ALABAMA BOARD OF FUNERAL SERVICES
PRENEED DIVISION
ADMINISTRATIVE CODE

CHAPTER 395-X-9
PRENEED CONTRACTS AND CERTIFICATE OF AUTHORITY

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395-X-9-.01 Preneed Contract – Defined.

(1) For purposes of this Chapter, a preneed contract is a written contract:

(a) entered into on a preneed basis (before the death of the contract purchaser or beneficiary);

(b) under which the purchaser pays or agrees to pay to the seller, before need and in whole or part, a purchase price for funeral merchandise and services or cemetery merchandise and services; and

(c) the seller's responsibility to deliver the contracted-for merchandise or perform the services, in whole or in part, is deferred until need.

(2) The Following arrangements or transactions create a preneed contract:

(a) Transactions which combine a current sale with an agreement for delivery or performance at need and in which the purchaser assumes a current obligation to pay for future delivery or performance.

(b) Transactions in connection with selection of funeral or cemetery merchandise or services which result in a preneed provider being designated, on a preneed basis, as a beneficiary or assignee of a financial instrument intended to provide funds for payment of merchandise and service costs at need (i.e., a life insurance policy or annuity, or a deposit of funds like a bank account or certificate of deposit), whether revocable or irrevocable, unless, the preneed seller and the purchaser acknowledge in writing that there is no agreement concerning the purchase of funeral or cemetery merchandise and services entered into as a result of the purchase or assignment of the life insurance policy or annuity at the time of such purchase or assignment.

(c) Any transaction or series of transactions which employ any artifice or scheme to evade, or have the effect of evading the requirements of, this Chapter and the Act.

(d) Any transaction in which a seller delivers the merchandise into some warehouse-type or other storage arrangement controlled by the seller until need.

(e) Any transaction deferring delivery or performance until need or until completion of installment payments.

(f) Any transaction involving vaults or other outer burial containers which, by their nature, require future service in the form of reopening, cleaning and/or repair or replacement, placement of the casket, sealing, closing and covering.

(g) Any transaction involving any type of funeral or cemetery services that are not capable of being performed until need.

(3) Except as provided in the preceding section, the following arrangements or transactions do not result in a preneed contract subject to this Chapter even if entered into on a preneed basis:

(a) A retail sale of merchandise and immediate services — delivery or installation — directly relating to that merchandise where:

1. The purchaser pays immediately or agrees to an installment payment plan.

2. The seller delivers the merchandise to the purchaser immediately or within a contractually-defined reasonable time after payment not tied to need or to completion of installment payments. The purchaser must have legal title

to and possession of the merchandise upon delivery into a storage arrangement controlled by the purchase or by virtue of installation on property under the purchaser's control (such as a cemetery space). Provided, that the seller may retain a security interest in the merchandise in a transaction involving an installment payment arrangement where merchandise will be delivered before completion of payments.

3. No future service relating to the merchandise will be required to realize effective use of the merchandise.

Non-inclusive examples of such transactions include caskets and memorials and related services such as delivery and installation of the merchandise.

(b) A prearrangement through which the purchaser specifies certain merchandise and services to be purchased at need, the seller agrees to sell that merchandise and those services at need with or without a preneed agreement on price (or an agreement about how a price will be determined at need), provided that the prearrangement contains no provisions for prefunding or prepayment.

(c) The sale of an interment right in a grave space, crypt, or mausoleum provided that the purchaser receives evidence of ownership of the right upon payment and the sale is not accompanied by the sale of any merchandise or service.

(d) Sale of a "return of mortal remains plan," addressed in Rule 395-X-9-.02, in conjunction with a preneed contract.

(4) A contract or agreement that is not a preneed contract shall not represent that portions of a purchaser's payments are being placed in trust (except as necessary to comply with the requirements concerning cemetery endowment care funds) unless such deposits have been made in fact or otherwise represent or imply that the contract complies with the Act.

Author: Charles M. Perine
Statutory Authority: Code of Ala. 1975, §§34-13-26, 34-13-27, 34-13-170 to -277.
History: **New Rule:** Published March 29, 2024; effective May 13, 2024.

395-X-9-.02 Sale Of "Return Of Mortal Remains" Plans.

(1) For purposes of this Chapter, a "return of a mortal remains plan" refers to a contract or agreement by whatever title or name, sold in conjunction with a preneed contract, in which a third party provider other than the preneed contract seller agrees, in exchange for a cost paid by or for the plan beneficiary, to cause

transportation of the decedent's remains in the event the decedent dies outside the scope of any radius clause or geographical limitation expressed in a preneed contract for funeral or cemetery merchandise or services. The plan may or may not:

(a) be a "membership"-type arrangement;

(b) provide that the agreement provider will arrange and pay for services actually provided by others;

(c) provide that the agreement provider will directly perform services; or

(d) include services like embalming or other body preparation and merchandise such as a shipping container.

(2) A return of mortal remains plan may be offered in conjunction with the sale of a preneed contract. A foreign (non-Alabama) business entity shown as the provider or seller in the agreement must have registered through the office of the Alabama Secretary of State as and to the extent required by the Alabama Business and Nonprofit Entity Code, Code of Ala. 1975, et seq. §10A-1-1.01 (2010).

(3) A preneed provider offering a return of mortal remains plan shall have in effect a written agreement with the plan provider which describes the terms, conditions, and restrictions under which the preneed provider can offer the plan to prospective purchasers. The agreement should include provisions describing the manner in which the cost of the plan is remitted to the plan provider; expressing the amount to be paid to the preneed provider by the plan provider for having sold a plan (or the formula from which that amount can be determined); identifying any third-party provider relied upon to perform the benefits called for in the plan; and any insurance company provider insurance to be used in paying for or defraying the cost of performance of the plan benefits.

(4) A preneed provider's sale of a return of mortal remains plan must be documented separately from the preneed contract. The return of mortal remains plan shall not be listed as merchandise, a service, or otherwise in the preneed contract, and the plan's cost shall not be included as part of the total cost of the preneed contract.

(5) The price of the plan shall be collected from the purchaser at the time of sale or paid in installments by agreement distinct from the preneed contract. In the event of an installment sale, and if applicable under the agreement between the plan provider and preneed provider, the preneed provider shall disclose that the plan does not become effective until the entire plan price is collected. The plan price shall not be financed as part of the price of the preneed contract.

(6) A preneed provider shall account for amounts paid by preneed contract purchasers for return of mortal remains plans separately from amounts paid for preneed contracts. No portion of the payments shall be deposited in a preneed merchandise and services trust or otherwise treated as preneed contract payments. Funds collected as payment for a return of mortal remains plan shall be immediately remitted to the plan provider.

(7) The provider or seller of the return of mortal remains plan must furnish the following to the preneed provider for use with prospective purchasers of the plan:

(a) A form of brochure or flier describing the benefits to be provided, the terms, conditions, and limitation applicable to the plan, and the price of the plan.

(b) The form by which the purchaser buys, applies for, joins, or enrolls in the plan. The form shall identify the price of the plan to the purchaser and, if applicable, shall describe the terms of any installment payment arrangement.

(c) The form of certificate or other evidence of coverage or entitlement to benefits to be provided to the purchaser.

(d) If not included in the certificate, a description of the benefits to be provided, the terms, conditions, and limitations applicable to the plan, and the manner in which claims for benefits are submitted.

(e) All forms shall clearly identify the entity which is undertaking to provide or arrange for the provision of any services or merchandise described as benefits in the plan and shall state the entity's mailing and physical addresses, voice and facsimile telephone numbers, electronic mail address, and, if applicable, website address.

(8) If the return of mortal remains plan provider relies on the preneed provider to deliver documentation to a purchaser, the preneed provider shall promptly deliver that documentation to the purchaser.

(9) Copies of complete return of mortal remains plan transaction documents as described above shall be maintained by the preneed provider as part of a purchaser's preneed contract file. The documentation shall be made available to the Board as part of a preneed examination or otherwise upon request.

Author: Charles M. Perine

Statutory Authority: Code of Ala. 1975, §§34-13-26, 34-13-27, 34-13-170 to -277.

History: **New Rule:** Published March 29, 2024; effective May 13, 2024.

395-X-9-.03 Preneed Contract – Filing And Approval.

(1) A preneed contract must be on a written or preprinted contract form, approved by the Board, that is completely filled in and signed by the purchaser and the preneed seller.

(2) Preneed contract forms, including forms based on templates supplied by the Board, shall be filed for approval with the Board, in a format and manner prescribed by the Board, and the forms approved before use. A filed contract form may be used beginning thirty (30) days after its filing date unless the Board has disapproved its use during the 30-day period. Any revisions to a preneed contract form must be filed with and approved by the Board prior to use. Revisions required as a result of this Chapter shall be filed within sixty (60) days of the effective date of this Chapter.

(3) In order to be approved by the Board, a preneed contract form must adhere to the minimum requirements set forth in Rules 395-X-9-.04 and 395-X-9-.05, as applicable.

(4) It shall be the responsibility of the Certificate of Authority holder to maintain proof of approval of any preneed contract form(s) used by the Certificate of Authority holder.

(5) Nothing in this section shall prohibit a trust or insurance company from filing a contract for approval on behalf of the certificate holder.
Author: Charles M. Perine
Statutory Authority: Code of Ala. 1975, §§34-13-26, 34-13-27, 34-13-170 to -277.
History: **New Rule:** Published March 29, 2024; effective May 13, 2024.

395-X-9-.04 Preneed Contract – Minimum Requirements - Funeral Providers.

(1) On or after January 1, 2015, a preneed contract for funeral merchandise and services must have, at a minimum, the following required disclosures:

(a) A thirty (30) day refund provision in the event of a cancellation. In the event of a cancellation prior to thirty (30) days the purchaser shall be entitled to a complete refund of the amount paid. In the event of a cancellation after the expiration of the thirty (30) days, the seller shall be entitled to a cancellation fee not to exceed twenty percent (20%) of the purchase price collected, and the balance of

payments exceeding twenty percent (20%) shall be refunded to purchaser. If the contract is funded by life insurance or an annuity, any cancellation after thirty (30) days will entitle the purchaser to be paid the cash value of the life insurance policy or annuity contract or other refunds per the terms of the policy unless the purchaser elects to maintain the life insurance policy or annuity contract by continuing payment of premiums to the issuing insurance company.

(b) An acknowledgement from the purchaser that purchaser has reviewed a current general price list, casket price list, and outer burial container price list prior to signing the contract.

(c) A disclosure as to which method of funding the seller is using to fund the preneed contract. Regardless of the method of preneed contract funding, the disclosure should include language to the effect that if the purchaser has not completed all required payments when the contract turns at-need, the outstanding balance according to the terms of the contract is immediately due to the provider servicing the contract. In the event that individual or group life insurance funding is being used as an alternative to a trust, the disclosure must comply with the provisions of Rule 395-X-11-.10. In the event that the trustee is purchasing life insurance on the contract purchaser or beneficiary, written consent must be made through a document separate from the preneed contract under Rule 395-X-11-.11.

(d) An explanation that an “irrevocable option” provision in the contract, when signed by the purchaser, is used when the purchaser is a recipient of or is seeking to qualify for public assistance for such programs as Medicaid and Supplemental Security Income. The purchaser must acknowledge that the purchaser is aware that the contract is revocable unless and until the “irrevocable option” is signed. The purchaser must further acknowledge that an “irrevocable option” is not required to be signed in order to execute the contract.

(e) In the event the contract contains a transfer provision, the seller shall be entitled to a reasonable fee for a transfer. The “reasonable fee” shall be no more than the cancellation fee allowed under (a) of this subsection.

(f) An acknowledgment by purchaser that cash advance item(s) not guaranteed at the listed contract price are clearly denoted as subject to change and the difference is due, if any, at the time of contract fulfillment.

(g) Provision in the event of a purchaser default. After ninety (90) days or more past due, seller must give thirty (30) days written notice to purchaser to cure any default. At

the expiration of thirty (30) days, seller shall be entitled to cancel the contract and withdraw funds in trust. The seller shall refund to purchaser the amount collected less a "reasonable fee" of no more than the cancellation fee under (a) of this subsection.

(h) Breach of contract provision where the purchaser shall be entitled to a refund of 100 percent of all money paid on the contract in the event of a breach of contract by the seller.

(i) If the seller's practice is to install vaults or outer burial containers before need, the additional provisions described in Rule 395-X-9-.06.

(j) If merchandise and services are to be provided as complimentary or free of charge, such merchandise and services must be itemized on the preneed contract and noted as "no charge."

(2) Preneed contracts shall be sequentially numbered in a uniform manner. A sworn statement shall be submitted to the board by the certificate holder annually with each renewal explaining the numbering system and affirming that no contracts exist within any numerical gap.
Author: Charles M. Perine
Statutory Authority: Code of Ala. 1975, §§34-13-26, 34-13-27, 34-13-171 to -277.
History: **New Rule:** Published March 29, 2024; effective May 13, 2024.

395-X-9-.05 Preneed Contract – Minimum Requirements – Cemetery Providers.

(1) On or after January 1, 2015, a preneed contract for cemetery merchandise and services must have, at a minimum, the following required disclosures:

(a) A thirty (30) day refund provision in the event of a cancellation. In the event of a cancellation prior to thirty (30) days for contracts funded by trust, letter of credit or surety bond, purchaser shall be entitled to a complete refund of the amount paid. The contract shall further provide that the purchaser is entitled to a refund of all money paid on the contract in the event of a breach of contract by the seller.

(b) A disclosure as to which method of funding the seller is using to fund the preneed contract.

(c) If the seller's practice is to install vaults or outer burial containers before need, the additional provisions described in Rule 395-X-9-.06.

(d) If merchandise and services are to be provided as complimentary or free of charge, such merchandise and services must be itemized on the preneed contract and noted as "no charge."

(2) Preneed contracts shall be sequentially numbered in a uniform manner. A sworn statement shall be submitted to the board by the certificate holder annually with each renewal explaining the numbering system and affirming that no contracts exist within any numerical gap.

Author: Charles M. Perine
Statutory Authority: Code of Ala. 1975, §§34-13-26, 34-13-27, 34-13-170 to -277.
History: **New Rule:** Published March 29, 2024; effective May 13, 2024.

395-X-9-.06 Installation Of Vaults Or Outer Burial Containers Before Need.

(1) The sale of a vault or outer burial container on a preneed basis is a preneed contract even if the contract provides for installation of the vault or outer burial container before need.

(2) On or after January 1, 2015, where a provider's practice is to install vaults or outer burial containers before need, the preneed contract must grant to the preneed contract purchaser the sole option to have a contracted-for vault or outer burial container installed before need or at need and must otherwise conform to the requirements in this Rule.

(3) On or after the effective date amending this section, the preneed contract must contain a conspicuously-displayed provision, to be signed by the purchaser separate from signing the contract as a whole, in the following or substantially similar terms:

It is the Seller's practice to install a vault prior to need unless the Purchaser elects to have the vault installed at the time of need.

The Seller has explained if I elect to install my vault prior to need, the vault may not be in the condition of a new or properly stored vault including but not limited to water damage, cracking, defective seal, and other deterioration which may require the vault to be replaced.

_____ I elect to have my vault installed prior to need.

_____ I elect not to have my vault installed prior to need.

(4) The preneed contract must clearly distinguish between service fees to install the vault/outer burial container before need and fees for re-opening the previously installed vault/outer burial container, placing the casket, and closing and covering the vault/outer burial container at need. The disclosed fee for installing a vault/outer burial container before need must be described in the preneed contract using the term "vault installation fee," "burial (or grave) space excavation fee," or other words reasonable descriptive of the nature of the services being performed. The fee may not be described by use of the word, "interment."

(5) The amount of the disclosed fee to install a vault/outer burial container before need shall not exceed fifty percent (50%) of the total amount (expressed in dollars) of that fee and the disclosed fee charged for opening the installed vault/outer burial container, placing the casket, and closing and covering the vault/outer burial container at need. This allowed allocation notwithstanding, the Board may require a provider to increase the amounts trusted for opening/closing services at interment in the event (i) a provider ceases performing the service using its own employees and equipment in favor of contracting with third parties to perform the service, or (ii) as a condition for the Board's approval of an application by the provider to transfer or to surrender of a certificate of authority or branch registration, or (iii) if the provider's financial condition warrants an increase in the trust amount.

(6) The preneed contract shall specify a time period within which the vault/outer burial container will be installed before need (if so elected by the purchaser).

(7) The preneed contract shall provide that, in the case a purchaser elects preneed vault/outer burial container installation, the preneed provider bears any risk of damage to the vault/outer burial container when installed and will provide and install a new vault/outer burial container of comparable quality at no cost to the preneed contract purchaser or beneficiary if required by the circumstances at the time of interment.

(8) No other preneed contract provisions can conflict with, qualify, defeat, or diminish the contractual option granted to the preneed contract purchaser/beneficiary.

(9) At the time the preneed contract is negotiated, the preneed seller must furnish the contract purchaser a disclosure substantially in the form of the model disclosure developed by the Board and published on the Board's website. The actual form of the disclosure must have been submitted to and approved by the Board before use. The original disclosure signed by the preneed contract purchaser(s) and the responsible preneed sales agent must be retained by the preneed provider as part of the preneed contract file. The preneed contract purchaser(s) must be furnished a copy

of the signed disclosure at the time the preneed contract is finalized.

(10) Any preneed provider offering installation of a vault/outer burial container before need must implement a program to instruct its preneed sales agents about properly explaining installation of vaults/outer burial containers before need and answering purchaser inquiries about installation before or at need. The program must include reasonable measures for monitoring preneed sales agents' actual explanation methods to purchaser. The program must be maintained in a form that can be produced to the Board for review upon request.

(11) The vault/outer burial container must be installed within thirty (30) days prior to the time the first trust deposit is required to be made under the contract in accordance with state law. If the contract is funded by another method, the vault/outer burial container must be installed within thirty (30) days from the date of the preneed contract.

(12) Any preneed provider offering installation of a vault/outer burial container before need must maintain records sufficient to permit the Board's examiners to verify that vaults/outer burial containers contracted for installation before need have been installed.

Author: Charles M. Perine
Statutory Authority: Code of Ala. 1975, §§34-13-26, 34-13-27, 34-13-170 to -277.
History: **New Rule:** Published March 29, 2024; effective May 13, 2024.

395-X-9-.07 Certificate Of Authority - Required.

(1) Every preneed seller subject to the Act must have a valid preneed certificate of authority to sell preneed contracts and to collect payments for preneed contracts. Each branch affiliated with a certificate holder must have a valid branch registration.

(2) The certificate of authority or branch registration, as applicable, shall be prominently displayed in a public area of the certificate holder's or branch registrant's facility. In the event a certificate of authority or branch registration is surrendered, non-renewed, suspended or revoked, the certificate or branch registration shall not be displayed and must be returned to the Board.

(3) On or before July 1st of each year, every certificate holder shall file an application for renewal which shall include the certificate holder's annual statement and, if applicable, statement of trust activities as required in Section 34-13-191(g).

(4) A certificate holder shall be subject to a fine for each day after July 1 the certificate holder fails to file its annual statement or, if applicable, statement of trust activities as provided in Section 34-13-191(h). The amount of the fine is set forth in Rule 395-X-2-.03.

(5) Upon notice to the certificate holder by the Board of the failure of the certificate holder to file the annual statement or, if applicable, statement of trust activities, the certificate holder's authority to sell preneed contracts shall be suspended as provided in Section 34-13-191(h).

(6) A certificate of authority expires on October 1 unless properly renewed as provided in this rule as provided in Section 34-13-53 and 34-13-191(h).
Author: Charles M. Perine
Statutory Authority: Code of Ala. 1975, §§34-13-26, 34-16-27, 34-13-170 to -277.
History: **New Rule:** Published March 29, 2024; effective May 13, 2024.

395-X-9-.08 Certificate Of Authority – Financial Requirements.

(1) An applicant for a preneed certificate of authority must meet, and a certificate holder must maintain, the financial requirements set forth in this Rule demonstrating its ability to discharge its liabilities as they become due in the normal course of business, and must have sufficient funds available to perform its obligations under its existing preneed contracts.

(2) Unless exempted under paragraph (8), a preneed seller must file with the Board a financial statement in order to apply for a certificate of authority or renew an existing certificate of authority. The financial statement shall, at the preneed seller's option, be

(a) a financial statement accompanied by a compilation, review or audit report from a licensed certified public accountant prepared in conformity with GAAP, or

(b) a financial statement in the form furnished by the Board and published on the Board's website using the alternate basis of accounting described in paragraph (5).

(3) The financial statement must be for the preneed seller holding a certificate of authority or the applicant seeking a certificate of authority. Information in the financial statement must be accurate and contain all relevant notes and disclosures appropriate to the accounting basis used. The financial statement must be signed by the certificate holder or applicant and, if

prepared by a certified public accountant or public accountant, by the accountant.

(4) Financial statements prepared in conformity with GAAP that are consolidated must include supplementary consolidating schedules to provide supporting detail for each consolidated financial statement presented.

(5) The financial statement form developed by the Board reflects a basis of accounting adopted by the Board as an alternative to GAAP reporting. This alternative basis differs from the measurements and disclosures required by GAAP in the following respects:

(a) GAAP requires consolidation of certain equity investments and of variable interest entities under FIN 46(R), entitled Consolidation of Variable Interest Entities. The Board requires that only the primary reporting entity's accounts and activities be reported. Investment in trusts are to be marked-to-market as of the financial statement date. Closely- held investments should be recorded using the equity method.

(b) Deferred revenue for preneed contracts incurred prior to May 1, 2002 (the Act's effective date), is to be equal to the current cost of providing the preneed services and merchandise.

(c) A noncurrent receivable is to be recorded for the face amount of life insurance policies used to fund preneed contracts, with the offset being a credit to deferred revenue.

(6) The financial statement of an applicant or certificate holder (in the case of annual renewals) must demonstrate the following levels of equity determined on the basis of the accounting method used in the financial statement:

(a) An applicant or certificate holder with total preneed deferred revenue of $100,000 or less must have a minimum of $10,000 equity.

(b) An applicant or certificate holder with total preneed deferred revenue of $100,001 or greater must have equity in an amount not less than ten percent (10%) of the total preneed deferred revenue.

(7) On either a financial statement prepared using GAAP or the alternative form, the Board will disregard any figure included for "good will" as an intangible asset in determining whether the statutory requirements or equity requirements in Rule 395-X-9-.08(6) above are met. The Board may assess other forms of intangible assets against the statutory requirements and equity requirements in Rule 395-X-9-.08(6).

(8)(a) If, based on the accounting method used in its financial statement, the certificate holder or applicant does not meet the requirements of paragraph (6), the certificate holder or applicant

may voluntarily submit to the Board additional evidence or enter into written agreements intended to demonstrate the certificate holder's or applicant's ability to meet the requirements of Code of Ala. 1975, §34-13-191, and as a condition for receiving and/or retaining a certificate of authority.

(b) The Board, in his discretion, may issue or renew a certificate of authority if the Board determines based on such additional information or agreement(s) that the applicant or certificate holder meets the requirements of Code of Ala. 1975, §34-13-191, in which event the certificate may be expressly conditioned on satisfactory continued compliance with any and all terms or conditions set forth in any agreement(s) entered into by the person or entity receiving the certificate.

(9) The Board may exempt a certificate holder from filing financial statements and from the equity requirements in 395-X-9-.08(6) at renewal, provided that the following conditions are met:

(a) The certificate holder demonstrates that 100% of the net amount of each of the certificate holder's preneed contract(s) are funded by trust or life insurance.

(b) At minimum, the certificate holder must submit the following documentation to the Board on or before July 1st of each year for the Board's approval:

1. A written request for an exemption from filing financial statements at renewal.

2. An annual financial summary which must include the certificate holder's:

(i) Total Assets

(ii) Total Liabilities

(iii) Equity

(iv) Total net amount of Preneed Contracts

(v) Total amount of Preneed Contract Funds collected.

(vi) Total funded amount of Preneed Contract Funds.

3. A sworn written statement affirming the accuracy of the submitted information.

(c) If payments are being made by the purchaser to the seller, the seller must submit 100% of the payment collected to the trust or insurance company within the required timeframe

established by law to be eligible for exemption of financial statements and equity requirements.

(d) An exemption will not be granted if the certificate holder has any preneed contracts, that fall under the jurisdiction of the board, that are not 100% funded by trust or insurance.

(e) For the purpose of this chapter, assets, liabilities and equity shall be defined according to GAAP, except as modified in 395-X-9-.08(5).

Author: Charles M. Perine
Statutory Authority: Code of Ala. 1975, §§34-13-26, 34-13-27, 34-13-170 to -277.
History: **New Rule:** Published March 29, 2024; effective May 13, 2024.

395-X-9-.09 Transfer Of Certificate Of Authority Or Branch Registration.

(1) A transaction which has the effect of transferring a certificate of authority or branch registration must be authorized by the Board prior to the closing of the transaction. Without limitation, authorization is required for the sale of a certificate of authority or branch registration, the sale of a certificate holder's business or assets to the extent the transaction includes transfer of the certificate of authority or branch registration, and sale of all or a controlling interest in any business entity certificate holder or branch registrant.

(2) Prior to the closing of the transaction which will give rise to a transfer, the certificate holder shall give notice of the proposed transaction in a form prescribed by the Board and provide the following to the Board:

(a) A copy of any fully signed letter of intent with any exhibits, attachments, or schedules referenced in the letter of intent.

(b) A copy of the fully signed purchase agreement or other form of contract which describes the terms of the transaction which will result in a transfer with any exhibits, attachments, or schedules referenced in the agreement or contract. Any such purchase agreement or contract must be conditioned upon approval of the Board to the transfer and must specifically address the parties' agreements concerning performance of preneed contracts previously sold, but unperformed, by the certificate holder. If the proposed transaction will result in a change of ownership of the certificate holder, the agreement or contract must provide that preneed contract holders will be notified in writing of

the change of ownership within ninety (90) days after the transfer is complete.

(c) If not otherwise addressed by the purchase agreement or contract, evidence acceptable to the Board that all required amounts have been deposited in trust and that the certificate holder's interest in each trust will be conveyed to the purchaser or transferee as part of the transaction without a diminution or pay out of trust assets or gain on such assets to the transferring certificate holder or another as part of the transaction.

(d) Any other documentation requested by the Board of the seller or purchaser in order for the Board to make a determination on the proposed transfer.

For sale or transfer of endowment care cemeteries, all payments required to be paid to the endowment care trust fund must be paid to date. The endowment care trust must continue to hold the trust funds after the sale or transfer. No funds held by the endowment care trust may be withdrawn as a result of a sale or transfer.
Author: Charles M. Perine
Statutory Authority: Code of Ala. 1975, §§34-13-26, 34-13-27, 34-13-170 to -277.
History: **New Rule:** Published March 29, 2024; effective May 13, 2024.

395-X-9-.10 Surrender Of Certificate Of Authority.

(1) Surrender of a certificate of authority must be accepted by the Board to be effective.

(2) The certificate holder shall give prior notice of the surrender in a form prescribed by the Board and provide the following to the Board:

(a) Copies of the certificate holder's existing trust agreements if not already on file with the Board.

(b) A sample copy of each form of preneed contract sold.

(c) The certificate holder's report of the status of all outstanding preneed contracts sold current to the proposed time of the surrender.

(d) The trustee's report of the status of all trusts current to the time of submission.

(e) The certificate of authority.

(3) Surrender shall not be authorized in the following events:

(a) Findings or violations identified in the immediately preceding examination remain have not been resolved to the Board's reasonable satisfaction.

(b) Any previously-imposed fines, assessments, or examination expenses remain unpaid in whole or in part.

Author: Charles M. Perine
Statutory Authority: Code of Ala. 1975, §§34-13-26, 34-13-27, 34-13-170 to -277.
History: **New Rule:** Published March 29, 2024; effective May 13, 2024.

395-X-9-.11 Effect Of Certificate Surrender Or Other Inactivity.

(1) For purposes of this Rule, "inactivity" means surrender of a certificate of authority, expiration of a certificate due to non-renewal, or revocation of a certificate, and also includes assumed inactivity due to the following circumstances:

(a) The certificate holder has ceased transacting business, either in general, or with respect to the particular business that is the subject of the certificate.

(b) The certificate holder has filed a petition for relief under Chapter 7 of the United States Bankruptcy Code or a bankruptcy court with jurisdiction has ordered relief according to said Chapter 7.

(c) If the certificate has been suspended, the holder has failed to reinstate the certificate in the time set forth in the order of suspension or, if not so addressed in the order, within six months after the date of the order of suspension.

(2) In the event of inactivity, a certificate of authority shall be canceled and of no further force and effect, and the certificate holder shall cease all sales of preneed contracts and collection of payments for preneed contracts. The certificate holder shall immediately collect and deposit in trust that portion of funds paid toward preneed contracts sold before inactivity which are to be trusted in accordance with the Act, including, where applicable, contributions to a cemetery endowment care fund.

(3) In the event of inactivity, all existing trusts and, if applicable, any cemetery endowment care fund shall be held intact and in trust, and shall not be disbursed except as allowable under the Act.

(4) In the event of inactivity, as long there are preneed funds in trust or preneed contracts in force that are not fulfilled, a former certificate holder shall timely and properly file on an

annual basis an inactive certificate holder report and any required attachments in accordance with instructions of the Board posted on the Board's website.
Author: Charles M. Perine
Statutory Authority: Code of Ala. 1975, §§34-13-26, 34-13-27, 34-13-197 to 34-13-277.
History: **New Rule:** Published March 29, 2024; effective May 13, 2024.

395-X-9-.12 Preneed Sales Agents.

(1) Each employee or agent selling preneed contracts or who execute contracts on behalf of a certificate holder must be registered by that certificate holder as a preneed sales agent (PSA). To sell preneed contracts, every certificate holder must have at least one PSA registered. The fee for issuing or renewing a certificate of authority does not include payment for any PSA registrations.

(2) Application for registration shall be made on the form published on the Board's website. Each PSA registration requires payment of a registration fee, which is to be paid with the initial registration and annually thereafter. Each PSA registration must be renewed annually. The fees for PSA initial registration and annual renewal are set forth in Rule 395-X-2-.03.

(3) A PSA registration is not active if the registrant is not affiliated with any certificate holder.

(4) An individual may be registered as a preneed sales agent on behalf of more than one certificate holder if the individual has received written consent of all certificate holders. The consent must be filed with the application for PSA registration.

(5) The certificate holder shall notify the Board within 30 days after a registered PSA's affiliation with a certificate holder has terminated.
Author: Charles M. Perine
Statutory Authority: Code of Ala. 1975, §§34-13-26, 34-13-27, 34-13-170 to -277.
History: **New Rule:** Published March 29, 2024; effective May 13, 2024.

395-X-9-.13 Response To Requests For Information; Effect Of Pending Administrative Action.

(1) If records, information, and/or a response are requested in writing of any applicant for or holder of a preneed certificate of authority by any duly appointed employee, examiner, or agent of

the Board, the requested records, information, or response shall be provided within ten (10) business days of receipt of the request unless the request specifies another time not less than ten (10) business days from receipt. A failure to timely respond to a request shall be deemed a violation of this chapter unless the Board or the person making the request grants an extension in writing or the applicant or certificate holder can demonstrate to the satisfaction of the Board that there is reasonable justification for failure to timely respond.

(2) If the Board has notified an applicant for or holder of a preneed certificate of authority of any administrative action, that action must be addressed and/or resolved to the Board's satisfaction before the Board will:

(a) issue a certificate of authority or branch registration,

(b) renew a certificate or branch registration,

(c) approve a proposed transfer of a certificate or branch registration, or

(d) enter an order of termination on an application for voluntary surrender of a preneed certificate.

(3) For purposes of this Rule, "administrative action" includes:

(a) A pending administrative complaint alleging violation(s) of the Act and/or violations of the Alabama Insurance Code in connection with activities engaged in under or pursuant to a certificate of authority or without a certificate of authority in violation of the Act.

(b) Failure to comply with requirements imposed in a prior settlement agreement, consent order, or final adjudicated order in an administrative complaint proceeding or court action.

(c) A preneed examination which has identified issues to be addressed in order to bring the certificate holder into compliance with the Act and subsequent regulation.

(d) Payment of or compliance with a payment arrangement for all examination invoices and/or amounts otherwise imposed by prior settlement agreement, consent order, or final adjudicated order in or in lieu of an administrative complaint proceeding, to include, where applicable, deposits in a merchandise and services trust and/or cemetery endowment care trust.

Author: Charles M. Perine
Statutory Authority: Code of Ala. 1975, §§34-13-26, 34-13-27, 34-13-170 to -277.

History: New Rule: Published March 29, 2024; effective May 13, 2024.