

## **Title 1: Secretary of State**

### **Part 12: Regulation and Enforcement – Preneed Funeral Service and Mdse. and Perpetual Care Cemeteries Regulation**

#### **Subpart: 1: Mississippi Preneed Cemetery and Funeral Registration Act Rules**

*Repeal of Prior Rules.* Upon their effective date, these rules and regulations supersede and repeal all previous rules and regulations promulgated under the Preneed Cemetery and Funeral Registration Act.

#### **Part 12 Chapter 1: Definitions**

*Rule 1.1 Act.* As used herein, all references to “Act” or “the Act” shall mean the “Preneed Cemetery and Funeral Registration Act” and any amendments thereto.

Source: *Miss. Code Ann. § 75-63-67 (Rev. 2009).*

*Rule 1.2 Contract Beneficiary.* As used herein, all references to “Contract Beneficiary” shall mean the person upon whose death will initiate the performance of a preneed contract.

Source: *Miss. Code Ann. § 75-63-67 (Rev. 2009).*

*Rule 1.3 Division.* As used herein, all references to “Division” or “the Division” shall mean the Regulation and Enforcement Division of the Mississippi Secretary of State’s Office.

Source: *Miss. Code Ann. § 75-63-67 (Rev. 2009).*

*Rule 1.4 Establishment.* As used herein, all references to “Establishment” or “Preneed Establishment” or “Registered Establishment” shall mean the funeral home, cemetery, or other providers of preneed merchandise and/or services that sell and shall be required to perform a preneed contract.

Source: *Miss. Code Ann. § 75-63-67 (Rev. 2009).*

*Rule 1.5 Rules.* As used herein, all references to “Rules” or “these Rules” shall mean the “Mississippi Preneed Cemetery and Funeral Registration Act Rules.”

Source: *Miss. Code Ann. § 75-63-67 (Rev. 2009).*

*Rule 1.6 Secretary of State.* As used herein, all references to “the Secretary of State” or “Secretary of State” shall mean the Mississippi Secretary of State.

Source: *Miss. Code Ann. § 75-63-67 (Rev. 2009).*

## **Part 12 Chapter 2: Registration**

*Rule 2.1 Establishment Registration.* Any establishment or organization which engages in the business of selling preneed merchandise and/or services shall register with the Secretary of State by filing a completed Preneed Establishment and/or Agent Registration Form (Form 10PN001) with the Division. The form shall be marked in the space designated “Initial Registration” and shall be accompanied by a registration fee of Two Hundred Fifty Dollars (\$250). This “Initial Registration” shall only be completed once for each establishment registration; therefore, the Two Hundred Fifty Dollar (\$250) registration fee shall only be paid once by each establishment that registers with the Division. The only reason an establishment would have to pay the Two Hundred Fifty Dollar (\$250) registration fee on more than one occasion would be if, for any reason, the establishment has to re-register. **All registrations expire on March 31<sup>st</sup> of each year and must be renewed.**

Source: *Miss. Code Ann.* § 75-63-67 (Rev. 2009).

*Rule 2.2 Agent Registration.* Any person who engages in the business of selling preneed contracts shall register with the Secretary of State by filing a Form 10PN001 with sections A, D, and E completed. All agent applications must be sponsored by a registered establishment.

Source: *Miss. Code Ann.* § 75-63-67 (Rev. 2009).

*Rule 2.3 Annual Report Filing.* Every registered establishment shall annually submit a written report to the Secretary of State of its preneed contract sales and performance of such contracts. This report shall be filed with the Secretary of State on or before March 31<sup>st</sup> of each year for the calendar year ending the preceding December 31<sup>st</sup>. Annual reports shall be submitted to the Secretary of State on Form 10PN001 that is marked in the space designated “Renewal Registration & Annual Report.” A Fifty Dollar (\$50) renewal of license fee shall also accompany the filing and shall be made payable to the Mississippi Secretary of State's Office.

Source: *Miss. Code Ann.* § 75-63-67 (Rev. 2009).

*Rule 2.4 Trustee Annual Report Filing.* Every trustee for a preneed funeral and/or cemetery services and merchandise trust shall annually submit a written report to the Secretary of State containing the trust activity for the previous ending calendar year. This report shall be filed on or before March 31<sup>st</sup> of each year for the calendar year ending the preceding December 31<sup>st</sup>. Trustee Annual Reports shall be submitted on the Annual Trustee Report Form and marked in the space designated “Preneed Funeral/Cemetery Services & Merch. Trust.” No fee shall be submitted with this report.

Source: *Miss. Code Ann.* § 75-63-67 (Rev. 2009).

*Rule 2.5 Change in Establishment or Agent Information.* Any changes in the information provided by the establishment or agent in a registration shall be supplied to the Secretary of State in writing by completing the appropriate sections of Form 10PN001. Notice shall be supplied to the Secretary of State within thirty (30) days after such change has occurred.

Source: *Miss. Code Ann.* § 75-63-67 (Rev. 2009).

*Rule 2.6 Change in Ownership or Control.*

- A. The seller shall apply for change of ownership or control when:
  - 1) The seller transfers all or a portion of the interest in any contract for prepaid funeral merchandise and services;
  - 2) The seller transfers one or more of its establishments for providing funeral merchandise or services;
  - 3) All or a portion of the equity ownership of a seller has been transferred that will result in a change of:
    - a. The sale of more than fifty percent (50%) of the interest of a seller when the seller is a corporation;
    - b. Ownership of a seller when the seller is other than a corporation;
  - 4) The seller transfers all of its business assets relating to providing funeral merchandise or services; or
  - 5) The seller terminates its business of providing funeral merchandise or services.
- B. At least fifteen (15) days before the proposed occurrence of an event described in subsection A of this rule, the seller shall file a verified change of ownership application with the Division, which shall contain the following:
  - 1) The name and address of the seller;
  - 2) The name and address of the organization proposing to acquire property of the seller, hereinafter referred to as the “transferee”;
  - 3) A description of the property and of the proposed transaction, as set forth in subsection A of this section;
  - 4) An accounting of the trust fund and all outstanding contracts, which accounting shall contain all the information required in the annual report, prepared as of a date within thirty (30) days of the required application filing date above;
  - 5) Any required documents or amendments thereto relating to the trust fund;
  - 6) A copy of any notice proposed to be sent to the contract buyers after the transfer;
  - 7) A filing fee of One Hundred Dollars (\$100.00); and
  - 8) Any other information that may reasonably be required by the Division by rule or order.
- C. The Division must approve the change in ownership or control. The Division shall approve the seller’s application for change of ownership by written authorization if:
  - 1) The transferee set forth in the application holds a valid, current registration under the provisions of this article;
  - 2) The accounting required is complete, accurate, and reflects the trust fund whole and intact; and
  - 3) All required information and documents are filed with and approved by the Division
- D. The Division shall have the authority by rule or order to waive or reduce any of the requirements contained in subsection B of this rule as not being necessary or appropriate in the public interest or for the protection of the contract beneficiaries.
- E. The seller, or its interest therein, shall remain liable for all funds and transactions to the effective date of the transfer. The buyer shall be liable for all funds and transactions thereafter.

- F. Any shortages in the trust fund due to the failure to properly capitalize the trust in accordance with Section 75-63-59 shall be funded by the preneed seller or new owner before closing. Nothing provided in this section shall alleviate or excuse the purchaser from exercising due diligence in the transaction before closing.

Source: *Miss. Code Ann.* § 75-63-67 and 77 (Rev. 2009).

*Rule 2.7 Change in Trustee or Trust Institution.* In the event of any change in the investment composition of the assets of a preneed trust reflecting a redistribution of Twenty-Five percent (25%) or more of trust assets or a change in the trustee or trust institution, the Secretary of State shall be notified in writing no less than thirty (30) days after the time of such change occurs.

Source: *Miss. Code Ann.* § 75-63-67 (Rev. 2009).

*Rule 2.8 Termination of Agents.* Establishments shall notify the Secretary of State in writing within thirty (30) days after an agent has ceased employment with that establishment.

Source: *Miss. Code Ann.* § 75-63-67 (Rev. 2009).

*Rule 2.9 Notarization.* All registration forms and annual reports must be notarized.

Source: *Miss. Code Ann.* § 75-63-67 (Rev. 2009).

*Rule 2.10 Certificate.* An establishment and/or agent shall not be considered registered under the Act until the establishment and/or agent receives a certificate from the Division stating that it has satisfied the registration requirements of the Act and these Rules.

Source: *Miss. Code Ann.* § 75-63-67 (Rev. 2009).

*Rule 2.11 Filing Dates.* Any filing required by the Act or these Rules is considered timely filed by reference to the postmark when filed along with the appropriate forms, filing fee, and all other documents required by the Act or these Rules.

Source: *Miss. Code Ann.* § 75-63-67 (Rev. 2009).

*Rule 2.12 Deficient Filings.* Any filing made pursuant to the Act or these Rules may be deemed deficient if any of the following exist:

- A. The application is not on the proper form;
- B. The application is not in compliance with the Act or these Rules;
- C. The application is incomplete;
- D. The application is not signed and notarized; and/or
- E. The associated fee is not submitted.

When a registration application or filing is found to be deficient, the Division shall send a deficiency letter stating the grounds for noncompliance. If following the transmission of a

deficiency letter, no communication is received by the Division for a period of thirty (30) days, the application or filing will be deemed abandoned and returned to the applicant.

Source: *Miss. Code Ann.* § 75-63-67 (Rev. 2009).

*Rule 2.13 Addresses.* For all correspondence to the Division **including payment of fees or penalties**, please mail to this address:

Secretary of State  
Regulation and Enforcement Division  
Post Office Box 136  
Jackson, Mississippi 39205

The physical address is:

Secretary of State  
Regulation and Enforcement Division  
125 South Congress Street  
Jackson, Mississippi 39201

Source: *Miss. Code Ann.* § 75-63-67 (Rev. 2009).

### **Part 12 Chapter 3: Contracts**

*Rule 3.1 Contract Forms.* All preneed contracts sold shall be evidenced in writing on forms approved by and on file with the Secretary of State. No contract form can be used unless approved by the Division. Said contract forms must be accompanied by all documents required by the Act and these Rules to be provided to a contract beneficiary.

All preneed contract forms filed with the Secretary of State shall be reviewed in order to ensure compliance with the Act and these Rules. If the contract meets all of the requirements of the Act and these Rules then it shall be marked “Accepted” and a copy shall be returned to the preneed establishment. If the contract fails to meet the requirements of the Act and these Rules, it shall be marked “Rejected” and it shall be returned to the preneed establishment along with the reasons for rejection.

It is the Establishment’s responsibility to obtain approval of a contract form that complies with requirements of the current Act and the current Rules. Outdated contract forms, even if previously approved by the Division, cannot be used if contract language is in conflict with the current Act and the current Rules.

Source: *Miss. Code Ann.* § 75-63-67 (Rev. 2009).

*Rule 3.2 Complaints.* All preneed contracts shall contain the following clause: “Consumer complaints may be filed with the Secretary of State by calling (601) 359-9055 or in writing at Post Office Box 136, Jackson, MS 39205.”

Source: *Miss. Code Ann.* § 75-63-67 (Rev. 2009).

*Rule 3.3 Certain Terms in Bold Type.* The following terms of a preneed contract that is funded by trust shall be in bold face type:

- A. The percentage of funds the seller is required to trust
- B. The name of the trust officer; and
- C. The name, address, and phone number of the trust institution.

These terms must also be set forth in a separate space on the contract and initialed by the contract beneficiary.

Source: *Miss. Code Ann.* § 75-63-67 (Rev. 2009).

*Rule 3.4 Contract Portability.*

- A. For Trust-funded contracts: If, for any reason, the original contract seller does not service the final needs of the contract beneficiary, no less than the amount remitted to trust with associated earnings, interest, and income shall be paid to the substitute provider or the estate of the deceased. In the event the principal with interest, earnings, and income exceeds the retail contract price owed a substitute provider, then such excess or overage may be paid to the original contract seller. Such payment shall be made within ten (10) days by the original provider's trustee upon receipt of documentation of death and documentation of the substitute provider's services and merchandise furnished to the deceased.
- B. For Insurance-funded contracts: If, for any reason, the original contract seller does not service the final needs of the contract insured but the policy proceeds are disbursed to the original contract seller, then the original contract seller shall remit all policy proceeds to the substitute provider or the estate of the deceased within ten (10) days of the receipt of policy proceeds.

Furthermore, all preneed contracts sold in Mississippi must contain the portability language stated above before the contract can be approved and used in this State.

The effective date for Rule 3.4 shall be July 1, 2012.

Source: *Miss. Code Ann.* § 75-63-67 (Rev. 2009).

*Rule 3.5 Merchandise Description Specificity.* All preneed contracts must provide a sufficient, detailed description of funeral or cemetery services purchased as well as the make, model, and quality of the merchandise covered by the contract. No contract form will be approved for use if the format does not capture specific information regarding the consumer's purchase.

Source: *Miss. Code Ann.* § 75-63-67 (Rev. 2009).

*Rule 3.6 Retention of Documents.* The preneed establishment or its successor shall maintain a copy of all preneed contracts entered into by the establishment for a period of the lifetime of each contract and for two (2) years after the death of a contract insured. These documents shall

be maintained on the premises of the establishment and shall be maintained in an auditable format. The Secretary of State's Office recommends that these records be kept indefinitely in electronic format.

Source: *Miss. Code Ann.* § 75-63-67 (Rev. 2009).

*Rule 3.7 Conversion of Funding Type.* No contract that is funded by trust may be converted to an insurance policy funded contract without the prior approval of the Division.

Source: *Miss. Code Ann.* § 75-63-67 (Rev. 2009).

## **Part 12 Chapter 4: Examination and Enforcement.**

*Rule 4.1 Trustee.* The preneed trustee must be a financial institution unrelated to the preneed provider, the seller, or a member, officer, or director of the contract provider if the contract provider is a corporation or LLC.

Source: *Miss. Code Ann.* § 75-63-67 (Rev. 2009).

*Rule 4.2 Pre-Installation of Vaults.* No grave space may be opened for the sole purpose of installing a vault. Any vault purchased must be installed in the grave space at the time human remains are interred. Lawn crypts are exempt from this rule.

Source: *Miss. Code Ann.* § 75-63-67 (Rev. 2009).

*Rule 4.3 Trusting requirements.* Not later than the fifth day of the following month from when funds are received, the contract seller shall place in a trust account in a financial institution as defined by this article at least eighty-five (85%) of the funds received for funeral and cemetery services and merchandise.

Source: *Miss. Code Ann.* § 75-63-59(3) and 67 (Rev. 2009).

## **Part 12 Chapter 5: Administrative Hearing Procedures.**

*Rule 5.1 Hearing Procedure Variance.* The Secretary of State may grant variances from these Rules if it is determined that application of the Rules would, in the particular case, be unnecessarily burdensome, and such variance would not be inconsistent with the public policy purposes of the Act.

Source: *Miss. Code Ann.* § 75-63-67 (Rev. 2009).

*Rule 5.2 Severability.* If any one or more of these Rules, or any part of any Rule is found to be invalid by any court of competent jurisdiction, such finding shall not affect the validity of any other Rule or the remaining content of any part of a Rule that is not found to be invalid. Further, if any one or more of these Rules, or any part of any Rule, is superseded, amended, or contradicted by subsequent legislation, such amendment or change by subsequent legislation in

no way invalidates any other part of a Rule or any other Rules not addressed or impacted by subsequent legislative action.

Source: *Miss. Code Ann.* § 75-63-67 (Rev. 2009).

*Rule 5.3 Oral opinions.* Oral or informal opinions by the staff of the Division as to the applicability of the Act and oral or informal representations by the staff of the Division concerning the status of filings made with the Division are not binding upon the Division. Requestors can obtain a written declaratory opinion from the Division by following the procedures described in the Secretary of State's Rule on Declaratory Opinions. A non-refundable fee of One Hundred Fifty Dollars (\$150.00) must accompany each request.

Source: *Miss. Code Ann.* § 75-63-67 (Rev. 2009).

*Rule 5.4 Administrative Hearing Procedures.*

- A. Written notice shall be provided to any preneed establishment or other person against whom the Attorney General or Secretary of State intends to institute an administrative hearing pursuant to the Act or these Rules. At least twenty (20) calendar days of notice shall be given to the establishment or other person prior to the hearing unless the establishment or other person notified consents or the Division has authority to do so under applicable statute. Notice is effective on date of issue.
- B. Such notice shall be by certified mail, return receipt requested, and shall set forth the date, time and place for the administrative hearing and shall also designate a Hearing Officer.
- C. Any Party wishing to appear or introduce evidence or other testimony at the administrative hearing shall, no later than four (4) business days prior to the hearing date, file with the Hearing Officer and the opposing party a list of witnesses which it intends to call to testify or to otherwise give evidence. The list shall contain for each witness:
  - 1) Name;
  - 2) Residential and business address, if known;
  - 3) Residential and business telephone number, if known;
  - 4) A brief summary statement indicating the substance of the person's expected testimony.
- D. Upon request by any Party, any documents, papers, or tangible things to be introduced by any Party at the hearing shall be made available for inspection and copying by the requesting Party no later than four (4) business days prior to the hearing date.
- E. The Hearing Officer, or his or her designee, shall have the authority to administer oaths and affirmations. Each Party may be represented by an attorney or other authorized representative. The Hearing Officer may clear the hearing room of witnesses not under examination.
- F. The Hearing Officer shall have the authority to maintain the decorum of the hearing and shall take reasonable steps to do so when necessary, including clearing the hearing room of any person who is disruptive.
- G. The hearing shall be informal and technical rules of evidence shall be relaxed. All witnesses who appear and testify under oath shall be subject to cross-examination.

- H. The Hearing Officer shall have the authority to admit into the record any evidence which, in his or her judgment, has a reasonable degree of probative value and trustworthiness. The Hearing Officer shall have the authority to exclude evidence which is irrelevant, immaterial, lacking in probative value, untrustworthy or unduly cumulative.
- I. Documents received into evidence by the Hearing Officer shall be marked by him or her, or under his or her direction, entered into evidence and made a part of the record in the cause.
- J. Rebuttal and surrebuttal evidence may be heard at the discretion of the Hearing Officer.
- K. At the hearing, the Attorney General or the Secretary of State or the Division shall be the first to present evidence.
- L. The Attorney General or the Secretary of State or the Division shall have the burden of proving its allegations by a preponderance of the evidence. Fraud must be proven by clear and convincing evidence.
- M. A record of testimony at the hearing shall be made.
- N. A true and correct copy of said stenographic recording shall be made available to any Party requesting it, provided such Party agrees to pay the expense of such copy.
- O. After all evidence is heard or received and the hearing is completed, the Hearing Officer shall, within a reasonable time thereafter, issue a report and recommendation that details the findings of the hearing officer. All parties (including the Division) shall be served with the Hearing Officer's Report and Recommendations. Within fourteen (14) days following service of the findings, either party may present a written response to these findings to the Secretary of State. The Secretary of State will review the Hearing Officer's Report and Recommendations, all exhibits entered into evidence, all written responses to the Report and Recommendations and, if desired, order a transcript of the hearing. Thereupon, the Secretary may issue a Final Order adopting and accepting the Hearing Officer's Report and Recommendations; or reject the report and recommendations in whole or in part and issue findings of fact and conclusions of law with a Final Order; or, remand the case to the Hearing Officer for additional findings or clarification of key issues. A case is not concluded until issuance of a Final Order by the Secretary of State. All reports and recommendations and final orders shall be sent via certified mail, return receipt requested, to all Parties who appeared at the administrative hearing or their attorney or authorized representative.
- P. Continuances requested by any Party will be granted within the discretion of the Hearing Officer only for good cause shown.
- Q. In computing any period of time prescribed or allowed under these Rules, the Hearing Officer and all Parties shall be guided by the Mississippi Rules of Civil Procedure.

Source: *Miss. Code Ann.* § 75-63-67 (Rev. 2009).

## **Title 1: Secretary of State**

### **Part 12: Regulation and Enforcement – Preneed Funeral Service and Mdse. and Perpetual Care Cemeteries Regulation**

#### **Subpart 2: Mississippi Perpetual Care Cemetery Rules**

##### **Part 12 Chapter 1: Definitions.**

*Rule 1.1 Division.* As used herein, all references to “Division” or “the Division” shall mean the Regulation and Enforcement Division of the Mississippi Secretary of State’s Office.

Source: *Miss. Code Ann.* §41-43-37 (Rev. 2013).

*Rule 1.2 Establishment.* As used herein, all reference to “Establishment” or “Cemetery Establishment” or “Registered Establishment” shall mean the perpetual care cemetery that is required to register with the Mississippi Secretary of State’s Office.

Source: *Miss. Code Ann.* §41-43-37 (Rev. 2013).

*Rule 1.3 Law.* As used herein, all reference to “Law” or “the Law” shall mean the “Cemetery Law” and any amendments thereto.

Source: *Miss. Code Ann.* §41-43-37 (Rev. 2013).

*Rule 1.4 Rules.* As used herein, all references to “Rules” or “these Rules” shall mean the “Perpetual Care Cemetery Rules.”

Source: *Miss. Code Ann.* §41-43-37 (Rev. 2013).

*Rule 1.5 Secretary of State.* As used herein, all references to “the Secretary of State” or “Secretary of State” shall mean the Mississippi Secretary of State.

Source: *Miss. Code Ann.* §41-43-37 (Rev. 2013).

##### **Part 12 Chapter 2: Registration**

*Rule 2.1 Establishment Registration.* Any person, partnership, corporation or other organization organized or engaging in business under the laws of the State of Mississippi who owns, maintains, or operates a cemetery, providing lots or other interment space therein for the remains of human bodies, unless exempt, is subject to the Law and said cemetery must be registered with the Secretary of State as a Perpetual Care Cemetery by filing a completed Perpetual Care Cemetery Registration Form (Form 10PC001) with the Division. The form shall be marked in the space designated “New Registration” and shall be accompanied by a registration fee of Twenty Five Dollars (\$25). Every nonexempt cemetery location must register regardless of common ownership. Exemptions from this requirement are addressed in the Law. The only

cemeteries that are exempt from this requirement are, as stated in Mississippi Code Annotated Section 41-43-33 “organizations and cemeteries that are affiliated with or owned by churches or religious societies, established fraternal societies, municipalities, other political subdivisions of the State of Mississippi, or family cemeteries or family burial grounds, and community cemeteries that provide burial lots at no charge, or sell burial lots to the public.” **All registrations expire on March 31<sup>st</sup> of each year and must be renewed.**

Source: *Miss. Code Ann.* §41-43-37 (Rev. 2013).

*Rule 2.2 Annual Report Filing.* Every registered establishment shall annually submit a written report to the Secretary of State containing any sales activity, trust fund information, and any changes in registration information for the prior ending calendar year. This report shall be filed with the Secretary of State on or before March 31<sup>st</sup> of each year for the calendar year ending the preceding December 31<sup>st</sup>. Annual reports shall be submitted to the Secretary of State on Form 10PC001 and marked in the space designated “Renewal.” A Twenty Five Dollar (\$25) renewal of license fee shall also accompany the filing and shall be made payable to the Mississippi Secretary of State's Office.

Source: *Miss. Code Ann.* §41-43-37 (Rev. 2013).

*Rule 2.3 Trustee Annual Report Filing.* Every trustee for a perpetual care cemetery trust shall annually submit a written report to the Secretary of State containing the trust activity for the previous ending calendar year. This report shall be filed on or before March 31<sup>st</sup> of each year for the calendar year ending the preceding December 31<sup>st</sup>. Trustee Annual Reports shall be submitted on the Annual Trustee Report Form (Form 10PN003) and marked in the space designate “Perpetual Care Cemetery Trust.” No fee shall be submitted with this report.

The report shall be at all times available to inspection and copy by any owner of a burial right in the cemetery, or the family, legal representative, or next of kin of the owner, at the usual place for transacting the regular business of the cemetery.

Source: *Miss. Code Ann.* §41-43-37 (Rev. 2013).

*Rule 2.4 Change in Establishment Information.* Any changes in the information provided by the establishment in a registration shall be supplied to the Secretary of State in writing by completing the appropriate sections of the Perpetual Care Cemetery Registration Form which should be marked in the space designated “Amendment of Registration.” Notice shall be supplied to the Secretary of State within thirty (30) days after such change has occurred. No payment should be sent.

Source: *Miss. Code Ann.* §41-43-37 (Rev. 2013).

*Rule 2.5 Change in Ownership or Control.* Before any sale or transfer of a perpetual care cemetery or a controlling interest of Fifty percent (50%) or greater therein, an independent audit of the perpetual care trust fund shall be performed at the expense of the seller and/or buyer and filed with the Division. The audit shall be current within thirty (30) days of the proposed sale or

transfer. No sale or transfer of any perpetual care cemetery shall occur until approved in writing by the Division.

Source: *Miss. Code Ann.* §41-43-37 and 38 (Rev. 2013).

*Rule 2.6 Change in Trustee or Trust Institution.* The Division must be notified thirty (30) days prior to any change in the trustee or trust institution administering the Perpetual Care Trust Fund of any establishment. Approval of such change must be given in writing by the Division before such change shall occur.

Source: *Miss. Code Ann.* §41-43-37 (Rev. 2013).

*Rule 2.7 Notarization.* All registration forms and annual reports must be notarized.

Source: *Miss. Code Ann.* §41-43-37 (Rev. 2013).

*Rule 2.8 Certificate.* An establishment shall not be considered registered under the Law until the establishment receives a certificate from the Division stating that it has satisfied the registration requirements of the Law and these Rules.

Source: *Miss. Code Ann.* §41-43-37 (Rev. 2013).

*Rule 2.9 Filing Dates.* Any filing required by the Law or these Rules to be filed with the Division is considered timely filed by reference to the postmark when filed along with the appropriate forms, filing fee, and all other documents required by the Law or these Rules.

Source: *Miss. Code Ann.* §41-43-37 (Rev. 2013).

*Rule 2.10 Deficient Filings.* Any filing made pursuant to the Law or these Rules may be deemed deficient if any of the following exist:

- A. The application is not on the proper form;
- B. The application is not in compliance with the Law or these Rules;
- C. The application is incomplete;
- D. The application is not signed and notarized; and/or
- E. The associated fee is not submitted.

When a registration application or filing is found to be deficient, the Division shall send a deficiency letter stating the grounds for noncompliance. If following the transmission of a deficiency letter, no communication is received by the Division for a period of thirty (30) days, the application or filing will be deemed abandoned and returned to the applicant.

Source: *Miss. Code Ann.* §41-43-37 (Rev. 2013).

*Rule 2.11 Addresses.* For all correspondence to the Division **including payment of fees or penalties**, please mail to this address:

Secretary of State  
Regulation and Enforcement Division  
Post Office Box 136  
Jackson, Mississippi 39205

The physical address is:

Secretary of State  
Regulation and Enforcement Division  
125 South Congress Street  
Jackson, Mississippi 39201

Source: *Miss. Code Ann.* §41-43-37 (Rev. 2013).

### **Part 12 Chapter 3: Examination and Enforcement.**

*Rule 3.1 Trustee.* The perpetual care trustee must be affiliated with an established bank, trust company, other financial institution or financial services company. The trustee must be unrelated to the perpetual care cemetery, the seller, or a member, officer, or director of the cemetery if the cemetery is a corporation or LLC.

Source: *Miss. Code Ann.* §41-43-37 (Rev. 2013).

*Rule 3.2 Pre-Installation of Vaults.* No grave space may be opened for the sole purpose of installing a vault. Any vault purchased must be installed in the grave space at the time human remains are interred. Lawn crypts are exempt from this rule.

Source: *Miss. Code Ann.* §41-43-37 (Rev. 2013).

*Rule 3.3 Recordkeeping.* Every perpetual care cemetery shall maintain continuously and at all times an up-to-date record of the persons buried in the cemetery or entombed within a mausoleum or columbarium; the date of burial or entombment; a map of the designated lot for burial or entombment as well as a map of lots, burial spaces, mausoleum crypts or columbarium niches that have been sold. The map or plat shall also contain up-to-date designations indicating committed or planned designations of burial lots, crypt, niche, or mausoleum spaces for future use. Additionally, the Secretary of State may require those maps to be produced to a designated representative at any time. These records and any records regarding the trusting of perpetual care funds shall be maintained on the premises of the establishment and shall be maintained in an auditable format.

Source: *Miss. Code Ann.* §41-43-37 and 40 (Rev. 2013).

*Rule 3.4 Trusting requirements.*

A. The owner of every cemetery, subject to the provisions of Section 41-43-31 et seq., that is organized, begins or continues to do business in the State of Mississippi after July 1, 2009, shall

provide for the creation and establishment of an irrevocable perpetual care trust fund, the principal of which shall permanently remain intact except as hereinafter provided and only the income thereof shall be devoted to the perpetual care of the cemetery. The perpetual care trust fund shall not be subject to the claims of the cemetery's creditors and shall not be used as collateral, pledged, encumbered or placed at risk. This fund shall be created and established as follows:

- 1) In respect to a cemetery for earth burials, by the application and payment thereto of an amount equivalent to fifteen percent (15%) of the sale price, or Forty Cents (40¢) per square foot of ground interment rights sold, whichever is greater;
- 2) In respect to an above-ground community or public mausoleum, by the application and payment thereto of an amount equivalent to five percent (5%) of the sale price, or Fifty Dollars (\$50.00) per crypt sold, whichever is greater; and
- 3) In respect to a community columbarium, by the application and payment thereto of an amount equivalent to five percent (5%) of the sale price, or Ten Dollars (\$10.00) per niche sold, whichever is greater.

For any sale of a lot for an earth burial, mausoleum crypt or columbarium niche in which payment is made by the purchaser on an installment basis over time, the percentage required to be trusted shall be paid into the perpetual care trust fund calculated on each payment.

B. From the sale price the owner shall pay to the perpetual care fund an amount in proportion to the requirements in subsection (1) of this section, which payment shall be in cash, check, money order or electronic transfer and shall be deposited with the custodian or trustee of the fund not later than the fifth day of the following month from when funds are received.

Source: *Miss. Code Ann.* §41-43-37 (Rev. 2013).

*Rule 3.5 Cemetery Rules and Regulations.* The owner of any cemetery may make and enforce reasonable rules and regulations for the use, care control, management, restriction, and protection of such cemetery.

Source: *Miss. Code Ann.* §41-43-37 and 47 (Rev. 2013).

## **Part 12 Chapter 4: Administrative Hearing Procedures.**

*Rule 4.1 Hearing Procedure Variance.* The Secretary of State may grant variances from these Rules if it is determined that application of the Rules would, in the particular case, be unnecessarily burdensome, and such variance would not be inconsistent with the public policy purposes of the Law.

Source: *Miss. Code Ann.* §41-43-37 (Rev. 2013).

*Rule 4.2 Severability.* If any one or more of these Rules, or any part of any Rule is found to be invalid by any court of competent jurisdiction, such finding shall not affect the validity of any other Rule or the remaining content of any part of a Rule that is not found to be invalid. Further, if any one or more of these Rules, or any part of any Rule, is superseded, amended, or contradicted by subsequent legislation, such amendment or change by subsequent legislation in

no way invalidates any other part of a Rule or any other Rules not addressed or impacted by subsequent legislative action.

Source: *Miss. Code Ann.* §41-43-37 (Rev. 2013).

*Rule 4.3 Oral opinions.* Oral or informal opinions by the staff of the Division as to the applicability of the Law and oral or informal representations by the staff of the Division concerning the status of filings made with the Division are not binding upon the Division. Requestors can obtain a written declaratory opinion from the Division by following the procedures described in the Secretary of State's Rule on Declaratory Opinions. A non-refundable fee of One Hundred Fifty Dollars (\$150.00) must accompany each request.

Source: *Miss. Code Ann.* §41-43-37 (Rev. 2013).

*Rule 4.4 Administrative Hearing Procedures.*

- A. Written notice shall be provided to any establishment or other person against whom the Attorney General or Secretary of State intends to institute an administrative hearing pursuant to the Law or these Rules. At least twenty (20) calendar days of notice shall be given to the establishment or other person prior to the hearing unless the establishment or other person notified consents or the Division has authority to do so under applicable statute. Notice is effective on date of issue.
- B. Such notice shall be by certified mail, return receipt requested, and shall set forth the date, time and place for the administrative hearing.
- C. Any Party wishing to appear or introduce evidence or other testimony at the administrative hearing shall, no later than four (4) business days prior to the hearing date, file with the Hearing Officer and the opposing party a list of witnesses which it intends to call to testify or to otherwise give evidence. The list shall contain for each witness:
  - 1) Name;
  - 2) Residential and business address, if known;
  - 3) Residential and business telephone number, if known;
  - 4) A brief summary statement indicating the substance of the person's expected testimony.
- D. Upon request by any Party, any documents, papers, or tangible things to be introduced by any Party at the hearing shall be made available for inspection and copying by the requesting Party no later than four (4) business days prior to the hearing date.
- E. The Hearing Officer, or his or her designee, shall have the authority to administer oaths and affirmations. Each Party may be represented by an attorney or other authorized representative. The Hearing Officer may clear the hearing room of witnesses not under examination.
- F. The Hearing Officer shall have the authority to maintain the decorum of the hearing and shall take reasonable steps to do so when necessary, including clearing the hearing room of any person who is disruptive.
- G. The hearing shall be informal and technical rules of evidence shall be relaxed. All witnesses who appear and testify under oath shall be subject to cross-examination.
- H. The Hearing Officer shall have the authority to admit into the record any evidence which, in his or her judgment, has a reasonable degree of probative value and trustworthiness.

The Hearing Officer shall have the authority to exclude evidence which is irrelevant, immaterial, lacking in probative value, untrustworthy or unduly cumulative.

- I. Documents received into evidence by the Hearing Officer shall be marked by him or her, or under his or her direction, entered into evidence and made a part of the record in the cause.
- J. Rebuttal and surrebuttal evidence may be heard at the discretion of the Hearing Officer.
- K. At the hearing, the Attorney General or the Secretary of State or the Division shall be the first to present evidence.
- L. The Attorney General or the Secretary of State or the Division shall have the burden of proving its allegations by a preponderance of the evidence. Fraud must be proven by clear and convincing evidence.
- M. A record of testimony at the hearing shall be made.
- N. A true and correct copy of said stenographic recording shall be made available to any Party requesting it, provided such Party agrees to pay the expense of such copy.
- O. After all evidence is heard or received and the hearing is completed, the Hearing Officer shall, within a reasonable time thereafter, issue a report and recommendation that details the findings of the hearing officer. All parties (including the Division) shall be served with the Hearing Officer's Report and Recommendations. Within fourteen (14) days following service of the findings, either party may present a written response to these findings to the Secretary of State. The Secretary of State will review the Hearing Officer's Report and Recommendations, all exhibits entered into evidence, all written responses to the Report and Recommendations and, if desired, order a transcript of the hearing. Thereupon, the Secretary may issue a Final Order adopting and accepting the Hearing Officer's Report and Recommendations; or reject the report and recommendations in whole or in part and issue findings of fact and conclusions of law with a Final Order; or, remand the case to the Hearing Officer for additional findings or clarification of key issues. A case is not concluded until issuance of a Final Order by the Secretary of State. All reports and recommendations and final orders shall be sent via certified mail, return receipt requested, to all Parties who appeared at the administrative hearing or their attorney or authorized representative.
- P. Continuances requested by any Party will be granted within the discretion of the Hearing Officer only for good cause shown.
- Q. In computing any period of time prescribed or allowed under these Rules, the Hearing Officer and all Parties shall be guided by the Mississippi Rules of Civil Procedure.

Source: *Miss. Code Ann.* §41-43-37 (Rev. 2013).

## **Title 1: Secretary of State**

### **Part 12: Regulation and Enforcement – Preneed Funeral Service and Mdse. and Perpetual Care Cemeteries Regulation**

#### **Subpart 3: Mississippi Preneed Contracts Loss Recovery Association Rules**

##### **Part 12 Chapter 1: Association**

*Rule 1.1 Name.* The name of the Association shall be the Preneed Loss Recovery Association.

Source: Miss. Code Ann. § 75-63-81(9) (Rev. 2009).

*Rule 1.2 Purpose.* The purpose of the Preneed Loss Recovery Association is to oversee the Preneed Contracts Loss Recovery Fund. The purpose of the fund is to reimburse the estates, or in the absence of an estate filing, the appropriate loss payee, who suffered financial loss as a result of the misfeasance, fraud, default, failure or insolvency of a registered Mississippi preneed provider.

Source: Miss. Code Ann. § 75-63-81(9) (Rev. 2009).

##### **Part 12 Chapter 2: Directors**

*Rule 2.1 Association Directors.* In accordance with the provisions of Miss. Code Ann. § 75-63-81, the Directors shall be appointed by the Secretary of State. There shall be no fewer than five Directors, one from each of the Mississippi Supreme Court districts and two from the state at large. At least three of the Directors must possess five or more years experience in the preneed funeral service and merchandise business as an owner or manager.

All Directors shall be appointed for staggered six-year terms, with the exception of the initial terms of service for the original five Directors. The Secretary of State may appoint any Director to a successive six-year term. The initial term of service for all Directors began on October 1, 2009, with the initial term of two Directors expiring on September 30, 2011, two expiring on September 30, 2013, and one expiring on September 30, 2015. In case of death, incapacity, resignation, or removal a new member shall be appointed to serve the remainder of the term.

Source: Miss. Code Ann. § 75-63-81(9) (Rev. 2009).

*Rule 2.2 Compensation of Association Directors.* In accordance with the controlling statute and the policies of the Department of Finance and Administration (DFA), Directors may be compensated from the Preneed Contracts Loss Recovery Fund in an amount of Fifty Dollars (\$50.00) for each designated meeting as determined by the Secretary of State as well as travel reimbursement and lodging/meal reimbursement when provided by DFA policy.

Source: Miss. Code Ann. § 75-63-81(9) (Rev. 2009).

*Rule 2.3 Conflicts of Interest.* Any Association Director who has a financial, personal, official or other interest in or conflict with any matter pending before the Association that may prevent that member from acting on the matter in an impartial manner will excuse him/herself and refrain from discussion and voting on said item.

Source: Miss. Code Ann. § 75-63-81(9) (Rev. 2009).

## **Part 12 Chapter 3: Meetings**

*Rule 3.1 Meetings of the Association Directors.* An annual meeting of the Association shall be held in the month of January in the office of the Secretary of State unless the Secretary or Chairman, upon proper notice, shall designate some other date and/or location. Written notice of the annual meeting, or of any special or emergency meeting, including the time, place and purpose of such meeting, shall be sent to each Director not less than ten business days prior to the date of the meeting. All meetings shall be open to the public and notice of their annual recurring date shall be contained in the minutes of the first annual meeting in accordance with the Mississippi Open Meetings Law. Miss. Code Ann. § 25-41-1 et seq.

Three Directors shall constitute a quorum for the transaction of business. In the absence of a quorum, no formal action shall be taken except to adjourn the meeting to a subsequent date. The acts of a majority of Directors present at a meeting at which a quorum is present shall be the acts of the Association. Directors may participate in all Association meetings via phone conference or internet conferencing as needed including the submission of votes via email or teleconference.

At the annual meeting, the Association may elect a Chairman from among its Directors. Such Chairman will assume office upon election and remain Chairman until the next annual meeting.

Special and/or emergency meetings may be called by the Chairman, a quorum of the Directors or the Secretary of State, and will be held at times and places as may be necessary.

At each annual meeting, the Directors shall review, consider and act on any matters deemed by the Association to be necessary and proper for the administration of the Association not in conflict with any other provisions of these rules.

Source: Miss. Code Ann. § 75-63-81(9) (Rev. 2009).

*Rule 3.2 Records and Reports.* A written record of the proceedings of each meeting shall be made. The original record shall be retained by the Secretary of State's Office with copies furnished to each Association Director and, upon request, to any other individual or entity.

The Association, by its Directors, shall prepare and submit a financial report and a report of activities during the preceding calendar year as required by Miss. Code Ann. § 75-63-81 to the Secretary of State not later than March 1 of each year.

The Association shall maintain such financial records as are necessary to properly reflect the receipt and disbursement of all funds obtained by the Association. Such records shall also reflect the financial condition of the Association at any given time.

Source: Miss. Code Ann. § 75-63-81(9) (Rev. 2009).

## **Part 12 Chapter 4: Duties and Powers**

*Rule 4.1 Duties and Powers of the Association and Directors.* The Association shall have the authority to:

- A. Undertake all actions as authorized, required or otherwise permitted by Miss. Code Ann. § 75-63-81, for the operation and administration of the Association;
- B. Recommend investments for funds not currently needed to reimburse losses;
- C. Maintain adequate reserves for the Fund;
- D. Request payments from the Fund by the Department of Finance and Administration on approved claims; purchase insurance for Association liability and to indemnify losses as considered appropriate by the Directors and not inconsistent with the purpose of the Fund; maintain adequate reserves; employ staff and professional assistance as needed, including legal counsel, accountants, consultants and other persons the Association considers necessary to assure compliance with this section and to pay the expenses of the Association for administering the Fund; and
- E. Reduce, suspend or resume collection of the fee at any time and for any period to ensure that a sufficient amount is available to meet anticipated disbursements and to maintain an adequate reserve.

The Chairman of the Association shall have the authority to:

- A. Preside at all meetings of the Association;
- B. Call regular and special meetings of the Association; and
- C. Call a meeting of the Association upon written request of three Association Directors.

Source: Miss. Code Ann. § 75-63-81(9) (Rev. 2009).

## **Part 12 Chapter 5: Claims Administration**

*Rule 5.1 Procedures for Filing Claims.* Claims may be filed by:

- A. Funeral homes, cemeteries and other businesses that have provided at-need merchandise and/or services at no compensation or less than full compensation to a deceased who was a Beneficiary under a preneed contract where the seller of said contract is insolvent or is no longer in business and has not transferred its book of business to another provider for the assumption of that liability;
- B. The surviving family member or legal representative of a decedent who was a Beneficiary under a preneed contract where the seller of said contract's trust is insolvent;
- C. The Beneficiary of a preneed contract who is still living where the seller of said contract's trust is insolvent; and

- D. Any person(s) who signed an at-need contract as the responsible party and fulfilled the contract payment obligations for funeral or cemetery merchandise or services for a covered contract beneficiary as determined by the Association.

Claims must be filed by completing the appropriate Preneed Loss Recovery Association Claim Form which is available on the Mississippi Secretary of State's website at [www.sos.ms.gov](http://www.sos.ms.gov).

Source: Miss. Code Ann. § 75-63-81(9) (Rev. 2009).

*Rule 5.2 Procedures for Processing Claims.* Upon receipt of a properly completed claim form, the Secretary of State's Office will notify the Association Directors. The Secretary of State's Office and the Association Directors will then set up a meeting within a reasonable amount of time at which at least a quorum of the Association Directors are available to be present either in person or via telephone or internet conferencing. At said meeting, the Association Directors will consider the Claim (or Claims) and decide by majority vote to approve the claim for payment, reject the claim, or direct the staff of the Secretary of State's Office to collect additional information in order to dispose of the claim. When a decision has been made, the Association will notify the claimant of the decision via Certified Mail, Return Receipt Requested. If the Claimant disagrees with the decision, he or she may request a reconsideration of the decision within ten (10) days of receipt of the same. A Claimant has only one opportunity to request reconsideration; any additional information the Claimant feels should be considered should be submitted along with the reconsideration request.

The Association shall:

- A. Determine the appropriate loss payee entitled to receive compensation/reimbursement from the Fund;
- B. Determine the amount of the claim;
- C. Provide opportunity for objections to be raised by any Claimant with regard to the decision for each claim;
- D. Approve a final determination for each claim;
- E. Issue requests for payments from the Fund; and
- F. Reject claims, provided that, if the Association rejects a claim, it promptly notifies the claimant in writing setting forth the reasons for the rejection.

The Association is responsible for investigating all applications and may reject, deny, or approve claims in whole or in part. Payment may only be made to the extent that money is available in the Fund and payments may be prorated among applicants. The Association has complete discretion to determine the order, amount, and manner of payment of approved claims and may approve a book of business as a single claim.

The Association may approve a claim, in whole or in part, that includes more than one claim for the benefit or purchasers of prepaid contracts of an insolvent provider as part of a plan to arrange for another provider to assume the obligations of the provider being liquidated if the Association finds that the plan is reasonable and in the best interests of the contract beneficiaries.

No third-party beneficiary has a right in the Fund. No claimant is eligible for compensation from the Fund unless the contract purchaser paid the loss recovery fee to the Association when the preneed contract was purchased.

Reimbursement from the Fund must not exceed the total payment made by the customer for preneed funeral or cemetery services and merchandise required to be trusted by Miss Code Ann. § 75-63-59. No current or future insurance benefits may be reimbursed.

The Association shall have wide discretion to determine the appropriate loss payee. Approved loss payees may include the purchaser of the preneed contract, the decedent's estate, the substitute provider, or the individual(s) signing as responsible party for at-need funeral or cemetery services and merchandise. In some instances, joint payment loss payees may be appropriate.

All funds received by the Association shall be held in a separate account maintained by the State Treasurer to be used exclusively by the Association. Warrants from the Fund may only be issued by the Department of Finance and Administration following a request by a majority vote of Association Directors. All interest or other income earned on the fund shall be retained by the fund.

Source: Miss. Code Ann. § 75-63-81(9) (Rev. 2009).

*Rule 5.3 No Reimbursement for Insured Claims.* There shall be no payment from the Fund for any claim or any portion of a claim which was or is insured or bonded, regardless of whether insuring or bonding entity paid a claim or any part of a claim.

Source: Miss. Code Ann. § 75-63-81(9) (Rev. 2009).

*Rule 5.4 Liability and Appeals from Claim Decisions.* The Association has no liability and no action of any kind may be brought against any Director of the Association for any act or omission by them in the performance of their powers and duties, or in the administration, handling or collecting of funds for the program. The fund has no liability for preneed contracts sold or claims that accrued prior to July 1, 2009.

Appeal rights for claim decisions exist in the chancery court. Any appeal from claim decisions issued by the Association Directors must be filed within 30 days of the Association's written order denying a claim in whole or in part.

Source: Miss. Code Ann. § 75-63-81(9) (Rev. 2009).

## **Part 12 Chapter 6: Statute of Limitations**

*Rule 6.1 Statute of Limitations.* The statute of limitations for all claims shall be three (3) years from the date of death of the contract beneficiary. The claim must be received and stamped "received" or "filed" by the Secretary of State's Office no later than the third anniversary of the contract beneficiary's date of death.

Source: Miss. Code Ann. § 75-63-81(9) (Rev. 2009).

## **Part 12 Chapter 7: Advertising**

*Rule 7.1 Advertising prohibited.* No person may make, publish, disseminate, circulate or place before the public, or cause, directly or indirectly, to be made, published, disseminated, circulated or placed before the public, in a newspaper, magazine or other publication, or in the form of a notice, circular, pamphlet, letter, poster or over any radio station or television station, or in any other way, any advertisement, announcement or statement that uses the existence of the fund for the purpose of sales, solicitation or inducement to purchase any form of preneed contract covered under this article.

Source: Miss. Code Ann. § 75-63-81(9) (Rev. 2009).

## **Part 12 Chapter 8: Loss Recovery Fee and Reporting Requirements**

*Rule 8.1 Loss Recovery Fee.* A fee not to exceed ten dollars (\$10) shall be added to the cost of every preneed contract sold after July 1, 2009, that is funded by trust. If a joint preneed contract is written covering more than one beneficiary, the fee shall be ten dollars (\$10.00) for each contract beneficiary covered under the contract.

Source: Miss. Code Ann. § 75-63-81(9) (Rev. 2009).

*Rule 8.2 Reporting Requirements.* Every provider that sells trust funded (in whole or in part) preneed contracts must file a completed Loss Recovery Quarterly Report Form with the Secretary of State within fifteen (15) days of the end of each quarter of the year. The quarterly reporting periods and the due dates for the submission of the Loss Recovery Report and associated fees are as follows: July 1 – September 30, due **October 15**; October 1 – December 31, due **January 15**; January 1 - March 31, due **April 15**; April 1 – June 30, due **July 15**. Preneed contracts funded in whole or in part by burial association certificates or policies or with fraternal policies or any other funding component for which there is no coverage afforded under the Mississippi Life and Health Fund Guaranty are trust funded contracts for which the fee is owed.

Source: Miss. Code Ann. § 75-63-67 (Rev. 2009).

## **Part 12 Chapter 9: Amendments and Conformity to Statute**

*Rule 9.1 Amendments.* Amendments to these Rules may be adopted by a majority vote of the Association Directors, subject to the approval of the Secretary of State.

Source: Miss. Code Ann. § 75-63-81(9) (Rev. 2009).

*Rule 9.2 Conformity to Statute.* The Mississippi Preneed Cemetery and Funeral Registration Act, as written and as may be amended, is incorporated as part of these Rules.

Source: Miss. Code Ann. § 75-63-81(9) (Rev. 2009).