

R156. Commerce, Occupational and Professional Licensing.

R156-9. Funeral Service Licensing Act Rule.

R156-9-101. Short title.

This rule shall be known as the "Funeral Service Licensing Act Rule".

R156-9-102. Definitions.

In addition to the definitions in Title 58, Chapters 1 and 9, as defined or used in this rule:

- (1) "Contract" means a guaranteed preneed funeral arrangement contract.
- (2) "Funeral service establishment" is defined in Subsection 58-9-102(18).
- (3) "Guaranteed product contract" means a contract wherein goods or services are selected which will be provided at the time of need for the consideration specified in the contract regardless of the market price at the time of need.
- (4) "Recipient of goods and services" is synonymous with "beneficiary" as defined in Subsection 58-9-102(2), and is used herein to avoid confusion with various common meanings of the term "beneficiary".
- (5) "Unprofessional conduct" as defined in Title 58, Chapters 1 and 9, is further defined in accordance with Subsection 58-1-203(1)(e) in Section R156-9-502.

R156-9-103. Authority - Purpose.

This rule is adopted by the Division under the authority of Subsection 58-1-106(1)(a) to enable the Division to administer Title 58, Chapter 9.

R156-9-104. Organization - Relationship to Rule R156-1.

The organization of this rule and its relationship to Rule R156-1 is as described in Section R156-1-107.

R156-9-302a. Qualifications for Licensure - Examination Requirements.

In accordance with Subsections 58-1-203(1)(d) and 58-1-301(3), the qualifications for licensure in Subsections 58-9-302(1)(g), 58-9-302(2)(e), 58-9-302(4)(e) and 58-9-306(6) and (7) are defined, clarified, or established as follows:

- (1) An applicant for licensure as a funeral service director shall pass the National Board Examinations (science and art sections) of the Conference of Funeral Service Examining Boards. The examination may be taken while the individual is enrolled in an approved funeral service school.
- (2) An applicant for licensure as a funeral service director, funeral service intern, preneed sales agent or funeral service director by endorsement shall pass the Utah Funeral Service Law and Rule Examination with a score of at least 75%.
- (3) An individual who fails the Utah Funeral Service Law and Rule Examination may retake the failed examination:
 - (a) no more than three times within a six month period; and
 - (b) no earlier than three months following any failure thereafter.

R156-9-303. Renewal Cycle - Procedures.

- (1) In accordance with Subsection 58-1-308(1), the renewal date for the two-year renewal cycle applicable to licenses under Title 58, Chapter 9 is established by rule in Section R156-1-308a.
- (2) Renewal procedures shall be in accordance with Section R156-1-308c.

R156-9-304. Continuing Professional Education - Funeral Service Directors.

In accordance with Subsections 58-1-203(1)(g) and 58-1-308(3)(b) and Section 58-9-304, the continuing education requirements for funeral service directors is defined, clarified or established as follows:

- (1) Continuing professional education shall consist of 20 hours of qualified continuing professional education in each preceding two-year period of licensure or expiration of licensure.
- (2) If a renewal period is shortened or extended to effect a change of renewal cycle or if an initial license is granted for a period of less than two years, the continuing professional education hours required for that period shall be increased or decreased accordingly as a pro rata amount of the requirements of a two-year period.
- (3) The standards for qualified continuing professional education are:
 - (a) College classes, seminars, or workshops sponsored by professional associations in areas related to funeral service will generally qualify for continuing professional education (CPE) if the education contributes to the professional competence and knowledge of the funeral service director and if the program complies with the standards set forth under Subsection (b).
 - (b) CPE programs shall meet the following standards:
 - (i) the course shall be formally organized and be primarily instructional;
 - (ii) the sponsor shall prepare an outline of the course which shall be retained for a minimum of four years following the presentation;
 - (iii) the sponsor shall list the hour rating of the course in the course outline. One hour of CPE shall be credited for each 50 minute period of instruction;

(iv) the sponsor shall record and keep an accurate record of course attendance including the date, place, and the name of the licensed funeral service directors attending the course; and

(v) the sponsor shall issue a certificate of completion listing the time, date, place, name of licensee, number of hours of CPE completed and the course title.

(c) Formal correspondence or other individual study programs which require registration shall provide evidence of satisfactory completion including test results and meet all other requirements as specified in this section will qualify.

(d) Each semester hour of college credit shall equal 15 hours of CPE. A quarter hour shall equal ten hours of CPE.

(4) Upon written request from the licensee, the Board may waive the requirement for CPE as provided in Section R156-1-308d.

(5) The licensee is responsible to insure that the program will qualify for CPE. Each licensee shall keep an accurate record of CPE on forms supplied by the Division. The records shall be maintained for a minimum of four years.

(6) The Division in collaboration with the Board shall perform random audits to determine if the licensee is in compliance with the CPE requirements. If audited, or upon request by the Division, the licensee is responsible to submit documentation of compliance with CPE requirements.

R156-9-401. Facility/Staff Requirements.

(1) The funeral service establishment is responsible for the maintenance and safe operation of equipment used in funeral services and to insure that the facility is in compliance with the local or state health, fire and life safety codes. All mortuaries shall be kept and maintained in a clean and sanitary condition and all embalming tables, sinks, receptacles, instruments and other appliances used in embalming and cremation of dead human bodies shall be thoroughly cleansed and disinfected.

(2) The funeral service director is responsible to comply with the standards established by the Occupational Safety and Health Administration for the Federal Government and for the State of Utah.

(3) A funeral establishment or a number of funeral establishments under one management shall contain:

(a) a preparation room equipped with tile, cement, or composition floor, necessary drainage and ventilation. Every preparation room shall be provided with proper and convenient receptacles for refuse, bandages, cotton and other waste materials and supplies. All refuse, bandages, cotton, and other waste materials shall be destroyed in a sanitary manner, in accordance with health regulations.

(b) necessary instruments, supplies and proper protective clothing for the preparation and embalming of dead human bodies for burial, transportation, or other disposition.

(4) The care and preparation of the body for burial or other disposition of all human dead bodies shall be strictly private. No one shall be allowed in the embalming room while a dead body is being embalmed, except the licensed embalmer, intern, staff, public officials in the discharge of their duties and upon request, members of the immediate family of the deceased.

R156-9-402. Duties and Responsibilities of a Funeral Service Director in Supervision of Funeral Service Interns, Preneed Funeral Arrangement Sales Agents and Unlicensed Staff.

The duties and responsibilities of a supervising funeral service director include:

(1) being professionally responsible for the acts and practices of the supervisee;

(2) being engaged in a relationship with the supervisee in which the supervisor is independent from control by the supervisee and in which the ability of the supervisor to supervise and direct the practice of the supervisee is not compromised;

(3) being available for advice, consultation, and direction consistent with the standards and ethics of the profession and the requirements suggested by the total circumstances including the supervisee's level of training;

(4) monitoring the performance of the supervisee for compliance with laws, standards, and ethics applicable to the funeral service profession, including the Utah Vital Statistics Rules of the Utah Department of Health;

(5) submitting appropriate documentation to the Division with respect to all work completed by the funeral service intern evidencing the performance of the supervisee during the period of supervised training, including the supervisor's evaluation of the supervisee's competence in the practice of the funeral service profession. This report shall be submitted to the Division within 30 days after the supervisor-supervisee relationship is terminated or within 30 days after the supervisee has completed 2000 hours of supervised experience in a period exceeding one year, performed 50 embalmings, and has satisfactorily completed all the duties and functions of an intern throughout the entire internship period;

(6) supervising not more than one funeral service intern at any given time unless approved by the Board and Division;

(7) being physically present and directly supervising, or ensuring that another funeral director directly supervises all duties and functions completed by a funeral service intern throughout the entire internship period;

(8) being responsible for and signing all preneed and at need funeral contracts sold by persons under supervision;

(9) assuring each supervisee is appropriately licensed as a funeral service intern or preneed funeral arrangement sales agent prior to beginning the supervision;

(10) notifying the Division of beginning or ending of association or employment of a preneed sales agent with the funeral service establishment within ten days. Notification shall be made on forms provided by the Division; and

(11) assuring that the supervision requirements are met as required in Section 58-9-307.

R156-9-403. Death Registration - Removal of Body - Transportation and Preservation of Dead Human Bodies.

(1) A funeral service director licensed in another state may enter the state of Utah for the purpose of transporting a dead human body to another state without being in violation of Title 58, Chapter 9. However, the person shall comply with the Utah Vital Statistics Rules of the Utah Department of Health and any other statute or rule regulated by the Utah Department of Health.

(2) All licensed funeral service directors, who release a dead human body to such persons, are responsible to insure that the out of state persons and their staff comply with the Utah Vital Statistics Rules of the Utah Department of Health.

R156-9-502. Unprofessional Conduct.

"Unprofessional conduct" as defined in Title 58, Chapters 1 and 9, is further defined in accordance with Subsection 58-1-203(1)(e) to include:

- (1) violating the ethical standards of the profession;
- (2) failing to comply with laws and rules established by any local, state, federal or other authority regarding funeral services, preneed contracts, health, safety, sanitation, regarding funeral establishments or transportation or handling of dead human bodies, or disclosure requirements to purchasers or prospective purchasers of funeral services or preneed contract;
- (3) failing to comply with any provision of the Title 58, Chapter 9, Funeral Service Licensing Act or this Funeral Service Licensing Act Rule;
- (4) failing to comply with the disclosure requirements of the Federal Trade Commission;
- (5) failing to accurately report and record information required by law to be reported on a death certificate;
- (6) solicitation or the direct or indirect offer to pay a commission for the procurement of dead human bodies;
- (7) failing to comply with the Utah Vital Statistics Rules as promulgated by the Utah Department of Health;
- (8) selling preneed funeral arrangements by a preneed funeral arrangement sales agent when the sales agent is not associated with or employed by a funeral service establishment;
- (9) selling a preneed funeral arrangement when the preneed funeral arrangement sales agent has not obtained approval to do so from the funeral service establishment and the contract is not approved by the supervising funeral director;
- (10) selling an insurance policy to fund a preneed funeral arrangement contract naming a funeral service establishment as beneficiary, prior to executing the underlying preneed funeral arrangement contract;
- (11) selling a preneed funeral arrangement without executing an approved preneed funeral arrangement contract within ten working days following the sale;
- (12) failing to notify the Division of the beginning or ending of association or employment of a preneed funeral arrangement sales agent;
- (13) exercising undue influence over a consumer thereby requiring or causing the consumer to purchase goods or services beyond those the consumer desires or needs;
- (14) collecting or receiving money from the sale of an insurance policy funding a preneed funeral arrangement contract unless the person is collecting or receiving the money as a licensed insurance agent or broker;
- (15) violating Title 31A, Chapter 23a, containing the fiduciary duties of a trustee with respect to money collected or received as a licensed insurance agent or broker;
- (16) receiving a death benefit payment of life insurance proceeds beyond the funeral service establishment's insurable interest in the recipient of goods and services specified in a preneed contract, unless the excess is promptly returned to the insurance company or paid to those entitled to the funds;
- (17) converting a preneed funeral arrangement funded by money placed in trust to insurance except as provided by this rule;
- (18) failing to provide guaranteed goods and services at time of need in accordance with the terms of a preneed funeral arrangement contract;
- (19) retaining life insurance proceeds of a policy purchased to fund funeral arrangements but not accompanied by a preneed funeral arrangement contract, unless the licensee provides an equivalent value of funeral goods and services;
- (20) failing to report known violations of governing law or rules to the Division and to appropriate law enforcement or other appropriate agencies; and
- (21) failing to handle, remit or deposit funds received in payment for a preneed funeral arrangement contract by placing the funds in trust or remitting the funds to an insurance carrier as is required by the contract terms and conditions and by all laws and rules regulating the sale of preneed funeral arrangements and insurance and annuity policies.

R156-9-604. Affiliation of Licensed Sales Agent with Licensed Funeral Service Establishment.

(1) When a licensed sales agent enters association with a licensed funeral service establishment and such association is not currently registered with the Division under the provisions of Subsection 58-9-302(3)(d), or this subsection, the licensed funeral service establishment shall file a notice of association with the Division on forms provided by the Division within ten days after commencement of association.

(2) The licensed funeral service establishment shall provide the licensed sales agent with a copy of the notice filed with the Division.

(3) If a notice of association is not filed by the licensed funeral service establishment within ten days after association, the sales agent may not represent the licensed funeral service establishment with respect to any preneed funeral arrangement until such notice is filed.

R156-9-605. Licensure of Persons Selling Preneed Funeral Arrangements to be Funded by Proceeds from Insurance or Annuity Policy.

(1) Any person who sells or represents that they will or intend to sell specific funeral goods or services, represents that goods or services will be provided by a specific funeral establishment, represents that specified amount of money will purchase defined funeral goods or services, or represents that payment for those goods or services to be provided at some future date shall be accomplished through the purchase of a life insurance policy or annuity policy, is engaged in the sale of a preneed funeral arrangement and is required to be licensed as a funeral service establishment or sales agent.

(2) Any person who sells or represents that they will or intend to sell an insurance or annuity policy which will provide a certain benefit at time of death, represents that such benefit will be available to pay for funeral arrangements and no reference is made to specific funeral goods or services, to the cost of specific funeral goods or services, or to the services of a specific funeral service establishment, is not engaged in the sale of a preneed funeral arrangement and is not required to be licensed as a funeral service establishment or preneed sales agent.

(3) Nothing in this section shall be interpreted to affect or modify any requirement under state law regarding licensure of persons engaged in the sale of insurance or annuity policies.

R156-9-606. Preneed Funeral Arrangement Contracts Funded by Insurance or Annuity Policy.

(1) The beneficiary designation on any insurance or annuity policy sold to fund a preneed funeral arrangement contract shall be a contingent designation using such wording as "as their interests may appear under a funeral arrangement contract" with information identifying the funeral arrangement contract, or other substantially equivalent beneficiary designation language.

(2) Monies received by a licensee in payment for an insurance or annuity policy sold to fund a preneed funeral arrangement contract shall be handled in accordance with the contractual terms and conditions of the policy and the insurance laws applicable to the policy.

R156-9-607. Contract Forms - Division Model.

(1) To assist applicants for a funeral service establishment license, the Division shall publish a model guaranteed preneed funeral arrangement contract form which meets the requirements of Section 58-9-701.

(2) In accordance with the provisions of Subsection 58-9-302(3)(e), a funeral service establishment must submit to the Division a copy of the preneed contract form it intends to market for initial licensure and then ensure that if any amendments are made to the preneed section in the future, the amendments shall meet the requirements set forth in Section 58-9-701 before the contract form may be used in marketing the licensee's preneed funeral arrangement plan under that contract form.

(3) In accordance with the provisions of Subsection 58-9-701(2)(a), easy-to-read type size is hereby defined to be of a type size large enough to accommodate no more than six lines per vertical inch and no more than 15 characters per horizontal inch.

(4) After April 30, 2007, a new preneed contract form is not required to contain a clause indicating that the Division has approved the contract. Preneed contract forms approved prior to April 30, 2007 shall continue to contain a clause indicating approval by the Division.

R156-9-608. Contract Notice Regarding Medicaid.

The following notice shall appear in all preneed contracts:

"Notice: Under Federal regulations, a Medicaid recipient whose preneed contract is revoked, canceled, or mutually rescinded may become ineligible for Medicaid benefits. Before permitting or causing your preneed agreement to be revoked, canceled or rescinded, you should seek the advice of an attorney or a Medicaid representative."

R156-9-609. Retention of Completed or Terminated Contracts.

Contracts shall be maintained for a period of five years after the contracts have been serviced and obligations of the funeral service establishment have been completed, or after the contracts have been otherwise terminated. The contracts shall be filed and maintained with a copy of the death certification or burial transit permit with respect to those contracts for which services have been provided, and with sufficient documentation to clearly identify the basis for termination of otherwise terminated.

R156-9-610. Cash Advance Item Prohibited Unless a Guaranteed Product.

A cash advance item as defined in 16 CFR Part 453, Funeral Industry Practices Trade Regulation Rule, of the Federal Trade Commission is prohibited in a preneed funeral arrangement contract unless the item is a guaranteed product permitting the contract to meet the requirements of Subsection 58-9-701(2)(d).

R156-9-611. Use of Funds in Trust Account to Purchase Insurance or Annuity Policy.

A funeral service establishment may convert a contract funded by monies held in trust with a contract funded by the proceeds from an insurance or annuity policy provided:

- (1) the buyer consents in writing to the conversion after full disclosure of the consequences of the transaction in writing by the funeral service establishment;
- (2) the buyer's consent is given without coercion, threat, concealment of material fact, undue influence, or other prejudicial influence inconsistent with the buyer's best interest;
- (3) the funeral service establishment uses all monies held in the individual trust account, including interest, as premium for the purchase of the life insurance or annuity policy, unless otherwise directed in writing by the buyer;
- (4) the new preneed funeral arrangement contract must be in writing and must provide for goods and services which at least equal to those required of the funeral service establishment under the original contract, and
- (5) the new contract meets all requirements of Title 58, Chapter 9, and this rule.

R156-9-612. Conversion of Trust Accounts Under Prior Law Prohibited.

Conversion of funds held in trust which was established under any prior law regulating preneed funeral arrangements, may not be converted to a trust under the provisions of current statute and rules, but shall continue to be held in trust under the terms and conditions of the predecessor law. However, the funeral service establishment is required to file reports with the Division as required under this rule.

R156-9-613. Prohibition Against Provider Accepting Payment in a Form Other Than Cash, Cash Equivalents, or Negotiable Instruments.

A funeral service establishment may accept in payment for a preneed funeral arrangement contract only cash, cash equivalents, or negotiable instruments which are readily convertible to cash.

R156-9-614. Funeral Service Establishment Expenditure of Earnings from Trust Account.

- (1) In accordance with Subsection 58-9-704(1), earnings of a preneed funeral arrangement trust account shall be available to the funeral service establishment for expenditure toward reasonable trustee expenses of administering a trust account, not to exceed the lesser of the earnings remaining in the trust account or 1% of the entire trust account, plus any amounts necessary to pay taxes incurred on the entire trust account's earnings.
- (2) In accordance with Subsection 58-9-704(2), earnings of an individual account within the trust shall be available to the funeral service establishment for expenditure toward other authorized reasonable funeral service establishment expenses incurred against the individual account, not to exceed earnings totaling 30% of the sales amount of the respective preneed funeral arrangement contract.
- (3) Remaining earnings of individual accounts within the trust shall, except as provided in Subsection 58-9-704(3), remain in each individual account within the trust to pay by account, the costs of providing the goods and services required under respective preneed funeral arrangement contracts.

R156-9-615. Maximum Life Insurance Proceeds Payable to Funeral Service Establishment.

- (1) Preneed life insurance proceeds payable to a funeral service provider shall not exceed the funeral service establishment's insurable interest in the recipient of goods and services which, by definition, shall not exceed the funeral service establishment's current retail price for the goods and services provided, as determined by the funeral service establishment's price list in effect at the recipient of goods and service's death.
- (2) Excess preneed life insurance proceeds not paid to the funeral service establishment shall be returned to the owner of the life insurance policy or his heirs and beneficiaries unless otherwise designated by the owner or his heirs and beneficiaries.

R156-9-616. Reporting Requirements.

- (1) In accordance with Sections 58-9-504 and 58-9-706, each funeral service establishment shall maintain an annual report at the establishment which shall be subject to Division audit at anytime. The annual report shall be maintained in a format set forth by the Division and shall include:
 - (a) a statement of compliance certifying:
 - (i) that all payments received from the sale of contracts have been:
 - (A) placed in the funeral service establishment's trust account in accordance with Section 58-9-702 and administered in accordance with Sections 58-9-703 through 58-9-705 and this rule; or
 - (B) submitted to the insurance company whose insurance or annuity policy funds the contract;
 - (ii) that complete and accurate information concerning the preneed funeral arrangements by the funeral service establishment or the funeral service establishment's sales agent was furnished or made available to the independent certified public accountant who prepared the report of agreed upon procedures; and
 - (iii) that the annual report is complete and accurate;

(b) at least one of the following reports which reconciles balances in all trust accounts and insurance policies to those in the annual report:

(i) a report from a bank trust department;

(ii) a report from a licensed insurance company; or

(iii) an accounting report on forms available from the Division, completed by an independent certified public accountant (CPA) licensed pursuant to Title 58, Chapter 26a, which report indicates the procedures used and agreed upon by the CPA and the funeral service establishment.

(c) an exhibit listing preneed contracts sold prior to April 29, 1991, funded by money, 75% of which is required to be maintained in the name of the contract buyer in the funeral service establishment's trust account as provided in Section 58-9-703, which shall include at a minimum: the contract number, date, amount, the recipient of goods and services and buyer if different, and balance due; the individual trust account number and amount trusted; and the trust earnings, earnings used, and trust balance;

(d) an exhibit listing preneed contracts sold after April 28, 1991, funded by money, 100% of which is required to be maintained in the name of the contract buyer in the funeral service establishment's trust account as provided in Section 58-9-703, which shall include at a minimum the information required under subsection (c);

(e) an exhibit listing preneed contracts funded by money placed in trust which were serviced, revoked, rescinded, or amended since the last reporting period, which shall include at a minimum: the contract number, date, amount, the recipient of goods and services and buyer if different; the individual trust account number and trust balance at the recipient of goods and service's death; the date the contract was closed; and an explanation regarding any preneed contract closed but not serviced;

(f) an exhibit listing preneed contracts sold after April 28, 1991, funded in whole or in part by insurance, which shall include at a minimum: the contract number, date, amount, recipient of goods and services and buyer if different; the insurance company; the policy number, policy holder, and face amount; and

(g) an exhibit listing preneed contracts funded by insurance which were serviced, revoked, rescinded, or otherwise amended since the last reporting period, which shall include at a minimum: the contract number, date, amount, the recipient of goods and services, and buyer if different; the insurance company; the policy number and policy holder; the policy proceeds; the date the contract was closed; and an explanation regarding any preneed contract closed but not serviced.

R156-9-617. Maximum Revocation Fee.

If a buyer revokes or defaults under a guaranteed preneed funeral arrangement contract, the funeral service establishment may retain a revocation fee from the trust corpus, not to exceed 25% of the amount received from the sale of the contract and trust earnings thereupon, provided the revocation fee is clearly identified in the contract.

R156-9-618. Goods and Services Not Provided - Refund.

If goods or services selected in the preneed contract are not provided at the time of need, the amount paid for those goods and services and any unexpended earnings thereupon will be distributed to the preneed contract buyer or the buyer's representative or in their absence, the buyer's heirs and beneficiaries.

KEY: funeral industries, licensing, funeral directors, preneed funeral arrangements

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FUNERAL SERVICE LICENSING ACT RULE

R156-9

Utah Administrative Code

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