

ARTICLE 7. PRENEED FUNERAL BURIAL SERVICES OR MERCHANDISE CONTRACTS

Rule 1. Definitions

832 IAC 7-1-1 Applicability

Authority: IC 25-15-9-8
Affected: IC 30-2-13

Sec. 1. The definitions in this rule apply throughout this article. *(State Board of Funeral and Cemetery Service; 832 IAC 7-1-1; filed Jun 26, 1992, 5:00 p.m.: 15 IR 2453; readopted filed May 10, 2001, 2:39 p.m.: 24 IR 3237; readopted filed Jul 19, 2007, 12:52 p.m.: 20070808-IR-832070048RFA)*

832 IAC 7-1-2 "Cash advance item" defined

Authority: IC 25-15-9-8
Affected: IC 30-2-13

Sec. 2. "Cash advance item" means any item of service or merchandise described to a purchaser as a "cash advance", "accommodation", "cash disbursement", or similar term. A cash advance item is also any item obtained from a third party and paid for by the funeral provider on the purchaser's behalf. Cash advance items may include the following:

- (1) Cemetery or crematory services.
- (2) Pallbearers.
- (3) Public transportation.
- (4) Clergy honoraria.
- (5) Flowers.
- (6) Musicians or singers.
- (7) Nurses.
- (8) Obituary notices.
- (9) Gratuities.
- (10) Death certificates.
- (11) Sales tax.

(State Board of Funeral and Cemetery Service; 832 IAC 7-1-2; filed Jun 26, 1992, 5:00 p.m.: 15 IR 2453; readopted filed May 10, 2001, 2:39 p.m.: 24 IR 3237; readopted filed Jul 19, 2007, 12:52 p.m.: 20070808-IR-832070048RFA)

832 IAC 7-1-3 "Contract" defined

Authority: IC 25-15-9-8
Affected: IC 30-2-13-4

Sec. 3. "Contract" has the meaning set forth in IC 30-2-13-4. *(State Board of Funeral and Cemetery Service; 832 IAC 7-1-3; filed Jun 26, 1992, 5:00 p.m.: 15 IR 2453; readopted filed May 10, 2001, 2:39 p.m.: 24 IR 3237; readopted filed Jul 19, 2007, 12:52 p.m.: 20070808-IR-832070048RFA)*

832 IAC 7-1-4 "Contract beneficiary" defined

Authority: IC 25-15-9-8
Affected: IC 30-2-13

Sec. 4. "Contract beneficiary" means the person specified in a contract for prepaid services or merchandise, upon whose death, the services or merchandise shall be provided or delivered. *(State Board of Funeral and Cemetery Service; 832 IAC 7-1-4; filed Jun 26, 1992, 5:00 p.m.: 15 IR 2453; readopted filed May 10, 2001, 2:39 p.m.: 24 IR 3237; readopted filed Jul 19, 2007, 12:52 p.m.: 20070808-IR-832070048RFA)*

832 IAC 7-1-5 "Delivery" defined

Authority: IC 25-15-9-8
Affected: IC 30-2-13-5

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Sec. 5. "Delivery" has the meaning set forth in IC 30-2-13-5. (*State Board of Funeral and Cemetery Service; 832 IAC 7-1-5; filed Jun 26, 1992, 5:00 p.m.: 15 IR 2453; readopted filed May 10, 2001, 2:39 p.m.: 24 IR 3237; readopted filed Jul 19, 2007, 12:52 p.m.: 20070808-IR-832070048RFA*)

832 IAC 7-1-6 "Preneed contract" defined

Authority: IC 25-15-9-8

Affected: IC 30-2-13

Sec. 6. "Preneed contract" means the same as "contract". (*State Board of Funeral and Cemetery Service; 832 IAC 7-1-6; filed Jun 26, 1992, 5:00 p.m.: 15 IR 2453; readopted filed May 10, 2001, 2:39 p.m.: 24 IR 3237; readopted filed Jul 19, 2007, 12:52 p.m.: 20070808-IR-832070048RFA*)

832 IAC 7-1-7 "Preneed services or merchandise" or "service of merchandise" defined

Authority: IC 25-15-9-8

Affected: IC 30-2-13-8

Sec. 7. "Preneed services or merchandise" or "service of merchandise" has the meaning set forth in IC 30-2-13-8. The terms do not include cash advance items or burial rights. Opening and closing fees referred to in IC 30-2-13-8(10) refer to fees for the opening and closing of grave sites. (*State Board of Funeral and Cemetery Service; 832 IAC 7-1-7; filed Jun 26, 1992, 5:00 p.m.: 15 IR 2453; readopted filed May 10, 2001, 2:39 p.m.: 24 IR 3237; readopted filed Jul 19, 2007, 12:52 p.m.: 20070808-IR-832070048RFA*)

832 IAC 7-1-8 "Purchaser" defined

Authority: IC 25-15-9-8

Affected: IC 30-2-13-9

Sec. 8. "Purchaser" has the meaning set forth in IC 30-2-13-9. (*State Board of Funeral and Cemetery Service; 832 IAC 7-1-8; filed Jun 26, 1992, 5:00 p.m.: 15 IR 2453; readopted filed May 10, 2001, 2:39 p.m.: 24 IR 3237; readopted filed Jul 19, 2007, 12:52 p.m.: 20070808-IR-832070048RFA*)

832 IAC 7-1-9 "Seller" defined

Authority: IC 25-15-9-8

Affected: IC 30-2-13-10

Sec. 9. "Seller" has the meaning set forth in IC 30-2-13-10. (*State Board of Funeral and Cemetery Service; 832 IAC 7-1-9; filed Jun 26, 1992, 5:00 p.m.: 15 IR 2454; readopted filed May 10, 2001, 2:39 p.m.: 24 IR 3237; readopted filed Jul 19, 2007, 12:52 p.m.: 20070808-IR-832070048RFA*)

Rule 2. Contract Provisions

832 IAC 7-2-1 Preneed contract

Authority: IC 25-15-9-8

Affected: IC 30-2-13

Sec. 1. It shall be unlawful for any seller doing business within this state to make, either directly or indirectly, by any means, a preneed contract unless it is as follows:

(1) Made on a form that complies with this article, is written in clear, understandable language, and printed in easy-to-read type, size, and style.

(2) Identifies, by name, address, and telephone number, the seller, purchaser, and the contract beneficiary, if other than the purchaser, and contains the seller's certificate of authority number and date of contract.

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(3) Clearly discloses that, upon payment in full, all services and merchandise subject to contract are guaranteed as to delivery, or, in the event a contract is funded through a cash installment sale or an insurance policy with a limited death benefit, delivery of services and merchandise may be reduced to the extent of funds actually received at the time delivery is to be made.

(4) Clearly discloses that if cash advance items are funded in the preneed contract, then, at the time of delivery, funds available shall be applied by the seller to the prepaid services and merchandise and cash advance items in the same proportion as initially funded in the preneed contract.

(5) Provides that the purchaser may terminate the contract within thirty (30) days of execution, that the contract becomes irrevocable after that time, and an acknowledgement by the purchaser that they understand the irrevocable nature of the contract.

(6) Provides that if the particular merchandise and services specified in the contract are unavailable at the time of delivery, the seller will furnish services and merchandise similar in style and quality of material at least equal in value.

(7) Clearly discloses the manner in which the preneed contract is to be funded, including, but not limited to, a bank trust, annuity, life insurance policy, or savings account.

(8) Clearly discloses the purchaser's right to designate a new seller, and place of final disposition, if known.

(9) Clearly discloses any geographic restrictions and related charges, if any.

(State Board of Funeral and Cemetery Service; 832 IAC 7-2-1; filed Jun 26, 1992, 5:00 p.m.: 15 IR 2454; readopted filed May 10, 2001, 2:39 p.m.: 24 IR 3237; readopted filed Jul 19, 2007, 12:52 p.m.: 20070808-IR-832070048RFA)

832 IAC 7-2-2 Delivery of contract

Authority: IC 25-15-9-8

Affected: IC 30-2-13

Sec. 2. At the time the contract is entered into, the seller shall furnish the purchaser with a copy of the signed contract. *(State Board of Funeral and Cemetery Service; 832 IAC 7-2-2; filed Jun 26, 1992, 5:00 p.m.: 15 IR 2454; readopted filed May 10, 2001, 2:39 p.m.: 24 IR 3237; readopted filed Jul 19, 2007, 12:52 p.m.: 20070808-IR-832070048RFA)*

832 IAC 7-2-3 Preneed contract paid through installments

Authority: IC 25-15-9-8

Affected: IC 30-2-13

Sec. 3. In the event a contract is funded on a cash basis, payable in installments, or with a life insurance policy, annuity, or other method which has a limited death benefit period, and the contract beneficiary dies either before the installments are paid in full or during the limited death benefit period, then the seller shall:

(1) deliver services and merchandise equal in value to the funds available in trust or the proceeds of a life insurance policy, annuity, or other funding vehicle; or

(2) deliver services and merchandise specified in the preneed contract, provided the purchaser, or other person, provides a financial guaranty or other consideration sufficient in value to pay the difference between the seller's retail price at time of delivery and the proceeds available from the funding mechanism employed to fund the contract.

(State Board of Funeral and Cemetery Service; 832 IAC 7-2-3; filed Jun 26, 1992, 5:00 p.m.: 15 IR 2454; readopted filed May 10, 2001, 2:39 p.m.: 24 IR 3237; readopted filed Jul 19, 2007, 12:52 p.m.: 20070808-IR-832070048RFA)

832 IAC 7-2-4 Bank trust deposits

Authority: IC 25-15-9-8

Affected: IC 30-2-13-12

Sec. 4. Cash or other property received for services or merchandise shall be deposited as required by IC 30-2-13-12. Subsequent installment payments shall be deposited by the seller within thirty (30) days of the end of the month in which payments are received. *(State Board of Funeral and Cemetery Service; 832 IAC 7-2-4; filed Jun 26, 1992, 5:00 p.m.: 15 IR 2454; readopted filed May 10, 2001, 2:39 p.m.: 24 IR 3237; readopted filed Jul 19, 2007, 12:52 p.m.: 20070808-IR-832070048RFA)*

832 IAC 7-2-5 Cash advance item and sales tax collections

Authority: IC 25-15-9-8
Affected: IC 30-2-13-12

Sec. 5. All funds collected by a seller for future payment of cash advance items or sales tax shall be deposited to trust in accordance with IC 30-2-13-12 or IC 23-14-1-14 [*IC 23-14-1 was repealed by P.L.52-1997, SECTION 58, effective July 1, 1997.*] and held in trust until the time of delivery. Funds paid premiums for life insurance or annuities to fund cash advance items or sales tax shall be paid as premiums to the life insurance company. (*State Board of Funeral and Cemetery Service; 832 IAC 7-2-5; filed Jun 26, 1992, 5:00 p.m.: 15 IR 2454; readopted filed May 10, 2001, 2:39 p.m.: 24 IR 3237; readopted filed Jul 19, 2007, 12:52 p.m.: 20070808-IR-832070048RFA*)

832 IAC 7-2-6 Duplicate contracts

Authority: IC 25-15-9-8
Affected: IC 30-2-13

Sec. 6. In the event of preneed contracts providing the same or similar services or merchandise, the seller of the contract which is second in time shall, on demand of the purchaser, refund to the purchaser from trust all funds or other property paid to seller in the funding of the second contract. Seller shall execute whatever documents are necessary to effectuate such transfer or refund. (*State Board of Funeral and Cemetery Service; 832 IAC 7-2-6; filed Jun 26, 1992, 5:00 p.m.: 15 IR 2455; readopted filed May 10, 2001, 2:39 p.m.: 24 IR 3237; readopted filed Jul 19, 2007, 12:52 p.m.: 20070808-IR-832070048RFA*)

832 IAC 7-2-7 Transferred contracts

Authority: IC 25-15-9-8
Affected: IC 30-2-13-13

Sec. 7. In the event a transfer fee as allowed by IC 30-2-13-13, applicable to contracts executed on or after July 1, 1991, is imposed by the transferring seller when a preneed contract is transferred from one (1) seller to a successor seller, the transfer shall not be effective until the transfer fee is paid in full. (*State Board of Funeral and Cemetery Service; 832 IAC 7-2-7; filed Jun 26, 1992, 5:00 p.m.: 15 IR 2455; readopted filed May 10, 2001, 2:39 p.m.: 24 IR 3237; readopted filed Jul 19, 2007, 12:52 p.m.: 20070808-IR-832070048RFA*)

832 IAC 7-2-8 Consumer protection charges

Authority: IC 25-15-9-8
Affected: IC 30-2-13-12; IC 30-2-13-27

Sec. 8. A seller may elect to include in its sales price the cost of compliance with IC 30-2-13-27, and such charge shall not be subject to the trust requirements of IC 30-2-13-12. (*State Board of Funeral and Cemetery Service; 832 IAC 7-2-8; filed Jun 26, 1992, 5:00 p.m.: 15 IR 2455; readopted filed May 10, 2001, 2:39 p.m.: 24 IR 3237; readopted filed Jul 19, 2007, 12:52 p.m.: 20070808-IR-832070048RFA*)

832 IAC 7-2-9 Consumer protection fund disclosure

Authority: IC 25-15-9-8
Affected: IC 30-2-13

Sec. 9. A seller shall not use, employ, advertise, market, or otherwise solicit the sale of services or merchandise in such a manner as to publicize the existence of the Preneed Consumer Protection Fund as an inducement to such sale or attempted sale of a preneed contract. (*State Board of Funeral and Cemetery Service; 832 IAC 7-2-9; filed Jun 26, 1992, 5:00 p.m.: 15 IR 2455; readopted filed May 10, 2001, 2:39 p.m.: 24 IR 3237; readopted filed Jul 19, 2007, 12:52 p.m.: 20070808-IR-832070048RFA*)

832 IAC 7-2-10 Excess funds; IC 30-2-10 trust

Authority: IC 25-15-9-8

Affected: IC 30-2-10; IC 30-2-13

Sec. 10. (a) Funeral director sellers required to employ a trust for escrow authorized by IC 30-2-10 shall compute any excess or refund amount on the difference between the seller's retail price at the time of delivery and the proceeds available from the funding mechanism employed to fund the contract.

(b) This section does not apply to cemetery or third party sellers required to employ a trust or escrow authorized by IC 23-14-1-14 [IC 23-14-1 was repealed by P.L.52-1997, SECTION 58, effective July 1, 1997.]. (State Board of Funeral and Cemetery Service; 832 IAC 7-2-10; filed Jun 26, 1992, 5:00 p.m.: 15 IR 2455; readopted filed May 10, 2001, 2:39 p.m.: 24 IR 3237; readopted filed Jul 19, 2007, 12:52 p.m.: 20070808-IR-832070048RFA)

832 IAC 7-2-11 Pre-Act exchange provisions

Authority: IC 25-15-9-8

Affected: IC 30-2-13

Sec. 11. Options provided by contracts executed prior to July 1, 1991, but not exercised until after July 1, 1991, take precedence over any contracts executed after July 1, 1991, for the same or similar services and merchandise. (State Board of Funeral and Cemetery Service; 832 IAC 7-2-11; filed Jun 26, 1992, 5:00 p.m.: 15 IR 2455; readopted filed May 10, 2001, 2:39 p.m.: 24 IR 3237; readopted filed Jul 19, 2007, 12:52 p.m.: 20070808-IR-832070048RFA)

832 IAC 7-2-12 Requirements to make records available to board

Authority: IC 25-15-9-8

Affected: IC 30-2-13-31

Sec. 12. Each holder of a certificate of authority and each person required by IC 30-2-13 to obtain a certificate of authority shall, upon demand, provide and make available for inspection and copying any and all detailed records:

(1) required by IC 30-2-13-31; and

(2) necessary to show compliance with IC 30-2-13-31;

upon request by the board for investigative purposes. (State Board of Funeral and Cemetery Service; 832 IAC 7-2-12; filed Jun 9, 1993, 9:00 a.m.: 16 IR 2423; readopted filed May 10, 2001, 2:39 p.m.: 24 IR 3237; readopted filed Jul 19, 2007, 12:52 p.m.: 20070808-IR-832070048RFA)

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