

# ARTICLE 7. PRENEED FUNERAL BURIAL SERVICES OR MERCHANDISE CONTRACTS

## Rule 1. Definitions

### 832 IAC 7-1-1 Applicability

Authority: IC 25-15-9-8; IC 30-2-13-34

Affected: IC 30-2-13

Sec. 1. The definitions in IC 30-2-13 and 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; filed Mar 11, 2013, 2:50 p.m.: 20130410-IR-832120198FRA; readopted filed Nov 25, 2013, 9:23 a.m.: 20131225-IR-832130288RFA*)

### 832 IAC 7-1-2 "Cash advance item" defined (Repealed)

Sec. 2. (*Repealed by State Board of Funeral and Cemetery Service; filed Mar 11, 2013, 2:50 p.m.: 20130410-IR-832120198FRA*)

### 832 IAC 7-1-3 "Contract" defined (Repealed)

Sec. 3. (*Repealed by State Board of Funeral and Cemetery Service; filed Mar 11, 2013, 2:50 p.m.: 20130410-IR-832120198FRA*)

### 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; readopted filed Nov 25, 2013, 9:23 a.m.: 20131225-IR-832130288RFA*)

### 832 IAC 7-1-5 "Delivery" defined (Repealed)

Sec. 5. (*Repealed by State Board of Funeral and Cemetery Service; filed Mar 11, 2013, 2:50 p.m.: 20130410-IR-832120198FRA*)

### 832 IAC 7-1-6 "Preneed contract" defined (Repealed)

Sec. 6. (*Repealed by State Board of Funeral and Cemetery Service; filed Mar 11, 2013, 2:50 p.m.: 20130410-IR-832120198FRA*)

### 832 IAC 7-1-7 "Preneed services or merchandise" or "service of merchandise" defined (Repealed)

Sec. 7. (*Repealed by State Board of Funeral and Cemetery Service; filed Mar 11, 2013, 2:50 p.m.: 20130410-IR-832120198FRA*)

### 832 IAC 7-1-8 "Purchaser" defined (Repealed)

Sec. 8. *(Repealed by State Board of Funeral and Cemetery Service; filed Mar 11, 2013, 2:50 p.m.: 20130410-IR-832120198FRA)*

**832 IAC 7-1-9 "Seller" defined (Repealed)**

Sec. 9. *(Repealed by State Board of Funeral and Cemetery Service; filed Mar 11, 2013, 2:50 p.m.: 20130410-IR-832120198FRA)*

**Rule 2. Contract Provisions**

**832 IAC 7-2-1 Preneed contract**

Authority: IC 25-15-9-8; IC 30-2-13-34

Affected: IC 30-2-13

Sec. 1. (a) 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.
- (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 acknowledgment 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) a bank trust;
  - (B) an annuity;
  - (C) a life insurance policy; or
  - (D) a 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.

(b) Where the particular merchandise and services specified in the contract are unavailable under subsection (a)(6), the seller must advise the purchaser of the substituted merchandise or services and explain how the seller determined the merchandise or services are similar in style and quality of material and at least equal in value. *(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; filed Mar 11, 2013, 2:50 p.m.: 20130410-IR-832120198FRA; readopted filed Nov 25, 2013, 9:23 a.m.: 20131225-IR-832130288RFA)*

**832 IAC 7-2-2 Delivery of contract**

Authority: IC 25-15-9-8

Affected: IC 30-2-13

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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; readopted filed Nov 25, 2013, 9:23 a.m.: 20131225-IR-832130288RFA*)

**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; readopted filed Nov 25, 2013, 9:23 a.m.: 20131225-IR-832130288RFA*)

**832 IAC 7-2-4 Bank trust deposits**

Authority: IC 25-15-9-8; IC 30-2-13-34

Affected: IC 30-2-13-12.5

Sec. 4. Cash or other property received for services or merchandise shall be deposited as required by IC 30-2-13-12.5. Subsequent installment payments shall be deposited by the seller within thirty (30) days of receipt. (*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; filed Mar 11, 2013, 2:50 p.m.: 20130410-IR-832120198RFA; readopted filed Nov 25, 2013, 9:23 a.m.: 20131225-IR-832130288RFA*)

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

Authority: IC 25-15-9-8; IC 30-2-13-34

Affected: IC 30-2-13-12.5

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 30-2-13-12.5 and held in trust until the time of delivery. Funds collected as 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; filed Mar 11, 2013, 2:50 p.m.: 20130410-IR-832120198RFA; readopted filed Nov 25, 2013, 9:23 a.m.: 20131225-IR-832130288RFA*)

**832 IAC 7-2-6 Duplicate contracts**

Authority: IC 25-15-9-8; IC 30-2-13-34

Affected: IC 30-2-13

Sec. 6. In the event there is more than one (1) preneed contract to provide the same or similar services or merchandise without a successor seller designated, the contract that is first in time prevails and is valid. The seller of a subsequent contract who has not been designated as a successor seller shall, on demand of the purchaser, refund to the purchaser from trust all funds or other

property paid to the subsequent seller in the funding of the subsequent contract. The seller of the subsequent contract shall execute whatever documents are necessary to effectuate the 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; filed Mar 11, 2013, 2:50 p.m.: 20130410-IR-832120198FRA; readopted filed Nov 25, 2013, 9:23 a.m.: 20131225-IR-832130288RFA*)

### **832 IAC 7-2-7 Transferred contracts (Repealed)**

Sec. 7. (*Repealed by State Board of Funeral and Cemetery Service; filed Mar 11, 2013, 2:50 p.m.: 20130410-IR-832120198FRA*)

#### **832 IAC 7-2-7.1 Inability to perform contractual duties**

Authority: IC 25-15-9-8; IC 30-2-13-34

Affected: IC 30-2-13

Sec. 7.1. (a) A seller who is unable to perform its obligations under a preneed contract for any reason shall give notice to the board and to each preneed contract purchaser under the requirements of IC 30-2-13-15.

(b) A purchaser who receives notice under subsection (a) has thirty (30) days after the date the notice was mailed to designate, under IC 30-2-13-13, a new seller to become the beneficiary of the trust or the designated recipient of the escrow funds. Should the newly designated seller consent to the designation, the original seller shall transfer the unperformed contract and funds held in trust or escrow to the newly designated seller. The newly designated seller shall perform the transferred contract. A purchaser receiving notice under IC 30-2-13-13 may not hold back or retain the right to make future delivery of any item of service or merchandise, or any cash advance item, set forth in the contract subject to transfer.

(c) A seller who is unable to perform its obligations under a preneed contract and has not been informed by a purchaser regarding a newly designated seller within thirty (30) days of sending notice under subsection (a) shall send the board all unperformed preneed contracts for which there is no newly designated seller. The preneed contracts and all original supporting documentation shall be sent to the board within sixty (60) days after the date the notice required under subsection (a) was mailed by the seller to the purchaser.

(d) Where a purchaser has not designated a new seller, the board shall designate a new seller, subject to acceptance by the new seller of such designation. In selecting a new seller, the board shall consider sellers in the geographic area where the preneed contract is to be performed. Each newly designated seller shall become the beneficiary of the trust or the designated recipient of the escrow funds of the purchaser.

(e) In the event the board is required to designate a new seller, the board's action shall not limit or prohibit a purchaser from exercising the right to further designate a successor seller of the purchaser's choosing under IC 30-2-13-13.

(f) A seller who is unable to perform its obligations under a preneed contract and fails to discharge its responsibilities under IC 30-2-13-15 and this rule may be subject to criminal and civil penalties, as provided by IC 30-2-13-38. (*State Board of Funeral and Cemetery Service; 832 IAC 7-2-7.1; filed Mar 11, 2013, 2:50 p.m.: 20130410-IR-832120198FRA; readopted filed Nov 25, 2013, 9:23 a.m.: 20131225-IR-832130288RFA*)

#### **832 IAC 7-2-8 Consumer protection charges**

Authority: IC 25-15-9-8; IC 30-2-13-34

Affected: 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. (*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; filed Mar 11, 2013, 2:50 p.m.: 20130410-IR-832120198FRA; readopted filed Nov 25, 2013, 9:23 a.m.: 20131225-IR-832130288RFA*)

**832 IAC 7-2-9 Consumer protection fund disclosure**

Authority: IC 25-15-9-8; IC 30-2-13-34

Affected: IC 30-2-13

Sec. 9. A seller shall not:

- (1) use;
- (2) employ;
- (3) advertise;
- (4) market; or
- (5) otherwise solicit;

the sale of services or merchandise in such a manner as to publicize the existence of the Preneed Consumer Protection Fund in the promotion of 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; filed Mar 11, 2013, 2:50 p.m.: 20130410-IR-832120198FRA; readopted filed Nov 25, 2013, 9:23 a.m.: 20131225-IR-832130288RFA*)

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

Authority: IC 25-15-9-8; IC 30-2-13-34

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

Sec. 10. Funeral director sellers required to employ a trust or 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. (*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; filed Mar 11, 2013, 2:50 p.m.: 20130410-IR-832120198FRA; readopted filed Nov 25, 2013, 9:23 a.m.: 20131225-IR-832130288RFA*)

**832 IAC 7-2-11 Pre-Act exchange provisions (Repealed)**

Sec. 11. (*Repealed by State Board of Funeral and Cemetery Service; filed Mar 11, 2013, 2:50 p.m.: 20130410-IR-832120198FRA*)

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

Authority: IC 25-15-9-8; IC 30-2-13-34

Affected: IC 30-2-13

Sec. 12. (a) 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; and
- (2) necessary to show compliance with IC 30-2-13;

upon request by the board for investigative purposes.

(b) All records shall be maintained in a secure manner in accordance with 832 IAC 5-1-1.2(b). (*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; filed Mar 11, 2013, 2:50 p.m.: 20130410-IR-832120198FRA; readopted filed Nov 25, 2013, 9:23 a.m.: 20131225-IR-832130288RFA*)

**832 IAC 7-2-13 Unlawful inducement**

Authority: IC 25-15-9-8; IC 30-2-13-34

Affected: IC 23-14-37; IC 30-2-13-13

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Sec. 13. (a) "Inducement" means the act or process of a seller to entice or persuade a purchaser or potential purchaser to take a certain course of action with respect to a contract. An inducement can be tangible or intangible as well as direct or indirect.

(b) "Unlawful inducement" means an inducement employed by a seller that is in violation of IC 30-2-13, IC 23-14-37, or these rules.

(c) The advertisement of preneed services or merchandise to the general public does not constitute an unlawful inducement unless the advertisement is false or misleading or otherwise in violation of statute or these rules.

(d) It is an unlawful inducement for a seller to knowingly induce a purchaser to breach an existing contract that provides for prepaid or at-need services or merchandise. It is not an unlawful inducement for a seller to advertise or otherwise inform consumers of their right to transfer their contracts to a successor seller.

(e) A seller engages in an unlawful inducement where the seller knowingly:

(1) induces a purchaser who has the right to designate a successor seller under IC 30-2-13-13 to:

(A) make a designation of a successor seller;

(B) breach an existing contract for prepaid or at-need services or merchandise; or

(C) enter into a prepaid or at-need contract calling for the delivery of similar services or merchandise; or

(2) offers a monetary inducement or the exchange or substitution of free or discounted services or merchandise in an effort to induce a purchaser to change the designation of a seller of prepaid or at-need services or merchandise.

(f) An unlawful inducement occurs where a seller provides free or discounted burial rights as:

(1) an inducement or as a consideration for the transfer of a contract; or

(2) an inducement of a purchaser to change the designation of a seller of prepaid or at-need services or merchandise.

(g) In addition to section 9 of this rule, a seller engages in an unlawful inducement where the seller, as inducement to purchase burial rights in a cemetery or as inducement to purchase preneed or at-need services or merchandise, does any of the following:

(1) Offers, promises, or agrees to resell or repurchase the burial rights.

(2) Pays or offers to pay any sum of money as interest or as a premium for the right to resell or repurchase the burial rights.

(3) Allows a purchaser to convert, substitute, or exchange the purchase of burial rights for the purchase of services or merchandise.

(4) Offers or provides a purchaser with free services or merchandise in exchange for the purchase of other services or merchandise.

(5) Offers or provides a purchaser with cash or gifts with a value of more than fifty dollars (\$50) as inducement to purchase a contract for services or merchandise.

(h) A cemetery owner is not prohibited by subsection (g) from offering or agreeing to repurchase burial rights under a lot exchange plan that:

(1) is entered into with other cemetery owners or through an association of cemetery owners; and

(2) provides for the repurchase of burial rights in case the purchaser should change legal residence to another community and purchases burial rights in a cemetery located in the community of the purchaser's new place of residence.

(i) A seller is not prohibited from offering or providing cash or gifts of a value less than fifty dollars (\$50) as inducements to potential purchasers or new customers as part of the advertisement of goods and services.

(j) Any reference to a seller includes an agent of the seller. (*State Board of Funeral and Cemetery Service; 832 IAC 7-2-13; filed Mar 11, 2013, 2:50 p.m.: 20130410-IR-832120198FRA; readopted filed Nov 25, 2013, 9:23 a.m.: 20131225-IR-832130288RFA*)

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