

CEMETERY AND FUNERAL BUREAU

Proposed Language

§ 1267. Keeping of ~~Pre-Need~~ Preneed Books, Accounts, Contracts, and Records

Each funeral establishment charged with the reporting of ~~pre-need~~preneed funds hereunder shall at all times maintain or cause the trustee of the ~~pre-need~~preneed trust to maintain in California and available for inspection by the bureau during reasonable working hours, complete financial records of all ~~pre-need~~preneed contracts and arrangements, which records shall be established and maintained in accordance with generally accepted accounting principles. Such records shall include the following, provided, however, that records may otherwise be established and maintained in accordance with generally accepted accounting principles:

(a) An individual trustor contract, plan, or agreement.

(b) An individual trustor or beneficiary ledger account which shall set forth the amount of the contract, all payments received, all disbursements made, and all income prorated in accordance with the ratio which the trust corpus of the account bears to the entire corpus invested as set forth in Section 1265.

(c) For a licensed, successor funeral establishment that has accepted the transfer of preneed contracts and arrangements from another funeral establishment pursuant to Section 7737(c)(1) of the Code, a copy of the written notice to all beneficiaries, trustors, legal representatives of the beneficiaries or trustors, or trustees (“consumers”) associated with the preneed funeral agreements required by subdivision (c) of Section 7737.1(a)(4)(B) of the Code and proof the notice was provided as defined in Section 1267.1.

~~(ed)~~ A cash receipts journal which shall show each payment received and ~~shall be totalled monthly.~~

~~(de)~~ A cash disbursements journal which ~~will~~shall show each withdrawal and be totaled monthly. ~~for an investment in compliance with 1263 and each disbursement to the funeral establishment for a serviced account or to the individual trustor on a cancelled account, and all withdrawals for documented expenses.~~

(ef) In the case where a checking account is used to deposit payments received or disbursements to the funeral establishment and/or the funeral director, a trustor, or an investment, it shall be designated as a trust fund account, and be reported as such. It shall be reconciled each month with the balance shown in the trust account by

accounting for checks not yet presented and outstanding, bank deposits not shown on the bank statements, and other adjustments required.

(fg) A general ledger which shall be posted monthly with respect to all accounts controlling the fiduciary relationship with the individual trustees. Such postings shall occur within ninety (90) days after the close of each business month.

(gh) A portfolio of all investments related to the trust funds.

(hi) Records for serviced accounts shall include but not be limited to:

(1) A copy of the death certificate or other satisfactory evidence of the death; copies of all documents required as specified under Sections 7685 and 7685.2, ~~Division 3, Chapter 12, Article 5.5~~ of the Business and Professions Code; a copy of the final arrangements (itemized); and a copy of the final statement to the family.

(2) All monies received from the trust; all monies received from the family; and all monies received from the Veterans Administration or Social Security or any other source to be applied to the final bill.

(3) A record showing credit for each of the above.

(ij) Records for cancelled accounts shall include but not be limited to:

(1) A record of all monies received, income earned, and expenses taken, including a revocation fee as stated in Section 7735, Division 3, Chapter 12, Article 9, of the Business and Professions Code- which shall include a copy of the individual trustor or beneficiary account record.

(2) A copy of the final accounting provided to the family with the cancelled check or withdrawal slip showing the amount refunded to the trustor.

(ik) Records for accounts held by licensed funeral establishments that have escheated preneed accounts in accordance with the Unclaimed Property Law subject to the Code of Civil Procedure section 1518.5 (a) through (c), shall include a copy of the following documents:

(1) Proof of remittance of funds in accordance with the Unclaimed Property Law (Chapter 7 (commencing with Section 1500) of Title 10 of Part 3 of the code of Civil Procedure). For this section "proof" means bank statements and if available, canceled checks.

(2) Record of the final total escheated for each account. This record shall be in the form of an individual trustor or beneficiary ledger account as specified in Section 1267(b) and must include the date of remittance.

(k) All of the foregoing records shall be retained for a period of one (1) year after the account has been cancelled, or serviced, or escheated and audited by the bureau and compliance with all recommendations made and audit exceptions resolved or seven (7) years from the date of service, or cancellation, or escheatment, whichever comes first.

The required books and records for more than one (1) licensed funeral establishment may be centrally maintained at a single location in California with notification to the bureau or the main office as defined in Section 1204(c)(2), provided that a monthly summary of all financial transactions pertaining to each individual trust account for each licensed funeral establishment is available, at each such establishment during reasonable working hours, to the bureau or its authorized representatives; and provides further that the monthly summary contains sufficient information from which the current balance of each individual trustor's account or each individual trustor's share of any commingled trust account may be identified.

Note: Authority cited: Sections 7606 and 7740, Business and Professions Code.
Reference: Sections 7735, 7737 and 7740, Business and Professions Code.

§ 1267.1 Funeral Establishments Intending to Cease Business Operations

(a) A funeral establishment intending to cease engaging in business operations and transfer its preneed funeral agreements to a licensed successor funeral establishment under Sections 7737 and 7737.1 of the Code shall do all of the following:

(1) At least 60 days prior to the cessation of operations, provide each beneficiary, trustor, or legal representative of the beneficiary of each of the establishment's preneed agreements, or each trustor holding the preneed funeral trusts associated with each preneed funeral agreement ("consumers") a written notice that their preneed funeral agreements will be transferred to the licensed successor funeral establishment using the form 12-PASFD (New 1/23) required by subdivision (c) of Section 1274,

(2) Prior to the cessation of business operations, provide the bureau with a copy of the notice provided to consumers specified in subsection (a)(1) and a list all preneed funeral agreements transferred to the licensed successor funeral establishment; and,

(3) Prior to the cessation of business operations, provide the licensed successor funeral establishment with a copy of the notice to consumers specified in subsection (a)(1) and proof that the notice was provided to the consumers as specified in this section.

(b) A funeral establishment intending to cease engaging in business operations without a transfer of the preneed funeral agreements to a licensed, successor funeral establishment shall give written notice to each beneficiary, trustor or trustee associated with the establishment's preneed funeral agreements of the cancellation of their preneed funeral agreements at least 60 days prior to the cessation of business operations using the form 12-PACE (New 1/23) in compliance with subdivision (b) of Section 1274. At least 60 days prior to the cessation of business operations, copies of the notice provided to each beneficiary, trustor or trustee required by this subdivision shall also be provided to the bureau by regular mail.

(c) "Proof that the notice was provided" shall mean proof of service of any notice required by this section to consumers by mail by completion of a "written certification of service by mail" section on the form 12-PASFD (New 1/23) or form 12-PACE (New 1/23), whichever is applicable, incorporated by reference in Section 1274.

Note: Authority cited: Sections 7606, 7737.1, and 7740, Business and Professions Code. Reference: Sections 7737, 7737.1, and 7740, Business and Professions Code.

§ 1274. Inability to Perform

(a) If, for any reason, a licensed funeral establishment or licensed funeral director is unable to perform the funeral services prior to or upon the death of the beneficiary of a ~~pre-need~~preneed trust agreement, then the trustees shall pay all trust corpus and net income to the beneficiary, trustor, or the legal representative of either the beneficiary or trustor without the imposition of any revocation charge.

(b) If a funeral establishment intends to cease engaging in business operations by reason of dissolution, closure, sale, or revocation, without a transfer of preneed funeral agreements to a licensed, successor funeral establishment, it shall complete bureau form 12-PACE (New 1/23), Notice of Cancellation of Preneed Funeral Contract or Agreement, which is hereby incorporated by reference and provide the completed form to each consumer as defined in Section 1267.1 by regular mail to the last known address provided by the consumer to the funeral establishment.

(c) If a funeral establishment intends to cease engaging in business operations by reason of dissolution, closure, sale, or revocation, and the preneed agreements are being transferred to a licensed successor funeral establishment, it shall complete bureau form 12-PASFD (New 1/23), Notice of Transfer of Preneed Contract or Agreement to Successor Funeral Establishment, which is hereby incorporated by reference, and provide the completed form to each beneficiary, trustor, or trustee associated with the establishment's preneed funeral agreements by regular mail to the last known address provided by the beneficiary, trustor, or trustee to whom the notice is addressed.

Note: Authority cited: Sections 7606 and 7740, Business and Professions Code.
Reference: Sections 7737, 7737.1, 7737.2, and 7740, Business and Professions Code.

§ 1275. Requirements of Preneed Trust Agreements

A preneed trust contract within the meaning of Article 9, Chapter 12, Division 3, of the Business and Professions Code shall include but not be limited to the following information:

- (a) The name and address of the trustor.
- (b) The name and address of the beneficiary.
- (c) The names and addresses of the trustees.
- (d) The name, address, and phone number of the funeral establishment.
- (e) A sequential number which shall be continuous and in order of issue.
- (f) A copy of the completed funeral arrangements forms including, but not limited to, the following:
 - (1) A description of the merchandise and services selected which is sufficiently detailed to identify them; and
 - (2) Any disclosure of prices or itemization of services or merchandise, which is required to be provided pursuant to State or Federal law, rule, or regulation then in effect.
- (g) A statement that earned annual income is being credited to the account and that administrative expenses, if charged, are paid from income only.
- (h) A statement, in clear nontechnical language, that the contract is either a guaranteed ~~pre-need~~ preneed contract or that it is a nonguaranteed ~~pre-need~~ preneed contract, and, if guaranteed only in part, the services or merchandise included in the guarantee shall be specified. This statement shall be printed in bold face type and shall be located on the first page of the contract.
 - (1) If the contract is guaranteed, there shall be included in the contract a complete explanation of all the terms and conditions limiting the guarantee.

(2) If the contract is not guaranteed, there shall be included in the contract a complete explanation of how the trust balance will be applied to pay for services and merchandise provided at the beneficiary's death and that there may be additional payments required or a refund due.

(i) A statement that the trustees of the trust will deliver the corpus of the trust and net income to the funeral establishment filing a certified copy of the Death Certificate and evidence that said funeral establishment has furnished the merchandise and services. (Corpus of the Trust means all monies paid and all securities delivered pursuant to this prearrangement contract.)

(j) A statement that the amount of revocation fee to be charged in the event of revocation, shall in no event exceed ten percent (10%) of the paid-in corpus and is chargeable against earned income only; and a statement that no revocation fee may be charged if the funeral establishment is unable to perform substantially according to the terms of the agreement.

(k) In immediate proximity to the space reserved for the purchaser's signature, in a size equal to at least ten point (10-point) bold type, the following statement: "All funds received will be deposited with the trustees within thirty (30) days and held in a trust which is fully refundable upon fifteen (15) days' written notice except when the beneficiary is the recipient of public assistance, as provided in the Welfare and Institutions Code and this trust agreement has been designated as being irrevocable thereunder."

Note: Authority cited: Sections 7606 and 7740, Business and Professions Code.
Reference: Sections 7735, 7736, 7737, 7738, 7740 and 7740.5, Business and Professions Code.

§ 1277.5. Disclosure of Preneed Funeral Agreement

(a) The statement disclosing whether or not the funeral establishment has any preneed agreement made by or on behalf of the deceased shall be made on the "Disclosure of Preneed Funeral Agreement" form provided by the Bureau (Form 21F1 (10/03)), which is hereby incorporated by reference. The disclosure statement shall be signed and dated by the representative of the funeral establishment and by the survivor or responsible party. A copy of the completed disclosure statement shall be given to the survivor or responsible party, and the original completed disclosure statement, or copy thereof, shall be retained by the funeral establishment for not less than one (1) year after the serviced preneed account has been audited by the Bureau or seven (7) years from the date the disclosure statement was made, whichever comes first.

(b) The "survivor" is the person with the right to control disposition of the remains under Health and Safety Code Section 7100, or their designee.

(c) The “responsible party” is the person contracting for funeral goods or services or both funeral goods and services for the decedent from the funeral establishment.

(d) Pursuant to Business and Professions Code Sections 7685.6 and 7745, a copy of any signed preneed agreement made by, or on behalf of the decedent that is paid for in full or in part and is in the possession of the funeral establishment must be given to the responsible party or the decedent's survivor who is handling the funeral arrangements prior to drafting any contract for goods or services.

Note: Authority cited: Section 7606, Business and Professions Code. Reference: Sections 7606, 7685.6 and 7745, Business and Professions Code.