



ADMINISTRATIVE RULES OF MONTANA



24.147.1504 PRENEED FUNERAL AGREEMENTS

- (1) Every preneed funeral agreement executed in this state shall be reduced to writing, and must:
 - (a) be signed by the provider and by the purchaser or the intended funeral recipient or the intended funeral recipient's guardian, agent or next of kin, and
 - (b) include at least the following information:
 - (i) the name, address and telephone number of the mortuary intended to be utilized at the time of the agreement;
 - (ii) the name and license number of the individual licensee acting as or on behalf of the provider;
 - (iii) the purchaser's name, address and social security number;
 - (iv) the name, address and social security number of the intended funeral recipient;
 - (v) both a copy of the provider's current general price list and an itemized statement of funeral goods and services to be included in the agreement;
 - (vi) full and complete disclosure of how the agreement is to be funded;
 - (vii) whether the agreement is a guaranteed price agreement or nonguaranteed price agreement, which term, as applicable, shall be defined in the agreement in accordance with this subchapter; together with complete disclosure of how the planned funeral expenses shall be funded in the event the funds held by the trust are insufficient and means of disposition of any proceeds of the trust in excess of that needed for planned funeral goods and services;
 - (viii) complete disclosure of rates of interest to be accrued on the invested funds, including any fees to be charged against the invested funds, how those fees are determined and how, when and to whom such fees are paid.
 - (ix) full identification of the depository institution where the funds will be held, together with all pertinent account numbers or other means whereby the funds may be identified.
 - (c) provide that all funeral arrangements and prepaid funeral trust agreements are revocable upon demand of the purchaser, if alive, and if not, then by the intended funeral recipient where they are different persons. The amount of any and all moneys paid under or in connection with such an agreement together with any and all interest, if any, accrued thereon while on deposit shall be repaid on demand at any time prior to the delivery of the prepaid funeral goods or the performance of the prepaid funeral services. Upon the death of

the intended funeral recipient, the intended funeral recipient's authorizing agent shall have the right to revoke the funeral arrangements and to sever the funeral funding arrangements from the funeral arrangements; except however, as provided in 37-19-708 , MCA the means of disposition specified by the preneed funeral agreement may not be changed by the authorizing agent. In those instances where a prepaid funeral agreement is revoked, the moneys used to fund the agreement, including all principal and all accrued interest, shall be paid to:

- (i) the purchaser if alive, and if not, then to the personal representative or estate of the deceased purchaser; or
 - (ii) the intended funeral recipient if the funds originally paid for a prepaid funeral agreement belonged to the intended funeral recipient and the agreement is funded through a trust; or
 - (iii) the named beneficiaries on the insurance policy if the agreement is funded through a funeral insurance policy.
- (d) notwithstanding the provisions of (c) above to the contrary, an agreement may provide that the trust shall be irrevocable during the lifetime of the beneficiary, if at the time of the signing of an agreement, the intended funeral recipient of the trust is an applicant for or recipient of, benefits pursuant to the regulations of any public assistance agency or the medicaid program and utilizing the eligibility criteria of the supplemental social security income program in regard to burial spaces and funds set aside for burial expenses; or, a person who reasonably anticipates applying for, or receiving, such benefits within six months. A prepaid funeral agreement made irrevocable pursuant to this subchapter shall not affect the selection of funeral goods or services or the selection of the funeral home. If the intended funeral recipient of the trust enters into an agreement, reasonably anticipating that the intended funeral recipient will become an applicant for, or recipient of these programs within six months from the execution of the agreement, the agreement shall provide that, in the event the intended funeral recipient does not become an applicant for, or recipient of, any of these programs within the six month period, the trust shall revert to a revocable trust.
- (e) in circumstances wherein the agreement is made irrevocable, provisions must be made for a change of provider at the sole discretion of the purchaser or intended funeral recipient, without financial penalty or charge for such a change.
- (f) provide that, unless otherwise specified therein, a prepaid funeral agreement anticipates the provision of prepaid funeral goods and services in the area served by the provider. The agreement shall further provide that, if the intended funeral recipient's place of death is in a location other than that served by the provider, alternative funeral arrangements will be necessary unless otherwise provided for in the terms of the agreement.
- (g) provide for the provider's substitution of any funeral goods or services to be furnished or rendered thereunder for funeral goods of equal quality, value and workmanship, or services of equal quality and value in the event of the unavailability of any funeral goods or services set forth in the agreement. Any change in the price of the agreement resulting from such substitution of funeral goods and/or services shall be reflected in the statement of funeral goods and services rendered.

- (h) provide that, in the case of an agreement funded through a funeral trust, if the purchaser predeceases the intended funeral recipient where they are different persons, and no provision is made within the agreement for designation of the purchaser's successor, then the intended funeral recipient shall automatically assume the legal right to administer the funeral trust as purchaser, including the right to withdraw any and all funds held in the funeral trust, and with all other rights formerly held by the purchaser.
- (2) Any provision of any such agreement whereby a person who pays money under or in connection therewith waives any provision of these rules shall be void.

Authorizing statute(s): 37-1-131, 37-19-101, 37-19-202, MCA

Implementing statute(s): 37-19-827, 37-19-828, 37-19-829, MCA

History: NEW, 2000 MAR p. 1630, Eff. 6/30/00; TRANS, from Commerce, 2002 MAR p. 790.