

## **RULE63**

### **PRENEED INSURANCE REPLACEMENT AND PREPAID FUNERAL BENEFITS CONTRACT CANCELLATION REQUIREMENTS**

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#### **Section 1. Authority**

This Rule is issued based upon the authority granted the Arkansas Insurance Commissioner ("Commissioner") under Ark. Code Ann. §§ 23-61-108, 23-66-307(c)(2) and the Arkansas Administrative Procedures Act, §§ 25-15-201, et seq., for those sections governing the replacement of preneed insurance. For those sections in this Rule which establish standards related to cancellation of prepaid funeral benefits contracts, this Rule is issued based upon the authority granted the Commissioner under Ark. Code Ann. § 23-40-108(d).

#### **Section 2. Scope**

Sections Four (4), Five (5), Six (6), Seven (7), and Eight (8) of this Rule apply to insurers and insurance producers involved in the replacement of preneed insurance as defined in Section Four (4) in this Rule. Sections Four (4) and Sections Seven (7) through Fourteen (14) of this Rule apply to all persons engaged in the business of selling prepaid funeral benefits contracts under Ark. Code Ann. §§ 23-40-101, et seq., as amended.

### **Section 3. Purpose**

The purpose of this Rule is to increase written notice and disclosure to insureds who are replacing life insurance policies, certificates of life insurance coverage, or annuities that fund prepaid funeral benefits contracts. The Rule also provides standards for cancellations or transfers of prepaid funeral benefits contracts governed by Ark. Code Ann. § 23-40-122, the funding mechanisms for such contracts, and revises forms for cancellations or transfers and releases of trust funds under Ark. Code Ann. § 23-40-114.

### **Section 4. Definitions**

For the purposes of this Rule:

- A. "Cancellation" means the termination or transfer of a prepaid funeral benefits contract by the purchaser, prior to the seller's performance of the contract, as a result of action by the purchaser or his or her agents or assigns including, but not limited to, notifying the seller of the purchaser's intent to cancel the contract, transferring or attempting to transfer the contract or funding mechanism to a substitute provider, changing the beneficiary of a life insurance policy, certificate, or annuity contract used to fund a prepaid funeral benefits contract from the seller to a substitute provider or person or changing an assignment of rights to the proceeds from the seller to a substitute provider or person.
- B. "Contract beneficiary" means any natural person designated in a prepaid funeral benefits contract upon whose death funeral services or funeral merchandise, or both, shall be performed, provided, or delivered.
- C. "Existing insurer" means the insurance company whose policy or certificate or annuity contract is or will be changed or affected in a manner described within the definition of "replacement."
- D. "Existing policy or contract" means an individual life insurance policy (policy), group life insurance policy (or certificate evidencing coverage under a group life insurance policy), or annuity contract (contract) in force, including a policy or certificate under a binding or conditional receipt or a policy, certificate, or annuity contract that is within an unconditional refund period.
- E. "Financed purchase" means the purchase of a new insurance policy, certificate, or annuity contract involving the actual or intended use of funds obtained by the withdrawal or surrender of, or by borrowing from, values of an existing policy, certificate, or annuity contract to pay all or part of any premium due on the new policy, certificate, or annuity contract. "Financed purchase" within the meaning of this rule does not constitute an extension of consumer credit for purposes of state or federal law.
- F. "Preneed insurance" means any life insurance policy, certificate, or annuity contract which funds a prepaid funeral benefits contract as defined in Ark. Code Ann. §23-40-103(10).

- G. "Prepaid funeral benefits contract" means a contract as defined in Ark. Code Ann. §23-40-103(10).
- H. "Producer" means agents, brokers and any other person who has received qualification for a licensure to sell, solicit, or negotiate life insurance under Ark. Code Ann. §23-64-507(a)(1) or permitted to sell funeral expense insurance under Rule 30 of the Arkansas Insurance Department.
- I. "Replacement" means a transaction in which a new policy or certificate or annuity contract is to be purchased, and it is known or should be known to the proposing producer, or to the proposing insurer if there is no producer, that by reason of the transaction, an existing policy or certificate or annuity contract has been or is to be:
- (1) Lapsed, forfeited, surrendered or partially surrendered, assigned to the replacing insurer or otherwise terminated;
  - (2) Converted to reduced paid-up insurance, continued as extended term insurance, or otherwise reduced in value by the use of nonforfeiture benefits or other policy values;
  - (3) Amended so as to effect either a reduction in benefits or in the term for which coverage would otherwise remain in force or for which benefits would be paid;
  - (4) Reissued with any reduction in cash value; or
  - (5) Used in a financed purchase.
- J. "Replacing insurer" means the insurance company that issues or proposes to issue a new policy or contract that replaces an existing policy or contract or is a financed purchase.
- K. "Seller" means the organization selling prepaid funeral benefits or owning any interest in any contract for prepaid funeral benefits.

## **Section 5. Replacement Standards for Life Insurance Policies, Certificates, and Annuity Contracts Funding Prepaid Funeral Benefits Contracts**

The requirements in this Section shall not apply to the replacement or cancellations of prepaid funeral benefits contracts funded by cash.

A. In the event an existing policy, certificate, or annuity contract that is used to fund a prepaid funeral benefits contract is replaced with another policy, certificate, or annuity contract, or a prepaid funeral benefits contract is otherwise cancelled or transferred for the purpose of obtaining a new funeral provider, the producer who initiates the replacement or transaction shall comply with the following requirements:

### **PRODUCER**

1. The producer shall present and read to the applicant, not later than at the time of taking the application, a notice regarding replacements in the form as described in Appendix A in this Rule. The notice shall be signed by both the applicant and the producer attesting that the notice has been read

aloud by the producer or that the applicant did not wish the notice to be read aloud (in which case the producer need not have read the notice aloud). The producer shall leave a copy of the signed notice with the applicant and shall send a copy of the signed notice to the seller of the original prepaid funeral benefits contract along with the completed Form AID FI C3 as provided in Section 7(C) of this Rule.

2. Compliance with Section Five (5) (1) of this Rule shall satisfy a producer's requirement to furnish to the policyholder a written memorandum meeting the requirements of Ark. Code Ann. §23- 66-307(b)(1) and shall satisfy a producer's compliance with the requirements of Rule 97, "Life Insurance and Annuities Replacement."

### REPLACING INSURER

B. In the event an existing policy, certificate, or annuity contract that is used to fund a prepaid funeral benefits contract is replaced with another policy, certificate, or annuity contract that will be used to fund a prepaid funeral benefits contract, or a prepaid funeral benefits contract is otherwise cancelled or transferred for the purpose of obtaining a new funeral provider, the replacing insurer shall comply with the following requirements:

1. Verify that the required forms are received and are in compliance with Section Five (5) of this Rule;

2. Notify any other existing insurer that may be affected by the proposed replacement within fifteen (15) business days of receipt of a completed application indicating replacement or when the replacement is identified if not indicated on the application;

3. Provide to the policy or contract owner written notice of the right to return the policy or contract within thirty (30) days of the delivery of the contract and receive an unconditional full refund of all premiums or considerations paid on it, including any policy fees or charges or, in the case of a variable or market value adjustment policy or contract, a payment of the cash surrender value provided under the policy or contract plus the fees and other charges deducted from the gross premiums or considerations or imposed under such policy or contract.

## **Section 6. Violations and Penalties**

Any failure to comply with Section Five (5) of this Rule may be considered a violation of Ark Code Ann. § 23-66-206(2) subjecting the licensee to the penalties under Ark. Code Ann. § 23-66-206(10). Examples of violations include but are not limited to:

- (1) Any deceptive or misleading information set forth in sales material;
- (2) Failing to ask the applicant in completing the application the pertinent questions regarding the possibility of financing or replacement;
- (3) The intentional incorrect recording of an answer;

- (4) Advising an applicant to respond negatively to any question regarding replacement in order to prevent notice to the existing insurer; or
- (5) Advising a policy or contract owner to write directly to the company in such a way as to attempt to obscure the identity of the replacing producer or company.

## **Section 7. Cancellation or Transfer of Prepaid Funeral Benefits Contracts**

A. Arkansas Insurance Department Rule 63, "Trust Fund Release Forms for Prepaid Funeral Benefits Contracts," is hereby repealed and replaced by this Rule. The following release and cancellation or transfer forms for sellers and purchasers are attached as appendices to this Rule. They are the Seller's Affidavit of Contract Performance; Request to Withdraw Funds or Proceeds, Form AID FI C1; Seller's Affidavit for Cancellation or Transfer, Form AID FI C2; Affidavit and Request of Purchaser to Cancel or Transfer, Form AID FI C3; and Instructions for Record Keeping.

B. All prepaid funeral benefits contracts issued on and after July 1, 1995, shall be governed by Act 852 of 1995 (Ark. Code Ann. §§ 23-40-101 et seq., as amended). Pursuant to a consent judgment entered into by the Arkansas Insurance Department in Denver Roller, Inc., et al. v. Lee Douglass, Arkansas Insurance Commissioner, et al., Sixth Division, Chancery Court of Pulaski County, #IJ-95- 3835 (1995), Section 12 of Act 852 of 1995, amending Ark. Code Ann. § 23-40-122, is not applicable to prepaid funeral benefit contracts executed prior to July 1, 1995.

C. In the case of prepaid funeral benefits contracts in which cancellation or transfer is sought under Ark. Code Ann. § 23-40-122, the purchaser shall be entitled to cancel such contract with the seller or transfer it to a substitute provider consistent with the rights under Ark. Code Ann. § 23-40-122 by providing to the seller the cancellation or transfer request form adopted by this Rule, Form AID FI C3, along with any Appendices required in this Rule.

(1) Upon receipt of the cancellation or transfer request forms, for prepaid funeral benefits contracts funded by cash, the seller shall process and complete the cancellation or transfer request within forty (40) days of its receipt of the cancellation or transfer request form.

(2) For prepaid funeral benefits contracts funded by a life insurance policy or annuity, the seller shall complete the Seller's Affidavit for Cancellation or Transfer, Form AID FI C2, and forward it to the existing insurer along with a copy of the purchaser's cancellation or transfer request form, Form AID FI C3, within twenty (20) days after receipt of the purchaser's cancellation or transfer request forms. The existing insurer shall have thirty (30) days from receipt of Forms AID FI C2 and C3 to complete the cancellation or transfer request and to refund to the purchaser or transfer to the substitute provider the amounts specified in Ark. Code Ann. § 23-40-122(2)-(3) and to pay to the seller any funds exceeding those amounts.

(3) In processing any cancellation or transfer request, the seller shall not require the purchaser to sign, acknowledge or provide any releases, notices, or agreements of the seller beyond the forms required by this Rule. For prepaid funeral benefits contracts which are funded by life insurance or by annuities in which cancellation is sought under Ark. Code Ann. § 23-40- 122, the purchaser may, however, be required to execute or acknowledge the standard and approved forms of the insurer which effect a change of status, ownership, or beneficiary of the life insurance policy or an annuity.

(4) No seller or existing insurer shall be considered in violation of the time limits under this section, regardless of the manner of funding, if the completion of the cancellation or transfer is delayed because of a delay or failure to act by a person or party not under the control of the seller or existing insurer.

D. In the event an existing prepaid funeral contract is replaced with another prepaid funeral benefits contract, the substitute provider which initiates the replacement and the purchaser shall also execute and comply with the requirements in the form, Appendix B, to this Rule.

## **Section 8. Requirements of Preneed Insurers on Cancellation or Transfer Requests of Prepaid Funeral Benefits Contracts**

A. For prepaid funeral benefits contracts that are funded by a life insurance policy, certificate, or an annuity contract in which cancellation is sought under Ark. Code Ann. § 23-40-122 or effectuated by action of the purchaser, no existing insurer shall unreasonably delay changing the ownership, beneficiary, or status of a life insurance policy or annuity to a substitute funeral provider. Every existing preneed insurer shall require a purchaser who seeks to change either the beneficiary of a life insurance policy or annuity funding a prepaid funeral benefits contract to any party other than the seller or the assignment of benefits from the seller to another person or entity to follow the procedures in Section 7(C) of this Rule.

B. Whenever a preneed insurer is notified by a servicing funeral home or a representative of the purchaser of a prepaid funeral benefits contract that a funeral home other than the seller serviced the customer at the time of need, the preneed insurer shall be obligated to inform the seller of the original prepaid funeral benefits contract of the death claim and pay to the seller the amounts provided under Ark. Code Ann. § 23-40-122.

C. Upon receipt of a request by a purchaser to cancel a policy, certificate, or annuity contract that is used to fund a prepaid funeral benefits contract, or upon notice that a prepaid funeral benefits contract is subject to cancellation based upon actions taken by the customer, the insurer shall require the customer to execute Form AID FI C3 and to forward such form to the seller of the original prepaid funeral benefits contract. The insurer may withhold payment of any amounts due under Ark. Code Ann. § 23-40-122 until it receives properly executed copies of Forms AID FI C2 and C3. Upon receipt of properly executed Forms AID FI C2 and C3, the insurer shall pay to the seller the amounts provided under Ark. Code Ann. § 23-40-122.

## **Section 9. Permit Requirements**

Prior to entering into any prepaid funeral benefits contract, a seller shall obtain a permit from the Arkansas Insurance Department, as provided in Ark. Code Ann. §§ 23-40-109 through 23-40-111. To obtain an initial permit to enter into a prepaid funeral benefits contract, the seller shall provide:

- (a) The names, addresses and telephone numbers of the seller's officers, directors, managers, or any other individuals holding a 10 percent ownership interest in the seller.
- (b) Proof of the seller's license to do business in the State of Arkansas.
- (c) Proof that seller will use the forms identified as appendices to this Rule.
- (d) Sign a written agreement to abide by all provisions of this Rule and all applicable Arkansas and Federal statutes, including but not limited to those in Ark. Code Ann. §§ 23-40-101 through 23-40-125.

## **Section 10. Sales Contracts.**

- A. Disclosures

The seller shall disclose to the contract beneficiary of the prepaid funeral benefits contract or in a separate statement provided before the signing of the prepaid funeral benefits contract all of the following:

(1) The prepaid funeral benefits contract shall be in writing, in clear and understandable language, and printed in at least eight-point type.

(2) The prepaid funeral benefits contract shall identify the seller's name, address, and telephone number.

(3) The prepaid funeral benefits contract shall identify the purchaser's name, address, telephone number. If the purchaser is not the contract beneficiary, the prepaid funeral benefits contract shall also contain that information for the contract beneficiary. The prepaid funeral benefits contract shall also contain the social security number of the contract beneficiary so as to properly identify the contract beneficiary.

(4) The prepaid funeral benefits contract shall list all of the funeral goods and services purchased with such specificity as is required by state or federal law or regulation.

(5) The prepaid funeral benefits contract shall be signed by both the purchaser and seller and identify the date and place of execution of the contract.

(6) The seller shall be required to give a copy of the contract to the purchaser within fifteen (15) days of execution of the contract.

(7) The prepaid funeral benefits contract shall disclose whether it will be funded by insurance, an annuity, or trust funds.

(8) If the prepaid funeral benefits contract proceeds are used by the seller to purchase an insurance policy, certificate, or annuity contract, or if the purchaser elects to purchase an insurance policy, certificate, or annuity contract to fund the prepaid funeral benefits contract, a copy of the insurance or annuity application shall be attached to the prepaid funeral benefits contract.

(9) If the prepaid funeral benefits contract is funded by a trust, the contract shall disclose the name, address and phone number of trustee/financial institution receiving the trust deposit.

(10) If the prepaid funeral benefits contract is funded by a trust, the contract shall disclose when the prepaid funeral benefits contract trust funds will be deposited with the trustee/financial institution.

(11) If the prepaid funeral benefits contract is funded by a trust, the contract shall disclose that 100% of the contract proceeds will be deposited into the trust fund.

(12) If the prepaid funeral benefits contract is funded by a trust, the contract shall disclose who will be responsible for taxes generated by earnings on the trust account.

(13) If the prepaid funeral benefits contract is funded by a trust, the contract shall disclose if trustee fees or other administrative charges will be deducted from earnings of the trust funds.

(14) The prepaid funeral benefits contract shall disclose that if the price of the funeral goods and services provided in the contract is guaranteed, all funds in the trust account or the proceeds of the insurance policy, certificate, or annuity contract used to fund the prepaid funeral benefits contract, shall be paid to the seller at the time of death if the prepaid funeral benefits contract so provides, consistent with Ark. Code Ann. § 23-40-122.

(15) The prepaid funeral benefits contract shall disclose that even if the price of the funeral goods and services are guaranteed, there may be additional expenses that would not be covered by the contract.

(16) The prepaid funeral benefits contract shall disclose how the purchase price is to be paid and, if the price is paid in installments, a disclosure to the consumer regarding what constitutes default under the installment contract and the consequences of the default. The prepaid funeral benefits contract shall disclose that if the purchaser is in default then the actual cost of the funeral goods and services shall be determined at the time of death.



- (17) The prepaid funeral benefits contract shall disclose that a purchaser can exercise the right to cancel or transfer the contract to a substitute provider pursuant to Arkansas Code Annotated § 23-40-122 by sending an accurate and complete copy of Form AID FI C3 to the seller along with a signed copy of the notice described in Appendix A of this Rule and otherwise by complying with the requirements in this Rule.
- (18) If the prepaid funeral benefits contract is revocable, the contract shall disclose the right of the consumer to cancel the prepaid funeral benefits contract and how the consumer may exercise that right.
- (19) The prepaid funeral benefits contract shall disclose under what circumstances cancellation fees will be imposed and how much those cancellation fees will be to the extent permitted under Section Ten (10) (D) (1) of this Rule. If a fee is permitted to be charged, the contract shall disclose that cancellation fees are in addition to amounts specified as payable to the seller under Ark. Code Ann. § 23-40-122.
- (20) If the prepaid funeral benefits contract is irrevocable, the contract shall disclose that the purchaser does not have a right to cancel the contract and receive a refund of the amounts allowed in Ark. Code Ann. § 23-40-122 but may transfer the contract to a substitute provider under Ark. Code Ann. § 23-40-122 and the procedures in this Rule.
- (21) In order to make a prepaid funeral benefits contract irrevocable, the contract shall require a conspicuous notice that the contract will be irrevocable.
- (22) The prepaid funeral benefits contract shall disclose that if the seller is unable to perform the prepaid funeral benefits contract due to the seller's financial condition, the consumer shall be entitled to a full refund of the contract proceeds.
- (23) The prepaid funeral benefits contract shall disclose that the funeral provider may substitute goods and services of equal quality, value, and workmanship.
- (24) The prepaid funeral benefits contract shall disclose that complaints regarding the prepaid funeral benefits contract may be made to the Arkansas Insurance Department's Pre-Paid Funeral Section at 1200 West Third Street, Little Rock, Arkansas 72201, (501) 371-2640.
- (25) The prepaid funeral benefits contract shall disclose that if the funeral benefits are insurance or annuity funded, the contract beneficiary shall be entitled to know the name of the insurance company, the amount of the policy or annuity, and whether there are any ownership rights retained by the contract beneficiary.
- (26) The prepaid funeral benefits contract shall disclose the current price list value of the funeral benefits provided for in the prepaid funeral benefits contract.
- (27) The prepaid funeral benefits contract shall disclose any discounts or credits against the price.
- (28) The prepaid funeral benefits contract shall disclose that Ark. Code Ann. § 23-40-122 provides that the seller may retain amounts, if any, in excess of the premiums paid by the purchaser or the original face amount of the policy or annuity in the event of a cancellation or transfer.

#### B. Prohibited Prepaid Funeral Benefits Contract Terms and Practices

The following are improper trade practices and shall not be allowed under the terms of a prepaid funeral benefits contract:

- (1) A seller's failure to maintain the amount of proceeds paid into trust account, if applicable, except by decline in value of investments.
- (2) A seller's failure to maintain a policy or certificate of insurance or annuity contract in the amount stated in the prepaid funeral benefits contract in full force and effect, so long as the prepaid funeral benefits contract requires the seller to do so and the contract beneficiary has complied with his/her obligations in the prepaid funeral benefits contract.

(3) A seller's failure to notify the consumer that the contract is in default and the seller is not intending to be bound by the prices stated in the contract either in the terms of the prepaid funeral benefits contract or by a notice of default.

(4) Prepaid funeral benefits contracts cannot be funded with insurance in an initial face amount which exceeds the contract price unless the excess is payable to the buyer.

(5) All proceeds paid by a buyer must be placed in a trust fund or be paid as premiums on a policy of insurance or annuity. Nothing in this rule shall prevent insurance companies or annuity providers from paying the seller a commission for the sale of an insurance policy or annuity.

(6) No prepaid funeral benefits provider shall retain funds in excess of the amount specified in the prepaid funeral benefits contract after completion of performance of the prepaid funeral benefits contract, unless the keeping of such excesses is authorized by the Arkansas Prepaid Funeral Benefits Law (Ark. Code Ann. § 23-40-101, et seq) or this Rule. In the event funds received by a prepaid funeral benefits provider exceed the amount of the prepaid funeral benefits contract after completion of performance of the prepaid funeral benefits contract, the provider shall refund the excess to the appropriate party within thirty (30) days of completion of the contract.

#### C. Funding of Contracts

There are three (3) authorized options to fund a prepaid funeral benefits contract:

(1) Trust funded contracts - The contract proceeds may be deposited into a trust account by the seller until such time as those funds are needed to pay for the benefits specified in the prepaid funeral benefits contract.

(2) Funeral contract life insurance - the contract proceeds may be used by the seller to purchase a life insurance policy or certificate on the life of the contract beneficiary that names the seller as the beneficiary of said insurance policy, the indemnity from which shall be used to pay for the funeral benefits specified in the prepaid funeral benefits contract, or the purchaser may elect to purchase a life insurance policy or certificate directly from the insurance carrier and then either name the seller as beneficiary or assign the death benefits to the seller in order to fund the prepaid funeral benefits contract.

(3) Funeral contract assigned annuity - The contract proceeds may be used by the seller to purchase an annuity contract that names the seller as the beneficiary of said annuity contract, the proceeds of which shall be used to pay for the funeral benefits specified in the prepaid funeral benefits contract, or the purchaser may elect to purchase an annuity contract directly from the insurance carrier and then either name the seller as the beneficiary or assign the death benefits to the seller in order to fund the prepaid funeral benefits contract.

#### D. Cancellation and Transfer of Prepaid Funeral Benefits Contracts

(1) A seller or insurer funding the prepaid funeral benefits contract may not charge a fee for cancelling or transferring the prepaid funeral benefits contract to another funeral service provider unless otherwise provided in Ark. Code Ann. § 23-40-122.

(2) A purchaser may cancel or transfer a prepaid funeral benefits contract as provided under Ark. Code Ann. § 23-40-122, whether revocable or irrevocable, or whether cash funded or funded by insurance or an annuity, at any time prior to performance of the contract by the seller, subject to the following conditions:

(A) In the case of a cash or trust funded prepaid funeral benefits contract:

(i) Prior to the death of the contract beneficiary, if the prepaid funeral benefits contract is revocable, the purchaser shall be entitled to receive a refund of not less than one hundred percent (100%) of all sums paid to the seller by the purchaser, not to exceed the contract price;

(ii) After death, if the prepaid funeral benefits contract is revocable, the purchaser or his or her representative shall be entitled to receive one hundred percent (100%) of the amount paid to the seller by the purchaser, not to exceed the contract price; or

(iii) If the prepaid funeral benefits contract is irrevocable, the purchaser shall not have the right to a refund of any funds paid by him or her or proceeds paid to the seller, but shall have the right to change the provider of the contract services and merchandise to a substitute provider, in which event the seller shall transfer to the substitute provider not less than one hundred percent (100%) of the amount paid to the seller by the purchaser, not to exceed the contract price;

(B) In the case of a prepaid funeral benefits contract funded by life insurance:

(i) Prior to the death of the contract beneficiary, if the prepaid funeral benefits contract is revocable, the purchaser shall have the right to receive not less than one hundred percent (100%) of the cash surrender value of the policy used to fund the prepaid funeral benefits contract, not to exceed the premium paid by the purchaser;

(ii) After the death of the contract beneficiary, if the prepaid funeral benefits contract is revocable, the purchaser or his or her designee shall be entitled to receive not less than one hundred percent (100%) of the policy proceeds paid to the seller, not to exceed the original face amount of the policy; or

(iii) (a) Prior to the death of the contract beneficiary, if the contract is irrevocable, the prepaid funeral benefits contract purchaser shall not have the right to a refund of any funds paid to the seller but shall have the right to change the provider of the prepaid funeral benefits contract services and merchandise to a substitute provider, in which event the seller shall assign or transfer to the substitute provider, as directed by the contract owner, the life insurance policy used to fund the prepaid funeral benefits contract or funds in an amount not less than one hundred percent (100%) of the cash surrender value of the policy used to fund the prepaid funeral benefits contract, not to exceed the premium paid by the purchaser.

(b) After the death of the contract beneficiary, the seller shall transfer to the substitute provider not less than one hundred percent (100%) of the policy proceeds paid to the seller, not to exceed the original face amount of the policy; or

(C) In the case of a prepaid funeral benefits contract funded by an annuity:

(i) Prior to the death of the contract beneficiary, if the prepaid funeral benefits contract is revocable, the purchaser shall be entitled to receive a refund of not less than one hundred percent (100%) of the annuity value, not to exceed the premium paid by the purchaser for the annuity funding the prepaid funeral benefits contract;

(ii) After the death of the contract beneficiary, if the prepaid funeral benefits contract is revocable, the purchaser or his or her designee shall be entitled to receive not less than one hundred percent (100%) of the annuity proceeds received by the seller, not to exceed the premium paid by the purchaser; or

(iii) (a) Prior to the death of the contract beneficiary, if the prepaid funeral benefits contract is irrevocable, the purchaser shall not have the right to a refund of any funds paid to the seller but shall have the right to change the provider of the prepaid funeral benefits contract services and merchandise to a substitute provider, in which event the seller shall assign or transfer to the substitute provider, as directed by the contract owner, the annuity policy used to fund the prepaid funeral benefits

contract, which shall be in an amount of not less than one hundred percent (100%) of the annuity value, not to exceed the premium paid by the purchaser.

(b) After the death of the contract beneficiary, the seller shall transfer to the substitute provider not less than one hundred percent (100%) of the annuity proceeds received by the seller, not to exceed the premiums paid by the purchaser.

(3) Section 7(C) of this Rule sets forth the procedures that must be followed if a purchaser desires to cancel or transfer a prepaid funeral benefits contract under Ark. Code Ann. § 23-40-122.

## **Section 11. Change of Ownership**

Change of ownership of the seller of a prepaid funeral benefits contract shall be governed in accordance with the provisions of Ark. Code Ann. § 23-40-113.

## **Section 12. Solicitation**

All sellers and their employees, agents, or anyone soliciting on their behalf are prohibited from undertaking any of the following practices when engaging in the solicitation of prepaid funeral benefits contracts from consumers:

(a) The making of any untrue statements of material fact or omission of any material facts when engaged in prepaid funeral benefits contracts solicitation.

(b) The use of any advertisements or offers of prepaid funeral benefits contracts which are false, misleading, deceptive, unfair, coercive or intimidating.

(c) The solicitation of potential prepaid funeral benefits contracts consumers by telephone any time between the hours of 9:00 p.m. and 8:00 a.m., unless the consumer specifically requests a solicitation during these hours.

(d) The use of the term "trust" or "trust-funded" in any prepaid funeral benefits contracts advertisement or solicitation in any misleading way.

## **Section 13. Annual Report**

Each seller shall file an annual report as provided in Ark. Code Ann. § 23-40-119.

## **Section 14. Audit; Administration; Enforcement**


(a) Sellers of prepaid funeral benefits contracts shall be subject to audits as provided for in Ark. Code Ann. § 23-40-120.

(b) The Insurance Commissioner for the State of Arkansas shall be responsible for the administration and regulation of the sale of prepaid funeral benefits contracts as provided in Ark. Code Ann. § 23-40-107-08.

(c) The Insurance Commissioner for the State of Arkansas shall be responsible for the enforcement of the sale of prepaid funeral benefits contracts as provided in Ark. Code Ann. §§ 23-40-101, et seq., including delinquency proceedings as provided in Ark. Code Ann. § 23-40-123.

**Section 15. Effective Date**

This Rule shall be effective on or after June 30, 2010.



JAY BRADFORD  
INSURANCE COMMISSIONER

3- 11.. - tb  
DATE

## APPENDIX A

### IMPORTANT NOTICE: REPLACEMENT OF LIFE INSURANCE OR ANNUITIES USED TO FUND PREPAID FUNERAL BENEFITS CONTRACTS

This document must be signed by the applicant and the producer, if there is one, and copies left with the policyholder and sent to the seller of the original prepaid funeral benefits contract.

You are contemplating the purchase of a life insurance policy or annuity contract. In some cases this purchase may involve discontinuing or changing an existing policy or contract. If so, a replacement is occurring.

A replacement occurs when a new policy or contract is purchased and, in connection with the sale, you discontinue making premium payments on the existing policy or contract, or an existing policy or contract is surrendered, forfeited, assigned to the replacing insurer, or otherwise terminated or used in a financed purchase.

You should carefully consider whether a replacement is in your best interests. You may have to pay costs deducted from your policy or contract. You may be able to make changes to your existing policy or contract to meet your insurance needs at a lower cost. For more information, contact the Arkansas Insurance Department's Pre-Paid Funeral Section at 1200 West Third Street, Little Rock, Arkansas 72201, (501) 371-2640.

We want you to understand the effects of replacements before you make your purchase decision and ask that you answer the following questions and consider the questions on the remainder of this form.

1. Are you considering discontinuing making premium payments, surrendering, forfeiting, assigning to the insurer, or otherwise terminating an existing policy or contract?  
YES NO
2. Are you considering using funds from an existing policy or contract to pay premiums due on the new policy or contract? \_ YES NO

If you answered "yes" to either of the above questions, list each existing policy or contract you are contemplating replacing (include the name of the insurer, the insured or annuitant, and the policy or contract number if available) and whether each policy or contract will be replaced or used as a source of financing:

- |    | INSURER<br>NAME | CONTRACTOR<br>POLICY# | INSURED OR<br>ANNUITANT | REPLACED (R) OR<br>FINANCING (F) |
|----|-----------------|-----------------------|-------------------------|----------------------------------|
| 1. |                 |                       |                         |                                  |
| 2. |                 |                       |                         |                                  |
| 3. |                 |                       |                         |                                  |

Make sure you know the facts. Contact your existing company or its agent for information about the old policy or contract. If you request one, an in force illustration, policy summary or available disclosure documents must be sent to you by the existing insurer. Ask for and retain all sales material used by the agent in the sales presentation. Be sure that you are making an informed decision.

The existing policy or contract is being replaced because

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I certify that the responses herein are, to the best of my knowledge, accurate:

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Applicant's Signature and Printed Name

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Date

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Producer's Signature and Printed Name

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Date

I do not want this notice read aloud to me. \_\_\_\_ (Applicants must initial only if they do not want the notice read aloud.)

A replacement may not be in your best interest, or your decision could be a good one. You should make a careful comparison of the costs and benefits of your existing policy or contract and the proposed policy or contract. One way to do this is to ask the company or agent that sold you your existing policy or contract to provide you with information concerning your existing policy or contract. You should discuss the following with your agent to determine whether replacement or financing your purchase makes sense:

PREMIUMS:           Are they affordable?  
                          Could they change?  
                          You're older-are premiums higher for the proposed new policy?  
                          How long will you have to pay premiums on the new policy? On the old policy?

POLICY VALUES: New policies usually take longer to build cash values and to pay dividends.  
                          What surrender charges do the policies have?  
                          What expense and sales charges will you pay on the new policy?  
                          Does the new policy provide more insurance coverage?

INSURABILITY: If your health has changed since you bought your old policy, the new one could cost you more, or you could be turned down.  
You may need a medical exam for a new policy.  
Claims on most new policies for up to the first two years can be denied based on inaccurate statements.  
Suicide limitations may begin anew on the new coverage.

IF YOU ARE KEEPING THE OLD POLICY AS WELL AS THE NEW POLICY:

How are premiums for both policies being paid?  
How will the premiums on your existing policy be affected?  
What values from the old policy are being used to pay premiums?

IF YOU ARE SURRENDERING AN ANNUITY OR INTEREST SENSITIVE LIFE PRODUCT:

Will you pay surrender charges on your old contract?  
What are the interest rate guarantees for the new contract?  
Have you compared the contract charges or other policy expenses?



## APPENDIX B

### IMPORTANT NOTICE: REPLACEMENT OF PREPAID FUNERAL BENEFIT CONTRACT

This document must be signed by the contract beneficiary or the contract designee and the substitute provider seller, and a copy left with the contract beneficiary.

You are contemplating the replacement of your prepaid funeral benefit contract. This replacement will involve discontinuing your prepaid funeral benefit contract with your original selling agent, and you may lose valuable benefits provided under your original contract.

A replacement occurs when a prepaid funeral benefit contract is transferred in connection with your funeral arrangements and with the original seller, and you change your provider on an existing contract. Your prepaid funeral benefit contract will be terminated.

You should carefully consider whether a replacement is in your best interest. You may be able to make changes to your contract to meet your needs at a lower cost, or you may have to pay higher costs for the same or similar services and merchandise.

We want you to understand the effects of replacements before you make your substitute provider transfer decision and ask that you answer the following questions and consider the questions on this form.

1. Are you forfeiting, or otherwise terminating, your existing prepaid funeral benefit contract?  
\_\_\_\_\_ YES \_\_\_\_\_ NO

2. Are you considering using funds from your contract to cover the cost on the new contract?  
\_\_\_\_\_ YES \_\_\_\_\_ NO

If you answered "YES" to either of the above questions, list the existing contract you are contemplating replacing:

Selling Funeral Home's Name \_\_\_\_\_  
Date of Contract \_\_\_\_\_  
Contract Beneficiary \_\_\_\_\_  
New Provider Funeral Home \_\_\_\_\_

Make sure you know the facts. Contact the seller of your prepaid funeral contract for information about your original contract. Ask for and retain both your new contract from the substitute provider funeral home and your original seller's contract. Be sure you are making an informed decision. Make sure you compare your new contract with your existing contract.

I certify that the responses herein are, to the best of my knowledge, accurate:

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SIGNATURE of Contract Beneficiary

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Date

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Designee of Contract Transferred

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PRINTED NAME of Contract Beneficiary or  
Designee of Contract Transferred

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SIGNATURE of Substitute Provider Funeral Home

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Date

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PRINTED NAME of Substitute Provider Funeral Home