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BULLETIN

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

**FROM: Jim L. Ridling
Commissioner of Insurance** 

DATE: December 5, 2008

RE: Installation of vaults or outer burial containers before need

THIS BULLETIN SUPERSEDES THE BULLETIN ISSUED ON JULY 30, 2008, ON THIS SUBJECT.

The Commissioner of Insurance is aware that some preneed contracts provide that a vault or other form of outer burial container will be installed before need. The Department of Insurance does not construe the Alabama Preneed Funeral and Cemetery Act, Ala. Code §§ 27-17A-1 *et seq.*, as necessarily prohibiting this practice except to the extent that, as implemented, the practice becomes an unfair and deceptive trade practice. This Bulletin describes the manner in which preneed vault or outer burial container installation can be offered to consumers:

1. This Bulletin is effective as of its issue date except any revised contract forms and the disclosure form required by paragraph (10) must be approved by the Department and placed in use by January 1, 2009.
2. The sale of a vault or outer burial container on a preneed basis is a preneed contract for purposes of the Act even if the contract provides for installation of the vault or outer burial container before need.
3. The preneed contract must grant to the preneed contract buyer the sole option to have a contracted-for vault or outer burial container installed before need or at need. The preneed contract form must have been submitted to and approved by the Department prior to use. Contract forms will not be approved if they do not substantially comply with the provisions in paragraphs (4) through (9) of this Bulletin.
4. The preneed contract must contain a conspicuously-displayed provision, to be signed or initialed by the buyer, in the following or substantially similar terms:

It is the Seller's practice to install a vault prior to need unless the Purchaser elects to have the vault installed at the time of need.

_____ **I elect to have my vault installed prior to need.**

_____ **I elect not to have my vault installed prior to need.**

5. The preneed contract must clearly distinguish between service fees to install the vault/outer burial container before need and fees for re-opening the previously installed vault/outer burial container, placing the casket, and closing and covering the vault/outer burial container at need. The disclosed fee for installing a vault/outer burial container before need must be described in the preneed contract by using the term "Vault Installation Fee," "Burial (or Grave) Space Excavation Fee," or other words reasonably descriptive of the nature of the services being performed. The fee may not be described by use of the word "interment."

6. To the end that adequate funds are deposited in trust to reasonably ensure performance of contracted-for services at interment, the amount of the disclosed fee to install a vault/outer burial container before need shall not exceed fifty percent (50%) of the total amount (expressed in dollars) of that fee and the disclosed fee charged for opening the installed vault/outer burial container, placing the casket, and closing and covering the vault/outer burial container at need. This allowed allocation notwithstanding, the Department may require a provider to increase the amounts trusted for opening/closing service at interment in the event (i) a provider ceases performing such service using its own employees and equipment in favor of contracting with third parties to perform the service, or (ii) as a condition for the Commissioner's approval of an application by the provider to transfer or to surrender of a certificate of need or certificate of branch registration, or (iii) if the provider's financial condition warrants an increase in the trust amount.

7. The preneed contract shall specify a time period within which the vault/outer burial container will be installed before need (if so elected by the consumer).

8. The preneed contract shall provide that, in the case a consumer elects preneed vault/outer burial container installation, the preneed provider bears any risk of damage to the vault/outer burial container when installed and will provide and install a new vault/outer burial container of comparable quality at no cost to the preneed contract buyer and/or beneficiary if required by the circumstances at the time of interment.

9. No other preneed contract provisions can conflict with, qualify, defeat, or diminish the contractual option granted to the preneed contract buyer/beneficiary.

10. A preneed provider offering installation of a vault/outer burial container before need must furnish the contract buyer a disclosure substantially in the form of the attached model at the time the preneed contract is negotiated. The actual form of the disclosure must have been submitted to and approved by the Department before use. The original disclosure signed by the preneed contract buyer(s) and the responsible preneed sales agent must be retained by the preneed provider as part of the preneed contract file. The preneed

contract buyer(s) must be furnished a copy of the signed disclosure at the time the preneed contract is finalized.

11. Any preneed provider offering installation of a vault/outer burial container before need must implement a program to instruct its preneed sales agents about properly explaining installation of vaults/outer burial containers before need and answering customer inquiries about installation before or at need. The program must include reasonable measures for monitoring preneed sales agents' actual explanation methods to customers. The program must be maintained in a form that can be produced to the Department for review on request.

12. If a preneed contract buyer has affirmatively elected in a trust-funded contract to have a vault/outer burial container installed before need and the vault/outer burial container is not actually installed within thirty (30) days after the end of the calendar month in which the contract is paid in full, the preneed provider must cause the proper amounts, determined under Ala. Code § 27-17A-42(a)(2) and -(3), to be timely deposited in the provider's merchandise and services trust(s). Upon installation of the vault/outer burial container, funds so deposited in trust may be withdrawn to the extent and in the manner provided for in Ala. Code § 27-17A-43(b).

13. Any preneed provider offering installation of a vault/outer burial container before need must maintain records sufficient to permit the Department's examiners to verify that vaults/outer burial containers contracted for installation before need have been installed.

JLR/JFM/bc

Attachment: Disclosure Form

**DISCLOSURE FORM TO BE USED IF VAULTS OR
OUTER BURIAL CONTAINERS ARE INSTALLED
BEFORE NEED**

To the buyer:

If your preneed contract includes the purchase and installation of a burial vault (or other type of outer burial container), you may be asked if you agree that the vault can be installed at some time prior to need (burial). A preneed provider is not required to offer this option. **If offered as an option, this is your choice. You are not required to agree to installation before need. You can request that the vault be installed at need (at the time of burial). YOU SHOULD BE PROVIDED THIS FORM BEFORE YOU ARE ASKED TO SIGN YOUR PRENEED CONTRACT AND YOU SHOULD READ IT BEFORE SIGNING THE CONTRACT.**

In making your decision about vault installation, you should consider the following:

1. The preneed provider representative should fully explain to you all available options about installation of a vault and answer any questions you have to your satisfaction.
2. Your preneed contract should clearly and separately disclose the cost of the vault, the cost of installing the vault before need, and the cost of reopening the vault, placing the casket, and closing, sealing, and covering the vault at need. The contract should also say approximately when or the timeframe within which the vault will be installed.
3. The disclosed cost of installing the vault before need cannot be more than 50% of the total amounts of that cost and the cost of reopening the vault, placing the casket, and closing, sealing, and covering the vault at need.
4. You need to verify that your preneed contract says the preneed provider is responsible for cleaning the interior of the vault before placing the casket and for replacing or repairing the vault if it is in a damaged condition when reopened at need to place the casket or if it is damaged as part of the final reopening or closing process – all at no additional cost to you.
5. You should be aware that, once installed, the vault may become a part of the real estate (the grave space) where installed. You may not be able to later have the vault removed.
6. You should be aware that, if the vault is installed before need, this may affect your ability to later cancel or transfer your preneed contract. At a minimum, you may not be entitled to a refund of the vault cost or the cost of installation. You need to read what your preneed contract says about that.
7. You should be asked to sign or initial a place in the preneed contract where you agree to have the vault installed before need or you request that it be installed at need.
8. Unless your preneed contract is fully funded by life insurance or the provider has posted a surety bond or letter of credit, Alabama law requires the preneed provider to deposit certain portions of the purchase price you pay for your contract into a merchandise and services trust. If your contract is trust-funded, and if you agree to have your vault installed before need, you should know that the amounts paid for the vault and the cost of installing it may not be placed in trust (or if placed in trust, those amounts will be withdrawn when the vault is installed).

What should be placed in trust in this situation is an amount equal to 60% of the cost for reopening the vault at need, placing the casket, and closing and covering the vault.

9. You should completely read your preneed contract, ask your preneed provider representative any questions you have, be sure your questions are answered, and make sure you understand those answers before signing anything.

10. You should be asked to sign this separate form which the preneed provider should keep as part of your contract record. You should be given a copy of this fully signed form and of the fully signed preneed contract.

**IN ALABAMA, PRENEED SALES OF FUNERAL OR CEMETERY
MERCHANDISE AND SERVICES ARE REGULATED BY LAW
THROUGH THE ALABAMA DEPARTMENT OF INSURANCE.
YOU MAY CONTACT THE DEPARTMENT AT (334) 240-4420.**

Preneed contract buyer(s):

Date: _____

Preneed provider representative