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[CMR 239](#)**Rules and Regulations**
4.00: Pre-Need Funeral Contracts and Arrangements

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4.01: Definitions

Board - means the Board of Registration in Embalming and Funeral Directing.

Buyer - means the person entering into a pre-need funeral contract with a licensed funeral establishment.

Funeral Goods And/Or Services - means those goods and services which are customarily provided in the business of embalming and funeral directing, as commonly practiced, including but not limited to usage of facilities and those goods and services identified in 239 CMR 4.02(3)(e).

Funeral Trust - means a written agreement of trust whereby funds are transferred to a named trustee with the intention that the trustee will manage and administer those funds for the benefit of a named beneficiary and use those funds to pay for funeral goods and/or services to be furnished to that named beneficiary.

Funeral Trust Account - an account established, pursuant to the terms of a funeral trust, in any federal or state-chartered banking institution having trust powers, or any trust company, located in the Commonwealth of Massachusetts, in which funds are deposited or invested for the purpose of paying for funeral goods and/or services at a future time.

Licensed Funeral Establishment - means a fixed place or establishment owned or maintained by a person, partnership, corporation, association or other organization which has been duly registered by the Board pursuant to M.G.L. c. 112, § 84 and which is located, constructed, equipped and operated for the purpose of providing sanitary handling, preparation,

disposition and care of dead human bodies.

Pre-Need Funeral Contract - means any pre-need funeral services contract or pre-need funeral arrangements contract, entered into in advance of death, as defined in 239 CMR 4.00.

Pre-Need Funeral Services Contract - means any written agreement whereby a licensed funeral establishment agrees, prior to the death of a named person, to provide specifically-identified funeral goods and/or services to that named person upon his/her death, and which is signed by both the buyer and a duly authorized representative of the licensed funeral establishment.

Pre-Need Funeral Arrangements Contract - means any written arrangement between a licensed funeral establishment and another person which establishes a source of funds to be used solely for the purpose of paying for funeral goods and/or services for a named person, but which does not identify the specific funeral goods and/or services to be furnished to that person.

Pre-Need Insurance Policy or Annuity - means any policy, certificate, agreement or contract of insurance issued by an insurance company, the proceeds of which are to be utilized to pay for funeral goods and/or services furnished to a named person.

Settlor - means a person who places funds in a funeral trust for the benefit of a named person.

Statement of Funeral Goods and Services - means a written itemized statement showing to the extent then known the price of funeral goods and/or services selected by a person, the price of each supplemental item of goods and/or services to be provided, the estimated amount for each item for which the funeral establishment will advance monies as an accommodation to the person or persons making the funeral arrangements, and all other information required by M.G.L. c. 112, § 84B, 239 CMR 3.14, and 16 CFR 453.2.

Trust Beneficiary - means the beneficiary of any funeral trust to whom funeral goods and/or services are to be provided at death.

Trustee - means a licensed funeral establishment, a federal or state-chartered banking institution within the Commonwealth of Massachusetts having trust powers, or a trust company within the Commonwealth of Massachusetts, to which funds have been transferred in trust for the purpose of paying for funeral goods and/or services for a named beneficiary, and which is charged with the fiduciary duty of managing and administering those funds for the benefit for that named beneficiary.

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4.02: General Requirements

- (1) All pre-need funeral contracts shall be between the buyer and a licensed funeral establishment.
- (2) No person shall prepare, negotiate or execute a pre-need funeral contract with a buyer or potential buyer; or receive, control or manage any funds tendered as payment for the funeral goods and/or services identified in such a pre-need funeral contract; unless he or she is duly registered with the Board as a registered licensed funeral director or registered certified funeral director.
- (3) A registered licensed funeral director or registered certified funeral director shall not sell or provide pre-need insurance policies or annuities as a funding method for any pre-need funeral contract unless he or she is duly licensed as an insurance agent or broker by the Massachusetts Division of Insurance.
- (4) No licensed funeral establishment, or agent or employee thereof, shall use or pledge any funds which are received in connection with any pre-need funeral contract and which are to be invested in a funeral trust account pursuant to 239 CMR 4.06(2), or used to purchase a pre-need insurance policy or annuity pursuant to 239 CMR 4.07, for any personal use, payment of the operating expenses of any funeral establishment, issuance of a loan to any person, as collateral for any loan, or for any purpose other than those expressly authorized by that pre-need funeral contract and 239 CMR 4.00.
- (5) Every licensed funeral establishment shall file with the Board, on or before June 30 of each calendar year, a written report setting forth the following information:
 - (a) The number of pre-need funeral contracts entered into during the preceding calendar year;
 - (b) The funding method used to finance each pre-need funeral contract entered into during the preceding calendar year;
 - (c) The names and addresses of all banks, financial institutions, insurance companies and/or investment companies holding any funds received in connection with any such pre-need funeral contracts during the preceding calendar year; and
 - (d) The location within the Commonwealth of Massachusetts where its records pertaining to pre-need funeral contracts are maintained.

Said report shall be made in such form and manner as the Board may direct.

(6) Upon request by any authorized representative of the Board in connection with any official inquiry, a licensed funeral establishment shall furnish complete written information regarding the total amount of assets being held in connection with pre-need funeral contracts by each institution or company identified pursuant to 239 CMR 4.02(5)(c) which is holding any such funds.

(7) Registered licensed funeral directors and registered certified funeral directors who prepare, negotiate and/or execute pre-need funeral contracts shall arrange only for funeral goods and/or services, and shall not sell interment space or monuments in such contracts.

(8) All pre-need centers or offices which engage in the preparation, negotiation or execution of pre-need funeral contracts or arrangements shall be located within a duly licensed funeral establishment.

(9) Notwithstanding the provisions of 239 CMR 4.06, a licensed funeral establishment may require a customer to reimburse said funeral establishment for any local, state or federal taxes or fees added after the execution of the pre-need funeral contract, including but not limited to any value-added or sales taxes, for which the funeral establishment is held responsible by the taxing authority. In cases where the pre-need funeral contract is funded in full or in part, said reimbursement shall be considered an additional sum to be paid by the customer, and the funeral establishment shall not be required to deduct it from any income which accrues on the amount initially placed with the funeral establishment for investment in a pre-need funeral trust account, funeral insurance policy or other funding arrangement.

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4.03: Required Contents of Pre-Need Funeral Contracts

(1) General. Every pre-need funeral contract shall contain, at a minimum, all of the following:

(a) The name, address and telephone number of each party to the contract and, if the beneficiary of the contract is an individual other than the buyer, the name and address of the beneficiary of the contract;

(b) Provisions which adequately describe, in clear non-technical language, the respective rights and obligations of each party to the contract with respect to:

1. Payment for any funeral goods or services selected;

2. Amendment and/or cancellation of the contract, consistent with the requirements of 239 CMR 4.05, 239 CMR 4.06(7) and 239 CMR

4.06(8);

3. Refunds of any payments made;

4. The buyer's and beneficiary's rights to freedom of choice in the selection of a funding method; and

5. The buyer's and beneficiary's rights to inspect records of the funeral establishment pertaining to the contract;

(c) Provisions which describe the funeral establishment's obligations, as set forth in 239 CMR 4.06(6), to notify the buyer (and beneficiary, if different) of any changes in the terms of the contract, changes in the terms of any funeral trust, changes in the ownership of the funeral establishment or its assets, or changes in the financial circumstances of the funeral establishment which might affect the funeral establishment's ability to perform its obligations with respect to the contract or funeral trust;

(d) A written acknowledgement, signed by the buyer, which indicates that:

1. The buyer has established a funeral trust fund pursuant to 239 CMR 4.00 and has received all disclosures required by 239 CMR 4.06(3); or

2. The buyer has elected to purchase a pre-need insurance policy or annuity and has received all disclosures required by 239 CMR 4.07(2); or

3. The buyer has tendered payment in full for all funeral goods and services specified in the contract and has received satisfactory written evidence that those goods or services will be furnished at time of death; or

4. The buyer has declined to select a funding method and has paid no money to the funeral establishment;

(e) A written acknowledgement, signed by the buyer, verifying that he or she has received a copy of the Buyer's Guide to Pre-Need Funeral Contracts, as required by 239 CMR 4.04;

(f) The signature and registration number of the registered licensed funeral director or registered certified funeral director who prepared, negotiated and executed the pre-need funeral contract on behalf of the licensed funeral establishment; and

(g) The signature of the buyer.

(2) Additional Required Contents - Pre-need Funeral Services Contracts.

In addition to the provisions required by 239 CMR 4.03(1), every pre-need funeral services contract shall contain, or have attached to it, a "Statement of Funeral Goods and Services". Said "Statement of Funeral Goods and Services" shall, at a minimum, contain all of the following:

(a) The price, to the extent then known, of each item of service and/or merchandise identified in the agreement and a description of what is basically included therein;

(b) The price, to the extent then known, of each of the supplemental items of service and/or merchandise identified in the agreement;

(c) Where the price of the item in question is not guaranteed by the funeral establishment to be in effect at the time of death, the specific length of time for which the quoted price for that item will remain in effect;

(d) The estimated amount involved for each of the items for which the funeral establishment will advance monies as an accommodation to the buyer entering into the contract; and

(e) Any additional information which is required by the Federal Trade Commission Funeral Rule (15 CFR 453.2).

(3) Additional Required Contents - Pre-Need Funeral Arrangement Contracts. In addition to the provisions required by 239 CMR 4.03(1), every pre-need funeral arrangements contract shall contain:

(a) A statement indicating that no specific funeral goods and/or services have been selected by the buyer (or contract beneficiary, if different) from that licensed funeral establishment as of the time the pre-need funeral arrangements contract is signed by the parties; and

(b) A provision ensuring that a "Statement of Funeral Goods and Services" which contains all of the information required by 239 CMR 4.03(2) shall be furnished to the buyer at the time specific funeral goods and/or services are actually selected.

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4.04: Provision Of Buyer's Guide

(1) A copy of a Buyer's Guide to Pre-Need Funeral Contracts, approved by the Board, shall be furnished to every person or identifiable group of persons who enter into negotiations or discussions with a registered licensed funeral director or registered certified funeral director regarding a pre-need funeral contract prior to the signing of any such contract by the parties.

(2) A Buyer's Guide to Pre-Need Funeral Contracts shall, at a minimum, inform the consumer that:

- (a) A consumer can pre-plan his or her funeral arrangements without paying for such arrangements in advance;
- (b) The prices of funeral goods and services specified in a pre-need funeral contract may or may not be guaranteed (*i.e.*, may or may not still be in effect at the time of death);
- (c) There are various methods of financing pre-need funeral contracts, including but not limited to trusts, pre-need insurance policies, funeral insurance, traditional life insurance policies, annuities, and separate bank accounts;
- (d) Each such financing method has certain briefly-described tax, Medicare and Medicaid eligibility, and cancellation consequences; and
- (e) The consumer has a legal right to cancel such a pre-need funeral contract within ten days of its execution without penalty.

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4.05: Cancellation Rights

- (1) Any buyer of a pre-need funeral contract may cancel that contract and receive a full refund of all monies paid, without penalty, at any time within ten days after signing said contract. After the expiration of this ten-day "cooling off period" a pre-need funeral contract may be canceled in accordance with 239 CMR 4.06(8).
- (2) Where an application by the buyer or contract beneficiary of a pre-need funeral contract for government benefits is pending, the buyer may waive his/her right to cancel said contract within this ten-day "cooling off" period, but only by signing a written waiver of that right. Said waiver shall not affect the buyer's right to cancel pursuant to 239 CMR 4.06(8).
- (3) No licensed funeral establishment, or agent or employee thereof, shall impose any surcharge, fee or other penalty (monetary or otherwise) upon any buyer of a pre-need funeral contract who seeks to exercise his rights to cancel under 239 CMR 4.05.

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4.06: Funding Methods - Funeral Trusts

- (1) All funeral trusts shall be established and administered in compliance with the requirements of 239 CMR 4.06.

(2) Investment Requirements.

(a) Where a funeral trust is established, the licensed funeral establishment shall deposit at least 90% of all funds received in connection with that funeral trust in a funeral trust account within five business days after the expiration of the "cooling-off" period described in 239 CMR 4.05(1). Every such funeral trust account shall:

1. Designate either the licensed funeral establishment, or a federal or state-chartered banking institution or trust company within the Commonwealth of Massachusetts which has trust powers, as the trustee of said funeral trust account;
2. Designate the person for whom the funeral goods and/or services are to be provided as the beneficiary of said funeral trust account;
3. Indicate that the funds are to be used solely for the purpose of paying for funeral goods and/or services; and
4. Provide that the entire account balance shall be payable to the licensed funeral establishment upon presentation of a certified copy of the death certificate for the named trust beneficiary and a written statement from the funeral establishment, signed by a registered licensed funeral director, certifying that the terms of the pre-need funeral contract have been performed in full.

(b) Where the named trustee of a funeral trust account established pursuant to 239 CMR 4.06(2)(a) is a federal or state-chartered banking institution or trust company within the Commonwealth which has trust powers, the funeral trust account may take the form of:

1. A bank account which is insured; or
2. Any other form of investment which may lawfully be established or maintained by the trust department of the banking institution or trust company in which the funeral trust account is established.

All funds deposited in said funeral trust account shall be invested and managed in a manner which is consistent with the "prudent man" investment standard for trustees.

(c) Where the name trustee of a funeral trust account

established pursuant to 239 CMR 4.06(2)(a) is a licensed funeral establishment, the funds to be placed in said funeral trust account may be deposited in any banking institution or trust company within the Commonwealth of Massachusetts, but shall be placed only in a bank account or other type of deposit which is properly insured.

(d) The licensed funeral establishment may retain, as an administration fee, up to ten percent of the funds received for placement in a funeral trust established pursuant to 239 CMR 4.06, subject to all applicable limitations, restrictions and requirements thereof. No such administration fee shall be charged to, or deducted from, the funds to be deposited in any funeral trust account more than once, regardless of whether or not the prices of the funeral goods and services specified in a pre-need funeral contract were guaranteed to be in effect at the time of death and regardless of the date of the trust beneficiary's death. In addition, where the funeral establishment is the named trustee, no additional fees shall be paid to the funeral establishment out of the funeral trust account for the administration of the funeral trust.

(e) funds received in connection with more than one funeral trust may be deposited in a single common or commingled funeral trust account under the terms of a single trust instrument, provided that:

1. The common or commingled funeral trust account is established and administered in accordance with all applicable requirements of 239 CMR 4.06(2)(e)1.; and

2. Separate records, which meet the requirements of 239 CMR 4.06(10), are maintained for each customer whose funds are deposited in the common or commingled funeral trust account.

(3) Disclosure Requirements.

(a) Prior to accepting or receiving any funds for deposit in a funeral trust established pursuant to 239 CMR 4.06, the licensed funeral establishment shall disclose to the buyer who signs or will sign the applicable pre-need funeral contract, in writing, all of the following information:

1. The name and address of the trustee of said funeral trust, and the fees charged by that named trustee, if any;
2. The fact that a funeral trust is being used to fund a pre-need funeral contract and the percentage of the funds paid by the settlor which will actually be deposited in the funeral trust account;

3. The amount of money, if any, which is being retained by the licensed funeral establishment as an administration fee pursuant to 239 CMR 4.06(2)(d);
4. The fact that, upon the expiration of the ten-day "cooling-off" period specified in 239 CMR 4.05(1), any administration fee retained by the funeral establishment pursuant to 239 CMR 4.06(2)(d) cannot be refunded upon cancellation of the funeral trust or pre-need funeral contract;
5. An explanation of the provisions of 239 CMR 4.06(4) and the specific purposes for which the funeral establishment may receive, disburse or utilize the monies deposited in the funeral trust as set forth therein;
6. The fact that the trust beneficiary will be responsible for payment of all applicable Federal and state taxes on any income earned by the trust and may also be responsible for any local, state or federal taxes or fees added after the execution of the pre-need funeral contract, including but not limited to any value-added or sales taxes, as set forth in 239 CMR 4.02(9);
7. A statement as to whether the funeral trust is revocable or irrevocable;
8. A statement as to whether the prices quoted for the funeral goods and/or services described in the pre-need funeral contract are guaranteed, and an explanation of what any such price guarantee means;
9. An explanation of the rules governing the disposition of the funeral trust income, as set forth in 239 CMR 4.06(5)(a) or 239 CMR 4.06(5)(b), whichever applies;
10. A statement that, where a pre-need funeral contract is paid for in full, and the prices of the goods and services specified in that contract have been guaranteed, the price guarantee shall prevail at the time the goods and services are furnished, even if an administration fee has been taken by the funeral establishment pursuant to 239 CMR 4.06(2)(d);
11. A description of the nature of the relationship between the licensed funeral establishment, the institution in which the trust funds will be deposited, and the named trustee;
12. The effect on the pre-need funeral contract of:
 - a. any change in an assignment, designation of the beneficiary, designation of trustee, or use of the funds in the funeral trust;
 - b. termination or transfer of the trust;
 - c. any failure to make payments to the trust;
 - d. lack of sufficient funds in the trust to cover the actual price of the funeral goods and services specified; and

e. relocation of the settlor or trust beneficiary to another area;

13. Whether any penalty will be imposed for failure to make a payment to the trust or for cancellation of the pre-need funeral contract, whether there is any grace period for making payments to the trust, and, if there is a grace period, the length of such grace period; and

14. Any and all penalties or restrictions pertaining to the funeral trust, or to the pre-need funeral contract, including but not limited to: geographic restrictions and/or the obligations of the licensed funeral establishment to provide substitutions of equal or greater value in the event that the funeral establishment is unable to provide the particular funeral goods and/or services identified in the pre-need funeral contract.

(b) Where the licensed funeral establishment is the named trustee of a funeral trust, said funeral establishment shall, in addition to the disclosures required by 239 CMR 4.06(3)(a), disclose the following additional information to the buyer who signed the pre-need funeral contract prior to accepting or receiving any funds for deposit in the funeral trust:

1. The form and manner in which the trust funds will be invested, including but not limited to the identity of the entity in which the funds will be invested and the manner in which those entities will use the funds; and

2. The amount of future service fees, if any, to be charged to or paid from the trust, and the identity of the individual or entity to whom those service fees will be paid.

(4) Access to Funeral Trust Funds.

(a) Where a licensed funeral establishment is the named trustee of any funeral trust, said funeral establishment shall not receive, disburse or otherwise utilize any funds deposited in said funeral trust for any purpose except:

1. To pay for funeral goods and/or services to be provided to the trust beneficiary, in accordance with the applicable pre-need funeral contract, upon receipt of a certified copy of the death certificate for said trust beneficiary;

2. To transfer said funds to another funeral trust or to a pre-need insurance policy or annuity, upon receipt of a written authorization to do so from the trust settlor or his/her legal representative, and in accordance with 239 CMR 4.00; or

3. To refund said funds to the trust beneficiary

upon receipt of a written notice of revocation of a revocable funeral trust from the trust settlor or his/her legal representative in accordance with 239 CMR 4.00.

(b) Where the named trustee of a funeral trust is a party other than a licensed funeral establishment, neither the licensed funeral establishment nor any agent or employee thereof shall have access to any of the funds deposited in said funeral trust for any purpose other than obtaining payment for the actual costs of funeral goods and/or services provided to the trust beneficiary. Said payment shall not be obtained or received unless the funeral establishment presents a certified copy of the death certificate for the trust beneficiary to the named trustee of the funeral trust, and a written statement, signed by a registered licensed funeral director, certifying that the pre-need funeral contract has been performed in full.

(5) Disposition of Funeral Trust Income.

(a) When a licensed funeral establishment guarantees that the trust beneficiary will not be charged more, at the time of his/her death, for the funeral goods and/or services specified in a pre-need funeral contract than the prices specified in that contract at the time it was signed by the parties (*i.e.* the pre-need funeral contract is a "price-guaranteed" contract), 239 CMR 4.06(5)(a)1., 2. and 3. shall govern the disposition of the funeral trust account proceeds:

1. All income earned by the funeral trust account shall be applied to offset any increase in the costs of the goods and/or services specified in the pre-need funeral contract.
2. In the event that the balance in the funeral trust account on the date of the trust beneficiary's death exceeds the cost of the funeral goods and/or services provided, the excess may be retained by the licensed funeral establishment.
3. In the event that the balance in the funeral trust account on the date of the trust beneficiary's death is less than the price of the funeral goods and/or services provided, the licensed funeral establishment shall not bill the estate of the trust beneficiary for the deficiency.

(b) If the licensed funeral establishment did not guarantee that the price of the funeral goods and/or services specified in the pre-need funeral contract would still be in effect upon the death of the trust beneficiary, 239 CMR 4.06(5)(b)1., 2. and 3. shall govern the disposition of the funeral trust account

proceeds:

1. All income earned by the funeral trust account shall be applied first to offset any increase in the cost of the funeral goods and/or services specified in the pre-need funeral contract.
2. In the event that the balance in the funeral trust account on the date of the trust beneficiary's death exceeds the price of the funeral goods and/or services provided, the excess shall be refunded to the estate of the trust beneficiary. In such event, the amount refunded may be subject to claims of the Commonwealth or the United States.
3. In the event that the balance in the funeral trust account on the date of the trust beneficiary's death is less than the price of the funeral goods and/or services provided, the licensed funeral establishment may bill the estate of the trust beneficiary for the amount of the resulting deficiency.

(6) Notice of Changes Affecting Contract or Trust Required.

- (a) A licensed funeral establishment shall send written notice of any proposed cessation of the funeral establishment's operation to the buyer (and beneficiary, if different) of each pre-need funeral contract, via certified mail, return receipt requested, at least ten days prior to the effective date of that proposed cessation of operations.
- (b) A licensed funeral establishment which is a party to a pre-need funeral contract shall send written notice of any proposed change in the terms of said contract to the buyer (and beneficiary, if different), via certified mail, return receipt requested, at least ten days prior to the effective date of said change in the contract terms.
- (c) A licensed funeral establishment which is the named trustee of any funeral trust shall send written notice of any of the following events to both settlor and the designated beneficiary of said trust, via certified mail, return receipt requested, at least ten days prior to the effective date of:
 1. Any proposed change in the identity of the trustee; or
 2. Any proposed change in the form or manner in which the trust funds are to be invested.

(d) A licensed funeral establishment shall send written notice of any transfer of ownership of the funeral establishment, or sale of any portion of its assets, to the buyer (and beneficiary, if different) of every pre-need funeral contract to which it is a party, via certified mail, return receipt requested, not later than ten days after the effective date of said transfer or sale.

(e) In the event that a licensed funeral establishment enters into an assignment for the benefit of creditors or other debt reorganization plan, or institutes bankruptcy or receivership proceedings under state or federal law, the funeral establishment shall send to the buyer (and beneficiary, if different) of each pre-need funeral contract to which it is a party, via certified mail, return receipt requested, a written explanation of how their rights and obligations under the contract will be affected by that event.

(7) Amendment of Pre-need Contracts and Funeral Trusts.

(a) A pre-need funeral contract may be amended by the licensed funeral establishment, the buyer, or the buyer's legal representative, at any time. The party proposing the change shall give written notice of the proposed change to the other party at least ten days prior to the effective date of the proposed change. All such amendments shall be in writing and shall be signed by both parties to the contract.

(b) Changes in the terms of any funeral trust, including but not limited to changes in the identity of the trustee and/or changes in the form or manner in which the trust funds are invested, may be made only with the written authorization of both the trust settlor (or his/her legal representative) and the named beneficiary (or his/her legal representative). All such amendments shall be in writing.

(8) Cancellations of Contracts & Trusts; Return of Funds.

(a) The buyer who signed a pre-need funeral contract, or his/her legal representative, may cancel a pre-need funeral contract with a licensed funeral establishment at any time by sending written notice of such cancellation, via certified mail, return receipt requested, to said funeral establishment. If a funeral trust has been established to fund said pre-need funeral contract, and the licensed funeral establishment is not the trustee, the buyer shall forward a copy of said notice of cancellation to the named trustee of said funeral trust.

(b) Except in the case of a funeral trust which is irrevocable by its terms, a funeral trust may be revoked by the trust settlor at any time by sending written notice of such revocation, via certified mail, return receipt requested, to the named trustee.

If said funeral trust was established to fund a pre-need funeral contract with a particular licensed funeral establishment, and the funeral establishment is not the trustee, the trust settlor shall forward a copy of said notice of trust revocation to said funeral establishment.

(c) If a funeral trust is revocable, and a licensed funeral establishment is the named trustee, said funeral establishment, within ten days of receiving a notice of trust revocation pursuant to 239 CMR 4.06(b), shall refund the entire balance of the funeral trust account to the named beneficiary of said trust, minus:

1. any bank charges applicable to the funeral trust account; and
2. any local, state or federal taxes which accrued prior to January 29, 1988 and which were paid by the trustee.

(d) Where a licensed funeral establishment established a funeral trust, and deposited 100% of the funds received from the settlor in a funeral trust account, prior to the effective date of 239 CMR 4.00, said funeral establishment may, upon revocation of that funeral trust pursuant to 239 CMR 4.06(8)(d), retain a portion of the proceeds equal to the administration fee provided for in 239 CMR 4.06(2)(d).

(9) Transfer of Funeral Trust Funds.

(a) Upon the written authorization of the trust settlor, or his/her legal representative, funds in any funeral trust may be transferred by a licensed funeral establishment to:

1. Another funeral trust; or
2. A pre-need insurance policy or annuity.

Where the licensed funeral establishment is not the trustee, the written authorization of the trust settlor or his/her legal representative, together with the written transfer instructions of the funeral establishment, shall be sent to the named trustee via certified mail, return receipt requested.

(b) Where a licensed funeral establishment is the named trustee of a funeral trust, said funeral establishment, within ten days after receipt of the settlor's written authorization to transfer funds from said trust pursuant to 239 CMR 4.06(9)(a), shall:

1. Transfer the entire balance of the funeral trust account, including all accrued income thereon, but excluding all bank charges applicable to the trust account for which the trustee is liable and all local, state or federal taxes accrued on said trust account prior to January 29, 1988 and paid by the trustee, to the new funeral trust designated and authorized by the settlor; or

2. Apply the entire balance of said funeral trust account, including all accrued income thereon, but excluding all bank charges applicable to the trust account for which the trustee is liable and all local, state and federal taxes accrued on said trust account prior to January 29, 1988 and paid by the trustee, to the purchase of a pre-need insurance policy or annuity designated and authorized by the settlor.

(c) No licensed funeral establishment, or agent or employee thereof, shall transfer any funds from a funeral trust account to pay for such a pre-need insurance policy or annuity, unless:

1. All of the disclosures required by any regulations of the Massachusetts Division of Insurance which are applicable to pre-need insurance policies or annuities have been made in writing to the settlor of the funeral trust from which the funds are to be transferred; and

2. The settlor of the funeral trust from which the funds are to be transferred has given his or her written consent to the purchase of the pre-need insurance policy or annuity in question.

(d) Where a licensed funeral establishment has established a funeral trust, and deposited 100% of the funds it receives from the settlor in a funeral trust account, prior to the effective date of 239 CMR 4.00, said funeral establishment may, upon the first transfer of the proceeds of said account to another funeral establishment, pursuant to 239 CMR 4.06(9)(d), retain a portion of the proceeds of said trust account equal to the administration fee permitted under 239 CMR 4.06(2)(d). 239 CMR 4.06(9)(d) shall not apply if any person holds an ownership interest in both the transferor and transferee funeral establishments.

(10) Obligations to Locate Trust Beneficiary.

(a) If a licensed funeral establishment which is a party to a pre-need funeral contract does not provide the funeral goods and/or services for the beneficiary of that contract upon his/her death, then, upon receipt of a certified copy of the death certificate of such beneficiary, the trustee of any funeral trust established to fund said pre-need funeral contract shall pay the assets of said trust to the estate or legal representative of the named beneficiary in accordance with the applicable requirements of 239 CMR 4.06(4), 239 4.06(5) and 239 CMR 4.06(8).

(b) If a licensed funeral establishment has not received notice of the death of the named beneficiary of a pre-need funeral contract for whom a funeral trust has been established under 239 CMR 4.06 within 100 years of the beneficiary's date of birth, said funeral establishment shall take all reasonable steps to contact that beneficiary or his/her legal representative to inform them of the existence of said funeral trust. A written notice of the existence of said funeral trust, sent via certified mail, return receipt requested, to the last known address of the trust beneficiary and his/her legal representative shall be sufficient to satisfy the requirements of 239 CMR 4.06(10)(b).

(c) If, after a reasonable search, a licensed funeral establishment which is the named trustee of a funeral trust established under 239 CMR 4.00 is unable to locate the named beneficiary of said trust or his/her legal representative, said funeral establishment shall turn over all funds in the funeral trust account to the Treasurer of the Commonwealth, in accordance with the laws of the Commonwealth. Any such transfer of funds to the Treasurer of the Commonwealth shall constitute a complete release of all obligations of such licensed funeral establishment pursuant to the pre-need funeral contract and/or funeral trust.

(11) Records Required.

(a) A licensed funeral establishment which serves as the named trustee of any funeral trust established pursuant to 239 CMR 4.00 shall maintain a separate, written record for each such funeral trust. Said records shall be legible and shall be maintained at all times at a location within the Commonwealth specified by the funeral establishment in its annual report submitted pursuant to 239 CMR 4.02(5). Said records, at a minimum, shall contain all of the following information:

1. The name and address of the trust settlor;
2. The name, address, date of birth and social security number of the named trust beneficiary;
3. The date on which the funeral trust was originally established and the amount of money originally deposited in the funeral trust account;
4. The balance in the funeral trust account, on a monthly basis;
5. A description of the form and manner in which the trust funds are invested;
6. A copy of the individual trust agreement, or, in the case of a common or commingled funeral trust account established pursuant to 239 CMR 4.06(2)(e), a copy of the Master Trust Agreement for the common account; and
7. Written documentation sufficient to demonstrate compliance with the requirements of 239 CMR 4.00 with respect to all changes in the terms or provisions of the funeral trust.

In the case of any common or commingled funeral trust account established pursuant to 239 CMR 4.06(2)(e), a separate written record which complies with the above-noted requirements shall be maintained for each separate trust beneficiary.

(b) Any and all records established and maintained pursuant to 239 CMR 4.06(11)(a) shall be available upon request, at any time during regular

business hours, to any duly authorized representative of the Board for inspection.

(c) Any and all records required by 239 CMR 4.06(11)(a) pertaining to a particular funeral trust shall be made available by the licensed funeral establishment which serves as trustee of said trust, during regular business hours, to the settlor of said trust, the named beneficiary of said trust, or the legal representative of either, within ten days after receipt of any request from any such person to examine such records.

(d) In addition to the foregoing, a licensed funeral establishment which serves as trustee of any funeral trust established under 239 CMR 4.00, shall send an annual statement of the earnings of the trust to the named beneficiary of said trust, unless the beneficiary requests in writing that said statements not be sent.

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4.07: Funding Methods - Pre-Need Insurance Policies and Annuities

(1) Any agent or employee of any licensed funeral establishment who sells or otherwise provides insurance policies or annuities as a method for funding pre-need funeral contracts shall comply with all applicable state and federal laws and regulations pertaining to the conduct of the business of insurance, including but not limited to all licensing requirements of the Massachusetts Division of Insurance.

(2) Any agent or employee of any licensed funeral establishment who sells or otherwise provides insurance policies or annuities as a method for funding pre-need funeral contracts shall, prior to accepting any funds as payment for the issuance of any such insurance policy or annuity, make all of the disclosures required by the Massachusetts Division of Insurance to the prospective purchaser of said insurance policy or annuity.

(3) No licensed funeral establishment, nor any agent or employee thereof, shall require any buyer to purchase any insurance policy or annuity as a condition for entering into any pre-need funeral contract.

(4) Any person who purchases a pre-need insurance policy or annuity from any agent or employee of any licensed funeral establishment who is duly licensed as an insurance agent by the Massachusetts Division of Insurance, may cancel said policy or annuity without penalty any time within ten days after said policy or annuity contract is delivered to him or her by surrendering the policy or annuity contract to either the insurance company which issued said policy or annuity or the agent from whom it was purchased. Upon surrender of such policy or annuity, the purchaser shall be entitled to a full refund of all payments made in connection with said policy or annuity. No licensed funeral establishment, nor any agent or employee thereof, shall impose any penalty or surcharge (monetary or otherwise) on any person exercising said right of cancellation.

(5) The requirements of 239 CMR 4.07 shall apply to any and all forms of insurance which are sold or utilized for the purpose of providing funding for a pre-need funeral contract, regardless of how named.

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4.08: Marketing Of Pre-Need Funeral Products

(1) No agent or employee of any licensed funeral establishment shall visit or call upon any patient in a hospital, convalescent or nursing home, rest home, charitable home for the aged, infirmary maintained in a town, intermediate care facility for the mentally retarded, or other health care facility, for the purpose of soliciting or inducing such patient to enter into any pre-need funeral contract, or for the purpose of soliciting or inducing such patient to establish a funeral trust or purchase a pre-need insurance policy or annuity, unless said agent or employee has received a written request from the patient or his/her legal representative to do so prior to the date of the visit.

(2) A licensed funeral establishment, or any agent or employee thereof, may utilize telephonic communications for the purpose of soliciting or inducing any person to enter into a pre-need funeral contract, establish a funeral trust, or purchase any pre-need insurance policy or annuity, provided that:

(a) The prospective customer is informed at the beginning of the telephonic communication that the telephonic communication is being made for the purpose of inducing him or her to enter into a pre-need funeral contract, establish a funeral trust, or purchase a pre-need insurance policy or annuity; and

(b) The telephonic communication is terminated immediately upon any request to do so from the prospective customer.

(3) No agent or employee of any licensed funeral establishment shall solicit or attempt to induce any person to enter into a pre-need funeral contract, establish any funeral trust, or purchase any pre-need insurance policy or annuity by any method or means which is false, deceptive, misleading, coercive, intimidating or threatening.

(4) No licensed funeral establishment, nor any agent or employee thereof, shall knowingly induce or attempt to induce any person to cancel or revoke any pre-existing pre-need funeral contract, funeral trust, or pre-need insurance policy or annuity.

(5) Advertising of Pre-need Funeral Products.

(a) Advertising of pre-need funeral contracts, funeral trusts and/or pre-need insurance policies or annuities by any

licensed funeral establishment, or agent or employee thereof, shall not be false, deceptive or misleading.

(b) All advertising of pre-need funeral contracts, funeral trusts and/or pre-need insurance policies or annuities shall disclose all of the following information:

1. The type of product (*e.g.*, funeral trust, pre-need insurance policy, annuity, etc.) which is to be, or may be, used to fund the pre-need funeral contract; and
2. The nature of the relationship between the agent who solicits the purchase of the product, the funeral establishment which is to provide the funeral goods and/or services, the buyer, and the individual or institution which will receive and/or hold any funds paid by the buyer in connection with the purchase of the product.

(c) All advertising of pre-need funeral contracts, funeral trusts and/or pre-need insurance policies or annuities by a licensed funeral establishment, or any agent or employee thereof, shall comply with all other applicable state and federal laws and regulations pertaining to such advertising.

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4.09: **Penalties**

Violation of any provision of this chapter shall be considered a violation of M.G.L. c. 112, § 84A(j), and may also be considered "gross misconduct in the practice of the profession" within the meaning of M.G.L. c. 112, § 61, and shall constitute grounds for disciplinary action by the Board.

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4.10: **Effective Date**

(1) 239 CMR 4.00 shall apply in full to any and all pre-need funeral contracts and/or funeral trusts established on or after July 1, 1992.

(2) With respect to any pre-need funeral contracts or funeral trusts established prior to July 1, 1992:

(a) All such pre-need funeral contracts and funeral trusts shall be in compliance with the record-keeping requirements of 239 CMR 4.06(11) no later than June 30, 1993.

(b) All other requirements of 239 CMR 4.00 shall apply to all such pre-need funeral contracts and funeral trusts as of

July 1, 1992.

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REGULATORY AUTHORITY

239 CMR 4.00: M.G.L. c. 112, § 85