



**STATE OF TENNESSEE  
DEPARTMENT OF COMMERCE AND INSURANCE  
BURIAL SERVICES SECTION**

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## **Language for Pre-Need Seller Trust Agreement**

The Tennessee Pre-Paid Funeral Benefits Act, located at Tennessee Code Annotated Section 62-5-401 *et seq.*, has specific requirements for Pre-Need Seller Trust Accounts. The following is language that Burial Services suggests be included in all pre-need seller trust agreements, as these sections concern specific requirements under this Act. It is highly recommended, however, that each pre-need seller consult with a private attorney to ensure their compliance with the Code.

### **DEPOSITS**

The Pre-Need Seller shall deposit all funds from a pre-need funeral contract with the Trustee within fifteen (15) calendar days of receipt. The deposit will include the name of the each contract beneficiary and the amount of payment on each contract for which the deposit is made.

### **TRUST RECORDS & ACCOUNTING**

The Trustee may establish a separate trust fund for each pre-need contract or a single trust fund for all pre-need contracts. The trust account shall be carried in the name of the Pre-Need Seller, but accounting records shall be established and maintained for each individual contract beneficiary showing the amounts deposited and interest earned.

The Trustee shall furnish annually, as required by law, to the Commissioner of Commerce and Insurance of the State of Tennessee a financial report with respect to the trust fund on forms which shall be obtained from the Commissioner, with a copy to the Pre-Need Seller. The Trustee shall also furnish to the Commissioner any additional reports or information as may be required under the Code or otherwise requested.

### **DISTRIBUTION**

Upon the death of the contract beneficiary, the Trustee shall pay the provider for the merchandise and services furnished once the Trustee receives proof of death and a copy of the statement of

merchandise and services, signed by both the provider and a representative of the contract beneficiary, setting forth that all terms and conditions of the preneed funeral contract have been fully performed. Any remaining balance of the deposits and interest earned on the contract shall be paid to the purchaser, the purchaser's estate, or otherwise named beneficiary.

Funds deposited may, with the written permission of the pre-need purchaser and written approval of the Commissioner of the Department of Commerce and Insurance for the State of Tennessee, be withdrawn and used to purchase a prearrangement insurance policy as allowed by the Tennessee Code.

### **MANAGEMENT OF TRUST**

The Trustee shall not diminish the principal of the trust fund. The Trustee can use the income from the principal to pay applicable taxes and reasonable expenses, including trustee fees. The Pre-Need Seller shall be liable to the extent that income from the trust is not sufficient to pay the trust expenses. The Trustee shall invest the funds as instructed by Tennessee Code Annotated Section 62-5-408(d).

### **RESIGNATION OR REMOVAL OF TRUSTEE**

The Trustee reserves the right to resign as Trustee upon thirty (30) days written notice to Pre-Need Seller and the Commissioner. Pre-Need Seller shall have the right to remove Trustee as trustee of its trust fund upon thirty (30) days written notice to Trustee and the Commissioner. The parties shall appoint a successor trustee, subject to compliance with all related requirements of the Code and the Commissioner's approval. Trustee shall transfer and convey to the successor trustee all trust assets held by Trustee. When the transfer and conveyance are completed, Trustee shall be released and discharged from all liability relating to further administration and investment of Pre-Need Seller's trust.

If the Commissioner is not ensured that the successor trustee will be able to comply with the requirements of this part, then the Commissioner may refuse to allow the Pre-need Seller to change the trustee. If the Commissioner does not object to the change of trustee within sixty (60) days of receiving the notice, then the current trustee shall have at least ninety (90) days for the notice date to transfer all trust assets.

### **CONSTRUCTION**

This trust agreement shall be construed and governed in all respects by laws of the State of Tennessee and shall be amended, if necessary, to comply with any subsequent amendments thereto.