

A Buyer's Guide to Preneed Funeral Contracts

239 CMR 4.00: Board of Registration in Embalming and Funeral Directing Preneed Funeral Contracts and Arrangements

In 2004, the Board of Registration in Embalming and Funeral Directing updated the regulation governing preneed funeral contracts and arrangements. This Buyer's Guide is a requirement of that regulation and has been approved by the Board for distribution to every person or identifiable group of persons who enter into negotiations or discussions with a registered licensed funeral director or registered certified funeral director regarding a preneed funeral contract prior to the signing of any such contract by the parties.

BUYER'S GUIDE TO PRENEED FUNERAL CONTRACTS

A consumer may plan his or her funeral prior to death by entering into a preneed funeral contract with a licensed funeral establishment. A preneed funeral contract may either specify the particular funeral goods and services the Funeral Establishment will provide upon the consumer's death or may simply establish a source of funds to be used to pay for funeral goods and services without identifying the particular funeral goods and services to be provided. A consumer may preplan his or her funeral arrangements without paying for such arrangements in advance. The prices of funeral goods and services specified in a preneed funeral contract may or may not be guaranteed (i.e. may or may not still be in effect at the time of death). There are various methods of financing preneed funeral contracts, including but not limited to trusts, preneed insurance policies and annuities, traditional life insurance policies and annuities, and separate bank accounts. Some methods are briefly described below.

1. FUNERAL TRUSTS

In a funeral trust arrangement the purchaser of a preneed funeral contract pays the contract price to the funeral establishment who, in turn, deposits it in a trust account of a Massachusetts bank. A trustee manages the money for the benefit of a named beneficiary. At the death of the named beneficiary, the money in the trust is used to pay for the funeral goods and services specified in the preneed funeral contract.

2. PRENEED INSURANCE POLICIES OR ANNUITIES

A preneed insurance policy or annuity is a policy, certificate, agreement or contract of insurance sold by a licensed insurance agent or broker and issued by an insurance company, the proceeds of which can be used to pay for funeral goods and services provided to the purchaser. Preneed insurance policies or annuities may be sold by a funeral director only if such funeral director is licensed as an insurance agent or broker.

3. TRADITIONAL INSURANCE POLICIES OR ANNUITIES

A traditional insurance policy or annuity is a policy, certificate, agreement or contract of insurance, sold by a licensed insurance agent or broker and issued by an insurance company, the proceeds of which can be used to pay for funeral goods and services provided to the purchaser. Traditional insurance policies or annuities may be sold by a funeral director only if such funeral director is licensed as an insurance agent or broker.

4. SEPARATE BANK ACCOUNTS

A separate bank account is any depository arrangement established with a banking institution in the Commonwealth of Massachusetts. Each of the four methods of financing preneed funeral contracts have certain tax, cancellation, Medicare and Medicaid eligibility consequences. These consequences are briefly described below:

TAX CONSEQUENCES

1. FUNERAL TRUSTS

In most cases, federal and state taxes on the income earned by funeral trusts are paid by the purchaser/trust settler as the income accrues. Persons whose income is sufficiently low that they are not required to file federal income tax returns will generally find that the amount of interest earned by a funeral trust is not sufficient to raise their income to a level which would require filing of such returns.

2. PRENEED INSURANCE POLICIES OR ANNUITIES

The tax consequences of a preneed insurance policy or annuity can vary greatly depending upon the terms of the policy or annuity. Purchasers are encouraged to discuss this issue with the seller of the policy or directly with the insurance company and to require that all disclosures regarding the policy or annuity including disclosures regarding tax consequences, cancellations, commissions and fees be made in writing.

3. TRADITIONAL LIFE INSURANCE POLICIES OR ANNUITIES

The tax consequences of a traditional insurance policy or annuity can vary greatly depending upon the terms of the policy or annuity. Purchasers are encouraged to discuss this issue with the seller of the policy or directly with the insurance company and to require that all disclosures regarding the policy or annuity, including disclosures regarding tax consequences, cancellations, commissions and fees be made in writing.

4. SEPARATE BANK ACCOUNTS

All federal and state taxes on the income earned by separate bank accounts are generally paid by the owners of such bank accounts.

CANCELLATION CONSEQUENCES

1. FUNERAL TRUSTS

Massachusetts regulations permit the purchaser of a revocable preneed funeral contract to cancel the arrangement at any time by sending written notice of such cancellation to the funeral establishment. The purchaser will receive an immediate return of funds from the trust account (including accumulated interest, but excluding bank fees). If a preneed funeral contract was irrevocable at the time it was originally created, such a contract shall not be cancelled by either party except by order of a court of competent jurisdiction. Such a contract may, however, be transferred to another licensed funeral establishment in accordance with 239 CMR 4.06.

2. PRENEED INSURANCE POLICIES OR ANNUITIES

The cancellation consequences of preneed insurance policies and annuities vary greatly depending upon the policy or annuity. Purchasers are encouraged to discuss the cancellation policy with the seller of the policy and/or insurance company issuing the policy and to require that all disclosures regarding the policy or annuity including disclosures regarding cancellation consequences, taxation issues, commissions and fees be made in writing.

3. TRADITIONAL INSURANCE POLICIES OR ANNUITIES

The cancellation consequences of insurance policies and annuities vary greatly depending upon the policy or annuity. Purchasers are encouraged to discuss the cancellation policy with the seller of the policy and/or insurance company issuing the policy and to require that all disclosures regarding the policy or annuity including disclosures regarding cancellation consequences, taxation issues, commissions and fees be made in writing.

4. SEPARATE BANK ACCOUNT

There are generally no penalties for withdrawal of funds from a separate bank account. Cancellation or revocation of a preneed funeral contract after the expiration of the ten-day "cooling-off" period may have adverse consequences in terms of eligibility for Medicaid or other government benefits programs.

MEDICARE CONSEQUENCES

Since Medicare eligibility is not based on financial status, the choice of a funding method will not have any impact on Medicare eligibility.

MEDICAID CONSEQUENCES

1. FUNERAL TRUSTS

A funeral trust containing less than \$1,500 is exempt from consideration in determining Medicaid eligibility. If the amount in a funeral trust is greater than \$1,500, the funeral trust must be irrevocable in order for the funeral trust to be exempt from consideration in determining Medicaid eligibility. Interest earned or accrued on funeral trusts is not counted in determining Medicaid eligibility.

2. PRENEED INSURANCE POLICIES OR ANNUITIES

A preneed insurance policy or annuity that has a face value of \$1,500 or less is exempt from consideration in determining Medicaid eligibility. Generally, preneed insurance policies and annuities that exceed \$1,500 are assets that will affect Medicaid eligibility, however Counsel to the Department of Public Welfare has indicated in response to informal inquiries that life insurance policies designated for funeral expenses with a face value in excess of \$1,500 would be exempt from consideration in determining Medicaid eligibility provided that the policy was irrevocably assigned to a funeral establishment pursuant to an irrevocable prepaid funeral contract, the value of which is equal to or exceeds the face value of the policy.

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4. SEPARATE BANK ACCOUNTS

A separate bank account that is expressly reserved for funeral and burial expenses and does not exceed \$1,500 is exempt from consideration in determining Medicaid eligibility.

The consumer has a legal right to cancel a preneed funeral contract within ten days of its execution without penalty unless the purchaser (or beneficiary, if different than the purchaser) is an applicant for public assistance and the purchaser has waived this right.

The funeral establishment will report any changes in the preneed funeral contract, or withdrawals of funds which were originally received in connection with that contract, to the applicable governmental authority responsible for the administration of Medicaid or other governmental benefits programs to the extent that such reporting is required by law. This Buyer's Guide to Preneed Funeral Contracts was initially approved by the Board of Registration in Embalming and Funeral Directing on August 18, 1992. It has been updated to reflect changes adopted on February 27, 2004.