. Please state your name and spell your last name for the record.

DRAFT

Mr. Lindquist – Brian Lindquist, L I N D Q U I S T.

Chair Peeples – Thank you, sir. Mr. Jensen has made a comment regarding the form that has been presented. And I think, Mr. Jensen, I don't want to speak for you, but I hope I have interpreted it correctly that the wording for the cancelation is not congruent with what the State of Florida requires. Can you address that for us, please?

Mr. Lindquist – Yes, I'm pulling up my copy. Just a minute.

Chair Peeples – Thank you.

Mr. Lindquist – If I understand the Board member's questions, it is that the cancelation section says that when they cancel the contract, it does not automatically cancel the life insurance certificate or annuity. The insured or beneficiary of the contract may cancel the life insurance certificate or annuity within thirty (30) days of purchasing it and receive a full refund of premiums paid. This is a life insurance-funded contract and so the funds are not being paid into a trust. So, to cancel a life insurance policy there's a thirty (30) day look-back period, and that's what it's referring to. Does that help?

Chair Peeples – Mr. Jensen?

Mr. Jensen – It does not help. The State of Florida says that no matter how you fund a preneed contract you still can cancel services even on life insurance 100% at any point in time during the duration of that contract. Is that correct, Ms. Simon?

Rabbi Lyons – Madam Chair?

Chair Peeples – Ms. Simon, did you want to reply to Mr. Jensen's comment? Or would you like me to go to Rabbi Lyons?

Ms. Simon – Please go to Rabbi Lyons. Thank you.

Chair Peeples – Rabbi Lyons?

Rabbi Lyons – I'm going to return the favor here and try to help out Mr. Jensen. So, there's a distinction between merchandise, services and cash advances. So, with merchandise, after thirty (30) days, the only thing which is refundable is undeliverable merchandise. With services, it's undelivered services, meaning services that have not been rendered. And with a cash advance it's the same thing. So, the question is that the contract in front of us appears to only call out the merchandized issue, but it does not inform the consumer of their rights regarding services being fully refundable and cash advance being fully refundable. And the distinction within merchandise, which is undeliverable is also fully refundable.

Mr. Jensen – My point exactly. Rabbi. That's what I'm saying. Services are 100% refundable. I opened up by saying merchandise. I realize thirty (30) days. But services are 100% refundable no matter how they are acknowledged, either through trust or insurance.

Chair Peeples – Mr. Jensen, if I may? We are a Great Western funeral home, also. If I may read to you in 2016, I just pulled up an agreement that was initiated 2016, under cancelations. "As you may terminate or cancel this contract of funeral goods and services selected, at any time. If you cancel this contract, it does not automatically cancel the funding insurance policy or annuity contract. You may terminate or cancel the funding insurance policy or annuity contract within thirty (30) days of purchase and receive a full refund of premiums paid. If the policy or annuity is terminated or canceled thirty-one (31) days or more after the issue date, you will receive the cash value of the insurance policy or annuity contract. The cash value might be considerably less than the premiums actually paid." So, back in 2016, there was nothing stated specifically about services, merchandise, cash advances. And I'm not speaking for Mr. Lindquist, but I'm not sure if they just took previous wording and they're using it now. So, we do need to address it, if we need to address it at this particular stage. Thank you, Mr. Jensen.

Mr. Jensen – And Madam Chair, I certainly appreciate that. Maybe we defer this one to the Department. I know that the trust contracts that FSI issues and so forth all have that on there. So, I'm just again, I've just not seen this before. I personally don't do the insurance-funded contracts, so perhaps I'm missing something.

DRAFT

Chair Peeples – Ms. Simon, then, Ms. Wiener.

Ms. Simon – If I may? I think that when it comes to funding a contract by insurance, I don't want to hold a precedent, but from what I understand that the language that's in the cancelation contract works. It's a different animal when a contract is funded by life insurance versus being funded in another manner and perhaps Ms. Wiener can shed more light on that.

Chair Peeples – Ms. Wiener?

Ms. Wiener – I can. Thank you. Rule Chapter 69K-8.005 is what governs here. It relates to preneed contracts funded by life insurance, and it does set forth the cancelation provisions, and they are as identical to what's included in this contract. And a few for your references, Subsection (4)(f).

Chair Peeples – Thank you, Ms. Wiener. Mr. Jensen, you had a question regarding this cancelation process. Does that satisfy your question, sir?

Mr. Jensen – Again, if it's correct is correct. I don't have the particular statute in front of me, but I know that in the State of Florida services are 100% cancellable at any time, no matter how they fund it. So, I don't know why that doesn't need to be on here, but if it doesn't, it doesn't.

Chair Peeples – What is the Board's pleasure? Rabbi Lyons?

Rabbi Lyons – Yes, I'm sorry. Can we get the citation one more time, please? I'm sorry.

Chair Peeples – Ms. Wiener?

Ms. Wiener – It's 69K-8.005(4)(f). And so, just to clarify, just like with a trust-funded preneed contract, an insurance-funded preneed contract can be canceled at any time. The difference is because the funeral home doesn't have any of the consumer's money, they don't have any responsibility to refund the consumer's money. When the consumer cancels the preneed contract, then that uncouples it from the life insurance policy, and then the consumer can take that life insurance policy and buy another preneed contract or do something totally different with it, if they want to. It. So it is cancellable, and they don't lose any of their money because they still have the insurance policy that they purchased.

Mr. Jensen – Well that's not what this says. This says that you may be entitled to the cash surrender value, which could be considerably less than the premiums actually paid. And that's not the case. If you pay $1000, then you know, toward services, then you should be able to get $1000 back. But that's not what it's saying, so that's where I'm confused.

Ms. Wiener – So, if you choose. So, your policy doesn't automatically cancel. And it says that if you cancel your preneed contract, that does not automatically cancel your insurance policy, but if you do choose to cancel your insurance policy, then you can lose some value, because that's how insurance works.

Mr. Jensen – So, may I ask another question?

Chair Peeples – Yes, sir.

Mr. Jensen – Ms. Wiener, I know you're the lawyer for FSI. So, just out of curiosity, why do all their contracts have this on there?

Ms. Wiener – Well, trust-funded preneed works differently than insurance-funded preneed. To be clear, I do not represent Great Western. I just have some insurance company clients, and I'm aware of this rule. So, that's the distinction between it. Trust-funded works differently than insurance-funded. Many people would say trust-funded is superior because of the capacity to cancel, and for the consumer to receive their money back. But on the other side, insurance-funded, if you cancel, you still have the insurance policy, and you can take it and do what you want with it, including cancel it.

DRAFT

Mr. Jensen – But wouldn't that be superseded by the statute that says that services are 100% refundable in Florida? I mean, if they want their money back for their $1000 they paid toward services, you're saying that they don't necessarily get that, they are going to get their insurance policy. So, what if they say they just want their money? What happens then? {Inaudible}

Ms. Wiener – {Inaudible} contract. FSI would certainly say they should have bought a trust-funded preneed contract, if that was their concern, because these things are set forth clearly on the contract. My whole point was they are in conformance with the rule that was adopted by the Board many, many years ago. And so, the language on this contract is in keeping with the rule that applies to it.

Chair Peeples – Ms. Munson?

Ms. Munson – This is just a very brief comment. I'm sure I can't speak on behalf of the Department, but I'm sure the Department also thanks Ms. Wiener for the information that she's sharing. I just want to remind the Board that the rules as written should never be inconsistent with what a statute says. Mr. Jensen is pointing out that there is a difference in what the statute says that how this rule maybe applied. That's just an indication that no matter how long the rule was written, maybe it needs to be reclarified, rewritten, so that type of clarity can exist. Because if in reading it in plain language it looks like it is not consistent with the statue, which indicates that everything that it should all be refundable, then that's just an area, again, for correction for rulemaking: I don't want the Board to have the impression that, because it's written that way, and we need to do it that way, and it's been written that way forever. I just know that we're entering a new rulemaking phase, and these areas probably will all be on the table.

Chair Peeples – Mr. Jensen, would you be more comfortable in tabling this matter until we get a little bit more clarification?

Mr. Jensen – Well, to answer your question, yes, Madam Chair. And all I'm looking for is a clarification. I've been doing this for thirty (30) years, and I'm just like, ok. And everything I've ever heard is it doesn't matter how you fund the preneed, you still have to follow the rules. And the rules are services are 100% refundable. So, I thought that had to be on the contract, but maybe it doesn't. So, I'm just looking for a clarification so to speak. So, I'm not saying it's wrong here, but…

Chair Peeples – Thank you, Mr. Jensen. Rabbi Lyons?

Rabbi Lyons – Ok, so it sounds like there's new revelation was that if it's an insurance-funded contract, everything is cancellable, and everything in theory is refundable. The problem is that it's locked in a life insurance policy. So, now you have two (2) choices. You can either transfer that policy to a different establishment or you can cash out with the warning, which is on the contract, and it is called out on the contract. The warning to the consumer is that if you cash out, you're probably going to lose money, So, but as far as a cancelation, it doesn't make any distinction. Any part of it is cancellable. It sounds like even a deliverable merchandise item would be cancellable because it's an insurance-funded contract.

Chair Peeples – Mr. Brandenburg?

MOTION: Mr. Brandenburg moved to approve the agreement subject to condition that two (2) full sized print-ready copies are received by the Department within sixty (60) days of this Board meeting. Rabbi Lyons seconded the motion.

Chair Peeples – All in favor of the motion, say yes.

Board members – Yes.

Chair Peeples – All opposed, say no. Mr. Jensen, did you vote yes or no?

Mr. Jensen – Actually I didn't vote. I understand merchandise after thirty (30) days being refunded, but I maintain that services are 100% refundable in the State of Florida, at any time. Services. Services. I'm not talking about caskets. I'm not talking about markers or any of that. So, you know, no matter how it's funded, and I'm pretty sure that that needs to be on a contract. If I'm wrong, so be it if it doesn't need to be on there. I think it's a little misleading to the consumers, but it doesn't matter. It's either right or wrong. So, I think I might have to abstain from this.

DRAFT

Ms. Munson – Not allowed to, sir. Unless recused, you have to vote one way or another and if you oppose it that's a registered vote as well.

Mr. Jensen – I vote no.

Chair Peeples – Please let the record reflect that the majority was she asked to approve the application, and Mr. Jensen was no. Ms. Simon?

Ms. Simon – Thank you, ma'am.

DRAFT