

# Preneed Manual

A guide to preneed funeral services in North Carolina

Published by the  
North Carolina Board of  
Funeral Service

(Rev. December 2009)

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DATE: December 9, 2009

TO: Preneed Licensees

I am pleased to release this revision to the Preneed Manual.

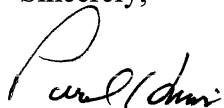
Please discard your old manuals and replace them with this edition.

Preneed continues to be a serious area of concern to many of us – this publication should help to answer your questions and lead to a better understanding of preneed.

I urge you to read this manual. It provides the essential framework for preneed and how this very important part of the funeral industry is regulated by the State of North Carolina – to protect the health, safety and welfare of our citizenry.

We at the North Carolina Board of Funeral Service hope you find this manual helpful. Consistent with our commitment to quality and continuous improvement, we welcome any comments or recommendations.

Sincerely,

A handwritten signature in black ink, appearing to read "Paul Harris". The signature is written in a cursive style with a large initial "P".

Paul Harris  
Executive Director

## **Introduction**

The purpose of this Preneed Manual is to provide a single reference source that not only provides current information relating to preneed funeral services, but also assists preneed licensees in properly preparing and maintaining preneed funeral contracts and records. Included are the policies, procedures, forms and a detailed account of the processes involved. This Preneed Manual was designed to assist licensees in properly managing their preneed records.

The North Carolina Legislature has deemed it necessary to regulate the preneed funeral industry in this State, with the purpose of protecting the health, safety and welfare of all North Carolinians. The North Carolina Board of Funeral Service (the "Board"), located in Raleigh, North Carolina, is the state-designated point of contact for all matters regarding preneed. Feel free to call on and use the services offered by the Board.

Many hours of work went into compiling this information. Although the information contained in this manual is "perishable" and may become obsolete or outdated, the Board will ensure subsequent updates are as current and in accordance with the latest statutory and regulatory requirements as possible. If there is a conflict between this Preneed Manual and a statute or rule, the statute or rule will control. You are urged to check with the Board for any updates, changes, etc., before making a decision based on the contents of this and any subsequent Preneed Manuals. Any recommendations for improving this Preneed Manual are welcome and should be submitted to the Board. Listed below are the address and telephone numbers for the Board:

### Mailing Address:

1033 Wade Avenue, Suite 108  
Raleigh, North Carolina 27605

Telephone: (919) 733-9380  
Fax: (919) 733-8271

## **Preneed Funeral Contracts - Basics**

### **A. What is a preneed funeral contract?**

The statute defines a preneed funeral contract as any contract, “which has for a purpose the furnishing or performance of funeral services, or the furnishing or delivery of personal property, merchandise, or services of any nature in connection with the final disposition of a dead human body, to be furnished or delivered at a time determinable by the death of the person whose body is to be disposed of, but does not mean the furnishing of a cemetery lot, crypt, niche, or mausoleum.”

If consumer purchases insurance that is not assigned to a funeral establishment as owner or does not name a funeral establishment as beneficiary, the consumer does not have a preneed funeral contract. This type of policy is often called by such names as “final expense policy,” “burial policy,” and other such names. It is important to understand that these policies are simply life insurance policies. Although the purchaser may want the money to go to his or her funeral expenses, the beneficiary is generally free to do with the policy proceeds as the beneficiary sees fit. The beneficiary is not generally under any legal obligation to use the policy proceeds to pay the final expenses of the purchaser.

### **B. Deposit and Filing Requirements.**

All licensees must place all preneed funeral funds into a trust account or an insurance policy within five business days. In addition, all licensees must file a copy of the preneed funeral contract, accompanied by the \$20.00 filing fee, with the Board within ten days from the date of the contract. The \$20.00 filing fee is a non-refundable fee except in cases where the consumer is denied insurance coverage.

The above time requirements are set by the statute. The Board has no authority to grant exceptions to these time limits. Be aware that the statute also makes failing to comply with these time limits a criminal offense.

All licensees should ensure that both sides of the preneed funeral contract are copied prior to filing the contract with the Board.

### **C. Licensing Requirements.**

In order to sell preneed funeral goods and services, a funeral establishment must have a preneed funeral establishment license. Having a preneed funeral establishment license imposes many responsibilities on the establishment. The preneed funeral establishment must fully comply with all the requirements set out in Article 13D and the rules enacted thereunder.

In order for an individual to sell preneed funeral goods and services, an individual must be a licensee and must have a preneed sales license. The preneed licensee must also be affiliated with a funeral establishment and each preneed sales license is only valid for one preneed establishment location. If a licensee desires to sell preneed contracts for more than one preneed funeral establishment, he or she must have a separate sales license for each establishment.

Both the preneed funeral establishment license and the individual preneed license must be renewed annually. While many preneed funeral establishments also renew the individual preneed license, it is the individual's responsibility to ensure that his or her license is properly renewed.

It is essential that establishments and individuals keep the Board fully informed as to their location and other information necessary to contact them. Changes in address must be reported immediately to the Board.

### **Contract Types and Properly Completing Forms**

#### A. Two Contract Types – Inflation-Proof and Standard.

There are two types of preneed funeral contracts – Standard and Inflation-Proof. Under a Standard Contract, the consumer is putting some funds towards the provision of funeral goods and services. Although the consumer may express a preference about which goods and services he or she desires, no goods and services are actually purchased at this time. The consumer may also express his or her desires in order to determine how much his or her funeral would cost if held today. This amount is used solely to determine how much funding would be required were the funeral held today. Again, no goods and services are actually purchased with a Standard Contract.

Under an Inflation-Proof Contract, the consumer actually selects funeral goods and services and locks in the price of these items. The consumer may also select cash advance items, but the cost of these items is not guaranteed.

Both Standard and Inflation-Proof Contracts can be made revocable or irrevocable and both can be funded with insurance or trust. In addition, both types of contracts may be funded with a trust, an insurance policy, or a combination of both. If they are funded by both, the licensee should file two contracts with the Board (i.e., a Standard Insurance Preneed Funeral Contract and a Standard Trust Preneed Funeral Contract). While two separate contracts must be filed with the Board, the licensee needs to submit only one \$20.00 filing fee. However, if filing an Inflation Proof Contract and a Standard Contract, two filing fees are required (\$40.00).

B. Revocable vs. Irrevocable.

A Revocable Contract is generally better for the consumer unless the consumer needs (or will soon need) to reduce his or her assets in order to qualify for benefits from the Department of Social Services. The Revocable Contract gives the consumer the most flexibility. An Irrevocable Contract can be expensive for the consumer to revoke as it requires a court order. An Irrevocable Contract does not offer any real advantages to the licensee. As mentioned, a consumer can still revoke the contract, but must obtain a court order to do so. The consumer can also transfer an Irrevocable Contract to another funeral establishment. Thus, having the consumer enter into an Irrevocable Contract does not guarantee that the funeral establishment will get to perform the goods and services called for in the contract.

C. How to Properly Complete the Forms.

It is very important to ensure that all items on the preneed funeral contracts are properly completed. Failure to do so will cost you time and may result in embarrassment because you have to go back to the consumer for additional information, initials or signatures.

1. Standard.

a. Standard Insurance Preneed Funeral Contract.

Please refer to the example on page 5 to ensure proper completion of a Standard Insurance Preneed Funeral Contract.

- (1) Your preneed funeral establishment number. If you have more than one preneed funeral establishment ensure you use the preneed license number of the branch where the contract was sold.
- (2) The name of your funeral home.
- (3) "Purchaser" is the person who is paying for the contract.
- (4) "Beneficiary" is the person who will receive the funeral goods and services upon his or her death. Often, the Purchaser and Beneficiary is the same person, but both items must be completed.
- (5) Insert the Beneficiary's address.
- (6) The Beneficiary's Social Security Account Number.
- (7) The amount that the funeral establishment received.
- (8) The name of the insurance company, the policy number, and the death benefit, or face value if the death benefit is not known, for each policy being

used to pay for the preneed contract should be entered.

- (9) Purchaser must initial to ensure he or she understands that if he or she does not receive confirmation that his or her contract has been received by the Board, the Purchaser must contact the Board.
- (10) Purchaser should only initial if the sale was made at the Funeral Establishment. If not, this item should be left blank and the Purchaser has three days to cancel the contract.
- (11) Purchaser must initial 11A if he or she wants the contract to be revocable or 11B if he or she wants the contract to be irrevocable. Again, unless the Purchaser is attempting to reduce his or her assets to qualify for benefits from the Department of Social Services, a revocable contract is in his or her best interest due to the cost and expense of canceling an irrevocable contract.
- (12) If the preneed contract includes cremation, the purchaser must specify the final disposition of cremated remains.
- (13) Date contract is signed is entered here.
- (14) Name of funeral home.
- (15) Complete address of Funeral Home selling contract.
- (16) Signature of funeral director or funeral service licensee. This signature binds Funeral Home to the contract.
- (17) Funeral Service License number (17A) or Funeral Director License number (17B), as appropriate.
- (18) Signature of individual selling preneed contract. This may be the same person as the person signing in block 16, but both blocks must be signed.
- (19) Preneed Sales licensee number of individual selling the preneed contract.
- (20) Purchaser must sign.
- (21) Purchaser's address or where Purchaser wants all mail regarding this contract to be sent.
- (22) Name and home office location of the insurance company, if it is a new insurance policy.
- (23) Signature of the agent accepting application from the Funeral Home.
- (24) Policy number, if available.

NOTE: THE CONTRACT FORM ON THE NEXT PAGE HAS BEEN REDUCED IN SIZE TO FIT IN THIS MANUAL. WHEN USING THIS FORM, IT MUST BE PRINTED ON 8½ X 14 INCH LEGAL SIZE PAPER.



STANDARD INSURANCE PRENEED FUNERAL CONTRACT  
Chapter 90, Article 13D, North Carolina General Statutes Governs this Contract

PRENEED FUNERAL ESTABLISHMENT NO. 1

2 ("Funeral Home") sells, and 3 ("Purchaser")  
purchases preneed funeral services, facilities and merchandise for 4 ("Beneficiary")  
whose address is 5 Street address PO Box City State Zip Code 6 Social Security no.

Purchaser acknowledges that he or she understands that: either no goods and services have been selected; or if goods and services were selected, **THE PRICE OF THESE GOODS AND SERVICES IS NOT GUARANTEED.**

If applicable, the amount the Purchaser paid to the Funeral Home \$ 7.

It is further understood that a life insurance policy or product is being purchased to fund this contract and that the benefit paid by the life insurance policy or product may, or may not, be sufficient to pay for the retail costs of the goods and services provided at the time they are provided. Any life insurance policy or product benefit which has been assigned to the Funeral Home will be applied to the at-need retail cost of the goods and services provided by Funeral Home.

If this contract is being funded by a previously purchased life insurance policy or product, please complete the following:

Name of Insurance Co.	Policy Number	Death Benefit
<u>8</u>		

*A filing fee of \$20.00 must be paid to the NC Board of Funeral Service.*

9 By writing initials, Purchaser acknowledges that if the Purchaser does not receive written notification from the NC Board of Funeral Service, within 30 days, that the Board has received a copy of this contract, the Purchaser will notify the Board at 1033 Wade Avenue, Suite 108, Raleigh NC 27605 or call 1-800-862-0636 (or local 733-9380 in Raleigh). The filing of this contract with the NC Board of Funeral Service is required by law for the Purchaser's protection.

10 By writing initials, Purchaser acknowledges that this sale was made at Funeral Home's place of business. If this was an off-premises sale, YOU, THE PURCHASER, MAY CANCEL THIS PRENEED CONTRACT AT ANY TIME PRIOR TO MIDNIGHT OF THE THIRD BUSINESS DAY AFTER THE DATE OF THIS TRANSACTION.

By writing initials, Purchaser chooses to make this contract **revocable or irrevocable**. If revocable, Purchaser has the right to revoke it. If irrevocable, Purchaser **does not** have the right to revoke it unless Purchaser obtains a court order.

Revocable: 11A Irrevocable: 11B

In accordance with NC Gen. Stat. Sec. 90-210.126(e), if this preneed contract includes a cremation, the purchaser hereby specifies the final disposition of the cremated remains: 12

The parties have signed this contract (which includes the provisions on the back) this 13 day of \_\_\_\_\_, 20\_\_\_\_.

<u>14</u> Name of accepting Funeral Home	<u>20</u> Signature of Purchaser
<u>15</u> Address of Funeral Home	<u>21</u> Address where all mail will be sent
City, State, Zip Code	City, State, Zip Code
<u>16</u> Signature of Funeral Director or FS licensee, binding Funeral Home to contract	<u>22</u> Insurance Company and location of home office
FSL NO. <u>17A</u> FD NO. <u>17B</u>	<u>23</u> Signature of agent accepting application from Funeral Home
<u>18</u> Signature of person who sold contract	<u>24</u> Policy number if available
<u>19</u> PN sales license no.	

Signed and preneed sales license number affixed in presence of Purchaser at time of sale.

#### PURCHASE OF INSURANCE

This contract is funded through the purchase of a life insurance policy or product, with premiums equal to the amount of money paid under the terms of the life insurance policy or product. The insurance policy or product is regulated by the North Carolina Department of Insurance.

Funeral Home agrees that it will not transfer, assign, cash in, encumber or otherwise divert from its intended purpose any policy or product, which funds, in whole or part, this contract.

#### USE OF INSURANCE PROCEEDS

Funeral Home will provide services, merchandise, and facilities at Funeral Home's prices at the time they are provided. If the funding of this contract is insufficient for payment in full, Beneficiary's representatives may direct that the death benefit paid by Insurance Company (Companies) be credited against costs contracted for by the representatives. If not otherwise directed by terms of this contract and the insurance policy or product, any balance after payment in full shall be paid to Beneficiary's estate.

#### REVOCAION

If this contract is revocable, you may revoke this contract at any time prior to the provision of goods and services by the Funeral Home. Designating Funeral Home to receive the proceeds of the life insurance policy or product does not restrict any right to purchase funeral merchandise or services in the open market, with the advantages of competition, at any time before Funeral Home delivers the funeral goods and services.

#### RIGHTS RESERVED

If a labor dispute, strike, government action, fire, war, epidemic, other disaster, changes in products or other causes beyond its control prevents or delays Funeral Home from providing the services, facilities or merchandise, Funeral Home may make reasonable substitution of comparable services, facilities or merchandise, and it will not be liable for inconvenience, delay, emotional upset, pain and suffering, loss or damage experienced by Purchaser or Beneficiary, their estates, families, legatees, heirs or legal representatives.

#### SUBSTITUTION OF FUNERAL HOME

If this contract is irrevocable, Purchaser, or, after his or her death, Beneficiary or his or her legal representative, may direct the substitution of another funeral home to provide equal service, merchandise and facilities at substitute funeral home's current price.

#### ENTIRE AGREEMENT

This form, together with the Standard Preened Statement of Funeral Goods and Services Selected, contains the entire agreement between Purchaser and Funeral Home and supersedes and integrates all communications and other agreements relating to this subject.

#### AMENDMENTS

Any changes to this contract must be filed as a new contract, marked "CONTRACT AMENDMENT," with the NC Board of Funeral Service. Contract amendment shall not change the irrevocable clause or directive by Purchaser that all funds along with growth be used for the purchase of funeral services, facilities or merchandise.

#### EXCLUSION OF WARRANTIES

There are no warranties of merchandise or fitness for a particular purpose extended by Funeral Home. The only warranties, express or implied, which are granted in connection with the services and merchandise sold under this contract are the express written warranties, if any, extended by the manufacturers of the merchandise sold, and no warranties are expressed or implied by Funeral Home.

#### DISCLOSURES BY FUNERAL HOME

All disclosures required by the Federal Trade Commission or other provisions of federal and North Carolina law are attached to this contract.

#### **WARNING**

**If you have received, are applying to receive, or are receiving public assistance benefits, state and federal laws may restrict the use of the life insurance policy or product that is purchased to fund this contract. You should carefully review those laws to assure compliance with those provisions.**

b. Standard Trust Preneed Funeral Contract.

Please refer to the example on page 9 to ensure proper completion of a Standard Trust Preneed Funeral Contract.

- (1) Your preneed funeral establishment number. If you have more than one preneed funeral establishment ensure you use the preneed license number of the branch where the contract was sold.
- (2) The name of your funeral home.
- (3) "Purchaser" is the person who is paying for the contract.
- (4) "Beneficiary" is the person who will receive the funeral goods and services upon his or her death. Often, the Purchaser and Beneficiary is the same person.
- (5) Insert the Beneficiary's address.
- (6) The Beneficiary's Social Security Account Number.
- (7) The Beneficiary's Phone Number.
- (8) The Beneficiary's Date of Birth.
- (9) Enter Purchaser's Social Security Account Number, if applicable. If not, leave blank.
- (10) Purchaser must initial this block if the Purchaser has made all the payments the Purchaser intends to make. The Purchaser also initials to acknowledge that he or she understands that while he or she may have selected funeral goods and merchandise, the price of those goods and services is not guaranteed.
- (11) The amount of the payment received by the Funeral Establishment.
- (12) Purchaser must initial this block if the Purchaser has only made a partial payment and intends to make future payments. The Purchaser also initials to acknowledge that he or she understands that while he or she may have selected funeral goods and merchandise, the price of those goods and services is not guaranteed.
- (13) Amount paid on the date of the contract.
- (14) The terms of future payments must be entered here. All parties need to be as specific as possible.
- (15) Purchaser must initial to ensure he or she understands that if he or she does not receive confirmation that his or her contract has been received by the Board, the Purchaser must contact the Board.

- (16) Purchaser must initial to indicate agreement as to the amount of the trust deposit that the funeral establishment will retain and not deposit in trust.
- (17) A number between zero and ten must be entered here to indicate the percent that the funeral establishment will retain and not deposit in trust.
- (18) Purchaser should only initial if the sale was made at the Funeral Establishment. If not, this item should be left blank and the Purchaser has three days to cancel the contract.
- (19) Purchaser must initial 19A if he or she wants the contract to be revocable or 19B if he or she wants the contract to be irrevocable. Again, unless the Purchaser is attempting to reduce his or her assets in order to qualify for benefits from the Department of Social Services, a revocable contract is in his or her best interest due to the cost and expense of canceling an irrevocable contract.
- (20) If the preneed contract includes cremation, the purchaser must specify the final disposition of cremated remains.
- (21) Date contract is signed is entered here.
- (22) Name of funeral home.
- (23) Complete address of Funeral Home selling contract.
- (24) Signature of funeral director or funeral service licensee.
- (25) Funeral Service License number (25A) or Funeral Director License number (25B), as appropriate.
- (26) Signature of individual selling preneed contract. This may be the same person as the person signing in block 24, but both blocks must be signed.
- (27) Preneed sales licensee number of individual selling preneed contract.
- (28) Purchaser must sign.
- (29) Purchaser's address or where Purchaser wants all mail regarding this contract to be sent.
- (30) Name and home office or branch location of the financial institution.
- (31) Signature of authorized representative of the Financial Institution.
- (32) Account number.
- (33) Trust fund tax ID number.
- (34) Date funds were received by the financial institution.
- (35) Amount of funds received by the financial institution.

NOTE: THE CONTRACT FORM ON THE NEXT PAGE HAS BEEN REDUCED IN SIZE TO FIT IN THIS MANUAL. WHEN USING THIS FORM, IT MUST BE PRINTED ON 8½ X 14 INCH LEGAL SIZE PAPER.

**STANDARD TRUST PRENEED FUNERAL CONTRACT**  
Chapter 90, Article 13D, North Carolina General Statutes Governs this Contract

PRENEED FUNERAL ESTABLISHMENT NO. 1

2 ("Funeral Home") sells, and 3 ("Purchaser")

purchases preneed funeral services, facilities and merchandise for 4 ("Beneficiary")

whose address is 5 Street Address 6 Social Security no.

7 Telephone Number 8 Date of Birth

The entry of Purchaser's Social Security no. here 9 means that this purchase is made with Purchaser's funds and that Purchaser is responsible for income tax on trust income, if any.

10 The payment of \$ 11 is made as of the date of this contract, receipt of which is acknowledged. Purchaser acknowledges that he or she understands that either no goods and services have been selected or if goods and services have been selected, **THE PRICE OF THESE GOODS AND SERVICES IS NOT GUARANTEED.**

12 Purchaser pays Funeral Home \$ 13, receipt of which is acknowledged this date. Purchaser acknowledges that he or she understands that either no goods and services have been selected or if goods and services have been selected, **THE PRICE OF THESE GOODS AND SERVICES IS NOT GUARANTEED.** Purchaser agrees to make further payments as follows: 14

*A filing fee of \$20.00 must be paid to the NC Board of Funeral Service.*

15 By writing initials, Purchaser acknowledges that if the Purchaser does not receive written notification from the NC Board of Funeral Service, within 30 days, that the Board has received a copy of this contract, the Purchaser will notify the Board at 1033 Wade Avenue, Suite 108, Raleigh NC 27605 or call 1-800-862-0636 (or local 733-9380 in Raleigh). The filing of this contract with the NC Board of Funeral Service is required by law for the Purchaser's protection.

16 By writing initials, Purchaser acknowledges that Funeral Home will retain, and not deposit in trust, 17 % (not more than 10%) of payments made by Purchaser. Purchaser and Funeral Home acknowledge that if the Purchaser (or after the death of the Purchaser, the Beneficiary, or the Beneficiary's legal representative) does not substitute another funeral establishment to furnish funeral services and merchandise, the Funeral Home shall give credit for the amount retained upon the death of the preneed funeral contract beneficiary and the performance of the preneed funeral contract.

18 By writing initials, Purchaser acknowledges that this sale was made at Funeral Home's place of business. If this was an off-premises sale, YOU, THE PURCHASER, MAY CANCEL THIS PRENEED CONTRACT AT ANY TIME PRIOR TO MIDNIGHT OF THE THIRD BUSINESS DAY AFTER THE DATE OF THIS TRANSACTION.

By writing initials, Purchaser chooses to make this contract **revocable or irrevocable**. If revocable, Purchaser has the right to revoke it. If irrevocable, Purchaser **does not** have the right to revoke it unless Purchaser obtains a court order.

Revocable: 19A Irrevocable: 19B

In accordance with NC Gen. Stat. Sec. 90-210.126(e), if this preneed contract includes a cremation, the purchaser hereby specifies the final disposition of the cremated remains: 20

The parties have signed this contract (which includes the provisions on the back) this 21 day of 21, 2021

22  
Name of accepting Funeral Home

28  
Signature of Purchaser

23  
Address of Funeral Home

29  
Address where all mail will be sent

City, State, Zip Code

City, State, Zip Code

24  
Signature of Funeral Director or FS licensee, binding Funeral Home to contract

30  
Financial Institution, which accepts Trust Fund and provisions of contract

FSL NO. 25A FD NO. 25B

31  
Signature of Authorized representative of Financial Institution

26 Signature of person who sold contract 27 PN sales license no.

32 Account number 33 Trust fund tax I.D. no.

Signed and preneed sales license number affixed in presence of Purchaser at time of sale.

34 Date funds received by Financial Institution 35 \$ Amount Received

**TRUST FUND.** Funeral Home will deposit all funds, less any permitted amount it retains, in Financial Institution in trust. Financial Institution will pay out the Trust Fund as provided by Chapter 90, Article 13D, North Carolina General Statutes.

**USE OF FUNDS.** Funeral Home will provide services, facilities and merchandise at Funeral Home's rates at the time they are provided. If the funding of this contract is insufficient for payment in full, Beneficiary's representatives may direct (or must direct if contract is irrevocable) that the trust fund and its income and any amount retained by Funeral Home be credited against costs contracted for by the representatives. If not otherwise directed by terms of this contract, any balance after payment in full shall be paid to Beneficiary's estate.

**DEFAULT.** If Purchaser does not make a payment when due, Funeral Home may declare this contract terminated, and Funeral Home will be relieved from further liability. Unless withdrawn (if this contract is revocable), Trust Fund will remain in trust, and Funeral Home will keep any amount retained by it, until Beneficiary's death. Then, the provisions concerning insufficient funds, under USE OF FUNDS, will apply.

**REVOCAION.** If this contract is revocable, in order for Purchaser to revoke it, Purchaser must deliver to Financial Institution a written demand for a refund and Financial Institution must deliver a written notice of refund to Funeral Home within five business days.

**RIGHTS RESERVED.** If a labor dispute, strike, government action, fire, war, epidemic, other disaster, changes in products or other causes beyond its control prevent or delay Funeral Home from providing the services, facilities or merchandise, Funeral Home may make reasonable substitution of comparable services, facilities or merchandise, and it will not be liable for inconvenience, delay, emotional upset, pain and suffering, loss or damage experienced by Purchaser or Beneficiary, their estates, families, legatees, heirs or legal representatives.

**RETENTION.** If Funeral Home retained and did not deposit in trust a portion of the purchase price, and if there is no substitute funeral establishment, Funeral Home will give credit for the amount retained at the death of Beneficiary and performance of this contract.

**SUBSTITUTION OF FUNERAL HOME.** If this contract is irrevocable, Purchaser, or, after Purchaser's death, Beneficiary or Beneficiary's legal representative, may direct the substitution of another funeral establishment.

**TRANSFER OF TRUST FUND TO ANOTHER FINANCIAL INSTITUTION.** Funeral Home has the right to have Trust Fund transferred to another Financial Institution.

**ENTIRE AGREEMENT.** This form, together with the Standard Preneed Statement of Funeral Goods and Services Selected, contains the entire agreement between Purchaser and Funeral Home and supersedes and integrates all communications and other agreements relating to this subject.

**AMENDMENTS.** Any changes to this contract must be filed as a new contract, marked "CONTRACT AMENDMENT", with the NC Board of Funeral Service. Contract amendment shall not change the irrevocable clause or directive by Purchaser that all funds, along with growth, be used for the purchase of funeral services, facilities or merchandise.

**EXCLUSION OF WARRANTIES.** There are no warranties of merchandise or fitness for a particular purpose extended by Funeral Home. The only warranties, express or implied, which are granted in connection with the services and merchandise sold under this contract are the express written warranties, if any, extended by the manufacturers of the merchandise sold, and no warranties are expressed or implied by Funeral Home.

**DISCLOSURE OF TRUST INFORMATION.** The Purchaser and the Funeral Home agree that the Financial Institution is authorized to disclose any and all information concerning the Trust Fund directly to the Purchaser.

**DISCLOSURES BY FUNERAL HOME.** All disclosures required by the Federal Trade Commission or other provisions of federal and North Carolina law are attached to this contract.

**RECOVERY FUND.**

**The NC Board of Funeral Service has a Recovery Fund to reimburse purchasers of preneed contracts who suffer financial loss as a result of the malfeasance, misfeasance, default, failure or insolvency of a preneed licensee.**

**WARNING**

**If this contract is irrevocable and used to qualify Beneficiary for any public assistance benefits, all monies may be required to be used for funeral services, facilities, and merchandise. You should carefully review those laws to assure compliance with those provisions.**

2. Inflation-Proof.

a. Inflation-Proof Insurance Preneed Funeral Contract.

Please refer to the example on page 12 to ensure proper completion of an Inflation-Proof Insurance Preneed Funeral Contract.

- (1) Your preneed funeral establishment number. If you have more than one preneed funeral establishment ensure you use the preneed license number of the branch where the contract was sold.
- (2) The name of your funeral home.
- (3) "Purchaser" is the person who is paying for the contract.
- (4) "Beneficiary" is the person who will receive the funeral goods and services upon his or her death. Often, the Purchaser and Beneficiary is the same person.
- (5) Insert the Beneficiary's address.
- (6) The Beneficiary's Social Security Account Number.
- (7) Enter the purchase price of the goods and services.
- (8) Enter the amount of money the funeral establishment receives from the Purchaser.
- (9) Enter NONE or enter the other terms that apply to this contract.
- (10) The name of the insurance company, the policy number, and the death benefit for each policy being used to pay for the preneed contract should be entered.
- (11) Purchaser must initial to ensure he or she understands that if he or she does not receive confirmation that his or her contract has been received by the Board, the Purchaser must contact the Board.
- (12) Purchaser should only initial if the sale was made at the Funeral Establishment. If not, this item should be left blank and the Purchaser has three days to cancel the contract.
- (13) Purchaser must initial 13A if he or she wants the contract to be revocable or 13B if he or she wants the contract to be irrevocable. Again, unless the Purchaser is attempting to reduce his or her assets in order to qualify for benefits from the Department of Social Services, a revocable contract is in his or her



- best interest due to the cost and expense of canceling an irrevocable contract.
- (14) If the preneed contract includes cremation, the purchaser must specify the final disposition of cremated remains.
  - (15) Date contract is signed is entered here.
  - (16) Name of funeral home.
  - (17) Complete address of Funeral Home selling contract.
  - (18) Signature of funeral director or funeral service licensee.
  - (19) Funeral Service License number (19A) or Funeral Director License number (19B), as appropriate.
  - (20) Signature of individual selling preneed contract.  
This may be the same person as the person signing in block 18, but both blocks must be signed.
  - (21) Preneed Sales licensee number of individual selling preneed contract.
  - (22) Purchaser must sign.
  - (23) Purchaser's address or where Purchaser wants all mail regarding this contract to be sent.
  - (24) Name and home office location of the insurance company.
  - (25) Signature of the agent accepting application from the Funeral Home.
  - (26) Policy number, if available.

NOTE: THE CONTRACT FORM ON THE NEXT PAGE HAS BEEN REDUCED IN SIZE TO FIT IN THIS MANUAL. WHEN USING THIS FORM, IT MUST BE PRINTED ON 8½ X 14 INCH LEGAL SIZE PAPER.

**INFLATION-PROOF INSURANCE PRENEED FUNERAL CONTRACT**  
Chapter 90, Article 13D, North Carolina General Statutes Governs this Contract

PRENEED FUNERAL ESTABLISHMENT NO. 1

2 ("Funeral Home") sells, and 3 ("Purchaser")  
purchases preneed funeral services, facilities and merchandise for 4 ("Beneficiary")  
whose address is 5 (Street address) 6 (PO Box) 7 (City) 8 (State) 9 (Zip Code) 10 (Social Security no.)

The purchase price is \$ 11 as of the date of this contract. Purchase price has been arrived at as itemized on the Inflation-Proof Preneed Statement of Funeral Goods and Services Selected, which must be attached.

If applicable, the amount the Purchaser paid to the Funeral Home \$ 12.

This contract is being funded by a life insurance policy or product. Funeral Home will accept the benefits of the life insurance policy or product as the full payment for the Guaranteed Funeral Goods and Services (Sections A + B on the Inflation-Proof Preneed Statement of Funeral Goods and Services Selected), even if the retail price for those items at the time of need is greater than the death benefit. Funeral Home is not entitled to receive the death benefits purchased to fund Non-Guaranteed Cash Advance Items and NC Sales and Use Tax (Sections C + D on the Inflation-Proof Preneed Statement of Funeral Goods and Services Selected) to cover the at-need retail price of guaranteed items, but must prorate any increase in the death benefit respectively.

The date from which this guarantee is effective will be determined by the type of life insurance policy or product purchased.

1. If the life insurance policy or product will pay an immediate death benefit which equals or exceeds the price of the Guaranteed Funeral Goods and Services for death from any cause, this guarantee is effective immediately.
2. If the life insurance policy or product has a limited death benefit, this guarantee will become effective at the end of the limited death benefit period; or
3. Other (specify) 13

If this contract is being funded by a previously purchased life insurance policy or product, please complete the following:

<u>14</u>		
Name of Insurance Co.	Policy Number	Death Benefit
Name of Insurance Co.	Policy Number	Death Benefit

Funeral Home will provide all items of services, merchandise and facilities listed in Sections A and B on the attached Statement of Funeral Goods and Services Selected without regard to future price increases. Funeral Home will be entitled to all death benefits from the insurance policy or product used to fund this preneed contract when Funeral Home has fully performed this contract.

**A filing fee of \$20.00 must be paid to the NC Board of Funeral Service.**

11 By writing initials, Purchaser acknowledges that if the Purchaser does not receive written notification from the NC Board of Funeral Service, within 30 days, that the Board has received a copy of this contract, the Purchaser will notify the Board at 1033 Wade Avenue, Suite 108, Raleigh NC 27605 or call 1-800-862-0636 (or local 733-9380 in Raleigh). The filing of this contract with the NC Board of Funeral Service is required by law for the Purchaser's protection.

12 By writing initials, Purchaser acknowledges that this sale was made at Funeral Home's place of business. If this was an off-premises sale, YOU, THE PURCHASER, MAY CANCEL THIS PRENEED CONTRACT AT ANY TIME PRIOR TO MIDNIGHT OF THE THIRD BUSINESS DAY AFTER THE DATE OF THIS TRANSACTION.

By writing initials, Purchaser chooses to make this contract **revocable or irrevocable**. If revocable, Purchaser has the right to revoke it. If irrevocable, Purchaser does not have the right to revoke it unless Purchaser obtains a court order.

Revocable: 13A Irrevocable: 13B

In accordance with NC Gen. Stat. Sec. 90-210.126(e), if this preneed contract includes a cremation, the purchaser hereby specifies the final disposition of the cremated remains: 14

The parties have signed this contract (which includes the provisions on the back) this 15 day of 16, 2017.

16 Name of accepting Funeral Home 17 Signature of Purchaser 22

17 Address of Funeral Home 18 Address where all mail will be sent 23

18 City, State, Zip Code 19 City, State, Zip Code 24

19A Signature of Funeral Director or FS Licensee, binding Funeral Home to contract 19B Insurance Company and location of home office 25

20 FSL NO. 21 FD NO. 26 Signature of agent receiving application from Funeral Home

20 Signature of person who sold contract 21 PN sales license no. 26 Policy number, if available

Signed and preneed sales license number affixed in presence of Purchaser at time of sale.

#### PURCHASE OF INSURANCE

This contract is funded through the purchase of a life insurance policy or product, with premiums equal to the amount of money paid under the terms of the life insurance policy or product. The insurance policy or product is regulated by the North Carolina Department of Insurance.

Funeral Home agrees that it will not transfer, assign, cash in, encumber or otherwise divert from its intended purpose any policy or product, which funds, in whole or part, this contract.

#### USE OF INSURANCE PROCEEDS

Funeral Home will be entitled to all funds from the insurance policies or products when Funeral Home has fully performed this contract. If Purchaser has failed to make any of the premium payments due and causes the policy or product to lapse, OR if insurance policy or product does not pay the full amount of death benefit because of terms and conditions found in the policy, Funeral Home is not obligated to provide items listed in contract at the contract purchase price. If the death benefit of the insurance policy or product is not sufficient to secure the guarantees set forth in this contract, Funeral Home will credit toward the at-need retail price the available death benefit. Any remaining balance will be due Funeral Home when contract is performed. If a percentage of the purchase price was paid for Non-Guaranteed Cash Advance Items and NC Sales and Use Tax listed on the Inflation-Proof Preneed Statement of Funeral Goods and Services Selected, Funeral Home shall apply up to an equal percentage of the total funds it receives to pay for Non-Guaranteed Cash Advance Items and NC Sales and Use Tax provided in performance of this contract. This percentage is determined by adding the Non-Guaranteed Cash Advance Items and the NC Sales and Use Tax (items C and D on the Inflation-Proof Preneed Statement of Funeral Goods and Services Selected) and dividing it by the cost of the Total Funeral Service (items A+B+C+D on the Inflation-Proof Preneed Statement of Funeral Goods and Services Selected). If the Insurance does not appreciate enough to cover the Non-Guaranteed Cash Advance Items and NC Sales and Use Tax, additional funds may be required to cover these expenses

#### REVOCATION

If this contract is revocable, you may revoke this contract at any time prior to the provision of goods and services by the Funeral Home. Designating Funeral Home to receive the proceeds of the life insurance policy or product does not restrict any right to purchase funeral merchandise or services in the open market, with the advantages of competition, at any time before Funeral Home delivers the funeral goods and services.

#### RIGHTS RESERVED

If a labor dispute, strike, government action, fire, war, epidemic, other disaster, changes in products or other causes beyond its control prevents or delays Funeral Home from providing the services, facilities or merchandise, Funeral Home may make reasonable substitution of comparable services, facilities or merchandise, and it will not be liable for inconvenience, delay, emotional upset, pain and suffering, loss or damage experienced by Purchaser or Beneficiary, their estates, families, legatees, heirs or legal representatives.

#### SUBSTITUTION OF FUNERAL HOME

If this contract is irrevocable, Purchaser, or, after his or her death, Beneficiary or his or her legal representative, may direct the substitution of another funeral home to provide equal service, merchandise and facilities at substitute funeral home's current price.

#### ENTIRE AGREEMENT

This form, together with the Inflation-Proof Preneed Statement of Funeral Goods and Services Selected, contains the entire agreement between Purchaser and Funeral Home and supersedes and integrates all communications and other agreements relating to this subject.

#### AMENDMENTS

Any changes to this contract must be filed as a new contract, marked "CONTRACT AMENDMENT," with the NC Board of Funeral Service and shall not change the irrevocable clause or directive by Purchaser that all funds along with growth be used for the purchase of funeral services, facilities or merchandise.

#### EXCLUSION OF WARRANTIES

There are no warranties of merchandise or fitness for a particular purpose extended by Funeral Home. The only warranties, express or implied, which are granted in connection with the services and merchandise sold under this contract are the express written warranties, if any, extended by the manufacturers of the merchandise sold, and no warranties are expressed or implied by Funeral Home.

#### DISCLOSURES BY FUNERAL HOME

All disclosures required by the Federal Trade Commission or other provisions of federal and North Carolina law are attached to this contract.

#### **WARNING**

**If you have received, are applying to receive, or are receiving public assistance benefits, state and federal laws may restrict the use of the life insurance policy or product that is purchased to fund this contract. You should carefully review those laws to assure compliance with those provisions.**

b. Inflation-Proof Trust Preneed Funeral Contract.

Please refer to the example on page 15 to ensure proper completion of an Inflation-Proof Trust Preneed Funeral Contract.

- (1) Your preneed funeral establishment number. If you have more than one preneed funeral establishment ensure you use the preneed license number of the branch where the contract was sold.
- (2) The name of your funeral home.
- (3) "Purchaser" is the person who is paying for the contract.
- (4) "Beneficiary" is the person who will receive the funeral goods and services upon his or her death. Often, the Purchaser and Beneficiary is the same person.
- (5) Insert the Beneficiary's address.
- (6) The Beneficiary's Social Security Account Number.
- (7) The Beneficiary's Phone Number.
- (8) The Beneficiary's Date of Birth.
- (9) Enter Purchaser's Social Security Account Number, if applicable. If not, leave blank.
- (10) Purchase price of the goods and services.
- (11) Purchaser must initial this block if the Purchaser has made all the payments the Purchaser intends to make.
- (12) Purchaser must initial this block if the Purchaser has only made a partial payment and intends to make future payments.
- (13) Amount paid on the date of the contract.
- (14) The terms of future payments must be entered here. All parties need to be as specific as possible.
- (15) Purchaser must initial to ensure he or she understands that if he or she does not receive confirmation that his or her contract has been received by the Board, the Purchaser must contact the Board.
- (16) Purchaser must initial to indicate agreement as to the amount of the trust deposit that the funeral establishment will retain and not deposit in trust.
- (17) A number between zero and ten must be entered here to indicate the percent that the funeral establishment will retain and not deposit in trust.
- (18) Purchaser should only initial if the sale was made at the Funeral Establishment. If not, this item should

- be left blank and the Purchaser has three days to cancel the contract.
- (19) Purchaser must initial 19A if he or she wants the contract to be revocable or 19B if he or she wants the contract to be irrevocable. Again, unless the Purchaser is attempting to reduce his or her assets in order to qualify for benefits from the Department of Social Services, a revocable contract is in his or her interest due to the cost and expense of canceling an irrevocable contract.
  - (20) If the preneed contract includes cremation, the purchaser must specify the final disposition of cremated remains.
  - (21) Date the contract is signed is entered here.
  - (22) Name of funeral home.
  - (23) Complete address of Funeral Home selling contract.
  - (24) Signature of funeral director or funeral service licensee.
  - (25) Funeral Service License number (25A) or Funeral Director License number (25B), as appropriate.
  - (26) Signature of individual selling preneed contract. This may be the same person as the person signing in block 24, but both blocks must be signed.
  - (27) Preneed sales license number of individual selling preneed contract.
  - (28) Purchaser must sign.
  - (29) Purchaser's address or where Purchaser wants all mail regarding this contract to be sent.
  - (30) Name and home office or branch location of the financial institution.
  - (31) Signature of authorized representative of the Financial Institution.
  - (32) Account number.
  - (33) Trust fund tax ID number.
  - (34) Date funds were received by the financial institution.
  - (35) Amount of funds received by the financial institution.

NOTE: THE CONTRACT FORM ON THE NEXT PAGE HAS BEEN REDUCED IN SIZE TO FIT IN THIS MANUAL. WHEN USING THIS FORM, IT MUST BE PRINTED ON 8½ X 14 INCH LEGAL SIZE PAPER.

**INFLATION-PROOF TRUST PRENEED FUNERAL CONTRACT**  
Chapter 90, Article 13D, North Carolina General Statutes Governs this Contract

PRENEED FUNERAL ESTABLISHMENT NO. 7

2 ("Funeral Home") sells, and 3 ("Purchaser") purchases preneed funeral services, facilities and merchandise for 4 ("Beneficiary"), whose address is \_\_\_\_\_  
Street address 5 PO Box \_\_\_\_\_ City \_\_\_\_\_ State \_\_\_\_\_ Zip Code \_\_\_\_\_  
Telephone Number 7 \_\_\_\_\_ Social Security no. 6  
Date of Birth 8

The entry of Purchaser's Social Security no. here (9) means that this purchase is made with Purchaser's funds and that Purchaser is responsible for income tax on trust income, if any.

The purchase price is \$ 10 as of the date of this contract. Purchase price has been arrived at as itemized on the Inflation-Proof Preneed Statement of Funeral Goods and Services Selected, which must be attached.

- 11 Purchaser pays Funeral Home the total purchase price in cash, receipt of which is acknowledged this date.
- 12 Purchaser pays Funeral Home \$ 13, receipt of which is acknowledged this date, and will make further installments as follows: 14 (Balance, if any, becomes due when contract is performed.)

For the purchase price, Funeral Home will provide all services, facilities, and merchandise listed in Sections A and B on the attached Inflation-Proof Preneed Statement of Funeral Goods and Services Selected without regard to future price increases. Funeral Home will be entitled to any unpaid portion of the Purchase Price and to all funds on deposit, including income and any amount retained and not deposited in trust, when Funeral Home has fully performed this contract.

A filing fee of \$20.00 must be paid to the NC Board of Funeral Service.

15 By writing initials, Purchaser acknowledges that if the Purchaser does not receive written notification from the NC Board of Funeral Service, within 30 days, that the Board has received a copy of this contract, the Purchaser will notify the Board at 1033 Wade Avenue, Suite 108, Raleigh NC 27605 or call 1-800-862-0636 (or local 733-9380 in Raleigh). The filing of this contract with the NC Board of Funeral Service is required by law for the Purchaser's protection.

16 By writing initials, Purchaser acknowledges that Funeral Home will retain, and not deposit in trust, 17 % (not more than 10%) of payments made by Purchaser. Purchaser and Funeral Home acknowledge that if the Purchaser (or after death of the Purchaser, the Beneficiary, or the Beneficiary's legal representative) does not substitute another funeral establishment to furnish funeral services and merchandise, the Funeral Home shall give credit for the amount retained upon the death of the preneed funeral contract beneficiary and the performance of the preneed funeral contract.

18 By writing initials, Purchaser acknowledges that this sale was made at Funeral Home's place of business. If this was an off-premises sale, YOU, THE PURCHASER, MAY CANCEL THIS PRENEED CONTRACT AT ANY TIME PRIOR TO MIDNIGHT OF THE THIRD BUSINESS DAY AFTER THE DATE OF THIS TRANSACTION.

By writing initials, Purchaser chooses to make this contract **revocable** or **irrevocable**. If revocable, Purchaser has the right to revoke it. If irrevocable, Purchaser **does not** have the right to revoke it unless Purchaser obtains a court order.

Revocable: 19A Irrevocable: 19B

In accordance with NC Gen. Stat. Sec. 90-210.126(e), if this preneed contract includes a cremation, the purchaser hereby specifies the final disposition of the cremated remains: 20

The parties have signed this contract (which includes the provisions on the back) this 21 day of \_\_\_\_\_, 20\_\_\_\_\_.

22  
Name of accepting Funeral Home

28  
Signature of Purchaser

23  
Address of Funeral Home

29  
Address where all mail will be sent

City, State, Zip Code

City, State, Zip Code

24  
Signature of Funeral Director or FS licensee, binding Funeral Home to contract

30  
Financial Institution which accepts Trust Fund and provisions of contract

FSL NO. 25A FD NO. 25B

31  
Signature of Authorized representative of Financial Institution

26 Signature of person who sold contract 27 PN sales license no.

32 Account number 33 Trust fund I.D. no.

Signed and preneed sales license number affixed in presence of Purchaser at time of sale.

34 Date funds received by Financial Institution 35 \$ Amount Received

**TRUST FUND.** Funeral Home will deposit the purchase price, less any permitted amount it retains, in Financial Institution in trust. Financial Institution will pay out Trust Fund as provided by Chapter 90, Article 13D, North Carolina General Statutes.

**USE OF PURCHASE PRICE.** Funeral Home shall be entitled to all funds on deposit, along with income and any unpaid balance of the purchase price when Funeral Home has fully performed this contract. If a percentage of the purchase price was paid for Non-Guaranteed Cash Advance Items and NC Sales and Use Tax listed on the Inflation-Proof Preneed Statement of Funeral Goods and Services Selected, Funeral Home shall apply up to an equal percentage of the total funds it receives to pay for Non-Guaranteed Cash Advance Items and NC Sales and Use Tax provided in performance of this contract. This percentage is determined by adding the Non-Guaranteed Cash Advance Items and the NC Sales and Use Tax (items C and D on the Inflation-Proof Preneed Statement of Funeral Goods and Services Selected) and dividing it by the cost of the Total Funeral Service (items A+B+C+D on the Inflation-Proof Preneed Statement of Funeral Goods and Services Selected). If the Trust Fund does not appreciate enough to cover the Non-Guaranteed Cash Advance Items and NC Sales and Use Tax, additional funds may be required to cover these expenses.

**DEFAULT.** If Purchaser does not make a payment when due, Funeral Home may declare this contract terminated, and Funeral Home will be relieved from further liability. Unless withdrawn (if this contract is revocable), Trust Fund will remain in trust, and Funeral Home will keep any amount retained by it, until Beneficiary's death. Then, Funeral Home is not obligated to provide items listed in this contract at the contract purchase price. In such cases of insufficient funds, Funeral Home will credit toward the at-need retail price the available funds. Any remaining balance will be due Funeral Home when the contract is performed.

**REVOCATION.** If this contract is revocable, in order for Purchaser to revoke it Purchaser must deliver to Financial Institution a written demand for a refund and Financial Institution must deliver a written notice of refund to Funeral Home within five business days.

**RIGHTS RESERVED.** If a labor dispute, strike, government action, fire, war, epidemic, other disaster, changes in products or other causes beyond its control prevent or delay Funeral Home from providing the services, facilities or merchandise, Funeral Home may make reasonable substitution of comparable services, facilities or merchandise, and it will not be liable for inconvenience, delay, emotional upset, pain and suffering, loss or damage experienced by Purchaser or Beneficiary, their estates, families, legatees, heirs or legal representatives.

**RETENTION.** If Funeral Home retained and did not deposit in trust a portion of the purchase price, and if there is no substitute funeral home, Funeral Home will give credit for the amount retained at the death of Beneficiary and performance of this contract.

**SUBSTITUTION OF FUNERAL HOME.** If this contract is irrevocable, Purchaser, or, after Purchaser's death, Beneficiary or Beneficiary's legal representative, may direct the substitution of a funeral establishment to provide equal service, facilities and merchandise at substitute funeral establishment's current price.

**TRANSFER OF TRUST FUND TO ANOTHER FINANCIAL INSTITUTION.** Funeral Home has the right to have Trust Fund transferred to another Financial Institution. If this contract is revocable, Funeral Home must notify Purchaser before the transfer. Form PN-4 must be used for this purpose.

**ENTIRE AGREEMENT; AMENDMENTS.** This form, together with the Inflation-Proof Preneed Statement of Funeral Goods and Services Selected, which must be attached to this contract, contains the entire agreement between Purchaser and Funeral Home and supersedes and integrates all communications and other agreements relating to this subject. Any changes to this contract must be filed as a new contract, marked "CONTRACT AMENDMENT," with the NC Board of Funeral Service. Contract amendment shall not change the irrevocable clause or directive by Purchaser that all funds, along with growth, be used for the purchase of funeral services, facilities or merchandise.

**EXCLUSION OF WARRANTIES.** There are no warranties of merchandise or fitness for a particular purpose extended by Funeral Home. The only warranties, express or implied, which are granted in connection with the services and merchandise sold under this contract are the express written warranties, if any, extended by the manufacturers of the merchandise sold, and no warranties are expressed or implied by Funeral Home.

**DISCLOSURE OF TRUST INFORMATION.** The Purchaser and the Funeral Home agree that the Financial Institution is authorized to disclose any and all information concerning the Trust Fund directly to the Purchaser.

**DISCLOSURES BY FUNERAL HOME.** All disclosures required by the Federal Trade Commission or other provisions of federal and North Carolina law are attached to this contract.

#### **RECOVERY FUND.**

The NC Board of Funeral Service has a Recovery Fund to reimburse purchasers of preneed contracts who suffer financial loss as a result of the malfeasance, misfeasance, default, failure or insolvency of a preneed licensee.

#### **WARNING**

**If this contract is irrevocable and used to qualify Beneficiary for any public assistance benefits, all monies may be required to be used for funeral services, facilities, and merchandise. You should carefully review those laws to assure compliance with those provisions.**

### **Filing of Completed Forms**

One copy of the completed preneed funeral contract must be filed with the Board within ten days. Please ensure that you always copy both sides of the preneed funeral contract and that it is legible prior to filing it with the Board, giving it to the consumer, or making a copy to maintain in your records. Also ensure that the financial institution information or insurance information is completed. A fee of \$20.00 must be submitted with the contract. One copy of the contract should be given to the consumer. A copy should also be sent to the insurance company or financial institution. A copy must also be maintained in the preneed licensee files. The preneed licensee should keep his or her copy on file for a minimum of ten years following (1) the substitution of a different funeral establishment to perform the preneed funeral contract, (2) the revocation of the preneed funeral contract, or (3) the death of the contract beneficiary, whichever occurs first.

If the Board contacts you concerning a preneed funeral contract you have filed with the Board, please comply with the Board's request for additional information promptly. The Board only contacts licensees concerning preneed funeral contracts when there is a problem with the contract and the Board is unable to file the contract. Your prompt attention to this problem is necessary to get the contract properly filed.

### **Statement of Preneed Funeral Goods and Services Selected**

Every preneed funeral contract must have a completed Preneed Statement of Funeral Goods and Services Selected. Please ensure that the Preneed Statement of Funeral Goods and Services Selected is the same as the Preneed Funeral Contract. For example, if the contract is a Standard Preneed Funeral Contract, you should file a Standard Preneed Statement of Funeral Goods and Services Selected.

If no goods and services were selected, the Preneed Statement of Funeral Goods and Services Selected should clearly be marked "No Goods or Services Selected." Some have questioned why this is necessary. The answer is because it clarifies matters. The Board often receives complaints that the Purchaser selected this or that and with no Preneed Statement of Goods and Services Selected, the Board is unable to simply tell the consumer that the Statement of Goods and Services indicates that nothing was selected. Unfortunately, this can often lead to the filing of a consumer complaint. The Board has determined that the best way to address this issue is to require a Preneed Statement of Funeral Goods and Services Selected in all cases.

The Board frequently receives questions concerning the sale of packages (i.e., bundled funeral goods and services). When selling a package, the licensee may annotate "Package A" and its price on the Preneed Statement of Funeral Goods and Services Selected so long as the licensee clearly indicates on the form what is included in "Package A" or attaches a description of what "Package A" contains to the Preneed Statement of Goods and Services Selected. Also, the licensee must still annotate on the



Preneed Statement of Funeral Goods and Services Selected the items that he or she will provide in order to comply with FTC requirements.

Beneficiaries on the Preneed Statement of Funeral Goods and Services Selected should be the same as the Beneficiaries on the preneed funeral contract. The Purchaser must sign the Preneed Statement of Goods and Services Selected even if no goods or services are selected.

### **Certificate of Performance**

Upon providing funeral goods and services pursuant to a preneed funeral contract, the preneed funeral establishment must file a Certificate of Performance with the Board. Ensure that all items on the Certificate of Performance are completed prior to filing it with the Board.

Always complete a Certificate of Performance for a trust preneed showing that the trust account has been closed. If a preneed funeral contract is funded with more than one insurance policy, you do not have to complete a Certificate of Performance for each policy nor do you have to wait until the last policy pays before filing. If you file the Certificate of Performance before you have received payment from all the insurance policies, simply mark that more insurance is pending, but do not send another certificate when the other insurance is paid.

Licensees should also notify the Board whenever a preneed funeral contract is cancelled or the insurance policy has lapsed and there is no balance in the policy.

NOTE: THE STATEMENTS OF FUNERAL GOODS AND SERVICES CONTRACT FORMS HAVE BEEN REDUCED IN SIZE TO FIT IN THIS MANUAL. WHEN USING THESE FORMS, THEY MUST BE PRINTED ON 8½ X 14 INCH LEGAL SIZE PAPER.

**INFLATION-PROOF PRENEED STATEMENT OF FUNERAL GOODS AND SERVICES SELECTED**

The Federal Trade Commission requires this disclosure. Also, this statement of disclosure is provided pursuant to the requirements of North Carolina G.S. 90-210.25(e). This funeral home is licensed by the North Carolina Board of Funeral Service whose mailing address is 1033 Wade Avenue, Suite 108, Raleigh, NC 27605, 1-800-862-0636 (or local 733-9380 in Raleigh).

While the costs of goods and services are not guaranteed with an Inflation Proof Preneed Funeral Contract, the Funeral Establishment agrees to provide all items, except the Non-Guaranteed Cash Advance Items and NC Sales and Use Tax, without receipt of additional sums from the Purchaser and without regard to whether there are sufficient funds available in the trust or insurance policy when the items are provided.

Funeral Home \_\_\_\_\_ Preneed Establishment License Number \_\_\_\_\_

Name of Beneficiary \_\_\_\_\_ Date \_\_\_\_\_

Charges are made only for those items that you selected or that are required. If we are required by law or by a cemetery or crematory to use any items, we will explain the reasons in writing below. If you selected a funeral that may require embalming, such as a funeral with viewing, you may have to pay for embalming. You do not have to pay for embalming you did not approve if you selected arrangements such as direct cremation or immediate burial. If we charged for embalming, we will explain below.

**A. CHARGE FOR PROFESSIONAL SERVICES, FACILITIES AND EQUIPMENT**

- Basic Services of Funeral Director and Staff and Overhead \$ \_\_\_\_\_
- Embalming \$ \_\_\_\_\_
- Other Preparation of the Body \$ \_\_\_\_\_
- Use of Facilities and/or Staff for Visitation/Viewing \$ \_\_\_\_\_
- Use of Facilities and/or Staff for Funeral Ceremony \$ \_\_\_\_\_
- Use of Facilities and/or Staff for Memorial Service \$ \_\_\_\_\_
- Use of Equipment and/or Staff for Graveside Service \$ \_\_\_\_\_
- Transfer of Remains to Funeral Home \_\_\_\_\_ miles radius \$ \_\_\_\_\_
- Hearse \$ \_\_\_\_\_
- Limousine or other Family Vehicle \$ \_\_\_\_\_
- Other Autos \$ \_\_\_\_\_
- Forwarding of Remains to another Funeral Home \$ \_\_\_\_\_
- Receiving Remains from another Funeral home \$ \_\_\_\_\_
- Direct Cremation \$ \_\_\_\_\_
- Immediate Burial \$ \_\_\_\_\_
- Additional Services, Facilities, and Equipment (Specify) \_\_\_\_\_ \$ \_\_\_\_\_
- \_\_\_\_\_ \$ \_\_\_\_\_
- \_\_\_\_\_ \$ \_\_\_\_\_
- \_\_\_\_\_ \$ \_\_\_\_\_
- Total Additional Services, Facilities, and Equipment \$ \_\_\_\_\_

**TOTAL SERVICES, FACILITIES AND EQUIPMENT** \$ \_\_\_\_\_

**B. CHARGES FOR MERCHANDISE**

- Casket (Specify manufacturer, model, material, color, interior fabric and color) \$ \_\_\_\_\_
- \_\_\_\_\_
- Outer Burial Container (Specify manufacturer, model, and material) \$ \_\_\_\_\_
- \_\_\_\_\_
- Additional Merchandise (Specify): \_\_\_\_\_ \$ \_\_\_\_\_
- \_\_\_\_\_ \$ \_\_\_\_\_
- \_\_\_\_\_ \$ \_\_\_\_\_
- \_\_\_\_\_ \$ \_\_\_\_\_
- \_\_\_\_\_ \$ \_\_\_\_\_
- TOTAL MERCHANDISE** \$ \_\_\_\_\_

**C. NON-GUARANTEED CASH ADVANCE ITEMS**

We charge you for our services in obtaining those items marked with an "X"

- Obituary notices \$ \_\_\_\_\_  \_\_\_\_\_ \$ \_\_\_\_\_
- Cemetery charges \$ \_\_\_\_\_  \_\_\_\_\_ \$ \_\_\_\_\_
- Certified copies of death certificate \$ \_\_\_\_\_  \_\_\_\_\_ \$ \_\_\_\_\_
- Flowers \$ \_\_\_\_\_  \_\_\_\_\_ \$ \_\_\_\_\_
- Crematory charges \$ \_\_\_\_\_  \_\_\_\_\_ \$ \_\_\_\_\_

**TOTAL NON-GUARANTEED CASH ADVANCE ITEMS** \$ \_\_\_\_\_

**D. NC SALES and USE TAX** \$ \_\_\_\_\_

**TOTAL CASH ADVANCE ITEMS AND NC SALES and USE TAX** \$ \_\_\_\_\_

**E. OTHER (Specify)** \_\_\_\_\_ \$ \_\_\_\_\_

**TOTAL FUNERAL SERVICE (A+B+C+D+E)** \$ \_\_\_\_\_

*Disclosures: NC law does not require the purchase of any funeral goods or services (except a cremation container is required for cremations). If any other legal, cemetery, or crematory requirement has required the purchase of any of the items listed above, we will explain the requirement below:*

Reason for embalming \_\_\_\_\_

By writing initials, Purchaser acknowledges that a current casket and outer burial container price list was shown prior to discussing prices. A current General Price List was given to the purchaser for retention.

Executed at \_\_\_\_\_, NC Date \_\_\_\_\_

Signature of Purchaser \_\_\_\_\_

Signature of preneed licensee \_\_\_\_\_ License Number \_\_\_\_\_

**STANDARD PRENEED STATEMENT OF FUNERAL GOODS AND SERVICES SELECTED**

The Federal Trade Commission requires this disclosure. Also, this statement of disclosure is provided pursuant to the requirements of North Carolina G.S. 90-210.25(e). This funeral home is licensed by the North Carolina Board of Funeral Service whose mailing address is 1033 Wade Avenue, Suite 108, Raleigh, NC 27605, 1-800-862-0636 (or local 733-9380 in Raleigh).

With a Standard Preneed Funeral Contract the costs of these goods and services are not guaranteed. They will most likely increase with inflation. Your selection of goods and services assists you in determining how much your funeral would cost if it were held today.

Funeral Home \_\_\_\_\_ Preneed Establishment License Number \_\_\_\_\_

Name of Beneficiary \_\_\_\_\_ Date \_\_\_\_\_

Charges are made only for those items that you selected or that are required. If we are required by law or by a cemetery or crematory to use any items, we will explain the reasons in writing below. If you selected a funeral that may require embalming, such as a funeral with viewing, you may have to pay for embalming. You do not have to pay for embalming you did not approve if you selected arrangements such as direct cremation or immediate burial. If we charged for embalming, we will explain below.

**A. CHARGE FOR PROFESSIONAL SERVICES, FACILITIES AND EQUIPMENT**

Basic Services of Funeral Director and Staff and Overhead	\$ _____
Embalming	\$ _____
Other Preparation of the Body	\$ _____
Use of Facilities and/or Staff for Visitation/Viewing	\$ _____
Use of Facilities and/or Staff for Funeral Ceremony	\$ _____
Use of Facilities and/or Staff for Memorial Service	\$ _____
Use of Equipment and/or Staff for Graveside Service	\$ _____
Transfer of Remains to Funeral Home _____ miles radius	\$ _____
Hearse	\$ _____
Limousine or other Family Vehicle	\$ _____
Other Autos	\$ _____
Forwarding of Remains to another Funeral Home	\$ _____
Receiving Remains from another Funeral home	\$ _____
Direct Cremation	\$ _____
Immediate Burial	\$ _____
Additional Services, Facilities, and Equipment (Specify) _____	\$ _____
_____	\$ _____
_____	\$ _____
_____	\$ _____
<b>Total Additional Services, Facilities, and Equipment</b>	<b>\$ _____</b>

**TOTAL SERVICES, FACILITIES AND EQUIPMENT** \$ \_\_\_\_\_

**B. CHARGES FOR MERCHANDISE**

Casket (Specify manufacturer, model, material, color, interior fabric and color)	\$ _____
_____	
Outer Burial Container (Specify manufacturer, model, and material)	\$ _____
_____	
Additional Merchandise (Specify):	\$ _____
_____	\$ _____
_____	\$ _____
_____	\$ _____
_____	\$ _____
<b>TOTAL MERCHANDISE</b>	<b>\$ _____</b>

<b>C. CASH ADVANCE ITEMS</b>			
We charge you for our services in obtaining those items marked with an "X"			
<input type="checkbox"/> Obituary notices	\$ _____	<input type="checkbox"/> _____	\$ _____
<input type="checkbox"/> Cemetery charges	\$ _____	<input type="checkbox"/> _____	\$ _____
<input type="checkbox"/> Certified copies of death certificate	\$ _____	<input type="checkbox"/> _____	\$ _____
<input type="checkbox"/> Flowers	\$ _____	<input type="checkbox"/> _____	\$ _____
<input type="checkbox"/> Crematory charges	\$ _____	<input type="checkbox"/> _____	\$ _____
<b>TOTAL CASH ADVANCE ITEMS</b>			<b>\$ _____</b>
<b>D. NC SALES and USE TAX</b>			
			\$ _____
<b>TOTAL CASH ADVANCE ITEMS AND NC SALES and USE TAX</b>			<b>\$ _____</b>

**E. OTHER (Specify)** \_\_\_\_\_ \$ \_\_\_\_\_

**TOTAL FUNERAL SERVICE (A+B+C+D+E)** \$ \_\_\_\_\_

*Disclosures: North Carolina law does not require the purchase of any funeral goods or services (except a cremation container is required for cremations). If any other legal, cemetery, or crematory requirement has required the purchase of any of the items listed above, we will explain the requirement below:*

*Reason for embalming* \_\_\_\_\_

By writing initials, Purchaser acknowledges that a current casket and outer burial container price list was shown prior to discussing prices. A current General Price List was given to the purchaser for retention.

Executed at \_\_\_\_\_, NC Date \_\_\_\_\_

Signature of Purchaser \_\_\_\_\_

Signature of preneed licensee \_\_\_\_\_ License Number \_\_\_\_\_

**CERTIFICATE OF PERFORMANCE OF PRENEED FUNERAL CONTRACT**

This form must be completed by each funeral home performing services. It will be presented to the financial institution for payment. If the contracting funeral home did not perform any services, the form may be presented for payment either by the contracting funeral home or the performing funeral home. Payment will be made to the contracting funeral home (or according to the terms of the insurance policy), and that funeral home will immediately pay the money received to the performer; however, if a preneed funeral contract is revoked or transferred after the death of the beneficiary, the contracting funeral home may charge for any services or merchandise it provided before revocation or transfer. Each trust account must be closed within 30 days from the date of death. **A copy of this form must be mailed to NC Board of Funeral Service, 1033 Wade Avenue, Suite 108, Raleigh, NC 27605 within ten days following receipt of payment from the financial institution or insurance company.**

Performing funeral home \_\_\_\_\_

Address \_\_\_\_\_

Preneed Funeral Establishment License No. \_\_\_\_\_

Contracting funeral home (if different from above) \_\_\_\_\_

Address \_\_\_\_\_

Preneed Funeral Establishment License No. \_\_\_\_\_

Name of deceased \_\_\_\_\_

Date of death \_\_\_\_\_ County where death certificate filed \_\_\_\_\_

Date of Pre-need Contract \_\_\_\_\_ Social Security Number of deceased \_\_\_\_\_

Invoice amount \$ \_\_\_\_\_ (Total cost of funeral)

The undersigned funeral home, through its duly authorized representative, certifies that this request for payment complies with Article 13D, Chapter 90, General Statutes of NC, in that (check applicable provision):

It has fully performed all provisions of the preneed funeral contract executed for the deceased named above.

The contract was revoked or transferred after the death of the deceased beneficiary, but the contracting funeral home provided services and/or merchandise before the revocation or transfer.

Date \_\_\_\_\_  
\_\_\_\_\_  
Funeral Home

By: \_\_\_\_\_  
\_\_\_\_\_  
Authorized Representative

Financial institution where trust held \_\_\_\_\_

Address \_\_\_\_\_

Preneed trust account or certificate no. \_\_\_\_\_

Amount paid \$ \_\_\_\_\_ Paid to \_\_\_\_\_

Date paid \_\_\_\_\_

Insurance company insuring deceased \_\_\_\_\_

Address \_\_\_\_\_

Policy no. \_\_\_\_\_ Amount paid \$ \_\_\_\_\_

Paid to \_\_\_\_\_ Date paid \_\_\_\_\_

FINANCIAL INSTITUTION – copy  
 BOARD OF FUNERAL SERVICE – copy

PERFORMING FUNERAL HOME – copy  
 CONTRACTING FUNERAL HOME – copy

## **Records Required to be Maintained in the Preneed Funeral Establishment**

Each preneed establishment must maintain the following preneed files and records:

1. General File containing the following:
  - a. A copy of each of its preneed license applications, including applications for renewals;
  - b. Copies of all preneed examination reports; and
  - c. Copies of all annual reports to the Board.
2. Two sets of files containing all preneed funeral contracts purchased.
  - a. One set of files containing all currently outstanding contracts. Each of these files shall include the following:
    - (i) A copy of each preneed funeral contract filed alphabetically or numerically, to include a copy of the Preneed Statement of Goods and Services Selected;
    - (ii) Copy of all Purchaser's check(s) to the Funeral Home/Trustee, Bank or Insurance Company, to include copies of any checks for subsequent contributions.
    - (iii) Dated bank deposit slip(s) showing when the funds were put into trust; or if the contract is funded by insurance, a copy of the dated application showing coverage criteria and copy of the dated receipt given to the Purchaser. Files shall contain the same for any subsequent contributions to the preneed funeral contract.
    - (iv) Copy of \$20.00 (filing fee) check mailed to the Board.
  - b. One set of files containing matured and/or cancelled contracts. Each of these files shall contain all the items required to be maintained in an active file (paragraph 2a above) plus the following:
    - (i) Copy of the death certificate. (Note: There is no requirement that this copy of the death certificate be a certified original. A copy of the original will suffice.)

(ii) Copies of the Statement of Funeral Goods and Services Selected prepared at the time of need. The final funeral bill showing the total amount of the funeral;

(iii) A copy of any and all completed claim forms, if funded by insurance;

(iv) A copy of the Certificate of Performance, properly completed, showing all required amounts, signatures, financial transactions, withdrawals and date; and

(v) Copies of all bank checks and/or insurance checks to the Trustee. If any excess funds are in a standard contract (or an inflation-proof contract if excess refunded), copies of checks (from the bank or funeral home) to the estate of the beneficiary.

3. In addition to the above files, each licensee shall maintain the following records:
- a. A separate cash journal or separate cash receipt book designated for preneed, showing all preneed payments collected (see Form PN-6 on page 23);
  - b. A contract register listing the purchaser's name and final disposition of the contract (See Form PN-7 on page 24);
  - c. An individual ledger for each contract purchaser showing the purchaser's and beneficiary's names, amount of the contract, amount paid on the contract, amount retained free of trust at contract inception, deposits to the trust, withdrawals from the trust, total amount of the trust, and amounts paid to insurance companies for insurance-funded contracts (See Form PN-8 on page 25);
  - d. Copies of bank statements and deposit slips from financial institutions in which trust funds are deposited, certificate of deposit records, including both principal and interest transactions and trust accountings; and
  - e. Copies of applications for insurance, insurance policies, beneficiary designation documents and instruments of assignment.









## **Inspections**

The Board is empowered to inspect all preneed funeral establishments. The purpose of an inspection is to ensure that the preneed funeral establishment is in compliance with the laws and rules governing preneed. If you are using this manual and complying with the provision contained herein, then you are in compliance with the laws and rules of the Board.

All licensees are required to make their facilities and records available for inspection by the Board during normal hours of operation and periods shortly before or after normal hours of operation. All licensees are required to keep for examination by the Board accurate accounts, books, and records in this State of all preneed funeral contract and prearrangement insurance policy transactions, copies of all agreements, insurance policies, instruments of assignment, the dates and amounts of payments made and accepted thereon, the names and addresses of the contracting parties, the persons for whose benefit funds are accepted, and the names of the financial institutions holding preneed funeral trust funds and insurance companies issuing prearrangement insurance policies.

## **Annual Report**

Each preneed funeral establishment must file an annual report with the Board. The report must contain the following information:

1. the total number of standard and inflation proof trust-funded and insurance-funded preneed funeral contracts maintained by the licensee;
2. the number of contracts sold in the reporting period;
3. the number of contracts which expired, including contracts performed, revoked, cancelled, and transferred, in the reporting period;
4. the total year-end balance of all preneed trust accounts maintained at each financial institution; and
5. the total year-end balance of all insurance-funded preneed contracts written with each insurance company.

The annual report must be filed no later than March 31 each year for the preceding year.

In order to assist preneed funeral establishments in complying with the above, the Board annually sends a copy of the preneed report to each preneed funeral establishment.

### **Revoking a Preneed Funeral Contract**

A purchaser may revoke a revocable preneed funeral contract at any time. The purchaser (and/or the funeral establishment should it desire to assist the purchaser) should notify the financial institution or insurance company in writing. The financial institution must refund the purchaser the entire amount in the trust fund within 30 days of receipt of the written request. An insurance company must pay such amounts as provided in the terms of the insurance contract within 30 days of receipt of the written request.

### **Transferring an Irrevocable Preneed Funeral Contract**

The preneed funeral contract purchaser, or after his or her death, the preneed funeral contract beneficiary or his legal representative has the right to transfer an irrevocable preneed funeral contract. While it is difficult to lose business, it is important to handle these transfers professionally in order to avoid any unnecessary additional pain to families.

Prior to the death of the beneficiary, the purchaser must transfer the contract to another preneed licensee. If the transfer is made after the death of the preneed funeral contract beneficiary, the transferee need not be a preneed licensee.

If the preneed funeral contract is funded by trust deposit(s), the financial institution shall immediately pay the funds held to the original contracting preneed licensee. The original contracting preneed licensee must immediately pay the funds received to the successor funeral establishment designated. In the alternative, the original contracting preneed licensee may authorize the financial institution to directly transfer the funds to the successor funeral establishment. This authorization should be in writing and is often the safest and easiest way to handle these transfers.

The original contracting preneed licensee need not return any money that it withheld and did not place in trust (up to 10%) as permitted.

For transfers prior to death, the original contracting preneed licensee may withhold up to 10% of the payments received for deposit if the original contract is dated between July 10, 1992 and September 30, 2003, the licensee did not withhold any funds at the time of the original contract, and the right to withhold these funds is disclosed on the contract by completion of the appropriate section on the front of the contract. For transfers after death, the original contracting preneed licensee may withhold up to 10% of the payments received for deposit if the original contract is dated between July 1, 1993 and September 30, 2003, the licensee did not withhold any funds at the time of the original contract, and the right to withhold these funds is disclosed by completion of the appropriate section on the front of the contract.

When an irrevocable preneed funeral contract is transferred prior to the purchaser's death, the following should be done. The purchaser writes a letter stating that

he or she desires to transfer his or her preneed funeral contract. A copy should be sent to the original preneed establishment, the gaining preneed establishment, the Board and either the financial institution or the insurance company. The purchaser should also enter into a new preneed funeral contract and statement of goods and services with the new preneed establishment. This new contract must be sent to the Board and must be accompanied by a \$20.00 filing fee. Extreme care must be taken when transferring a preneed funeral contract. If the preneed funeral contract was irrevocable, the new preneed funeral contract must also be irrevocable. If the original preneed funeral contract was irrevocable and funded by trust deposit, the new preneed funeral contract must also be irrevocable and funded by trust. No money can be refunded to the purchaser at the time of the transfer. On the other hand, a revocable preneed funeral contract can be revoked and any type of new preneed funeral contract can be written. Likewise, the new contract can be either standard or inflation proof. The new contract need not remain standard, when original was standard, or inflation proof, when original was inflation proof.

For transfers after death, a new preneed contract is not needed. The transferee should simply prepare the required at-need paperwork, but should also file a Certificate of Performance for the preneed contract.

If a preneed funeral contract is being transferred because the original funeral home went out of business or lost its preneed license, a new preneed funeral contract must be completed and filed with the Board, but no filing fee is required unless the preneed funeral contract had never been filed with the Board. See Section XIV for additional guidance.

### **Amending a Preneed Funeral Contract**

This is a difficult area and the action required depends on the type of amendment being made. Some amendments are not possible. For example, you cannot amend an inflation-proof contract to make it a standard contract. You must revoke the inflation-proof contract and enter into a new standard contract (See section on revoking a contract). An irrevocable contract cannot be amended to be a revocable contract. The following are some of the most frequently encountered amendments.

To change a standard contract to an inflation-proof contract, an appropriate inflation-proof contract and statement of goods and services must be filed with the Board. The inflation-proof contract must show any additional funds and the inflation-proof statement of goods and services must contain the selections made by the purchaser. No filing fee is required for this amendment. Again, if the original standard contract is irrevocable, the new inflation-proof contract must also be irrevocable.

To change a revocable contract to an irrevocable contract, a new contract must be completed. You cannot simply cross out the previous revocable selection and initial the irrevocable selection on the existing contract. A statement of goods and services should

be submitted if there is not one already on file. Again, no fee is required for this type of amendment.

When the only change to an insurance funded preneed funeral contract is the addition of more insurance, the preneed licensee need only file a copy of the application for additional insurance. A new contract is not necessary (unless the original contract was entered into prior to January, 2000 when the Board did not have separate insurance forms). However, if the purchase price is changing, then the preneed licensee must file an amended contract. Again, no fee is required. Of course, if changes are made to the statement of goods and services, a new statement of goods and services should be submitted with the amended contract.

With regard to trust funded contracts, the preneed licensee does not need to file an amendment each time he or she receives additional funds so long as the additional funds were part of the original contract. For example, if the preneed contract provided that the purchaser would pay \$40 a month, the preneed licensee does not need to file amendments each time he or she receives \$40. On the other hand, if the original preneed funeral contract did not provide for receipt of additional funds, the preneed licensee should file an amended contract. The additional funds should be deposited into the original trust fund. A new trust fund should not be established for each deposit. Again, no fee is required.

Regardless of the type of contract, if no changes are being made to the preneed funeral contract, but changes are being made to the statement of goods and services, then the preneed licensee should simply submit a new statement of goods and services. An amended contract is not required.

Other changes or corrections, such as names, social security numbers, addresses, etc., can be made by faxing a memo stating these changes. An amended contract is not required.

Note that in cases where an amendment to a contract is not permissible, it is always possible for the consumer to enter into a new preneed contract. For example, there is nothing that prohibits consumers from having part of their funeral costs funded by a trust preneed and part of their funeral costs funded by a separate insurance funded preneed funeral contract.

#### **Procedures to Follow When License is Revoked or Licensee is Going Out of Business**

When a preneed license lapses or is terminated for any reason (or if the preneed licensee is unwilling or unable to perform any preneed funeral contract), the preneed funeral contracts must immediately be transferred to another preneed licensee. The preneed licensee who is faced with the possibility of losing his or her license or being unable to perform should attempt to facilitate this transfer. The licensee should first seek

a preneed licensee who may be willing to pay some financial compensation for the preneed funeral contracts. The purchasing funeral establishment would then contact each preneed funeral contract purchaser and arrange for them to come to their establishment to execute new preneed funeral contracts. A fee of \$20.00 is not required unless a preneed funeral contract was not previously recorded. Of course, consumers are free to transfer their preneed contracts to any preneed establishment of their choice.

If the original preneed licensee is unable to transfer the contracts for money, the original preneed licensee should still attempt to transfer the contracts to another preneed licensee, who in turn would contact the preneed funeral contract purchasers and arrange for them to come to their establishment to execute new preneed funeral contracts. A fee of \$20.00 is not required unless a preneed contract was not previously recorded.

If the original preneed licensee does not transfer the preneed funeral contracts, the Board will seize the contracts and notify the purchasers of their need to transfer their preneed funeral contracts to another preneed licensee.

When a preneed funeral contract is transferred because the preneed license lapses or is terminated for any reason (or if the preneed licensee is unwilling or unable to perform any preneed funeral contract), the original preneed licensee must transfer any money withheld (up to 10%) when the contract was made. Further, if the preneed licensee did not previously withhold any money from the trust, the preneed licensee is not entitled to withhold any now. The withholding of up to 10% when a preneed funeral contract is transferred only applies to transfers initiated by the consumer and do not apply to transfers under these conditions.

### **How to Revoke an “Irrevocable” Preneed Funeral Contract**

Irrevocable preneed funeral contracts may not be revoked except by a court of competent jurisdiction and by the Board in cases when the beneficiary has moved out of state. There is no one “form” that can be used to ask a court to revoke an irrevocable preneed funeral contract. Consumers or legal representatives of the contract beneficiary should consult with their own legal counsel. Consumers seeking to revoke an irrevocable preneed funeral contract should be cautioned that if they entered into the contract in order to qualify for social service benefits, revoking the contract could constitute fraud. For revocations due to an out of state transfer request, the requirements of 21 NCAC 34D .0106 shall apply.

### **Changing Financial Institutions**

When a trustee of a trust-funded preneed funeral contract wants to move the trust account from one financial institution to another, he should complete the Preneed Funeral Trust Fund Transfer Memorandum found on page 32 and present it to the financial institution. The financial institution is not allowed to charge you for the transfer, but there may be some costs if the trust contains Certificates of Deposit that have not matured. Once the transfer is complete, you must file a copy of the Preneed Funeral Trust Fund Transfer Memorandum with the Board.

### **Recovery Fund**

The Board maintains a recovery fund that is available to reimburse consumers who have suffered financial loss as a result of the malfeasance, misfeasance, default, failure or insolvency of any preneed licensee. Consumers should file a claim for reimbursement on the Board's form. When filing a claim, the consumer should submit adequate documentation to substantiate his or her loss. The Board will process the form and make an appropriate decision concerning whether and how much to reimburse. Since the Board often has to investigate the financial loss the consumer has suffered, the processing of this reimbursement can take some time.

PRENEED FUNERAL TRUST FUND  
TRANSFER MEMORANDUM

TO: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
Name and Address of Financial Institution

FROM: \_\_\_\_\_  
Trustee (Preneed Funeral Establishment)

SUBJECT: Closing of Account No. \_\_\_\_\_  
\_\_\_\_\_  
(Beneficiary)  
Preneed funeral contract dated \_\_\_\_\_

North Carolina General Statute 90-210.68(b) provides that a trustee may transfer trust funds from one approved financial institution to another.

As authorized by General Statute 90-20.68(b), request is hereby made to close the above preneed funeral account for the purpose of transferring it to a successive financial institution.

\_\_\_\_\_  
Trustee (Preneed Funeral Establishment) Preneed Funeral Establishment License No. \_\_\_\_\_

BY: \_\_\_\_\_

\_\_\_\_\_ If the contract is revocable, by initialing this line I certify that the purchaser/beneficiary has been notified of the intended transfer.

In compliance with North Carolina General Statute 90-210.68(b) and request made by the above trustee, Deposit Account No.

\_\_\_\_\_ in the amount of \$ \_\_\_\_\_, was paid to the successive financial institution named below on \_\_\_\_\_, 20\_\_\_\_\_.

\_\_\_\_\_  
Financial Institution

BY: \_\_\_\_\_

-----

Pursuant to North Carolina General Statute 90-210.68(b), it is acknowledged that this transferee financial institution accepted the above amount on \_\_\_\_\_, 20\_\_\_\_ and will be bound, as "financial institution," to the above-described preneed funeral contract (a copy of which it has received) and to such provisions of General Statutes Chapter 90, Article 13D, as pertain to "financial institutions."

\_\_\_\_\_  
Transferee Financial Institution

\_\_\_\_\_  
Address

BY: \_\_\_\_\_

Account/Certificate No. \_\_\_\_\_

SEND A COPY OF THIS TRANSFER MEMORANDUM TO THE BOARD WITHIN TEN (10) DAYS OF TRANSFER.

Mail to: NC Board of Funeral Service  
1033 Wade Avenue, Suite 108, Raleigh, NC 27605-1158  
(919) 733-9380



**Preneed Statute**

Article 13D.

Preneed Funeral Funds.

**§ 90-210.60. Definitions.**

As used in this Article, unless the context requires otherwise:

- (1) "Board" means the North Carolina Board of Funeral Service as created pursuant to Article 13A of Chapter 90 of the General Statutes;
- (2) "Financial institution" means a bank, trust company, savings bank, or savings and loan association authorized by law to do business in this State;
- (3) "Insurance company" means any corporation, limited liability company, association, partnership, society, order, individual or aggregation of individuals engaging in or proposing or attempting to engage as principals in any kind of insurance business, including the exchanging of reciprocal or interinsurance contracts between individuals, partnerships, and corporations;
- (3a) "Legal representation" means the person authorized by G.S. 130A-420 who would be otherwise authorized to dispose of the remains of the preneed funeral contract beneficiary.
- (4) "Prearrangement insurance policy" means a life insurance policy, annuity contract, or other insurance contract, or any series of contracts or agreements in any form or manner, issued by an insurance company authorized by law to do business in this State, which, whether by assignment or otherwise, has for a purpose the funding of a preneed funeral contract or an insurance-funded funeral or burial prearrangement, the insured or annuitant being the person for whose service the funds were paid;
- (5) "Preneed funeral contract" means any contract, agreement, or mutual understanding, or any series or combination of contracts, agreements, or mutual understandings, whether funded by trust deposits or prearrangement insurance policies, or any combination thereof, which has for a purpose the furnishing or performance of funeral services, or the furnishing or delivery of personal property, merchandise, or services of any nature in connection with the final disposition of a dead human body, to be furnished or delivered at a time determinable by the death of the person whose body is to be disposed of, but does not mean the furnishing of a cemetery lot, crypt, niche, or mausoleum;
- (6) "Preneed funeral contract beneficiary" means the person upon whose death the preneed funeral contract will be performed; this person may also be the purchaser of the preneed funeral contract;
- (7) "Preneed funeral funds" means all payments of cash made to any person, partnership, association, corporation, or other entity upon any preneed funeral contract or any other agreement, contract, or prearrangement insurance policy, or any series or combination of preneed funeral contracts or any other agreements, contracts, or prearrangement insurance policies, but excluding the furnishing of

cemetery lots, crypts, niches, and mausoleums, which have for a purpose or which by operation provide for the furnishing or performance of funeral or burial services, or the furnishing or delivery of personal property, merchandise, or services of any nature in connection with the final disposition of a dead human body, to be furnished or delivered at a time determinable by the death of the person whose body is to be disposed of, or the providing of the proceeds of any insurance policy for such use;

- (8) "Preneed funeral planning" means offering to sell or selling preneed funeral contracts, or making other arrangements prior to death for the providing of funeral services or merchandise;
- (9) "Preneed licensee" means a funeral establishment which has applied for and has been granted a license to sell preneed funeral contracts under the Article. Such license is also referred to in this Article as a "preneed funeral establishment license." (1969, c. 187, s. 1; 1983, c. 657, s. 1; 1985, c. 12, s. 1; 1991 (Reg. Sess., 1992), c. 901, s. 2; 1993, c. 553, s. 27; 1997-399, s. 23; 2001-294, ss. 7, 8; 2003-420, s. 1; 2007-531, s. 7.1.)

**§ 90-210.61. Deposit or application of preneed funeral funds.**

(a) Preneed funeral funds are subject to the provisions of this Article and shall be deposited or applied as follows:

- (1) If the preneed funeral contract purchaser chooses to fund the preneed funeral contract by a trust deposit or deposits, the preneed licensee shall deposit all funds in an insured account in a financial institution, in trust, in the preneed licensee's name as trustee within five business days. The preneed licensee, at the time of making the deposit as trustee, shall furnish to the financial institution the name of each preneed funeral contract purchaser and the amount of payment on each for which the deposit is being made. The preneed licensee may establish an individual trust fund for each preneed funeral contract or a common trust fund for all preneed funeral contracts. The trust accounts shall be carried in the name of the preneed licensee as trustee, but accounting records shall be maintained for each individual preneed funeral contract purchaser showing the amounts deposited and invested, and interest, dividends, increases, and accretions earned. Except as provided in this Article, all interest, dividends, increases, or accretions earned by the funds shall remain with the principal. The trust fund may be charged with applicable taxes and for reasonable charges paid by the trustee to itself or others for the preparation of fiduciary tax returns. Penalties charged by a financial institution for early withdrawals caused by a transfer pursuant to G.S. 90-210.63 shall be paid by the preneed licensee. Penalties charged as a result of other early withdrawals as permitted by this Article shall be paid from the trust fund, and the financial institution shall give the preneed funeral contract purchaser prompt notice of these penalties.

- (2) Notwithstanding any other provision of law, if a preneed funeral contract is funded by a trust deposit or trust deposits, a preneed licensee may retain, free of the trust, up to ten percent (10%) of any payments made on a preneed funeral contract, provided that the preneed licensee fully discloses in writing in advance to the preneed funeral contract purchaser the percentage of the payments to be retained. If there is no substitution pursuant to G.S. 90-210.63(a), the preneed licensee shall give credit for the amount retained upon the death of the preneed funeral contract beneficiary and performance of the preneed funeral contract.
- (3) If the preneed funeral contract purchaser chooses to fund the contract by a prearrangement insurance policy, the preneed licensee shall apply all funds received for this purpose to the purchase of the prearrangement insurance policy within five business days. The preneed licensee shall notify the insurance company of the name of each preneed funeral contract purchaser and the amount of each payment when the prearrangement insurance policy or policies are purchased.

(b) Except as provided by this Article or by the preneed funeral contract, all payments made by the purchaser of a preneed funeral contract or prearrangement insurance policy shall remain trust funds within a financial institution or as paid insurance premiums with an insurance company, as the case may be, until the death of the preneed funeral contract beneficiary and until full performance of the preneed funeral contract.

(c) Each preneed licensee may establish and maintain with a financial institution of its choice, a preneed funeral fund clearing account. Preneed funeral funds received by a preneed licensee may be deposited and held in such an account until disbursed by the preneed licensee to fund a preneed funeral contract pursuant to subdivisions (a)(1) or (a)(3) of this section. This account shall be used solely for the receipt and disbursement of preneed funeral funds.

(d) Funds deposited in trust under a revocable standard preneed funeral contract may, with the written permission of the preneed funeral contract purchaser, be withdrawn by the trustee and used to purchase a prearrangement insurance policy. Except as provided in this subsection, no funds deposited in trust in a financial institution pursuant to this Article shall be withdrawn by the trustee to purchase a prearrangement insurance policy.

(e) Except as provided by G.S. 90-210.61(c), at no time before making a deposit or purchasing a prearrangement insurance policy may a preneed licensee, or its agents or employees, deposit in its own account or the account of any other person any monies coming into its hands for the purpose of purchasing services, merchandise, or prearrangement insurance policies under the provisions of this Article. (1969, c. 187, ss. 2, 4; 1981 (Reg. Sess., 1982), c. 1336, s. 1; 1983, c. 657, ss. 2, 4; 1985, c. 12, ss. 1-3; 1987, c. 430, ss. 15, 16; c. 879, s. 6.2; 1989, c. 485, s. 16; c. 738, s. 2; 1991 (Reg. Sess., 1992), c. 901, s. 2.)

**§ 90-210.62. Types of preneed funeral contracts; forms.**

(a) A preneed licensee may offer standard preneed funeral contracts and inflation-proof preneed funeral contracts. A standard preneed funeral contract applies the trust funds or insurance proceeds to the purchase price of funeral services and merchandise at the time of death of the contract beneficiary without protection against potential future price increases. An inflation-proof contract establishes an agreement between the preneed licensee and the purchaser for funeral services and merchandise without regard to potential future price increases. Upon written disclosure to the purchaser of a preneed funeral contract, inflation-proof contracts may permit the preneed licensee to retain all of the preneed funeral contract trust funds on deposit, and all insurance proceeds, even those in excess of the retail cost of goods and services provided, when the preneed licensee has fully performed the preneed funeral contract. Preneed funeral contracts may be revocable or irrevocable, at the option of the preneed funeral contract purchaser.

(b) The Board may prescribe forms for preneed funeral contracts consistent with this Article. All contracts must be in writing on forms prescribed by the Board. Any use or attempted use of any oral preneed funeral contract or any written contract in a form not prescribed by the Board shall be deemed a violation of this Article. (1991 (Reg. Sess., 1992), c. 901, s. 2; 2007-531, s. 8.)

**§ 90-210.63. Substitution of licensee.**

(a) If the preneed funeral contract is irrevocable, the preneed funeral contract purchaser, or after his death the preneed funeral contract beneficiary or his legal representative, upon written notice to the financial institution or insurance company and the preneed licensee who is a party to the preneed funeral contract, may direct the substitution of a different funeral establishment to furnish funeral services and merchandise.

(1) If the substitution is made after the death of the preneed funeral contract beneficiary, a funeral establishment providing any funeral services or merchandise need not be a preneed licensee under this Article to receive payment for such services or merchandise. The original contracting preneed licensee shall be entitled to payment for any services or merchandise provided pursuant to G.S. 90-210.65(d). If the substitution is made before the death of the preneed funeral contract beneficiary, the substitution must be to a preneed licensee. If the preneed funeral contract is funded by a trust deposit or deposits, the financial institution shall immediately pay the funds held to the original contracting preneed licensee.

(2) The original contracting preneed licensee shall immediately pay all funds received to the successor funeral establishment designated. Regardless of whether the substitution is made before or after the death of the preneed funeral contract beneficiary, the original contracting preneed licensee shall not be required to give credit for the amount retained pursuant to G.S. 90-210.61(a)(2), except when there was a substitution under G.S. 90-210.68(d1) and (e). Upon making payments pursuant to this subsection, the financial institution and the

- (2) Notwithstanding any other provision of law, if a preneed funeral contract is funded by a trust deposit or trust deposits, a preneed licensee may retain, free of the trust, up to ten percent (10%) of any payments made on a preneed funeral contract, provided that the preneed licensee fully discloses in writing in advance to the preneed funeral contract purchaser the percentage of the payments to be retained. If there is no substitution pursuant to G.S. 90-210.63(a), the preneed licensee shall give credit for the amount retained upon the death of the preneed funeral contract beneficiary and performance of the preneed funeral contract.
- (3) If the preneed funeral contract purchaser chooses to fund the contract by a prearrangement insurance policy, the preneed licensee shall apply all funds received for this purpose to the purchase of the prearrangement insurance policy within five business days. The preneed licensee shall notify the insurance company of the name of each preneed funeral contract purchaser and the amount of each payment when the prearrangement insurance policy or policies are purchased.

(b) Except as provided by this Article or by the preneed funeral contract, all payments made by the purchaser of a preneed funeral contract or prearrangement insurance policy shall remain trust funds within a financial institution or as paid insurance premiums with an insurance company, as the case may be, until the death of the preneed funeral contract beneficiary and until full performance of the preneed funeral contract.

(c) Each preneed licensee may establish and maintain with a financial institution of its choice, a preneed funeral fund clearing account. Preneed funeral funds received by a preneed licensee may be deposited and held in such an account until disbursed by the preneed licensee to fund a preneed funeral contract pursuant to subdivisions (a)(1) or (a)(3) of this section. This account shall be used solely for the receipt and disbursement of preneed funeral funds.

(d) Funds deposited in trust under a revocable standard preneed funeral contract may, with the written permission of the preneed funeral contract purchaser, be withdrawn by the trustee and used to purchase a prearrangement insurance policy. Except as provided in this subsection, no funds deposited in trust in a financial institution pursuant to this Article shall be withdrawn by the trustee to purchase a prearrangement insurance policy.

(e) Except as provided by G.S. 90-210.61(c), at no time before making a deposit or purchasing a prearrangement insurance policy may a preneed licensee, or its agents or employees, deposit in its own account or the account of any other person any monies coming into its hands for the purpose of purchasing services, merchandise, or prearrangement insurance policies under the provisions of this Article. (1969, c. 187, ss. 2, 4; 1981 (Reg. Sess., 1982), c. 1336, s. 1; 1983, c. 657, ss. 2, 4; 1985, c. 12, ss. 1-3; 1987, c. 430, ss. 15, 16; c. 879, s. 6.2; 1989, c. 485, s. 16; c. 738, s. 2; 1991 (Reg. Sess., 1992), c. 901, s. 2.)

**§ 90-210.62. Types of preneed funeral contracts; forms.**

(a) A preneed licensee may offer standard preneed funeral contracts and inflation-proof preneed funeral contracts. A standard preneed funeral contract applies the trust funds or insurance proceeds to the purchase price of funeral services and merchandise at the time of death of the contract beneficiary without protection against potential future price increases. An inflation-proof contract establishes an agreement between the preneed licensee and the purchaser for funeral services and merchandise without regard to potential future price increases. Upon written disclosure to the purchaser of a preneed funeral contract, inflation-proof contracts may permit the preneed licensee to retain all of the preneed funeral contract trust funds on deposit, and all insurance proceeds, even those in excess of the retail cost of goods and services provided, when the preneed licensee has fully performed the preneed funeral contract. Preneed funeral contracts may be revocable or irrevocable, at the option of the preneed funeral contract purchaser.

(b) The Board may prescribe forms for preneed funeral contracts consistent with this Article. All contracts must be in writing on forms prescribed by the Board. Any use or attempted use of any oral preneed funeral contract or any written contract in a form not prescribed by the Board shall be deemed a violation of this Article. (1991 (Reg. Sess., 1992), c. 901, s. 2; 2007-531, s. 8.)

**§ 90-210.63. Substitution of licensee.**

(a) If the preneed funeral contract is irrevocable, the preneed funeral contract purchaser, or after his death the preneed funeral contract beneficiary or his legal representative, upon written notice to the financial institution or insurance company and the preneed licensee who is a party to the preneed funeral contract, may direct the substitution of a different funeral establishment to furnish funeral services and merchandise.

(1) If the substitution is made after the death of the preneed funeral contract beneficiary, a funeral establishment providing any funeral services or merchandise need not be a preneed licensee under this Article to receive payment for such services or merchandise. The original contracting preneed licensee shall be entitled to payment for any services or merchandise provided pursuant to G.S. 90-210.65(d). If the substitution is made before the death of the preneed funeral contract beneficiary, the substitution must be to a preneed licensee. If the preneed funeral contract is funded by a trust deposit or deposits, the financial institution shall immediately pay the funds held to the original contracting preneed licensee.

(2) The original contracting preneed licensee shall immediately pay all funds received to the successor funeral establishment designated. Regardless of whether the substitution is made before or after the death of the preneed funeral contract beneficiary, the original contracting preneed licensee shall not be required to give credit for the amount retained pursuant to G.S. 90-210.61(a)(2), except when there was a substitution under G.S. 90-210.68(d1) and (e). Upon making payments pursuant to this subsection, the financial institution and the

original contracting preneed licensee shall be relieved from all further contractual liability thereon.

- (3) If the preneed funeral contract is funded by a prearrangement insurance policy, the insurance company shall not pay any of the funds until the death of the preneed funeral contract beneficiary, and the insurance company shall pay the funds in accordance with the terms of the policy.

(b) The person giving notice of the substitution of a preneed licensee and the successor preneed licensee shall enter into a new preneed funeral contract for the funds transferred, and this Article shall apply, including the duty of the successor preneed licensee to deposit all of the funds in a financial institution if the death of the preneed funeral contract beneficiary has not occurred. Nothing in this subsection shall be construed to permit the use of the transferred funds to purchase a prearrangement insurance policy, nor to permit an irrevocable preneed funeral contract to be made revocable or to result in the payment of any of the transferred funds to the preneed funeral contract purchaser or to the preneed funeral contract beneficiary or his estate, except as provided by G.S. 90-210.64(b). (1991 (Reg. Sess., 1992), c. 901, s. 2; 1993, c. 242, s. 1; 1997-399, s. 24; 2003-420, s. 11.)

#### **§ 90-210.63A. Amendment of preneed funeral contracts.**

(a) Unless otherwise provided by this Article, preneed funeral contracts may be modified by mutual consent of the contracting preneed funeral establishment and the preneed contract purchaser, or after the death of the preneed contract purchaser, the preneed contract beneficiary or his or her legal representative.

(b) When the preneed contract purchaser and preneed contract beneficiary are the same, the preneed contract purchaser may designate one or more individuals to change the arrangements or performing funeral establishment, or may designate that the arrangements or performing funeral establishment may not be changed without an order from the clerk of superior court in the county where probate proceedings are instituted upon a finding that the change is in the best interest of the estate.

(c) If the preneed purchaser, or after his or her death, the preneed contract beneficiary or his or her legal representative, and the contracting preneed funeral establishment agree to modify any goods or services selected under an inflation-proof contract, the preneed licensee shall not be required to guarantee the price of the modified goods and services at the time of death and all other funeral goods and service selected shall remain guaranteed. If the modifications increase the purchase price, the provisions of G.S. 90-210.64(b) shall apply as if the modified contract had been executed on the original date. If the modifications decrease the purchase price, the preneed licensee shall refund all monies according to the provisions of G.S. 90-210.64(d). (2007-531, s. 9.)

#### **§ 90-210.64. Death of preneed funeral contract beneficiary; disposition of funds.**

(a) After the death of a preneed funeral contract beneficiary and full performance of the preneed funeral contract by the preneed licensee, the preneed licensee shall promptly complete a certificate of performance and present it to the financial institution that holds funds in trust under G.S. 90-210.61(a)(1) or to the insurance company that issued a preneed insurance policy pursuant to G.S. 90-210.61(a)(3). Upon receipt of the

certificate of performance or similar claim form, the financial institution shall pay the trust funds to the contracting preneed licensee and the insurance company shall pay the insurance proceeds according to the terms of the policy. Within 10 days after receiving payment, the preneed licensee shall file a copy of the certificate of performance or other claim form to the Board.

(b) Unless otherwise specified in the preneed funeral contract, the preneed licensee shall have no obligation to deliver merchandise or perform any services for which payment in full has not yet been deposited with a financial institution or that will not be provided by the proceeds of a prearrangement insurance policy. Any such amounts received which do not constitute payment in full shall be refunded to the estate of the deceased preneed funeral contract beneficiary or credited against the cost of merchandise or services contracted for by a representative of the deceased. Any balance remaining after payment for the merchandise and services as set forth in the preneed funeral contract shall be paid to the estate of the preneed funeral contract beneficiary or the prearrangement insurance policy beneficiary named to receive any such balance. Provided, however, unless the parties agree to the contrary, there shall be no refund to the estate of the preneed funeral contract beneficiary of an inflation-proof preneed funeral contract except as required by G.S. 90-210.63A(c).

(c) In the event that any person other than the contracting preneed licensee performs any funeral service or provides any merchandise as a result of the death of the preneed funeral contract beneficiary, the financial institution shall pay the trust funds to the contracting preneed licensee and the insurance company shall pay the insurance proceeds according to the terms of the policy. The preneed licensee shall, subject to the provisions of G.S. 90-210.65(d), immediately pay the monies so received to the other provider.

(d) When the balance of a preneed funeral fund is one hundred dollars (\$100.00) or less and is payable to the estate of a deceased preneed funeral contract beneficiary and there has been no representative of the estate appointed, the balance due may be paid directly to a beneficiary or to the beneficiaries of the estate. If the balance of a preneed funeral fund exceeds one hundred dollars (\$100.00) or is not payable to the estate, the balance must be paid into the office of the clerk of superior court in the county where probate proceedings could be filed for the deceased preneed funeral contract beneficiary.

(e) Upon the fulfillment of a preneed contract, all of the following items shall be completed within 30 days:

- (1) The contracting preneed licensee must submit a certificate of performance or similar claim form to the financial institution holding the preneed trust funds and close the preneed account.
- (2) The proceeds of this trust account shall be distributed according to the terms of the preneed contract.
- (3) A completed copy of the certificate of performance or similar claim form evidencing the final disposition of any financial institution preneed trust account funds must be filed with the Board by the contracting licensee. (1991 (Reg. Sess., 1992), c. 901, s. 2; 1997-399, s. 25; 2001-294, s. 9; 2003-420, s. 12; 2007-531, s. 10.)



**§ 90-210.65. Refund of preneed funeral funds.**

(a) Within 30 days of receipt of a written request from the purchaser of a revocable preneed funeral contract who has trust funds deposited with a financial institution pursuant to G.S. 90-210.61(a), the financial institution shall refund to the preneed funeral contract purchaser the entire amount held by the financial institution.

(b) Within 30 days of receipt of a written notice of cancellation of any prearrangement insurance policy purchased pursuant to G.S. 90-210.61(a)(3), the issuing insurance company shall pay such amounts to such person or persons as is provided under the terms of the prearrangement insurance policy.

(c) After making refund pursuant to this section and giving notice of the refund to the preneed licensee, the financial institution or insurance company shall be relieved from all further liability.

(d) Notwithstanding any other provision of this Article, if a preneed funeral contract is revoked or transferred following the death of the preneed funeral contract beneficiary, the purchaser of the preneed funeral contract may be charged according to the contracting preneed licensee's price lists for any services performed or merchandise provided prior to revocation or transfer.

(e) This section shall not apply to irrevocable preneed funeral contracts. Irrevocable preneed funeral contracts may only be revoked or any proceeds refunded by the order of a court of competent jurisdiction, except as follows:

- (1) The Board may order an irrevocable contract revoked when the preneed contract beneficiary is no longer domiciled in this State and has submitted a written copy to the Board of a new preneed funeral contract executed under the laws of the state where the preneed contract beneficiary is domiciled. Upon receipt of the Board's order, the original contracting preneed licensee shall immediately follow the provisions of G.S. 90-210.63 to transfer the funds to the successor firm.
- (2) Irrevocable preneed funeral contracts purchased pursuant to G.S. 90-210.61(a)(3) shall also be revocable when the underlying insurance policy lapses or is otherwise cancelled and the lapsed or cancelled policy no longer provides any funding for the preneed funeral contract. (1969, c. 187, s. 3; 1981 (Reg. Sess., 1982), c. 1336, s. 2; 1983, c. 657, s. 3; 1985, c. 12, ss. 1, 2; 1991 (Reg. Sess., 1992), c. 901, s. 2; 2003-420, s. 13; 2007-531, s. 11.)

**§ 90-210.66. Recovery fund.**

(a) There is established the Preneed Recovery Fund. The Fund shall be administered by the Board. The purpose of the Fund is to reimburse purchasers of preneed funeral contracts who have suffered financial loss as a result of the malfeasance, misfeasance, default, failure or insolvency of any licensee under this Article, and includes refunds due a preneed funeral contract beneficiary from a preneed licensee who has retained any portion of the preneed funeral contract payments pursuant to G.S. 90-210.61(a)(2).

(b) From the fee for each preneed funeral contract as required by G.S. 90-210.67(d), the Board shall deposit two dollars (\$2.00) into the Fund. The Board may

suspend the deposits into the Fund at any time and for any period for which the Board determines that a sufficient amount is available to meet likely disbursements and to maintain an adequate reserve.

(c) All sums received by the Board pursuant to this section shall be held in a separate account known as the Preneed Recovery Fund. Deposits to and disbursements from the Fund account shall be subject to rules established by the Board.

(d) The Board shall adopt rules governing management of the Fund, the presentation and processing of applications for reimbursement, and subrogation or assignment of the rights of any reimbursed applicant.

(e) The Board may expend monies in the Fund for the following purposes:

- (1) To make reimbursements on approved applications;
- (2) To purchase insurance to cover losses as deemed appropriate by the Board and not inconsistent with the purposes of the Fund;
- (3) To invest such portions of the Fund as are not currently needed to reimburse losses and maintain adequate reserves, as are permitted to be made by fiduciaries under State law; and
- (4) To pay the expenses of the Board for administering the Fund, including employment of legal counsel to prosecute subrogation claims.

(f) Reimbursements from the Fund shall be made only to the extent to which such losses are not bonded or otherwise covered, protected or reimbursed and only after the applicant has complied with all applicable rules of the Board.

(g) The Board shall investigate all applications made and may reject or allow such claims in whole or in part to the extent that monies are available in the Fund. The Board shall have complete discretion to determine the order and manner of payment of approved applications. All payments shall be a matter of privilege and not of right, and no person shall have any right in the Fund as a third-party beneficiary or otherwise. No attorney may be compensated by the Board for prosecuting an application for reimbursement.

(h) In the event reimbursement is made to an applicant under this section, the Board shall be subrogated in the reimbursed amount and may bring any action it deems advisable against any person, including a preneed licensee. The Board may enforce any claims it may have for restitution or otherwise and may employ and compensate consultants, agents, legal counsel, accountants and any other persons it deems appropriate.

(i) The Fund shall apply to losses arising after July 9, 1992, regardless of the date of the underlying preneed funeral contract. (1991 (Reg. Sess., 1992), c. 901, s. 2; 1997-399, s. 26.)

#### **§ 90-210.67. Application for license.**

(a) No person may offer or sell preneed funeral contracts or offer to make or make any funded funeral prearrangements without first securing a license from the Board. Notwithstanding any other provision of law, any person who offers to sell or sells a casket, to be furnished or delivered at a time determinable by the death of the person whose body is to be disposed of in the casket, shall first comply with the provisions of this Article. There shall be two types of licenses: a preneed funeral establishment license

and a preneed sales license. Only funeral establishments holding a valid establishment permit pursuant to G.S. 90-210.25(d) shall be eligible for a preneed funeral establishment license. Employees and agents of such entities, upon meeting the qualifications to engage in preneed funeral planning as established by the Board, shall be eligible for a preneed sales license. The Board shall establish the preneed funeral planning activities that are permitted under a preneed sales license. The Board shall adopt rules establishing such qualifications and activities no later than 12 months following the ratification of this act [Session Laws 1991 (Reg. Sess., 1992), c. 901, s. 2]. Preneed sales licensees may sell preneed funeral contracts, prearrangement insurance policies, and make funded funeral prearrangements only on behalf of one preneed funeral establishment licensee; provided, however, they may sell preneed funeral contracts, prearrangement insurance policies, and make funeral prearrangements for any number of licensed preneed funeral establishments that are wholly owned by or affiliated with, through common ownership or contract, the same entity; provided further, in the event they engage in selling prearrangement insurance policies, they shall meet the licensing requirements of the Commissioner of Insurance. Every preneed funeral contract shall be signed by a person licensed as a funeral director or funeral service licensee pursuant to Article 13A of Chapter 90 of the General Statutes.

Application for a license shall be in writing, signed by the applicant and duly verified on forms furnished by the Board. Each application shall contain at least the following: the full names and addresses (both residence and place of business) of the applicant, and every partner, member, officer and director thereof if the applicant is a partnership, limited liability company, association, or corporation and any other information as the Board shall deem necessary. A preneed funeral establishment license shall be valid only at the address stated in the application or at a new address approved by the Board.

(b) An application for a preneed funeral establishment license shall be accompanied by a nonrefundable application fee of not more than four hundred dollars (\$400.00). The Board shall set the amounts of the application fees and renewal fees, by rule. A funeral establishment receiving a new preneed establishment license after January 1, 2008, or whose preneed establishment license has lapsed or was terminated for any reason after January 1, 2008, shall obtain a surety bond in an amount not less than fifty thousand dollars (\$50,000) for five years, or upon demonstrating that it is solvent, no less than one year from the date the original license is issued. The Board may extend the bonding requirement in the event there is a claim paid from the bond.

If the license is granted, the application fee shall be applied to the annual license fee for the first year or part thereof. Upon receipt of the application and payment of the application fee, the Board shall issue a renewable preneed funeral establishment license unless it determines that the applicant has violated any provision of G.S. 90-210.69(c) or has made false statements or representations in the application, or is insolvent, or has conducted or is about to conduct, its business in a fraudulent manner, or is not duly authorized to transact business in this State. The license shall expire on December 31 and each preneed funeral establishment licensee shall pay annually to the Board on or before that date a license renewal fee of not more than two hundred fifty dollars (\$250.00). On or before the first day of February immediately following expiration, a license may be renewed without paying a late fee. After that date, a license may be renewed by paying a

late fee of not more than one hundred dollars (\$100.00) in addition to the annual renewal fee.

(c) An application for a preneed sales license shall be accompanied by a nonrefundable application fee of not more than fifty dollars (\$50.00). The Board shall set the amounts of the application fees and renewal fees by rule, but the fees shall not exceed fifty dollars (\$50.00). If the license is granted, the application fee shall be applied to the annual license fee for the first year or part thereof. Upon receipt of the application and payment of the application fee, the Board shall issue a renewable preneed sales license provided the applicant has met the qualifications to engage in preneed funeral planning as established by the Board unless it determines that the applicant has violated any provision of G.S. 90-210.69(c). The license shall expire on December 31 and each preneed sales licensee shall pay annually to the Board on or before that date a license renewal fee of not more than fifty dollars (\$50.00). On or before the first day of February, a license may be renewed without paying a late fee. After that date, a license may be renewed by paying a late fee of not more than twenty-five dollars (\$25.00) in addition to the annual renewal fee.

(d) Any person selling a preneed funeral contract, whether funded by a trust deposit or a prearrangement insurance policy, shall remit to the Board, within 10 days of the sale, a fee not to exceed twenty dollars (\$20.00) for each sale and a copy of each contract. The person shall pay a late fee of not more than twenty-five dollars (\$25.00) for each late filing and payment. The fees shall not be remitted in cash.

(d1) The Board may also set and collect a fee of not more than twenty-five dollars (\$25.00) for the late filing of a certificate of performance and a fee of not more than one hundred and fifty dollars (\$150.00) for the late filing of an annual report.

(e), (f). Repealed by Session Laws 2003-420, s. 14, effective October 1, 2003. (1969, c. 187, s. 5; 1981, c. 671, ss. 16, 17; 1983, c. 657, s. 4; 1985, c. 12, ss. 1, 2; 1991 (Reg. Sess., 1992), c. 901, s. 2; 1995 (Reg. Sess., 1996), c. 665, s. 1; 1997-399, s. 27; 2001-294, s. 10; 2003-420, s. 14; 2007-531, s. 12.)

**§ 90-210.68. Licensee's books and records; notice of transfers, assignments and terminations.**

(a) Every preneed licensee shall keep for examination by the Board accurate accounts, books, and records in this State of all preneed funeral contract and prearrangement insurance policy transactions, copies of all agreements, insurance policies, instruments of assignment, the dates and amounts of payments made and accepted thereon, the names and addresses of the contracting parties, the persons for whose benefit funds are accepted, and the names of the financial institutions holding preneed funeral trust funds and insurance companies issuing prearrangement insurance policies. The Board, its inspectors appointed pursuant to G.S. 90-210.24 and its examiners, which the Board may appoint to assist in the enforcement of this Article, may during normal hours of operation and periods shortly before or after normal hours of operation, investigate the books, records, and accounts of any licensee under this Article with respect to trust funds, preneed funeral contracts, and prearrangement insurance policies. Any preneed licensee who, upon inspection, fails to meet the requirements of this subsection or who fails to keep an appointment for an inspection shall pay a reinspection fee to the Board in an amount not to exceed one hundred dollars (\$100.00).

The Board may require the attendance of and examine under oath all persons whose testimony it may require. Every preneed licensee shall submit a written report to the Board, at least annually, in a manner and with such content as established by the Board, of its preneed funeral contract sales and performance of such contracts. The Board may also require other reports.

(b) A preneed licensee may transfer preneed funds held by it as trustee from the financial institution which is a party to a preneed funeral contract to a substitute financial institution that is not a party to the contract. Within 10 days after the transfer, the preneed licensee shall notify the Board, in writing, of the name and address of the transferee financial institution. Before the transfer may be made, the transferee financial institution shall agree to make disclosures required under the preneed funeral contract to the Board or its inspectors or examiners. If the contract is revocable, the licensee shall notify the contracting party of the intended transfer.

(c) If any preneed licensee transfers or assigns its assets or stock to a successor funeral establishment or terminates its business as a funeral establishment, the preneed licensee and assignee shall notify the Board at least 15 days prior to the effective date of the transfer, assignment or termination: provided, however, the successor funeral establishment must be a preneed licensee or shall be required to apply for and be granted such license by the Board before accepting any preneed funeral contracts, whether funded by trust deposits or preneed insurance policies. Provided further, a successor funeral establishment shall be liable to the preneed funeral contract purchasers for the amount of contract payments retained by the assigning or transferring funeral home pursuant to G.S. 90-210.61(a)(2).

(d) Financial institutions that accept preneed funeral trust funds and insurance companies that issue prearrangement insurance policies shall, upon request by the Board or its inspectors or examiners, disclose any information regarding preneed funeral trust accounts held or prearrangement insurance policies issued by it for a preneed licensee.

Financial institutions that accept preneed funeral trust funds and insurance companies that assign policy proceeds or designate a preneed funeral establishment as beneficiary shall also forward an account balance to the contracting preneed funeral establishment at the end of each calendar year.

(d1) When a preneed funeral establishment license lapses or is terminated for any reason, the preneed licensee shall immediately divest of all the unperformed preneed funeral contracts and shall transfer them and any amounts retained under G.S. 90-210.61(a)(2) to another preneed funeral establishment licensee pursuant to the procedures of subsection (e) of this section.

(e) In the event that any preneed licensee is unable or unwilling or is for any reason relieved of its responsibility to perform as trustee or to perform any preneed funeral contract, the Board shall order the contract and any amounts retained pursuant to G.S. 90-210.61(a)(2) to be assigned to a substitute preneed licensee provided that neither the substitute preneed licensee or preneed contract purchaser, or after the death of the preneed contract purchaser, the preneed contract beneficiary or his or her legal representative, shall be obligated to perform the agreement without executing a new preneed funeral contract. Any lapse or transfer of a preneed contract pursuant to this section shall not be grounds to revoke an irrevocable preneed funeral contract.

(f) The substitute preneed licensee under subsections (d1) and (e) of this section shall be liable to the preneed funeral contract purchasers for the amount of contract payments that had been retained by, and that the substitute preneed licensee has received from, the assigning preneed licensee. (1969, c. 187, s. 6; 1983, c. 657, ss. 4, 5; 1985, c. 12, s. 1; 1991 (Reg. Sess., 1992), c. 901, s. 2; 1993, c. 164, s. 3; 1997-399, s. 28; 2007-531, ss. 13, 14.)

**§ 90-210.69. Rulemaking; enforcement of Article; judicial review; determination of penalty amount.**

(a) The Board is authorized to adopt rules for the carrying out and enforcement of the provisions of this Article. The Board may perform such other acts and exercise such other powers and duties as are authorized by this Article and by Article 13A of this Chapter to carry out its powers and duties.

(b) The Board may administer oaths and issue subpoenas requiring the attendance of persons and the production of papers and records in any investigation conducted by it. Members of the Board's staff or the sheriff or other appropriate official of any county of this State shall serve all notices, subpoenas and other papers given to them by the Board for service in the same manner as process issued by any court of record. Any person who does not obey a subpoena issued by the Board shall be guilty of a misdemeanor and, upon conviction thereof, shall be fined or imprisoned in the discretion of the court.

(c) In accordance with the provisions of Chapter 150B of the General Statutes, if the Board finds that a licensee, an applicant for a license or an applicant for license renewal is guilty of one or more of the following, the Board may refuse to issue or renew a license or may suspend or revoke a license or place the holder thereof on probation upon conditions set by the Board, with revocation upon failure to comply with the conditions:

- (1) Offering to engage or engaging in activities for which a license is required under this Article but without having obtained such a license.
- (2) Aiding or abetting an unlicensed person, firm, partnership, association, corporation or other entity to offer to engage or engage in such activities.
- (3) A crime involving fraud or moral turpitude by conviction thereof.
- (4) Fraud or misrepresentation in obtaining or receiving a license or in preneed funeral planning.
- (5) False or misleading advertising.
- (6) Violating or cooperating with others to violate any provision of this Article, the rules and regulations of the Board, or the standards set forth in Funeral Industry Practices, 16 C.F.R. 453 (1984), as amended from time to time.
- (7) Denial, suspension, or revocation of an occupational or business license by another jurisdiction.

In any case in which the Board is authorized to take any of the actions permitted under this subsection, the Board may instead accept an offer in compromise of the charges whereby the accused shall pay to the Board a penalty of not more than five thousand dollars (\$5,000). In any case in which the Board is entitled to place a licensee

on a term of probation, the Board may also impose a penalty of not more than five thousand dollars (\$5,000) in conjunction with such probation.

(d) Any proceedings pertaining to or actions against a funeral establishment under this Article may be in addition to any proceedings or actions permitted by G.S. 90-210.25(d)(4). Any proceedings pertaining to or actions against a person licensed for funeral directing or funeral service may be in addition to any proceedings or actions permitted by G.S. 90-210.25 (e)(1) and (2).

(e) Judicial review shall be pursuant to Article 4 of Chapter 150B of the General Statutes.

(f) In determining the amount of any penalty imposed or assessed under Article 13 of Chapter 90 of the General Statutes, the Board shall consider:

- (1) The degree and extent of harm to the public health, safety, and welfare, or to property, or the potential for harm.
- (2) The duration and gravity of the violation.
- (3) Whether the violation was committed willfully or intentionally or reflects a continuing pattern.
- (4) Whether the violation involved elements of fraud or deception either to the public or to the Board, or both.
- (5) The violator's prior disciplinary record with the Board.
- (6) Whether and the extent to which the violator profited by the violation. (1969, c. 187, s. 7; 1983, c. 657, s. 4; 1985, c. 12, s. 1; 1991 (Reg. Sess., 1992), c. 901, s. 2; 1997-399, ss. 29, 30; 2001-294, s. 11; 2004-203, s. 7; 2007-531, s. 15.)

#### **§ 90-210.70. Penalties.**

(a) Anyone who embezzles or who fraudulently, or knowingly and willfully misapplies, or in any manner converts preneed funeral funds to his own use, or for the use of any partnership, corporation, association, or entity for any purpose other than as authorized by this Article; or anyone who takes, makes away with or secretes, with intent to embezzle or fraudulently or knowingly and willfully misapply or in any manner convert preneed funeral funds for his own use or the use of any other person for any purpose other than as authorized by this Article shall be guilty of a felony. If the value of the preneed funeral funds is one hundred thousand dollars (\$100,000) or more, violation of this section is a Class C felony. If the value of the preneed funeral funds is less than one hundred thousand dollars (\$100,000), violation of this section is a Class H felony. Each such embezzlement, conversion, or misapplication shall constitute a separate offense and may be prosecuted individually. Upon conviction, all licenses issued under this Article shall be revoked.

(b) Any person who willfully violates any other provision of this Article shall be guilty of a Class 1 misdemeanor. Each such violation shall constitute a separate offense and may be prosecuted individually.

(c) If a corporation or limited liability company embezzles or fraudulently or knowingly and willfully misapplies or converts preneed funeral funds as provided in subsection (a) hereof or otherwise violates any provision of this Article, the officers, directors, members, agents, or employees responsible for committing the offense shall be fined or imprisoned as herein provided.

(d) The Board shall have the power to investigate violations of this section and shall deliver all evidence of violations of subsection (a) of this section to the district attorney in the county where the offense occurred. The Board shall, with the fees collected under this Article, employ legal counsel and other staff to monitor preneed trusts, investigate complaints, audit preneed trusts, and be responsible for delivering evidences to the district attorney when there is evidence that a felony has been committed by a licensee. The record of complaints, auditing, and enforcement shall be presented in an annual report from the Board to the General Assembly.

(e) Whenever it shall appear to the Board that any person, firm, or corporation has violated, threatens to violate, or is violating any provisions of this Article, the Board may apply to the courts of the State for a restraining order and injunction to restrain these practices. If upon application the court finds that any provision of this Article is being violated, or a violation is threatened, the court shall issue an order restraining and enjoining the violations, and this relief may be granted regardless of whether criminal prosecution is instituted under the provisions of this subsection. The venue for actions brought under this subsection shall be the superior court of any county in which the acts are alleged to have been committed or in the county where the defendant in the action resides. (1969, c. 187, s. 8; 1985, c. 12, s. 1; 1991 (Reg. Sess., 1992), c. 901, s. 2; 1993 (Reg. Sess., 1994), c. 767, s. 28; 1997-399, ss. 31, 32; 1997-443, s. 19.25(o); 2003-420, s. 15.)

**§ 90-210.71. Nonregulation of insurance sales.**

The provisions of this Article do not regulate the issuance and sale of insurance policies, but apply only to the underlying preneed funeral contracts. (1991 (Reg. Sess., 1992), c. 901, s. 2.)

**§ 90-210.72. Nonapplication to certain funeral contracts.**

This Article does not apply to contracts for funeral services or merchandise sold as preneed burial insurance policies pursuant to Part 13 of Article 10 of Chapter 143B of the North Carolina General Statutes or to replacements or conversions of such policies pursuant to G.S. 143B-472.28. (1991 (Reg. Sess., 1992), c. 901, s. 2.)

**§ 90-210.73. Not public record.**

The names and addresses of the purchasers and beneficiaries of preneed funeral contracts filed with the Board shall not be subject to Chapter 132 of the General Statutes. (1997-399, s. 33.)



**Preneed Rules**  
**SUBCHAPTER 34D - PRENEED FUNERAL CONTRACTS**

**SECTION .0100 - GENERAL PROVISIONS**

**21 NCAC 34D .0101 APPROVAL OF CONTRACT FORMS**

All preneed funeral contracts shall be transacted on forms prescribed by the Board. The Board may prescribe different forms for standard or inflation-proof contracts or for trust or insurance contracts. Each preneed funeral contract form shall contain the following information:

- (1) Is written in clear, understandable language and is printed in easy-to-read type, size and style on paper not larger than 8 1/2 by 14 inches, with printing on both sides permitted.
- (2) States or provides space for inserting the name, address and preneed funeral establishment license number of the contracting funeral establishment.
- (3) Provides space for inserting the names, addresses and Social Security numbers of the purchaser and contract beneficiary.
- (4) States that a description of the merchandise and services purchased is attached to the seller's and purchaser's copies of the contract and is a part of the agreement. The attachment shall be a form provided by the Board satisfying the requirements of a "statement of goods and services selected" as described in Funeral Industry Practices, 16 C.F.R. 453 (1984), as amended from time to time.
- (5) Discloses any penalties or restrictions, including geographical restrictions, on the delivery of merchandise and services.
- (6) States whether it is a standard or inflation-proof contract and summarizes, consistent with North Carolina law, the incidents of such type of contract.
- (7) Provides space for inserting the financial transaction.
- (8) Provides space for the purchaser to indicate, by the purchaser's signature or initials, the following:
  - (a) The purchaser's choice of trust-funded or insurance-funded contract.
  - (b) That the purchaser acknowledges that the funeral establishment will retain, and not deposit in trust, a stated percentage (not more than 10%) of the purchaser's payments.
  - (c) The purchaser's choice of revocable or irrevocable contract.
  - (d) That the purchaser acknowledges that the sale was made at the funeral establishment's place of business, so as to negate the cancellation rights connected with an off-premises sale.
- (9) Contains notice, in bold type, of the purchaser's right to cancel an off-premises sale.
- (10) Contains notice, in bold type, that if the purchaser does not receive notification from the Board, within 30 days, that it has received a copy of the contract, the purchaser should notify the Board at its current, stated address and telephone number.
- (11) Explains the parties' rights and obligations, consistent with North Carolina law, with respect to contract revocation, default, the funeral establishment's retention of a portion of the purchase price free of the trust, and the substitution of funeral homes to perform the contract.
- (12) Contains a notice of the existence of the Board's preneed recovery fund.
- (13) Contains, or refers to an attachment containing, all funeral sales disclosures to consumers as required by federal and North Carolina law.
- (14) Provides spaces for the signatures of the parties to the contract, including the signature and preneed sales license number of the preneed sales licensee who sold the contract. The following shall appear, in bold type, beneath the signature of the preneed sales licensee: "Signed and preneed sales license number affixed in presence of Purchaser at time of sale."
- (15) Any other information the Board deems necessary and is required by law.

*History Note: Authority G.S. 90-210.62(b); 90-210.69(a),(c)(6);  
Eff. July 1, 1993;  
Amended Eff. January 1, 2009; August 1, 1998.*

**21 NCAC 34D .0102 REFUND OF CONTRACT FEES**

The preneed funeral contract fee, paid as required by G.S. 90-210.67(d), shall be refunded by the Board to the payor only in the event that, because the insurance company refuses to insure the proposed preneed funeral contract beneficiary, the preneed funeral contract does not become binding.

*History Note: Authority G.S. 90-210.69(a);  
Eff. May 1, 1993.*

**21 NCAC 34D .0103 INSURANCE-FUNDED CONTRACTS**

A "preneed funeral contract," as defined in G.S. 90-210.60(5), is created when any person, partnership, corporation or association of individuals engaged in the business of providing funeral services or merchandise is named, with knowledge of being named, as a revocable or irrevocable beneficiary or co-beneficiary or assignee of a "prearrangement insurance policy," as defined in G.S. 90-210.60(4), regardless of whether specific funeral services or merchandise is selected. This example does not preclude the creation of insurance-funded preneed funeral contracts pursuant to other facts.

*History Note: Authority G.S. 90-210.69(a);  
Eff. May 1, 1993.*

**21 NCAC 34D .0104 INDICATION OF APPROVAL OF FORMS**

*History Note: Authority G.S. 90-210.69(a); 90-210.62(b);  
Eff. August 2, 1993;  
Repealed Eff. November 1, 2004.*

**21 NCAC 34D .0105 CONTRACT COPIES TO BE FILED**

Within 10 days following the sale of a preneed funeral contract, any person selling the contract shall send a copy of it to the Board, accompanying the fee required by G.S. 90-210.67(d).

*History Note: Authority G.S. 90-210.69(a); 90-210.62(b); 90-210.67(d); 90-210.68(a);  
Eff. August 2, 1993.*

**21 NCAC 34D .0106 TRANSFER OF TRUST PRENEED CONTRACTS TO ANOTHER JURISDICTION**

(a) In order to revoke a preneed funeral contract under G.S. 90-210.65(e)(1), the preneed contract purchaser, or after the death of the preneed contract purchaser, the preneed contract beneficiary or his or her legal representative, shall submit a written request to the Board. The request shall contain a written request to transfer the contract; the domicile of the preneed contract beneficiary at the time of the request; the mailing address of the requesting party, if different from the domicile of the preneed contract beneficiary; and a copy of the new preneed contract executed under the laws of the state of the preneed contract beneficiary's domicile.

(b) Upon finding that the contract may be revoked under G.S. 90-210.65(e)(1), the Board shall order the contract revoked and the funds be transferred to the succeeding funeral establishment under G.S. 90-210.63. A copy of the Board's order shall be served on the preneed contract beneficiary, the contracting funeral establishment, and the financial institution or insurance company holding the preneed funeral funds.

*History Note: Authority G.S. 90-210.65(e)(1); 90-210.69(a);  
Eff. January 1, 2009.*

**SECTION .0200 – LICENSING**

**21 NCAC 34D .0201 PRENEED FUNERAL ESTABLISHMENT LICENSE**

(a) A funeral establishment wishing to apply for a preneed funeral establishment license shall complete a form provided by the Board. The applicant shall submit, in addition to the information required by G.S. 90-210.67, the following information:

- (1) its funeral establishment permit number issued pursuant to G.S. 90-210.25(d);
- (2) type of business entity;
- (3) whether it is authorized to transact business in North Carolina;

- (4) whether it is solvent;
  - (5) whether there exist unsatisfied civil judgments against the applicant and copies of any;
  - (6) whether the applicant or any of its principals has been denied a license to engage in an occupation or had a license suspended, revoked or placed on probation;
  - (7) whether any principal has been convicted of a crime involving fraud or moral turpitude;
  - (8) for all applicants required to maintain a surety bond, evidence that the bond is in effect at the time of application; and
  - (9) any other information deemed necessary by the Board and required by law.
- (b) The Board may require an applicant to submit additional proof to satisfy the requirements of G.S. 90-210.67.
- (c) The applicant shall submit, with its application, the names, preneed sales license numbers and telephone numbers of all preneed sales licensees who will sell preneed funeral contracts as employees or agents of the applicant. Any additions to or deletions from the list of names shall be reported to the Board, within 10 days of the change, as an amended application on an application form.
- (d) The same Board form shall be used for the original application, annual renewal application and amended application. All applications shall be verified as correct before a notary public by the owner, a corporate officer, partner, or member of the limited liability company owning the preneed establishment.
- (e) Preneed funeral establishment licenses shall not be transferable. Upon a transfer of ownership of a funeral establishment, the provisions of 21 NCAC 34B .0605 apply, and a new application for a preneed funeral establishment license shall be made to the Board within 30 days of the transfer. The application fee shall accompany the application, as in the case of initial applications.
- (f) The license certificate shall be conspicuously displayed in the funeral establishment at the address to which it is issued.

*History Note: Authority G.S. 90-210.67(a),(b); 90-210.69(a);  
Eff. May 1, 1993;  
Amended Eff. February 1, 2009.*

**21 NCAC 34D .0202 PRENEED SALES LICENSE**

- (a) Subject to G.S. 90-210.69(c), holding a funeral director's license, issued by the Board, or a funeral service license, issued by the Board, is the qualification to be eligible for a preneed sales license.
- (b) The preneed sales licensee may engage, under the preneed sales license, in the following preneed funeral planning activities, pursuant to the definition of "preneed funeral planning" in G.S. 90-210.60(8):
- (1) show and explain written materials, including price lists and photographs, descriptive of the funeral services and merchandise and the preneed funeral plan or contract being offered;
  - (2) explain the various types of funeral ceremonies and services and the qualities and characteristics of various kinds of funeral merchandise;
  - (3) sell, on a preneed basis, funeral services and merchandise;
  - (4) record, on any form or otherwise, specific items of funeral services and merchandise selected on a preneed basis;
  - (5) make funeral arrangements on a preneed basis; and
  - (6) sign preneed contracts. No preneed funeral planning activities shall be engaged in by anyone other than a preneed sales licensee or a registered resident trainee in funeral service or funeral directing pursuant to 21 NCAC 34B .0103(b); provided, however, no preneed sales license is required solely for the sale of an insurance policy, and in connection with such a sale, the salesperson shall not be deemed to have engaged in preneed funeral planning if, for the sole purpose of permitting a prospective purchaser to make an informed decision as to the amount of insurance desired, the salesperson shows only price lists of funeral services and merchandise.
- (c) A licensed funeral director or funeral service licensee wishing to apply for a preneed sales license shall submit to the Board the applicant's name, address, telephone number, funeral director's or funeral service license number, name and address of the preneed funeral establishment licensee or licensees on whose behalf the applicant will sell preneed funeral contracts, and the applicant's employment or agency relationship with the licensee or licensees. If the applicant proposes to sell on behalf of more than one preneed funeral establishment licensee, the applicant shall disclose information to satisfy the requirement of G.S. 90-210.67(a) that the preneed funeral establishment licensees be related by ownership or contract.

(d) The Board shall issue to each preneed sales licensee a pocket card as certification of the preneed sales license. The preneed sales licensee shall carry the card while engaging in preneed funeral planning. Upon making application for a license the applicant shall indicate the names of the preneed funeral establishment licensees on whose behalf the preneed sales licensee is authorized to sell preneed funeral contracts. The applicant shall pay an application fee and an annual renewal fee determined, respectively, by multiplying the application fee and renewal fee in 21 NCAC 34A .0201(c) times the number of preneed funeral establishment licensees on whose behalf the preneed sales licensee is authorized to sell. When there is any change in the list of establishments on whose behalf the preneed sales licensee is authorized to sell, the preneed sales licensee shall, within 10 days, file an amended list with the Board and shall pay the application fee for each new funeral establishment licensee named on the list, regardless of whether one or more names have been deleted. The total preneed sales license application fee and total renewal fee paid pursuant to this Paragraph shall not exceed the maximums, respectively, set by statute.

(e) The preneed sales licensee shall sign and affix his or her preneed sales license number to each preneed funeral contract, which he or she sells, in the presence of the purchaser of the contract at the time of sale.

*History Note: Authority G.S. 90-210.25(a)(4); 90-210.67(a),(c); 90-210.69(a);  
Eff. July 1, 1993;  
Amended Eff. January 1, 1996; June 1, 1994.*

## SECTION .0300 - OPERATIONS

### 21 NCAC 34D .0301 RECORD AND BOOKKEEPING REQUIREMENTS

(a) Each preneed funeral establishment licensee shall maintain a file containing:

- (1) a copy of each of its license applications, including applications for license renewals;
- (2) copies of all preneed examination reports; and
- (3) copies of all annual reports to the Board.

(b) Each such licensee shall maintain files containing all preneed funeral contracts purchased. The files shall be maintained separately for outstanding contracts and for matured or cancelled contracts. The outstanding contract file shall include a copy of each preneed contract filed alphabetically or numerically. The matured or cancelled contract file shall contain a copy of each preneed contract, together with a copy of the certificate of performance, the preneed statement of funeral goods and services and the at-need statement of funeral goods and services, and shall be filed either chronologically or alphabetically by year.

(c) Each such licensee shall maintain the following records:

- (1) a contract register listing the purchaser's name and final disposition of the contract;
- (2) a separate cash journal or separate cash receipt book designated for preneed, showing all preneed payments collected;
- (3) an individual ledger for each contract purchaser showing the purchaser's and beneficiary's names, amount of the contract, amount paid on the contract, amount retained free of trust pursuant to G.S. 90-210.61(a)(2), deposits to trust, withdrawals from trust as permitted by law and the reasons therefor, interest on deposits, total amount of the trust, and amounts paid to insurance companies for insurance-funded contracts;
- (4) copies of bank statements and deposit slips from financial institutions in which trust funds are deposited, certificate of deposit records, including both principal and interest transactions and trust accountings; and
- (5) copies of applications for insurance, insurance policies, beneficiary designation documents and instruments of assignment.

(d) When two or more preneed funeral establishment licensees are wholly owned by the same entity, all of the copies and records required to be maintained by Paragraphs (a) and (b) of this Rule may be maintained at one address of the licensee, or they may be divided among and maintained at various addresses of the licensees, in their discretion.

(e) The copies required to be maintained by Paragraph (a) of this Rule shall be retained a minimum of ten years following their origination. The copies and records required to be maintained by Paragraphs (b) and (c) of this Rule shall be retained a minimum of ten years following the substitution of a different funeral establishment to perform the preneed funeral contract, the revocation of the preneed funeral contract or the death of the contract beneficiary, whichever occurs first.

(f) Individual ledgers and records of the depository financial institutions shall be balanced at least annually to ensure accuracy.

*History Note: Authority G.S. 90-210.68(a); 90-210.69(a);  
Eff. May 1, 1993;  
Amended Eff. November 1, 2004; January 1, 1996; August 2, 1993.*

**21 NCAC 34D .0302 ANNUAL REPORT**

Each preneed funeral establishment licensee shall file an annual report with the Board. The report shall include the following:

- (1) the total number of standard and inflation-proof trust-funded and insurance-funded preneed funeral contracts maintained by the licensee;
- (2) the number of contracts sold in the reporting period;
- (3) the number of contracts which expired, including contracts performed, revoked and transferred, in the reporting period;
- (4) the total year-end balance of all preneed trust accounts maintained at each financial institution;
- (5) the total year-end balance of all insurance-funded preneed contracts written with each insurance company;
- (6) for each preneed contract sold, whether the preneed contract is active, performed, cancelled, or lapsed; and
- (7) for each active preneed contract, the current insurance policy value or trust account balance.

The annual report shall be verified as correct before a notary public by the location manager registered under G.S. 90-210.25(d)(2)a. or by a corporate officer of the preneed establishment licensee. The annual report shall be filed not later than March 31 each year by each firm holding a preneed establishment license at any time during the preceding year ending December 31.

*History Note: Authority G.S. 90-210.69(a); 90-210.68(a);  
Eff. May 1, 1993;  
Amended Eff. September 1, 2009.*

**21 NCAC 34D .0303 CERTIFICATE OF PERFORMANCE**

(a) The certificate of performance as required by G.S. 90-210.64(a) shall be a form provided by the Board and shall require the following information: the names, addresses and preneed funeral establishment license numbers of the performing funeral establishment and the contracting funeral establishment; the name of the deceased beneficiary of the preneed funeral contract; the date of death and the county where the death certificate was or will be filed; the invoice amount; certification that the contract was or was not performed in whole or in part; the name and address of the financial institution where the preneed trust funds are deposited and the trust account or certificate number; the name and address of the insurance company that issued the prearrangement insurance policy and the policy number; and the amount and the date of the payment by the financial institution or insurance company and to whom paid.

(b) The form shall be completed by each funeral establishment performing any services or providing any merchandise pursuant to the preneed funeral contract, or, if none are performed or provided, by the contracting funeral establishment. The form shall be presented to the financial institution or insurance company for payment. Within 10 days following its receipt of payment, any funeral establishment that is required to complete the form shall file a copy with the Board.

*History Note: Authority G.S. 90-210.64(a); 90-210.68; 90-210.69(a);  
Eff. May 1, 1993;  
Amended Eff. February 1, 2009; November 1, 2004; August 1, 1998; November 1, 1994.*

**21 NCAC 34D .0304 TRANSFER OF TRUST FUNDS**

When, pursuant to G.S. 90-210.68(b), a preneed licensee directs a transfer of preneed funds to a substitute financial institution, the financial institution which is a party to the preneed funeral contract shall make the transfer directly and solely to the substitute financial institution and not mediately to the preneed licensee. The notification to the Board as required by G.S. 90-210.68(b) shall be made on a form provided by the Board, which shall indicate the transfer of the funds by the financial institution and their acceptance by the substitute financial institution and the agreement of the substitute financial institution to be bound by the

preneed funeral contract and, if the contract is revocable, certification that the licensee has notified the purchaser of the intended transfer.

*History Note: Authority G.S. 90-210.69(a); 90-210.68(b);  
Eff. May 1, 1993.*

## **SECTION .0400 - PRENEED RECOVERY FUND**

### **21 NCAC 34D .0401 DEFINITIONS**

For the purposes of this section, the following definitions shall apply:

- (1) "Fund" shall mean the preneed recovery fund as established by G.S. 90-210.66.
- (2) "Applicant" shall mean a person who has suffered a reimbursable loss pursuant to G.S. 90-210.66.
- (3) "Reimbursable losses" are only those losses of money which meet the requirements of G.S. 90-210.66 and in which, as determined by the Board, the applicant has exhausted all viable means to collect the applicant's losses and has complied with this section. Reimbursable losses shall not include losses of spouses, children, parents, grandparents, siblings, partners, associates, employers and employees of the person or business entity causing the losses.

*History Note: Authority G.S. 90-210.69(a); 90-210.66(c), (d), (f), (g);  
Eff. May 1, 1993.*

### **21 NCAC 34D .0402 APPLICATION FOR REIMBURSEMENT**

(a) The Board shall furnish a form of application for reimbursement which shall require the following information:

- (1) The name and address of the applicant.
- (2) The name and address of the licensee under G.S. 90, Article 13D, who caused the alleged loss.
- (3) The amount of the alleged loss for which application for reimbursement is made.
- (4) A copy of any preneed funeral contract which was the basis of the alleged loss.
- (5) The date or period of time during which the loss was incurred.
- (6) A statement of facts relative to the application.
- (7) All supporting documents, including copies of court proceedings and other papers indicating the efforts of the applicant to obtain reimbursement from the licensee, insurance companies or others.
- (8) A documentation of any receipt of funds in partial payment of the loss.
- (9) Any other information the Board deems necessary as required by law.

(b) The application form shall contain the following statement in boldface type: "The North Carolina General Assembly in G.S. 90-210.66 established the preneed recovery fund and directed the North Carolina Board of Funeral Service to provide for its funding and administration. The establishment of the fund did not create or acknowledge any legal responsibility on the part of the Board for the acts, or failure to act, of persons, firms or corporations licensed by it. All reimbursements of losses from the fund shall be a matter of privilege in the sole discretion of the Board and not a matter of right. No applicant or member of the public shall have any right in the fund as a third-party beneficiary or otherwise."

(c) An application shall be filed in the office of the Board.

*History Note: Authority G.S. 90-210.66(a), (c), (d), (f), (g); 90-210.69(a);  
Eff. May 1, 1993.  
Amended Eff. November 1, 2004.*

### **21 NCAC 34D .0403 PROCESSING APPLICATIONS**

(a) The Board in making investigation of all applications filed for reimbursement from the preneed recovery fund may require the attendance of and examine under oath all persons, including the alleged defalcating licensee, whose testimony it may require. A determination of the application shall be made by a majority vote of those present at a Board meeting at which a quorum is present. The Board may afford the applicant a reconsideration of the application; otherwise, a rejection is final, and no further

consideration shall be given by the Board to the application or to another application based upon the same alleged facts.

(b) The Board shall determine the amount of loss, if any, for which the applicant shall be reimbursed from the fund. In making such determination, the Board's considerations shall include:

- (1) The negligence, if any, of the applicant which contributed to the loss.
- (2) The hardship which the applicant suffered because of the loss.
- (3) The total amount of reimbursable losses of applicants on account of any one licensee or association of licensees.
- (4) The total amount of previous reimbursable losses for which total reimbursement has not been made and the total assets of the fund.
- (5) The total amount of insurance available to compensate the applicant for the loss.

(c) The Board may allow further reimbursements in cases in which a loss has not been fully reimbursed.

(d) Before receiving a payment from the fund, the person who is to receive such payment or his or her legal representative shall execute and deliver to the Board a written agreement stating that in the event the reimbursed applicant or his or her estate ever receives any restitution from the licensee or from any other source, the reimbursed applicant or his or her estate shall repay the fund the restitution received or the amount of reimbursement from the fund, whichever is less.

*History Note: Authority G.S. 90-210.66(a), (c), (d), (g); 90-210.69(a);  
Eff. May 1, 1993;  
Amended Eff. November 1, 2004.*

#### **21 NCAC 34D .0404 SUBROGATION**

In pursuing a subrogation claim as authorized by G.S. 90-210.66(h), the Board may require the reimbursed applicant to execute a subrogation agreement, providing for, among other things, that the action may be brought in the name of the applicant. Upon commencement of an action by the Board pursuant to its subrogation rights, it shall notify the reimbursed applicant at his or her last known address in order that the applicant may join in the action if desired. Any amounts recovered by the Board in excess of the amount to which the fund is subrogated, less the Board's actual costs of recovery, shall be paid to or retained by the reimbursed applicant as the case may be.

*History Note: Authority G.S. 90-210.69(a); 90-210.66(d);  
Eff. May 1, 1993.*