

ALABAMA DEPARTMENT OF INSURANCE
PRENEED REGULATION
ADMINISTRATIVE CODE

CHAPTER 482-3-004
PRENEED CONTRACT FUNDING AND TRUSTS

482-3-004-.12 Investment In Life Insurance And Annuities By
Preneed Funeral Merchandise And Services
Trusts.

(1) In order for a funeral merchandise and service trust to invest in life insurance and annuities as provided in Code of Ala. 1975, §27-17A-32(d) (2014), the trust agreement must include language that permits such investment by the trustee. A preneed contract for which a trust invests in insurance policies or annuities as allowed by Code of Ala. 1975, §27-17A-32(d) (2014) is a trust-funded contract for purposes of the Act and this Chapter.

(2) A trustee of a funeral merchandise and services trust has a limited insurable interest in the life of a preneed contract purchaser or a preneed contract beneficiary. The extent of the insurable interest of the trustee is limited to the lesser of \$20,000 or 100% of the purchase price of the preneed contract.

(3) If so authorized by the trust agreement, the trustee of a funeral merchandise and services trust may invest any portion or all of the funds deposited in trust for preneed contracts in life insurance contract or annuities issued on the lives of the preneed contract purchasers or preneed contract beneficiaries if the following requirements are met:

(a) The insurer is properly licensed by the Commissioner and by the insurer's domiciliary jurisdiction.

(b) Prior to the investment, the insured or annuitant consents, in writing, to the investment in a life insurance contract or annuity on the person's life.

(4) Written consent must be made by a document separate from the preneed contract. Preneed providers, trustees, and insurance companies may not rely or act on "consent" contained within a preneed contract signed by the contract purchaser or beneficiary. The form of consent must substantially conform to the form developed by the Department and published on the Department's website. Any other type of consent form used must be submitted for review and approval by the Commissioner prior to use.

(5) The insurance company has the responsibility for complying with consent requirements for life insurance policies or annuities for a preneed trust. A preneed provider, through its preneed sales agents, may present a consent form to a prospective preneed contract purchaser as part of the preneed contract sales process. The provider and its employees or agents shall not misrepresent the nature or terms of the consent form or the nature of the transaction. In connection with obtaining execution of the consent form, preneed sales agents or other employees or agents of the preneed provider shall not engage in activities constituting the sale, solicitation or negotiation of insurance for which licensing as an insurance producer is required. Consumer inquiries about the nature or effect of the consent, if not otherwise answered on the face of the consent form, must be referred to the insurance company.

(6) Consent must be obtained from the preneed contract beneficiary to the extent that a preneed contract purchaser identified in a preneed contract is not also identified as the beneficiary of that contract. The contract purchaser, if different, may not give consent on the beneficiary's behalf except in the specific instances provided for in Code of Ala. 1975, §§27-14-6(a)(1), -(2), or -(3) (2007). The person from whom consent is obtained must be of competent legal capacity to contract.

(7) The preneed trust or trustee electing to invest in life insurance policies or annuities as allowed will be shown as the owner and beneficiary of the policies or annuities.

(8) Neither the insurance company nor the funeral merchandise and services trustee may pay a certificate holder or the holder's employees or agents a commission or any other form of compensation relating, directly or indirectly, to life insurance or annuities sold to a funeral merchandise and services trust as a trust investment.

(9) An insurance company may not pay a funeral merchandise and services trust or the trustee of such a trust a commission, rebate, or financial inducement of any kind directly or indirectly relating to life insurance or annuities sold to the trust as a trust investment.

(10) Any trustee electing to use the investment mechanism allowed and any insurance company electing to sell life insurance or annuities to trusts will furnish to the Department and the trust beneficiary for transmittal to the Department a complete and accurate accounting of the trust's investments in life insurance policies and annuities if requested by the Department as part of the Department's examination or its regulatory responsibilities. Each preneed provider that is beneficiary of a funeral merchandise and services trust which invests in life insurance or annuities shall require the trustee to maintain a complete and

accurate accounting of the trust's investments in life insurance policies and annuities and to furnish the information to the Department upon request.

Author: Commissioner of Insurance

Statutory Authority: Code of Ala. 1975, §§27-2-17, 27-17A-1 to -57 (2014).

History: New Rule: November 13, 2014; effective January 1, 2015. Filed with LRS November 13, 2014. Rule is not subject to the Alabama Administrative Procedure Act.