

# COMMONWEALTH OF VIRGINIA



STEVEN T. FOSTER  
COMMISSIONER OF INSURANCE

Box 1157  
RICHMOND, VA 23209  
TELEPHONE: (804) 786-3741  
TDD/VOICE: (804) 225-3806

## STATE CORPORATION COMMISSION BUREAU OF INSURANCE

November 21, 1991

### Administrative Letter 1991-13

TO: All Insurance Companies Licensed to Write Life Insurance in Virginia

RE: Preneed Funeral Contracts Funded by Life Insurance or Annuities

The 1991 Virginia General Assembly adopted an amendment to Section 54.1-2820.B. of the Code of Virginia, as amended. As shown in the amendment, a copy of which is attached hereto, those engaged in the business of offering preneed funeral contracts funded by life insurance or annuities must comply with the requirements of Section 54.1-2820.B. with regard to life insurance or annuity contracts used in this situation. Title 54.1 of the Code of Virginia is administered by the Board of Funeral Directors and Embalmers. Since this is the case, insurers issuing contracts to fund preneed funeral contracts should immediately contact the Board of Funeral Directors and Embalmers for instructions as to the Board's requirements for these contracts. Failure of an insurer to follow the requirements of the Board could result in disciplinary action against those licensed by the Board who are involved in the sale of these products .

Only insurance forms approved by the Bureau of Insurance should be used to fund preneed funeral contracts. The Bureau of Insurance will approve these forms in accordance with its usual procedures and will not be involved in the administration of the requirements of Title 54.1.

Insurers wishing to market products to be used to fund preneed funeral contracts should contact the Board of Funeral Directors at the following address:

Ms. Meredith Partridge  
Executive Director  
Board of Funeral Directors and Embalmers  
1601 Rolling Hills Drive  
Richmond, Virginia 23229

Sincerely yours,

Steven T. Foster  
Commissioner of Insurance

STF/ds  
Attachment

**1991 SESSION**  
**VIRGINIA ACTS OF ASSEMBLY - CHAPTER 721**

*An Act to amend and reenact § 54.1-2820 of the Code of Virginia, relating to burial life insurance.*

[H 1906]

Approved APR 30 1991

Be it enacted by the General Assembly of Virginia:

1. That § 54.1-2820 of the Code of Virginia is amended and reenacted as follows:

§ 54.1-2820. Requirements of preneed funeral contracts.—A. It shall be unlawful for any person residing or doing business within this Commonwealth, to make, either directly or indirectly by any means, a preneed funeral contract unless the contract:

1. Is made on forms prescribed by the Board and is written in clear, understandable language and printed in easy-to-read type, size and style;

2. Identifies the seller, seller's license number and contract buyer and the person for whom the contract is purchased if other than the contract buyer;

3. Contains a complete description of the supplies or services purchased;

4. Clearly discloses whether the price of the supplies and services purchased is guaranteed;

5. States if funds are required to be trusted pursuant to § 54.1-2822, the amount to be trusted, the name of the trustee, the disposition of the interest, the fees, expenses and taxes which may be deducted from the interest and a statement of the buyer's responsibility for taxes owed on the interest;

6. Contains the name, address and telephone number of the Board and lists the Board as the regulatory agency which handles consumer complaints;

7. Provides that any person who makes payment under the contract may terminate the agreement at any time prior to the furnishing of the services or supplies contracted for; if the purchaser terminates the contract within thirty days of execution, the purchaser shall be refunded all consideration paid or delivered, together with any interest or income accrued thereon; if the purchaser terminates the contract after thirty days, the purchaser shall be refunded any amounts required to be deposited under § 54.1-2822, together with any interest or income accrued thereon;

8. Provides that if the particular supplies and services specified in the contract are unavailable at the time of delivery, the seller shall be required to furnish supplies and services similar in style and at least equal in quality of material and workmanship and the representative of the deceased shall have the right to choose the supplies or services to be substituted;

9. Discloses any penalties or restrictions, including but not limited to geographic restrictions or the inability of the provider to perform, on the delivery of merchandise, services or prearrangement guarantee; and

10. Complies with all disclosure requirements imposed by the Board.

If the contract seller will not be furnishing the supplies and services to the purchaser, the contract seller must attach to the preneed funeral contract a copy of the seller's agreement with the provider.

B. If a life insurance or annuity contract is used to fund the preneed funeral contract, *the life insurance or annuity contract shall provide either that the face value thereof shall be adjusted annually by a factor equal to the Consumer Price Index as published by the Office of Management and Budget of the United States, or a benefit payable at death under such contract that will equal or exceed the sum of all premiums paid for such contract plus interest thereon at the annual rate of at least five percent, compounded annually.* In addition, the following must also be disclosed as prescribed by the Board:

1. The fact that a life insurance policy or annuity contract is involved or being used to fund the preneed contract;

2. The nature of the relationship among the soliciting agent, the provider of the supplies or services, the prearranger and the insurer;

3. The relationship of the life insurance policy or annuity contract to the funding of the preneed contract and the nature and existence of any guarantees relating to the preneed contract; and

4. The impact on the preneed contract of (i) any changes in the life insurance policy or annuity contract including but not limited to changes in the assignment, beneficiary designation or use of the proceeds, (ii) any penalties to be incurred by the policyholder as

a result of failure to make premium payments, (iii) any penalties to be incurred or moneys to be received as a result of cancellation or surrender of the life insurance policy or annuity contract, and (iv) all relevant information concerning what occurs and whether any entitlements or obligations arise if there is a difference between the proceeds of the life insurance policy or annuity contract and the amount actually needed to fund the preneed contract.

C. When the consideration consists in whole or in part of any real estate, the contract shall be recorded as an attachment to the deed whereby such real estate is conveyed, and the deed shall be recorded in the clerk's office of the circuit court of the city or county in which the real estate being conveyed is located.

D. If any funeral supplies are sold and delivered prior to the death of the subject for whom they are provided, and the seller or any legal entity in which he or a member of his family has an interest thereafter stores these supplies, the risk of loss or damage shall be upon the seller during such period of storage.

2. That the provisions of this act shall become effective on January 1, 1992.

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President of the Senate

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Speaker of the House of Delegates

Approved:

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Governor