

Title 1: Secretary of State

Part 12: Regulation and Enforcement – Preneed Funeral Service and Mdse. and Perpetual Care Cemeteries Regulation

Subpart 3: Mississippi Preneed Contracts Loss Recovery Association Rules

Part 12 Chapter 1: Association

Rule 1.1 Name. The name of the Association shall be the Preneed Loss Recovery Association.

Source: Miss. Code Ann. § 75-63-81(9) (Rev. 2009).

Rule 1.2 Purpose. The purpose of the Preneed Loss Recovery Association is to oversee the Preneed Contracts Loss Recovery Fund. The purpose of the fund is to reimburse the estates, or in the absence of an estate filing, the appropriate loss payee, who suffered financial loss as a result of the misfeasance, fraud, default, failure or insolvency of a registered Mississippi preneed provider.

Source: Miss. Code Ann. § 75-63-81(9) (Rev. 2009).

Part 12 Chapter 2: Directors

Rule 2.1 Association Directors. In accordance with the provisions of Miss. Code Ann. § 75-63-81, the Directors shall be appointed by the Secretary of State. There shall be no fewer than five Directors, one from each of the Mississippi Supreme Court districts and two from the state at large. At least three of the Directors must possess five or more years experience in the preneed funeral service and merchandise business as an owner or manager.

All Directors shall be appointed for staggered six-year terms, with the exception of the initial terms of service for the original five Directors. The Secretary of State may appoint any Director to a successive six-year term. The initial term of service for all Directors began on October 1, 2009, with the initial term of two Directors expiring on September 30, 2011, two expiring on September 30, 2013, and one expiring on September 30, 2015. In case of death, incapacity, resignation, or removal a new member shall be appointed to serve the remainder of the term.

Source: Miss. Code Ann. § 75-63-81(9) (Rev. 2009).

Rule 2.2 Compensation of Association Directors. In accordance with the controlling statute and the policies of the Department of Finance and Administration (DFA), Directors may be compensated from the Preneed Contracts Loss Recovery Fund in an amount of Fifty Dollars (\$50.00) for each designated meeting as determined by the Secretary of State as well as travel reimbursement and lodging/meal reimbursement when provided by DFA policy.

Source: Miss. Code Ann. § 75-63-81(9) (Rev. 2009).

Rule 2.3 Conflicts of Interest. Any Association Director who has a financial, personal, official or other interest in or conflict with any matter pending before the Association that may prevent that member from acting on the matter in an impartial manner will excuse him/herself and refrain from discussion and voting on said item.

Source: Miss. Code Ann. § 75-63-81(9) (Rev. 2009).

Part 12 Chapter 3: Meetings

Rule 3.1 Meetings of the Association Directors. An annual meeting of the Association shall be held in the month of January in the office of the Secretary of State unless the Secretary or Chairman, upon proper notice, shall designate some other date and/or location. Written notice of the annual meeting, or of any special or emergency meeting, including the time, place and purpose of such meeting, shall be sent to each Director not less than ten business days prior to the date of the meeting. All meetings shall be open to the public and notice of their annual recurring date shall be contained in the minutes of the first annual meeting in accordance with the Mississippi Open Meetings Law. Miss. Code Ann. § 25-41-1 et seq.

Three Directors shall constitute a quorum for the transaction of business. In the absence of a quorum, no formal action shall be taken except to adjourn the meeting to a subsequent date. The acts of a majority of Directors present at a meeting at which a quorum is present shall be the acts of the Association. Directors may participate in all Association meetings via phone conference or internet conferencing as needed including the submission of votes via email or teleconference.

At the annual meeting, the Association may elect a Chairman from among its Directors. Such Chairman will assume office upon election and remain Chairman until the next annual meeting.

Special and/or emergency meetings may be called by the Chairman, a quorum of the Directors or the Secretary of State, and will be held at times and places as may be necessary.

At each annual meeting, the Directors shall review, consider and act on any matters deemed by the Association to be necessary and proper for the administration of the Association not in conflict with any other provisions of these rules.

Source: Miss. Code Ann. § 75-63-81(9) (Rev. 2009).

Rule 3.2 Records and Reports. A written record of the proceedings of each meeting shall be made. The original record shall be retained by the Secretary of State's Office with copies furnished to each Association Director and, upon request, to any other individual or entity.

The Association, by its Directors, shall prepare and submit a financial report and a report of activities during the preceding calendar year as required by Miss. Code Ann. § 75-63-81 to the Secretary of State not later than March 1 of each year.

The Association shall maintain such financial records as are necessary to properly reflect the receipt and disbursement of all funds obtained by the Association. Such records shall also reflect the financial condition of the Association at any given time.

Source: Miss. Code Ann. § 75-63-81(9) (Rev. 2009).

Part 12 Chapter 4: Duties and Powers

Rule 4.1 Duties and Powers of the Association and Directors. The Association shall have the authority to:

- A. Undertake all actions as authorized, required or otherwise permitted by Miss. Code Ann. § 75-63-81, for the operation and administration of the Association;
- B. Recommend investments for funds not currently needed to reimburse losses;
- C. Maintain adequate reserves for the Fund;
- D. Request payments from the Fund by the Department of Finance and Administration on approved claims; purchase insurance for Association liability and to indemnify losses as considered appropriate by the Directors and not inconsistent with the purpose of the Fund; maintain adequate reserves; employ staff and professional assistance as needed, including legal counsel, accountants, consultants and other persons the Association considers necessary to assure compliance with this section and to pay the expenses of the Association for administering the Fund; and
- E. Reduce, suspend or resume collection of the fee at any time and for any period to ensure that a sufficient amount is available to meet anticipated disbursements and to maintain an adequate reserve.

The Chairman of the Association shall have the authority to:

- A. Preside at all meetings of the Association;
- B. Call regular and special meetings of the Association; and
- C. Call a meeting of the Association upon written request of three Association Directors.

Source: Miss. Code Ann. § 75-63-81(9) (Rev. 2009).

Part 12 Chapter 5: Claims Administration

Rule 5.1 Procedures for Filing Claims. Claims may be filed by:

- A. Funeral homes, cemeteries and other businesses that have provided at-need merchandise and/or services at no compensation or less than full compensation to a deceased who was a Beneficiary under a preneed contract where the seller of said contract is insolvent or is no longer in business and has not transferred its book of business to another provider for the assumption of that liability;
- B. The surviving family member or legal representative of a decedent who was a Beneficiary under a preneed contract where the seller of said contract's trust is insolvent;
- C. The Beneficiary of a preneed contract who is still living where the seller of said contract's trust is insolvent; and

- D. Any person(s) who signed an at-need contract as the responsible party and fulfilled the contract payment obligations for funeral or cemetery merchandise or services for a covered contract beneficiary as determined by the Association.

Claims must be filed by completing the appropriate Preneed Loss Recovery Association Claim Form which is available on the Mississippi Secretary of State's website at www.sos.ms.gov.

Source: Miss. Code Ann. § 75-63-81(9) (Rev. 2009).

Rule 5.2 Procedures for Processing Claims. Upon receipt of a properly completed claim form, the Secretary of State's Office will notify the Association Directors. The Secretary of State's Office and the Association Directors will then set up a meeting within a reasonable amount of time at which at least a quorum of the Association Directors are available to be present either in person or via telephone or internet conferencing. At said meeting, the Association Directors will consider the Claim (or Claims) and decide by majority vote to approve the claim for payment, reject the claim, or direct the staff of the Secretary of State's Office to collect additional information in order to dispose of the claim. When a decision has been made, the Association will notify the claimant of the decision via Certified Mail, Return Receipt Requested. If the Claimant disagrees with the decision, he or she may request a reconsideration of the decision within ten (10) days of receipt of the same. A Claimant has only one opportunity to request reconsideration; any additional information the Claimant feels should be considered should be submitted along with the reconsideration request.

The Association shall:

- A. Determine the appropriate loss payee entitled to receive compensation/reimbursement from the Fund;
- B. Determine the amount of the claim;
- C. Provide opportunity for objections to be raised by any Claimant with regard to the decision for each claim;
- D. Approve a final determination for each claim;
- E. Issue requests for payments from the Fund; and
- F. Reject claims, provided that, if the Association rejects a claim, it promptly notifies the claimant in writing setting forth the reasons for the rejection.

The Association is responsible for investigating all applications and may reject, deny, or approve claims in whole or in part. Payment may only be made to the extent that money is available in the Fund and payments may be prorated among applicants. The Association has complete discretion to determine the order, amount, and manner of payment of approved claims and may approve a book of business as a single claim.

The Association may approve a claim, in whole or in part, that includes more than one claim for the benefit or purchasers of prepaid contracts of an insolvent provider as part of a plan to arrange for another provider to assume the obligations of the provider being liquidated if the Association finds that the plan is reasonable and in the best interests of the contract beneficiaries.

No third-party beneficiary has a right in the Fund. No claimant is eligible for compensation from the Fund unless the contract purchaser paid the loss recovery fee to the Association when the preneed contract was purchased.

Reimbursement from the Fund must not exceed the total payment made by the customer for preneed funeral or cemetery services and merchandise required to be trusted by Miss Code Ann. § 75-63-59. No current or future insurance benefits may be reimbursed.

The Association shall have wide discretion to determine the appropriate loss payee. Approved loss payees may include the purchaser of the preneed contract, the decedent's estate, the substitute provider, or the individual(s) signing as responsible party for at-need funeral or cemetery services and merchandise. In some instances, joint payment loss payees may be appropriate.

All funds received by the Association shall be held in a separate account maintained by the State Treasurer to be used exclusively by the Association. Warrants from the Fund may only be issued by the Department of Finance and Administration following a request by a majority vote of Association Directors. All interest or other income earned on the fund shall be retained by the fund.

Source: Miss. Code Ann. § 75-63-81(9) (Rev. 2009).

Rule 5.3 No Reimbursement for Insured Claims. There shall be no payment from the Fund for any claim or any portion of a claim which was or is insured or bonded, regardless of whether insuring or bonding entity paid a claim or any part of a claim.

Source: Miss. Code Ann. § 75-63-81(9) (Rev. 2009).

Rule 5.4 Liability and Appeals from Claim Decisions. The Association has no liability and no action of any kind may be brought against any Director of the Association for any act or omission by them in the performance of their powers and duties, or in the administration, handling or collecting of funds for the program. The fund has no liability for preneed contracts sold or claims that accrued prior to July 1, 2009.

Appeal rights for claim decisions exist in the chancery court. Any appeal from claim decisions issued by the Association Directors must be filed within 30 days of the Association's written order denying a claim in whole or in part.

Source: Miss. Code Ann. § 75-63-81(9) (Rev. 2009).

Part 12 Chapter 6: Statute of Limitations

Rule 6.1 Statute of Limitations. The statute of limitations for all claims shall be three (3) years from the date of death of the contract beneficiary. The claim must be received and stamped "received" or "filed" by the Secretary of State's Office no later than the third anniversary of the contract beneficiary's date of death.

Source: Miss. Code Ann. § 75-63-81(9) (Rev. 2009).

Part 12 Chapter 7: Advertising

Rule 7.1 Advertising prohibited. No person may make, publish, disseminate, circulate or place before the public, or cause, directly or indirectly, to be made, published, disseminated, circulated or placed before the public, in a newspaper, magazine or other publication, or in the form of a notice, circular, pamphlet, letter, poster or over any radio station or television station, or in any other way, any advertisement, announcement or statement that uses the existence of the fund for the purpose of sales, solicitation or inducement to purchase any form of preneed contract covered under this article.

Source: Miss. Code Ann. § 75-63-81(9) (Rev. 2009).

Part 12 Chapter 8: Loss Recovery Fee and Reporting Requirements

Rule 8.1 Loss Recovery Fee. A fee not to exceed ten dollars (\$10) shall be added to the cost of every preneed contract sold after July 1, 2009, that is funded by trust. If a joint preneed contract is written covering more than one beneficiary, the fee shall be ten dollars (\$10.00) for each contract beneficiary covered under the contract.

Source: Miss. Code Ann. § 75-63-81(9) (Rev. 2009).

Rule 8.2 Reporting Requirements. Every provider that sells trust funded (in whole or in part) preneed contracts must file a completed Loss Recovery Quarterly Report Form with the Secretary of State within fifteen (15) days of the end of each quarter of the year. The quarterly reporting periods and the due dates for the submission of the Loss Recovery Report and associated fees are as follows: July 1 – September 30, due **October 15**; October 1 – December 31, due **January 15**; January 1 - March 31, due **April 15**; April 1 – June 30, due **July 15**. Preneed contracts funded in whole or in part by burial association certificates or policies or with fraternal policies or any other funding component for which there is no coverage afforded under the Mississippi Life and Health Fund Guaranty are trust funded contracts for which the fee is owed.

Source: Miss. Code Ann. § 75-63-67 (Rev. 2009).

Part 12 Chapter 9: Amendments and Conformity to Statute

Rule 9.1 Amendments. Amendments to these Rules may be adopted by a majority vote of the Association Directors, subject to the approval of the Secretary of State.

Source: Miss. Code Ann. § 75-63-81(9) (Rev. 2009).

Rule 9.2 Conformity to Statute. The Mississippi Preneed Cemetery and Funeral Registration Act, as written and as may be amended, is incorporated as part of these Rules.

Source: Miss. Code Ann. § 75-63-81(9) (Rev. 2009).