

**ALABAMA DEPARTMENT OF INSURANCE
PRENEED REGULATION**

**CHAPTER 482-3-001
ACCOUNTING REQUIREMENTS AND RECORD KEEPING FOR PRENEED
FUNERAL AND CEMETERY PROVIDERS**

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482-3-001-.01 Authority. This chapter is adopted pursuant to Section 27-2-17, Code of Alabama 1975.

Author: Commissioner of Insurance

Statutory Authority: Code of Alabama 1975, § 27-2-17

History: New August 24, 2004, Effective September 3, 2004

482-3-001-.02 Purpose. The purposes of this chapter are to provide standards for the sale of preneed funeral and cemetery merchandise and services and to define the accounting and record keeping requirements for persons holding preneed certificates of authority under the Alabama Preneed Funeral and Cemetery Act of 2002.

Author: Commissioner of Insurance

Statutory Authority: Code of Alabama 1975, § 27-2-17

History: New August 24, 2004, Effective September 3, 2004;

Revised: December 1, 2008; Effective January 1, 2009

482-3-001-.03 Applicability and Scope. This chapter applies to all sales of preneed funeral and cemetery merchandise and services and the establishment and administration of funds held in trust in accordance with Chapter 17A of Title 27, Code of Alabama 1975.

Author: Commissioner of Insurance

Statutory Authority: Code of Alabama 1975, § 27-2-17

History: New August 24, 2004, Effective September 3, 2004

482-3-001-.04 Definitions. In addition to the definitions provided in Section 27-17A-2, Code of Alabama 1975, the following definitions shall also apply in this chapter:

(a) DEPARTMENT. The Alabama Department of Insurance.

(b) GAAP (Generally Accepted Accounting Principles). Accounting principles generally accepted in the United States of America.

(c) FINANCIAL STATEMENT. The written disclosure of financial information by an applicant for or holder of a preneed certificate of authority according to accounting principles and in a form prescribed by this chapter.

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(d) PRENEED ENTITY. Any funeral establishment, cemetery authority or third-party seller that is selling preneed services and/or merchandise as defined under the Act.

(e) THE ACT. The Alabama Preneed Funeral and Cemetery Act of 2002, Chapter 17A of Title 27, Code of Alabama 1975.

Author: Commissioner of Insurance

Statutory Authority: Code of Alabama 1975, § 27-2-17

History: New August 24, 2004, Effective September 3, 2004;

Revised: December 1, 2008; Effective January 1, 2009

482-3-001-.05 Certificate of Authority; Financial Requirements.

(1) Every entity subject to the Act selling preneed funeral or cemetery services or merchandise must have a valid preneed certificate of authority (COA). All branches affiliated with a certificate holder must have a valid branch registration.

(2) An applicant for a preneed certificate of authority must meet and a certificate holder must maintain the requirements set forth in this Rule demonstrating its ability to discharge its liabilities as they become due in the normal course of business and must have sufficient funds available to perform its obligations under its existing preneed contracts.

(3) On and after the effective date of this Rule, the Financial Statement submitted to the Department with an application for or renewal of a certificate of authority shall, at the preneed entity's option, be (i) a financial statement accompanied by a compilation, review or audit report from a licensed certified public accountant prepared in conformity with GAAP or (ii) a financial statement in the form set forth in the Appendix to this chapter using the alternate basis of accounting described in Rule 482-3-001-.05(6).

(4) The Financial Statement must be for the preneed entity holding a certificate of authority or the applicant seeking a certificate of authority. Information in the Financial Statement must be accurate and contain all relevant notes and disclosures appropriate to the accounting basis used. The Financial Statement must be signed by the certificate holder or applicant and, if prepared by a certified public accountant or public accountant, by the accountant.

(5) Financial Statements prepared in conformity with GAAP that are consolidated must include supplementary consolidating schedules to provide supporting detail for each consolidated financial statement presented.

(6) The financial statement form set forth in the Appendix to this chapter reflects a basis of accounting adopted by the Department as an alternative to GAAP reporting. This

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alternative basis differs from the measurements and disclosures required by GAAP in the following respects:

(a) GAAP requires consolidation of certain equity investments and of variable interest entities under FIN 46(R), entitled *Consolidation of Variable Interest Entities*. The Department requires that only the primary reporting entity's accounts and activities be reported. Investment in trusts are to be marked-to-market as of the Financial Statement date. Closely-held investments should be recorded using the equity method.

(b) Deferred revenue for preneed contracts incurred prior to May 1, 2002 (the Act's effective date), is to be equal to the current cost of providing the preneed services and merchandise.

(c) A noncurrent receivable is to be recorded for the face amount of life insurance policies used to fund preneed contracts, with the offset being a credit to deferred revenue.

(7) The Financial Statement of an applicant or certificate holder (in the case of annual renewals) must demonstrate the following levels of equity determined on the basis of the accounting method used in the Financial Statement:

(a) An applicant or certificate holder with total preneed deferred revenue of \$100,000 or less must have a minimum of \$10,000 equity.

(b) An applicant or certificate holder with total preneed deferred revenue of \$100,001 to \$1,000,000 must have equity in an amount not less than ten percent (10%) of the total preneed deferred revenue.

(c) An applicant or certificate holder with total preneed deferred revenue in excess of \$1,000,000 must have a minimum of \$100,000 equity.

(8)(a) If, based on the accounting method used in its Financial Statement, the certificate holder or applicant does not meet the Rule 482-3-001-.05(6), the certificate holder or applicant may voluntarily submit to the Commissioner additional evidence or enter into written agreements intended to demonstrate the certificate holder's or applicant's ability to meet the requirements of Section 27-17A-11, Code of Alabama 1975, and as a condition for receiving and/or retaining a Certificate of Authority. Such additional evidence or agreements may include any or all of the following as deemed appropriate by the Commissioner:

1. Submission of monthly financial statements.
2. Submission of quarterly financial statements.
3. Appraisal of the certificate holder's or applicant's property and/or a broker's opinion of the value of the certificate holder's or applicant's assets.

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4. A credit report on the certificate holder or applicant or its principal owners (in the case of an entity).

5. An agreement to subordinate debt, on a form approved by the Department, as to debts identified by the Department.

6. An indemnification/subrogation agreement binding the certificate holder or applicant and its principal owners (in the case of an entity).

7. Written explanation of past financial activity.

8. Submission of a twelve month projected business plan which shall include all of the following:

(i) Statement of cash flows.

(ii) Pro forma income statement with sources of revenue identified.

(iii) Marketing initiatives.

9. The certificate holder's or applicant's agreement to make deposits to a merchandise and services trust and/or cemetery endowment care trust in amounts and at times which exceed the requirements of the Act.

10. Posting of a surety bond or letter of credit acceptable to the Commissioner in addition to any surety bond or letter of credit provided to comply with the Act's security requirements.

11. Such other conditions or agreements as the Commissioner may determine are warranted under the particular circumstances.

(b) The Commissioner, in his discretion, may issue or renew a certificate of authority if the Commissioner determines from such additional information or agreement(s) that the applicant or certificate holder meets the requirements of Sections 27-17A-11, Code of Alabama 1975, in which event the certificate may be expressly conditioned on satisfactory continued compliance with any and all terms or conditions set forth in any agreement(s) entered into by the person or entity receiving the certificate.

(9) The certificate holder must notify the Department of any plans to surrender or transfer a certificate of authority. The surrender or transfer of any certificate of authority must utilize forms provided by the Department. Until the Commissioner has approved the surrender or transfer in writing, no preneed funds may be released from any trust required under the Act except as provided in the trust documents in the ordinary course of business.

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Author: Commissioner of Insurance

Statutory Authority: Code of Alabama 1975, § 27-2-17

History: New August 24, 2004, Effective September 3, 2004;

Revised: December 1, 2008; Effective January 1, 2009

482-3-001-.06 Preneed Contracts. A written preneed contract must be used to sell preneed merchandise and services for funerals and cemeteries. The preneed contract must be approved by the Commissioner prior to use. The preneed contract must contain at a minimum all of the required disclosures of the sample preneed contract provided by the Department and a preneed funeral contract must contain a 30 day refund provision. Any changes in the preneed contract must be approved by the Department prior to use. The preneed contract must be filled in completely, including all of the required signatures and dates.

Author: Commissioner of Insurance

Statutory Authority: Code of Alabama 1975, § 27-2-17

History: New August 24, 2004, Effective September 3, 2004

482-3-001-.07 Preneed Sales Agents.

(1) To sell preneed contracts, every certificate holder must have at least one preneed sales agent (PSA) registered. All employees or agents selling preneed contracts for funeral and/or cemetery services and merchandise must be registered. The PSA registration must be renewed annually.

(2) Each PSA registration requires payment of a registration fee of \$25, which is to be paid with the initial registration and annually thereafter. The fee for issuing or renewing a certificate of authority does not include payment for any PSA registrations.

Author: Commissioner of Insurance

Statutory Authority: Code of Alabama 1975, § 27-2-17

History: New August 24, 2004, Effective September 3, 2004;

Revised: December 1, 2008; Effective January 1, 2009

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482-3-001-.08 Deposit of Preneed Funds.

(1) Deposits. A detailed record of preneed funds collected must be maintained by the preneed entity.

(2) Trust.

(a) All preneed funds subject to the trust requirements of the Act must be placed into the trust within 30 days after the end of the calendar month in which the preneed contract is paid in full. The preneed entity must maintain a record of receipts for each preneed contract sold. The record must include, at a minimum, the name of the buyer, the amount of preneed funds collected and the date the preneed funds were collected. The trust agreement must have been approved by the Commissioner prior to use. A statement of Activities of Trust for Preneed Funds must be filed with the Department each year on a form specified by the Department. The form must be provided on or before April 1 of each year for the preceding calendar year. The trustee must provide to the funeral establishment or cemetery authority a valuation of the assets it holds in trust at least on a quarterly basis.

(b) There are two types of trusts that may apply: a funeral merchandise and services trust, and a cemetery merchandise and services trust. If a certificate holder subject to the trust requirements engages in the preneed sale of both funeral and cemetery merchandise and services, the certificate holder must establish two separate trusts. Funds collected for preneed funeral merchandise and services must be placed in the funeral merchandise and services trust and funds collected for preneed cemetery merchandise and services must be placed in the cemetery merchandise and services trust.

(3) Surety Bond.

(a) A surety bond may be used as an alternative to the trust requirements. The surety bond must be approved by the Department prior to use.

(b) The amount of the initial surety bond must be not less than the aggregate value of outstanding liabilities on undelivered preneed contracts of the certificate holder as of the end of its last fiscal year. For purposes of determining the amount of the surety bond, "outstanding liabilities" means the original retail amount of services and cash advances and the actual cost to the certificate holder to provide the undelivered merchandise sold on preneed contracts entered into by the certificate holder after April 30, 2002.

(c) Annually thereafter, the amount of the bond shall be increased or decreased as necessary to correlate with changes in the outstanding liabilities. On or before April 1 of each year the certificate holder must provide a report documenting the outstanding liabilities of the preneed provider as of the end of its last fiscal year. The report shall be signed by the certificate holder, if an individual, or by the chief executive officer or chief financial officer of the certificate holder, if a corporation or other business entity.

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(4) Letter of Credit. A letter of credit may be used in lieu of a surety bond. The letter of credit must be approved by the Department prior to use. The letter of credit must be “evergreen,” meaning it will not expire without an affirmative action by the issuer of the letter of credit. The amount of the letter of credit shall be determined in the same manner as indicated above for the amount of surety bonds. The same information required on surety bonds must be provided initially and annually thereafter for letters of credit.

(5) Pre-act Trusts.

(a) A preneed trust established for funds collected on preneed contracts entered into prior to May 1, 2002, may not be merged with a trust established for preneed contracts entered into on and after May 1, 2002, without the express permission of the Commissioner.

(b) To approve the merger of the trusts, the Commissioner must be satisfied that the minimum amounts required to be trusted under the law have been trusted on the contracts entered into prior to the law.

Author: Commissioner of Insurance

Statutory Authority: Code of Alabama 1975, § 27-2-17

History: New August 24, 2004, Effective September 3, 2004

482-3-001-.09 Schedule of Charges and Price List.

(1) In accordance with Section 8-30-2, Code of Alabama 1975, every cemetery authority must display a full and complete schedule of charges for burial services and merchandise provided by the cemetery authority.

(2) In accordance with Section 34-13-9, Code of Alabama 1975, every funeral home must have a published price list of services and merchandise available.

(3) The schedule of charges and price list must be dated. The preneed entity must retain a copy of all price lists covering the period since the last Department preneed examination.

Author: Commissioner of Insurance

Statutory Authority: Code of Alabama 1975, § 27-2-17

History: New August 24, 2004, Effective September 3, 2004

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482-3-001-10 Safekeeping of Records.

(1) All burial records and those contracts under the jurisdiction of the Commissioner and which have not been audited by the Commissioner must be filed and kept in a secure manner. For purposes of this rule, "secure" means any of the following:

(a) A vault or fire-proof container with a properly certified fire resistant capability of at least one hour.

(b) A computer readable media backed up by diskette, or optical disk, or tape which is stored at an off-site location.

(c) Microfilm backed up by a security roll stored at an off-site location.

(d) A duplicate copy of the records referenced in this rule is kept at an off-site location.

(2) Records that are deemed "secure" at an off-site location shall be updated quarterly.

Author: Commissioner of Insurance

Statutory Authority: Code of Alabama 1975, § 27-2-17

History: New August 24, 2004, Effective September 3, 2004

482-3-001-11 Cemetery Records.

(1) The following records for cemetery authorities shall be made available to the Commissioner for the purposes of examinations or inspections:

(a) Cemetery License and/or Certificate of Authority.

(b) Schedule of charges and price lists as required in Rule 482-3-001-.09.

(c) Advertising file.

(d) By-Laws and Rules and Regulations.

(e) Financial and accounting records, including financial statements, general ledger, accounts receivable, accounts payable and cash receipts, journals, receipt books and invoices.

(f) Preneed Contracts.

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- (g) Other contracts, including at need sales and contracts for burial rights.
- (h) Burial Records.
- (i) Lot ownership records.
- (j) Procedures for handling complaints.
- (k) Any mortgages on the property.
- (l) Record of cancellation requests and refunds given.
- (m) List of current preneed sales agents.
- (n) Detailed maps of the cemetery.
- (o) Procedure manuals.
- (p) Any other items the examiner may request.

(2) These records will be available for review at the licensed facility or an alternative site of the cemetery company if approved by the Commissioner. Certificate of Authority holders will send written notification to the Commissioner if records are available for review at an alternative site.

Author: Commissioner of Insurance

Statutory Authority: Code of Alabama 1975, § 27-2-17

History: New August 24, 2004, Effective September 3, 2004

482-3-001-.12 Endowment Care Cemeteries.

(1) All endowment care cemeteries must establish an endowment care fund which shall be placed with and held by a bank, trust company, savings and loan association, or other financial institution authorized to provide trust services under the provisions of Alabama Code or under the applicable laws of the United States or any other state, or a board of trustees, consisting of at least three members, who shall reside in Alabama, one of whom is engaged in outside cemetery management, and each of whom shall be bonded to honestly perform the duties of trustee under a formal trust agreement. The amount in the endowment care fund must comply with Section 27-17A-47. Cemeteries must make contributions as required by Section 27-17A-49. An annual report of the endowment care fund shall be made to the commissioner by each cemetery authority within 90 days of the close of each calendar year.

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(2) Existing endowment care trusts need not be terminated and can be simply merged with any such post-Act funds provided the existing trust agreement is modified or amended to comply with the provisions of the Act.

Author: Commissioner of Insurance

Statutory Authority: Code of Alabama 1975, § 27-2-17

History: New August 24, 2004, Effective September 3, 2004

482-3-001-13 Accounts Receivable Records.

(1) Accounts receivable records pertaining to each individual purchaser shall be assigned the same serial number as shown on the purchaser's contract and a log shall be maintained in numerical sequence. The name of the purchaser or beneficiary, total preneed contract amount, amounts required to be deposited in each trust upon payment in full, date and amount of each payment, outstanding balance, retail price of each item, and a schedule of payments.

(2) The information listed in paragraph (1) is the minimum information to be contained in the accounts receivable records.

Author: Commissioner of Insurance

Statutory Authority: Code of Alabama 1975, § 27-2-17

History: New August 24, 2004, Effective September 3, 2004

482-3-001-14 Records Required.

(1) A preneed entity must maintain and provide upon request by the Department detailed records for each preneed contract written. The detailed records shall include, but not be limited to, a preneed contract file that includes all supporting documentation, such as the preneed contract form, copies of insurance policies, trust account statements, and a complete history of preneed contract transactions. The preneed entity must have available this information on all preneed contracts sold since May 1, 2002.

(2) Records required to be maintained by the preneed entity shall include at least the following information for each contract:

(a) Sequentially ordered contract number.

(b) Contract type (i.e., void or cancelled).

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- (c) Date of contract.
- (d) Payments received since May 1, 2002.
- (e) Total trust liability.
- (f) Trust liability percentage.
- (g) Prior liability accrual.
- (h) Current examination liability accrual.
- (i) Prior total withdrawals from Trust.
- (j) Current withdrawals from Trust.

(3) The items identified in subparagraphs (d) and (f) of paragraph (2) may be provided on the accounts receivable records, as separate identifiable entries, in lieu of the records.

(4) For the purposes of this rule, trust liability and accruals should be detailed by trust as applicable (i.e., Merchandise, Preneed, Preconstruction, and Cemetery).

(5) Current records maintained shall include all new contracts written during the examination period and all contracts written in prior examination period with transactional activity and/or trust liability remaining to be accrued. Records should include page totals for all applicable items and a grand total.

(6) Upon renewal, the certificate holder shall provide a complete listing of all life insurance policies, the statement of activities of the trust, and a full and true report documenting the outstanding liabilities secured by the surety bond or letter of credit, as may be appropriate depending upon the funding method employed by the certificate holder.

(7) This rule is applicable to all contracts written under the Act on or after May 1, 2002.

(8) The Commissioner shall give the licensee an appropriate notice of the scheduled examination to provide sufficient time for the preparation of the records.

Author: Commissioner of Insurance

Statutory Authority: Code of Alabama 1975, § 27-2-17

History: New August 24, 2004, Effective September 3, 2004

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482-3-001-15 Severability. If any portion of this chapter or its applicability to any person or circumstance is held invalid by a court, the remainder of the chapter or the applicability of the provision to other persons or circumstances shall not be affected.

Author: Commissioner of Insurance

Statutory Authority: Code of Alabama 1975, § 27-2-17

History: New August 24, 2004, Effective September 3, 2004

482-3-001-16 Effective date. This chapter shall be effective upon its approval by the Commissioner of Insurance and upon its having been on file as a public document in the office of the Secretary of State for ten days.

Author: Commissioner of Insurance

Statutory Authority: Code of Alabama 1975, § 27-2-17

History: New August 24, 2004, Effective September 3, 2004

482-3-001-17 Response to requests for information; effect of pending administrative action.

(1) If records, information, and/or a response are requested in writing of any applicant for or holder of a preneed certificate of authority by any duly appointed employee, examiner, or agent of the Commissioner, the requested records, information, or response shall be provided within ten (10) business days of receipt of the request unless the request specifies another time not less than ten (10) business days from receipt. A failure to timely respond to a request shall be deemed a violation of this chapter unless the Commissioner or the person making the request grants an extension in writing or the applicant or certificate holder can demonstrate to the satisfaction of the Commissioner that there is reasonable justification for failure to timely respond.

(2) If the Department has notified an applicant for or holder of a preneed certificate of authority of any administrative action, that action must be addressed and/or resolved to the Commissioner's satisfaction before the Department will (i) issue a certificate of authority or branch registration, (ii) renew a certificate or branch registration, (iii) approve a proposed transfer of a certificate or branch registration, or (iv) enter an order of termination on an application for voluntary surrender of a preneed certificate. For purposes of this Rule, "administrative action" includes:

(a) A pending administrative complaint alleging violation(s) of the Act and/or violations of the Alabama Insurance Code in connection with activities engaged in under

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or pursuant to a certificate of authority or without a certificate of authority in violation of the Act.

(b) Failure to comply with requirements imposed in a prior settlement agreement, consent order, or final adjudicated order in an administrative complaint proceeding or court action.

(c) A preneed examination. If the certificate holder has been examined by the Department and the examination report adopted by the Commissioner, the certificate holder must (i) have filed a written statement, signed by or on behalf of the certificate holder, detailing the corrective action the certificate holder proposes to take to comply with the report's recommendations, and (ii) satisfactorily resolve or settle any violations of the Act identified in the report.

(d) Payment of or compliance with a payment arrangement for all examination invoices and/or amounts otherwise imposed by prior settlement agreement, consent order, or final adjudicated order in or in lieu of an administrative complaint proceeding, to include, where applicable, deposits in a merchandise and services trust and/or cemetery endowment care trust.

Author: Commissioner of Insurance

Statutory Authority: Code of Alabama 1975, § 27-2-17

History: New December 1, 2008; Effective January 1, 2009