

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;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. August 19, 2017.

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;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. August 19, 2017.

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;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. August 19, 2017.

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;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. August 19, 2017.

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;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. August 19, 2017.*

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;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. August 19,
2017.*

21 NCAC 34D .0203 SURETY BONDS

(a) Any applicant for a new preneed funeral establishment license or any preneed licensee required to maintain a surety bond under G.S. 90-210.67(b) shall submit a copy of the bond with its initial application and with each renewal application. The bond shall cover all insurance premiums paid under a preneed insurance policy and all trust payments under a preneed funeral trust. The bond shall name the Board as trustee and shall be issued by a bonding company licensed to do business in this State. The Board shall recognize all surety bond forms approved by the N.C. Department of Insurance.

(b) Any preneed establishment licensee required to obtain a bond may petition the Board to repeal the requirement one year after obtaining the bond. The preneed establishment licensee shall establish that the firm is solvent. For purposes of this paragraph, solvency shall be defined as assets in excess of liabilities; provided, however, that goodwill shall not be considered an asset and that unperformed preneed funeral contracts shall be treated as both an asset and a liability of equal value. A preneed establishment may demonstrate solvency by submitting a balance sheet prepared by a certified public accountant that is no more than 90 days old or through other financial evidence generally recognized as valid by certified public accountants.

(c) All petitions must be filed on a form provided by the Board. The petition form shall be verified before a notary public by the owner, a corporate officer, partner, or member of the limited liability company owning the preneed establishment and shall require the petitioner to furnish the following information:

- (1) the name of the preneed establishment;
- (2) certifications that the firm is solvent, has no unsatisfied civil judgments against it, and has not paid a claim on the bond; and
- (3) any other information that the Board deems necessary to determine solvency or to process the petition and that is required by law.

*History Note: Authority G.S. 90-210.67(b); 90-210.69(a);
Eff. October 1, 2010.*

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;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. August 19, 2017.*

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;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. August 19, 2017.

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;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. August 19, 2017.

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;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. August 19,
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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;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. August 19,
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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;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. August 19, 2017.

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;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. August 19, 2017.