

**RULES
OF
DEPARTMENT OF COMMERCE AND INSURANCE
DIVISION OF REGULATORY BOARDS**

**CHAPTER 0780-5-10
PRE-NEED FUNERAL SERVICE CONTRACTS**

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0780-5-10-.01 DEFINITIONS. With respect to this chapter, unless the context requires otherwise:

- (1) "Commissioner" means the Commissioner of the Tennessee Department of Commerce and Insurance or the Commissioner's designee.
- (2) "Board" means the Board of Funeral Directors and Embalmers for the State of Tennessee.
- (3) "Contract Seller" means and shall include natural persons, partnerships, firms, associations, and corporations residing in or doing business in this state (which includes issuing or performing wholly or in part in this state any incident of a Pre-need Funeral Service Contract), who engage in the business of selling Pre-need Funeral Service Contracts.
- (4) "Contract Buyer" means any person (such person may or may not be a Contract Beneficiary) who purchases a Pre-need Funeral Service Contract from a Contract Seller.
- (5) "Contract Beneficiary" means any natural person specified or included in a Pre-need Funeral Service Contract, upon whose death funeral services and/or funeral merchandise shall be performed, provided or delivered.
- (6) "Financial Institution" means a bank or trust company which is authorized to do business in this state, or a federally insured savings and loan association or a federally insured savings bank.
- (7) "Funds" means money paid pursuant to a Pre-need Funeral Service Contract.
- (8) "Person" means, according to the context, any individual, association, partnership, corporation, or any other organization or entity.
- (9) "Pre-need Funeral Service Contract", "Pre-need Funeral Contract", or "Pre-need Contract" means any agreement, contract or plan which is described in Tenn. Code Ann. § 62-5-401.
- (10) "Trust Funds" means funds deposited by a Contract Seller with a Trustee.
- (11) "Trust Instrument" means the document or documents pursuant to which a Trustee receives, holds, invests and disburses Trust Funds.
- (12) "Trustee" means any third person who holds funds pursuant to a Trust Instrument. The term "Trustee" shall not include:

(Rule 0780-5-10-.01, continued)

- (a) a Contract Seller; or
- (b) anyone employed by, or directly involved with, the Contract Seller in the business of selling Pre-need Funeral Service Contracts.

Authority: T.C.A. §62-5-405(a) and (b). **Administrative History:** Original rule filed October 22, 2002; effective January 5, 2003.

0780-5-10-.02 PURPOSE. These rules are promulgated for the purpose of administering the provisions of Tenn. Code Ann. Title 62, Chapter 5, Part 4, relative to contracts for future funeral services.

Authority: T.C.A. §62-5-405(a) and (b). **Administrative History:** Original rule filed October 22, 2002; effective January 5, 2003.

0780-5-10-.03 SCOPE. These rules shall apply to any agreement, contract, or plan requiring the payment of money in advance, whether in a lump sum or installments, which is made or entered into with any person, association, partnership, firm, or corporation for the final disposition of a dead human body, or for funeral or burial services, or for the furnishing of personal property or funeral or burial merchandise, wherein the use of the personal property or the funeral or burial merchandise or the furnishing of professional services by a funeral director or embalmer is not immediately required. Any financial institution which holds funds pursuant to Tenn. Code Ann. § 62-5-401 shall also be governed by these rules.

Authority: T.C.A. §§62-5-401 and 62-5-405(a) and (b). **Administrative History:** Original rule filed October 22, 2002; effective January 5, 2003.

0780-5-10-.04 EXEMPTIONS. Nothing in these rules shall apply to cemetery lots or permanent grave or crypt markers, nor shall burial associations where the certificate for burial benefits does not exceed one hundred dollars (\$100.00) be governed by such rules. Contracts of insurance subject to the regulation of the Department of Commerce and Insurance of the State of Tennessee shall not be governed by these rules. Nothing in these rules shall be construed as in conflict with Tenn. Code Ann. Title 46, as amended.

Authority: T.C.A. §§62-5-401, 62-5-405(a) and (b), and 62-5-408. **Administrative History:** Original rule filed October 22, 2002; effective January 5, 2003.

0780-5-10-.05 RECORDS.

- (1) All contract sellers and trustees shall maintain, within the State of Tennessee, accurate accounts, books and records in this state concerning transactions regulated under these rules.
- (2) (a) A contract seller's accounts, books, and records shall include:
 - 1. copies of all pre-need contracts, with each contract and its related documentation maintained in a separate file;
 - 2. the dates and amounts of payments made and accepted thereon;
 - 3. the name and address of each contract buyer;
 - 4. the name of the contract beneficiary of each pre-need contract; and
 - 5. the name of the trustee holding the trust funds received under each contract.

(Rule 0780-5-10-.05, continued)

- (b) A trustee's accounts, books and records shall include:
 - 1. the name of the contract seller;
 - 2. the amount and date of receipt of all funds received from the contract seller; and
 - 3. a record of all disbursements.
- (3) A contract seller shall retain all required accounts, books, and records pertaining to each pre-need contract for at least two (2) years after the date of performance or termination. Such accounts, books and records shall be available for inspection by contract buyers during normal business hours at the contract seller's place of business.

Authority: T.C.A. §62-5-405(a) and (b). **Administrative History:** Original rule filed October 22, 2002; effective January 5, 2003.

0780-5-10-.06 EXAMINATION OF RECORDS. All contract sellers and trustees shall make all accounts, books and records required to be kept under Rule 0780-5-10-.05 available to the Commissioner for the purpose of examination or audit. The Commissioner may examine or audit such accounts, books and records whenever the Commissioner deems necessary for the protection of contract buyers or beneficiaries.

Authority: T.C.A. §62-5-405(a) and (b). **Administrative History:** Original rule filed October 22, 2002; effective January 5, 2003.

0780-5-10-.07 ANNUAL REPORTS. All contract sellers and trustees shall, no later than March 15 of each year, file an annual report with the Commissioner on such forms as the Commissioner may prescribe. Such report shall include a summary of the information contained in the accounts, books and records required to be kept under Rule 0780-5-10-.05, and such other information as the Commissioner may reasonably require.

Authority: T.C.A. §62-5-405(a) and (b). **Administrative History:** Original rule filed October 22, 2002; effective January 5, 2003.

0780-5-10-.08 TRUST INSTRUMENTS.

- (1) Each trust instrument, and any amendments thereto, shall be filed with the Commissioner. Each trust instrument shall specify:
 - (a) the name of the contract seller;
 - (b) the name of the trustee;
 - (c) the trustee's duties in conformance with the provisions of these rules;
 - (d) the basis for determining the trustee's fee (if any); and
 - (e) any other appropriate terms of the trusteeship.
- (2) Each trust instrument shall bind the trustee to make available at reasonable times and places, on request by a contract buyer, the trustee's records of the trust account established pursuant to the contract buyer's pre-need contract.
- (3) The Commissioner may require alterations or additions to a trust instrument if the Commissioner finds that it is not in accord with the provisions of these rules.

(Rule 0780-5-10-.08, continued)

Authority: T.C.A. §62-5-405(a) and (b). **Administrative History:** Original rule filed October 22, 2002; effective January 5, 2003.

0780-5-10-.09 DEPOSIT OF FUNDS.

- (1) Contract sellers shall deposit all funds received on account of a pre-need contract as soon as possible after receipt, and in no event later than thirty (30) days after receipt.
- (2) All deposits of funds with a trustee shall be in cash only pursuant to a trust instrument; provided, however, that, at any time, a contract seller may change the trustee of its trust funds. In the event of such change of trustee, the requirements of Rule 0780-5-10-.08 shall be complied with.

Authority: T.C.A. §62-5-405(a) and (b). **Administrative History:** Original rule filed October 22, 2002; effective January 5, 2003.

0780-5-10-.10 INVESTMENT OF TRUST FUNDS.

- (1) A financial institution acting as trustee of trust funds under these rules shall invest such funds in accordance with applicable law. In so investing, such trustee shall exercise the judgement and care under the circumstances then prevailing, which men of prudence, discretion and intelligence exercise in the management of their own affairs, not in regard to the speculation, but in regard to the permanent disposition of their funds, considering the probable income as well as the probable safety of their capital.
- (2) An individual acting as a trustee of trust funds under these rules shall not, after depositing such funds with a financial institution, withdraw the trust funds for any purpose other than payment for funeral merchandise or service and refund of any balance remaining as provided by law. However, such individual trustee may, upon proper written authority, transfer trust funds to another financial institution or successor trustee.
- (3) Subject to contractual agreement between the parties, the trustee may receive a reasonable fee for services rendered as a trustee from the interest or earnings on the funds.

Authority: T.C.A. §§62-5-401, 62-5-402, and 62-5-405(a) and (b). **Administrative History:** Original rule filed October 22, 2002; effective January 5, 2003.

0780-5-10-.11 REVOCATION OF TRUST ACCOUNT. A financial institution holding trust funds in a revocable trust account shall promptly notify the contract seller if a contract buyer exercises the right under Tenn. Code Ann. § 62-5-403(b) to withdraw any or all of such funds.

Authority: T.C.A. §62-5-405(a) and (b). **Administrative History:** Original rule filed October 22, 2002; effective January 5, 2003.

0780-5-10-.12 OUTSTANDING CONTRACTS. The provisions of these rules relating to trustees and investment of trust funds shall apply to the disposition of all proceeds from pre-need contracts issued and outstanding from March 25, 1963 and thereafter.

Authority: T.C.A. §62-5-405(a) and (b). **Administrative History:** Original rule filed October 22, 2002; effective January 5, 2003.

0780-5-10-.13 PRE-NEED CONTRACT PROVISIONS.

- (1) No contract seller shall use a pre-need contract form unless the contract seller has submitted the form to the Commissioner, and the Commissioner has approved the form.

(Rule 0780-5-10-.13, continued)

- (2) Every pre-need contract shall contain, at a minimum, the following:
- (a) a statement as to whether the contract establishes a revocable trust account or an irrevocable trust account;
 1. if such trust account is revocable, a statement that the purchaser of the merchandise and/or services under the contract shall be entitled to receive any or all of the payments made and any earnings or interest thereon upon demand on the trustee prior to the death of the contract beneficiary;
 2. if such trust account is irrevocable, the contract shall state on its face and in boldface type and all uppercase letters the following:

“The trust account established by this contract is irrevocable, and the funds paid hereunder are not refundable. Accumulated trust principal and interest are freely transferable to satisfy funeral expenses at any licensed funeral establishment as provided by law.”
 - (b) a clear disclosure as to whether the funds identified as having been paid or are to be paid:
 1. are to be applied to the price of funeral merchandise and services to be selected by a designated person at the time of death of the person for whom the funds were paid. In the event this condition applies, the contract shall state on its face in boldface type and uppercase letters, the following:

“ _____ if the amount in the
(Purchaser's Signature)
trust account exceeds the prevailing price (at the time of selection) of the funeral merchandise and services selected, the balance remaining shall be refunded to

(Name).”
 2. fully pay for the funeral merchandise and services (or their equivalent) identified therein; or
 3. fully pay for the funeral merchandise and services (or their equivalent) identified therein, if and only if the prevailing price thereof at the time of the death of the contract beneficiary does not exceed the amount in the trust account at that time.
 - (c) a means whereby the purchaser can indicate his or her choice of either paying or not paying any applicable sales or use tax for the related merchandise or services at the time the contract is entered into;
 - (d) a complete disclosure of the pricing arrangement and of any contingent liabilities or costs of the buyer;
 - (e) a disclosure that, upon the death of the contract beneficiary, the trustee shall release an amount equal to the agreed purchase price to the contract seller upon proof of death of the contract beneficiary and verification that all of the terms of the pre-need contract have been fully performed by the contract seller;

(Rule 0780-5-10-.13, continued)

- (f) a disclosure that the trustee shall pay any balance remaining in the trust fund after payment for the funeral merchandise and services in accordance with the pre-need contract:
 - 1. to the contract buyer or his estate, if such merchandise and services are itemized in the contract; or
 - 2. to the person designated by the contract buyer in the boldface disclosure required by part (2)(b)1. of this rule, if selection of such merchandise and services is deferred until the death of the contract beneficiary.
 - (g) a disclosure that the contract, books, records and accounts pertaining to the contract buyer's contract shall be available for inspection by the contract buyer at the contract seller's place of business during normal working hours;
 - (h) a disclosure of the identity and address of the trustee for the purchaser's funds and that notification to purchasers need not be made upon change of trustees so long as this information is available upon request; and
 - (i) a disclosure that if the buyer and seller agree upon a reasonable fee for the trustee, such fee will be paid in the manner prescribed by these rules.
- (3) No pre-need contract form shall contain:
- (a) a provision specifying any particular investment of trust funds; or
 - (b) any provision not in compliance with Tenn. Code Ann. Title 62, Chapter 5, Part 4, or any of these rules.
- (4) The contract seller shall give to the contract buyer a copy of the pre-need contract, and any amendment thereto, at the time of its execution.
- (5) No approval of a pre-need contract form by the Commissioner shall be used for advertising or promotional purposes.
- (6) As soon as possible after the submission of a proposed pre-need contract form pursuant to this rule, the Commissioner shall approve or disapprove the form in writing; provided, however, that a preneed contract form shall be deemed approved unless disapproved within sixty (60) days after its receipt. In the event that the Commissioner disapproves a preneed contract form, the Commissioner shall specify in what respect such form does not meet the requirements of law.

Authority: T.C.A. §§62-5-403 and 62-5-405(a) and (b). **Administrative History:** Original rule filed October 22, 2002; effective January 5, 2003.

0780-5-10-.14 REGISTRATION OF PRENEED SELLERS AND PRENEED SALES AGENTS; FEES.

- (1) No individual may offer or sell preneed funeral contracts as defined in Tenn. Code. Ann. Title 62 Section 5 without first registering with the commissioner as a preneed sales agent.
- (2) No funeral establishment or other individual, firm, partnership, company, corporation, or association may offer or sell preneed funeral contracts without first registering with the commissioner as a preneed seller.

(Rule 0780-5-10-.14, continued)

- (3) An application for registration or renewal as a preneed seller or preneed sales agent shall be submitted on a form prescribed by the commissioner and shall be accompanied by a nonrefundable fee as follows:
 - (a) Seven hundred fifty dollars (\$750.00) for a preneed seller;
 - (b) One hundred fifty dollars (\$150.00) for a preneed sales agent.
- (4) All registrations shall be effective for two (2) years.
- (5) The certificates of registration for preneed sellers and preneed sales agents may be renewed at any time during the two (2) months preceding the date of expiration.
- (6) Certificates of registration not renewed by the expiration date are invalid and shall be subject to a penalty fee of two hundred dollars (\$200.00) for each month or portion thereof for which the renewal is late, for a maximum of two (2) months. The penalty fee is in addition to the renewal fee.
- (7) Certificates of registration shall not be renewed later than two (2) months after the expiration date of such certificate. Such certificates may be reinstated upon the submission of the proper form accompanied by a reinstatement fee of one thousand dollars (\$1,000.00).

Authority: T.C.A. §62-5-405(a), (b), and (d); and §§ 62-5-403, -404, -405, and -413 (effective January 1, 2008); and Chapter 592 of the Public Acts of 2007, §§ 4, 5, 6, and 14. **Administrative History:** Original rule filed October 22, 2002; effective January 5, 2003. Public necessity rule filed December 13, 2007; effective through May 26, 2008. Public necessity rule filed December 13, 2007, expired effective May 27, 2008. Rule reverted to its previous status. Public necessity rule filed June 4, 2008; effective through November 16, 2008.

0780-5-10-.15 ANNUAL AUDITS; FEES.

- (1) The Commissioner shall require an annual audit to ensure that each contract seller will be able to perform its contract with the purchaser.
- (2) The fee for the audit of pre-need trust accounts shall be three hundred dollars (\$300.00) per auditor, per day. The contract seller shall be billed in increments of not less than one-half day for each half-day or any portion thereof.
- (3) The contract seller shall remit payment to the Department not later than sixty (60) days after the invoice date.

Authority: T.C.A. §62-5-405(a), (b), and (c). **Administrative History:** Original rule filed October 22, 2002; effective January 5, 2003.

0780-5-10-.16 CIVIL PENALTIES.

- (1) With respect to any person, partnership, firm, association or corporation required to comply with the provisions of Tenn. Code Ann. Title 62, Chapter 5, Part 4, or rules promulgated thereunder, the Commissioner may, in addition to or in lieu of any other lawful disciplinary action, assess civil penalties against such person for each separate violation of a statute, rule or order pertaining to such provisions in accordance with the following schedule:

(Rule 0780-5-10-.16, continued)

Violation	Penalty
Tenn. Code Ann. § 62-5-401	Not more than \$1,000.00 nor less than \$25.00
Tenn. Code Ann. § 62-5-402(a)	Not more than \$1,000.00 nor less than \$25.00
Tenn. Code Ann. § 62-5-402(b)	Not more than \$1,000.00 nor less than \$25.00
Tenn. Code Ann. § 62-5-402(c)	Not more than \$1,000.00 nor less than \$25.00
Tenn. Code Ann. § 62-5-403	Not more than \$1,000.00 nor less than \$25.00
Tenn. Code Ann. § 62-5-404(b)	Not more than \$1,000.00 nor less than \$25.00
Tenn. Code Ann. § 62-5-404(c)	Not more than \$1,000.00 nor less than \$25.00
Rule 0780-5-10-.05(1)	Not more than \$1,000.00 nor less than \$25.00
Rule 0780-5-10-.05(2)(a)	Not more than \$1,000.00 nor less than \$25.00
Rule 0780-5-10-.05(2)(b)	Not more than \$1,000.00 nor less than \$25.00
Rule 0780-5-10-.05(3)	Not more than \$1,000.00 nor less than \$25.00
Rule 0780-5-10-.06	Not more than \$1,000.00 nor less than \$25.00
Rule 0780-5-10-.07	Not more than \$1,000.00 nor less than \$25.00
Rule 0780-5-10-.08(2)	Not more than \$1,000.00 nor less than \$25.00
Rule 0780-5-10-.09(1)	Not more than \$1,000.00 nor less than \$25.00
Rule 0780-5-10-.09(2)	Not more than \$1,000.00 nor less than \$25.00
Rule 0780-5-10-.10(1)	Not more than \$1,000.00 nor less than \$25.00
Rule 0780-5-10-.10(2)	Not more than \$1,000.00 nor less than \$25.00
Rule 0780-5-10-.11	Not more than \$1,000.00 nor less than \$25.00
Rule 0780-5-10-.13(1)	Not more than \$1,000.00 nor less than \$25.00
Rule 0780-5-10-.13(2)	Not more than \$1,000.00 nor less than \$25.00
Rule 0780-5-10-.13(3)	Not more than \$1,000.00 nor less than \$25.00
Rule 0780-5-10-.13(4)	Not more than \$1,000.00 nor less than \$25.00
Rule 0780-5-10-.13(5)	Not more than \$1,000.00 nor less than \$25.00
Rule 0780-5-10-.14(1)	Not more than \$1,000.00 nor less than \$25.00
Rule 0780-5-10-.15(3)	Not more than \$1,000.00 nor less than \$25.00

(Rule 0780-5-10-.16, continued)

- (2) Each day of continued violation shall constitute a separate violation.
- (3) In determining the amount of any civil penalty to be assessed pursuant to this rule, the Commissioner may consider such factors as the following:
 - (a) whether the amount imposed will be a substantial economic deterrent to the violator;
 - (b) the circumstances leading to the violation;
 - (c) the severity of the violation and the risk of harm to the public;
 - (d) the economic benefits gained by the violator as a result of noncompliance; and
 - (e) the interest of the public.

Authority: T.C.A. §§56-1-308 and 62-5-405(a), (b), and (e). **Administrative History:** Original rule filed October 22, 2002; effective January 5, 2003.