



#2627

RECEIVED

2007 OCT 11 PM 3:38

INDEPENDENT REGULATORY
REVIEW COMMISSION

17 North Second Street
12th Floor
Harrisburg, PA 17101-1601
717-731-1970 Main
717-731-1985 Fax
www.postschell.com

James J. Kutz

jkutz@postschell.com
717-812-6038 Direct

October 11, 2007

Via Hand Delivery

John H. Jewett
Regulatory Analyst
Independent Regulatory Review Commission
14th Floor, Harristown 2
333 Market Street
Harrisburg, PA 17101

**RE: Request for Documentation Re:
Approved Pre-Need Contracts - Bean Decision**

Dear Mr. Jewett:

In your recent e-mail, you had asked whether we could provide you with the "two pre-paid burial contracts" as they were referenced in the July 22, 2004 Opinion of the *En Banc* Commonwealth Court in the matter titled Bean v. Department of State. I am providing herewith your requested information, along with some related information. Allow me to put the documents in perspective, noting that I have handwritten paginated each of them.

Page 1 is an April 24, 2000 letter from the President of the Bean Funeral Home to the Department of State, wherein a proposed pre-need agreement is submitted for review and approval by the Board per the current Regulations of the Board.

Page 2 is a May 9, 2000 letter from Board Counsel advising that the submitted documentation "is in compliance with the Funeral Director Law...".

Pages 3, 4, 5, 6, and 7 represent the pre-need documentation that was the subject of the Bean submission and the Board approval. As this document is double-sided, please be sure to note the reverse side. Page 3 constitutes the initial part of the Security Agreement and you will note in the lower right-hand side of that document a three-day right of cancellation clause (which was approved by the Board). Page 4 is a listing of various funeral options, not necessarily related to any issue currently pending. Page 5 is the Statement of Funeral Goods and Services and the reverse side, Page 6, is, again, a listing of options. More importantly, however, I direct your attention to Page 7 (the last page of the approved pre-need agreement) and Paragraph 2 of the "General Provisions" relating to "Cancellation or Termination". Specifically, this pre-need agreement, submitted by Mr. Bean and approved by the Board, provides as follows:

John H. Jewett
October 11, 2007
Page 2

Except for Buyer's three-day right of rescission set forth above,
Buyer may not cancel this Security Agreement.

Simply stated, Pages 1-7 constitute the unequivocal approval by the State Board in calendar year 2000 of a pre-need agreement which contained an irrevocability provision but for the Unfair Trade Practices Act three-day right of rescission. Mr. Bean relied on this approval and entered into numerous pre-need agreements utilizing this form and believing that his approved contract was indeed approved for use.

Mr. Bean was also a member of the Pennsylvania Funeral Directors Association until recently, and in conjunction with that relationship, he utilized, at times, PFDA's for-profit affiliate, SecurChoice, for purposes of effectuating pre-need agreements and trusting the monies paid pursuant thereto. Pages 8-10 of the enclosed attachments represent the SecurChoice pre-need agreement which was in place and was utilized broadly by all PFDA members up until PFDA decided to rewrite the terms of its SecurChoice agreement in July, 2002. Notably, you will see that, on page 8 (the initial page of the SecurChoice agreement) there is an option to have the pre-need agreement "irrevocable" and, indeed, a specific box exists to check that category. Then, if you proceed to Page 9 (the reverse side of Page 8), you will see a "Termination" clause at Paragraph 4. That clause, although it speaks for itself, allows for termination of the pre-need agreement under two conditions, the first being if the customer checked the "revocable" (as opposed to the irrevocable) box on the front of the agreement, and the second condition being that the customer moved outside the Commonwealth of Pennsylvania. In other words, unless one of those two conditions existed, the agreement was not subject to termination by the customer. Of equal note, your attention is directed to other portions of the termination clause which expressly provide that, if there is a termination of the agreement, the funeral director is required to refund "all the money you have paid under this agreement", meaning that the consumer is assured that he will receive the same amount of monies upon termination as he paid initially at the time he or she entered into the agreement. At the same time, there is a clause allowing the funeral home to terminate the agreement but, again, that option would exist only if the customer elected the revocable option. Finally, and of particular importance, Paragraph 4 provides that, aside from the three-day right of rescission, and except for those two instances where the customer either moves out of state or has elected revocability, the customer "cannot terminate this agreement or the trust created pursuant to it."

The essence of pages 1-10 constitute irrefutable proof that the Funeral Board had approved as late as calendar year 2000, pre-need agreements which, by their terms, could be irrevocable. More importantly, these approved contracts were not only contracts drafted by individuals (as in the case of Mr. Bean), but also pre-need agreements utilized by PFDA. Again, Mr. Bean, relying upon the Board's approval of the SecurChoice contract, entered into an irrevocable pre-need agreement on numerous occasions.

Thus, even though it was your request that I provide the enclosed information, I think it is noteworthy that today, PFDA urges your office to approve Regulations which are completely

contrary to the pre-need agreements which PFDA had been using for years and for which they had asked State Board approval; *i.e.*, contracts that permitted irrevocability of obligation between the customer and the funeral home. Indeed, as Page 11 demonstrates, PFDA's SecurChoice would tender pre-need monies to its trustee, PNC, noting that the funds should be placed in the "irrevocable [master] trust".

Now, you may wonder why I include this April 9, 1999 SecurChoice confirmation to Mr. Bean's customer, confirming that \$6,500 was placed into PFDA's irrevocable trust. The answer is that this \$6,500 is invested and can result in a reduced value if the investment experience for the account is negative. Indeed, that is precisely what happened with SecurChoice's trust account for the identified customer of Mr. Bean. Specifically, attached as Page 12 is a check which SecurChoice cut for \$3,763.51, this representing the value of the customer's trust account as of January 2, 2003, the date that that customer died. In other words, although the funeral director received \$6,500 in 1999 in exchange for irrevocably committing to perform certain funeral services upon the death of the customer, at the time of her death, the account had dwindled by some \$2,200, thus causing the funeral director (in this case, Mr. Bean) to be required to provide services and merchandise now in excess of \$6,500, even though he only received back from the trust some \$3,700. The relevance of this fact? - because SecurChoice was experiencing losses in its accounts, the best way to deal with that problem was to rewrite pre-need contracts so that the funeral director could "get out of" such contracts at any time he or she wanted.

Accordingly, in the summer of 2002, PFDA's affiliate, SecurChoice, totally revamped their pre-need agreements, this time providing for the opportunity of both the customer and the funeral director to terminate the contract at any time. First, please note pages 13-17, attached hereto, which represent the correspondence leading to the State Board's approval of PFDA's "new" contracts. Notably, your attention is directed to Page 13, a July 5, 2002 letter from PFDA's affiliate pointing out two curious points. First, in Paragraph 2, the letter suggests that the new contracts and the changes in the new contracts are necessary "to come into compliance with recent rulings by the State Board of Funeral Directors...". Query: What rulings could this letter be referring to? Second, in Paragraph 5 of that same July 15, 2002 correspondence, the PFDA funeral director is advised that the major change in this new contract is that "the purchaser of a pre-need trust contract can cancel the agreement for any reason and receive all of their money back, including interest less fees...". These two statements are not only curious, they are erroneous. First, the State Board issued no "recent ruling" which would have compelled changes in the PFDA SecurChoice contract. Second, although the July 15 correspondence leads the reader to believe that only the purchaser of a pre-need contract can cancel for any reason, a review of the actual contract itself (see pages 18-20) compel a very different reading. Specifically, your attention is directed to page 20 and clause 4 thereof entitled "Termination". A review of that provision is nothing short of astounding. Indeed, what Paragraph 4 now provides (bearing in mind that this new contract was approved by the State Board) is that either the customer or the funeral director can terminate at any time. Putting to one side the fact that such a clause renders a contract "illusory" by legal definition, the more important point for purposes pertinent here is that this approved agreement now allows the funeral director to "get out of" a

John H. Jewett
October 11, 2007
Page 4

pre-need contract any time he or she wants. In addition, it allows the funeral director to escape his or her obligation under the pre-need agreement at a time when termination results in the customer receiving less than the amount the customer initially placed into trust. Specifically, this approved agreement provides:

If the funeral home terminates this agreement, the funeral home will instruct the trustee to refund to you the current market value of all the money you have paid under this agreement, together with income earned less fees and reassigns any insurance policies in the trust to you. If your monies were placed in an annuity contract, you may incur penalties for early withdrawal.

See Page 20.

The import of this revision cannot be overstated. Indeed, this provision allows the funeral director to terminate the agreement any time the trust shows a negative balance, thus leaving the customer to receive only the then "current market value" of his or her investment. Perhaps to state it differently, although PFDA leads the customer to believe that the major change in this new agreement was to let the customer terminate at any time, see e.g., Page 13, the new benefit to the funeral director is the fact that he too can terminate at any time, thus leaving the pre-need customer out in the cold. In fact, even if the pre-need customer was the party seeking to terminate, note again that the customer would only receive the then-current value of his initial deposit which could be significantly less than the amount originally paid as part of the pre-need agreement. For example, Page 19 shows the different investment options which the PFDA funeral director can make for an individual's account. Suffice it to say that virtually every one of those options carry risk and the potential downside of reduced value from the initial corpus.

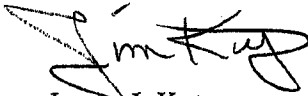
I would hope that the enclosed information is helpful to you in assessing whether or not the current Regulations are motivated by an intent to better protect the consumer or to better protect the funeral director, who has the option of terminating a contract and has the further option of harassing existing pre-need customers to sever their existing pre-need contracts, suffer the potential risks associated with said termination, and then place their remaining monies with he who has come late into the pre-need game.

Although you did not specifically request this, I am also enclosing three additional pages, Pages 21-23. These documents relate to another issue currently pending before you, *to wit*, the current Board proposal that no funeral director can have an interest in any entity which sells pre-need merchandise and requires only a 70% trusting requirement. For years, many funeral directors have been part of corporations that have sold merchandise and have trusted at 70%. In fact, one of the main reasons for that corporate formation was PFDA's strong suggestion in 1996, wherein they prepared a Pennsylvania Funeral Director Association Model Incorporation Kit, urging its members to set up a separate corporation so that trusting need only be at the 70% level for merchandise. As Page 21 of this attachment further shows, as late as 1999, the PFDA web site was urging its membership to continue to form corporations so that the benefits of the 70%

John H. Jewett
October 11, 2007
Page 5

trusting requirement could be achieved. Apparently, that program never got off the ground; others profited more; and, not surprisingly, PFDA and the State Board now suggest that such corporate creations are to be outlawed by the currently-proposed Regulations. Respectfully, these flip-flops are transparent. It is for all these reasons that you are seeing such significant opposition to Regulations which clearly are intended to advance the needs and desires of PFDA. Such conduct would not be so objectionable if it were not for the fact that it conflicts directly and severely with legal positions taken by PFDA and the State Board on a historical basis. The regulatory process in Pennsylvania should not be used as a conduit to achieve business goals that have no consumer benefit. Thank you.

Very truly yours,



James J. Kutz

JJK:dlh

Enclosures

cc: Ernie Heffner
Morgan Plant



April 24, 2000

Commonwealth of Pennsylvania
Department of State
Bureau of Professional and Occupational Affairs
State Board of Funeral Directors
P.O. Box 2649
Harrisburg, PA 17101-2649
Attention Tom Blackburn, Esq.

RE: Statement of Funeral Goods & Services
Pre Need Contracts

Dear Sir:

Enclosed please find copies of the above referenced documents for Board approval for Bean Funeral Homes and Crematory, Inc.

Please review the documents and communicate the Board's approval to me, if in fact the documents are acceptable to the Board.

Thank you for your attention to this matter.

Sincerely,

Terrence J. Shannon
President
Bean Funeral Homes and Crematory,
Inc.

Enc.

2



COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF STATE
BUREAU OF PROFESSIONAL AND OCCUPATIONAL AFFAIRS

LEGAL OFFICE
COUNSEL DIVISION
(717) 783-7200
FAX: (717) 787-0251

116 PINE STREET
P.O. BOX 2649
HARRISBURG, PA
17105-2649

May 9, 2000

Terrence J. Shannon, FD
Bean Funeral Homes & Crematory, Inc.
425 Penn Avenue
Sinking Spring, PA 19608

Dear Mr. Shannon:

I have received your request of April 24, 2000 for approval of your at-need and pre-need statements of funeral goods and services.

Upon my review, it appears that the submitted statement of funeral goods and services is in compliance with the Funeral Director Law¹ and regulations promulgated thereunder. As such, this form is approved for use.

Sincerely,

A handwritten signature in black ink, appearing to read 'T. Blackburn'.

Thomas A. Blackburn, Counsel
State Board of Funeral Directors

cc: Cheryl Lyne, Administrator
State Board of Funeral Directors

¹ Act of January 14, 1952 (P.L. 1951-1898), as amended; 63 P.S. § 479.1 et seq.

2

P-2

4/12/00

SecurChoice™

7441 Allentown Blvd. • Harrisburg, PA 17112

April 9, 1999

Ms. Audrey L. Price
c/o Ernest E. Price
20 S. Summit Avenue
Shillington PA 19607

Re: SecurChoice - Pre-Need and
Individual Trust Agreement

Dear Ms. Price:

PNC Bank, N.A. has received and accepted the Pre-Need and Individual Trust Agreement for Audrey L. Price, Account 25858. This Irrevocable Trust, funded with \$6,500.00, is a participant in the Master Pre-Need Trust of Bean Funeral Home Inc..

If you have any questions, please consult with your funeral director.

Very truly yours,



M. Kenneth Baylor
SecurChoice
Trust Administrator

Enclosure

cc: Mr. Kevin M. Bean
Bean Funeral Home Inc.
129 East Lancaster Avenue
Shillington PA 19607

PRE-NEED TRUST OFFICE:
1-800-692-6068 • (717) 545-7215 • FAX (717) 545-7360

Website: www.pfda.org

PRE-NEED INSURANCE OFFICE:
1-800-627-7526 • (717) 540-1303 • FAX (717) 540-1496

12

SECURCHOICE
NON NEGOTIABLE

40642

UniChoice Cooperative, Inc.
7441 Allentown Blvd.
Harrisburg PA 17112

From the Prepaid Funeral Trust for the benefit of Audrey L. Price

Account: 25858

January 2, 2003

\$ ****3,763.51

Bean Funeral Home Inc.
129 East Lancaster Avenue
Shillington PA 19607

40642

SecurChoiceSM

7441 ALLENTOWN BLVD. HARRISBURG, PA 17112

PNC BANK, N.A.
NORTHWEST PA 010
60-73-433

THREE THOUSAND SEVEN HUNDRED SIXTY THREE AND 51/100 *****

DATE	AMOUNT
January 2, 2003	\$ ****3,763.51

PAY TO THE ORDER OF

Bean Funeral Home Inc.
129 East Lancaster Avenue
Shillington PA 19607

CASH WITHIN 60 DAYS
AUTHORIZED SIGNATURE

Suzanne Bertold ^{MF}

⑈040642⑈ ⑆043300738⑆ 6430458529⑈

081012/05-09

Security Features included. Details on back.

Unichoice

*A member-owned cooperative
"Participation pays"*

7
July 15, 2002

Dear SecurChoice Pre-need Trust Users;

I am writing to inform you of some program changes that will become effective upon your receipt of the new trust packets, which you should receive in a few days.

Changes have been made to our trust documents and the new documents/forms are approved by the State Board of Funeral Directors. These changes were made to come into compliance with recent rulings by the State Board of Funeral Directors and to provide clarity in some parts of previous documents.

You are receiving a new Master Trust Agreement that needs to be signed and returned to us in the postage paid envelope enclosed and we will forward it to PNC Bank for signature by a Trust Officer. We will then return the 2nd copy and attachments to you for your files. Primary changes in the Master Trust Agreement can be seen in the attached "Proposed Changes to the Master Trust Agreement" and are in paragraphs 6 and 9. All Pre-need and Individual Trust Agreements submitted by your funeral home from this date forward will come under the terms of this new Master Trust Agreement.

A copy of a letter from Thomas A. Blackburn, Counsel, State Board of Funeral Directors is enclosed. This letter is to be kept on file in your funeral home as proof that the trust documents we are providing and you are using have been approved by the appropriate authority. This letter also states that you must submit Exhibit A, a Statement of Funeral Goods and Services with each pre-need contract. The FTC Statement of Funeral Goods and Services form will be provided in every packet and is approved by the State Board of Funeral Directors. If you use your own, make sure it is approved by the State Board of Funeral Directors.

A new Pre-need and Individual Trust Agreement form is enclosed. Changes to Part I, the front page, includes enlargement of the box titled "Itemization of Amount Financed." You will also notice in the lower left portion of the front page where you choose to Guarantee or Not Guarantee future prices, that you can now Guarantee or Not Guarantee the funeral home's Services and Merchandise and Cash Advances separately. Changes to Part II, the Investment Direction part of the Pre-need and Individual Trust Agreement, includes new mutual fund investment options and the two annuity options at the bottom of the page. Another copy of the investment options, investment risk and a short description will be included in the quarterly report you receive this week. The first annuity option listed on the new form is the one offered by Funeral Directors Life Insurance Company. You will also receive detailed information about this new annuity option in your quarterly report this week. The 2nd annuity is the one that has been offered for years through Microdata. Changes have also been made to Part III, Terms and Conditions of the Pre-need and Individual Trust Agreement. The major change is that the purchaser of a pre-need trust contract can cancel the agreement for any reason and receive all of their money back including interest less fees. The changes can be seen in the enclosed materials called "Proposed Changes to Part III, The Terms and Conditions of the Pre-need and Individual Trust Agreement."

You will receive a supply of new SecurChoice Trust Packets within the next few days. Again, the new packets will include the new Pre-need and Individual Trust Agreement forms and Exhibit A, a Statement of Funeral Goods and Services form. Please throw away all of your old trust packets! Yes, throw them out! We don't want to get the forms mixed up.

If you have any questions regarding any of the changes, please give us a call at the office. There will be no noticeable change in the appearance of the forms. The only new procedure is the required use of a Statement of Funeral Goods and Services, which was directed by the State Board of Funeral Directors.

Thank you for your business and your continued support of both PFDA and Unichoice.

Sincerely,

Ted Nielsen, Exec. V.P. & COO
Unichoice Cooperative, Inc.

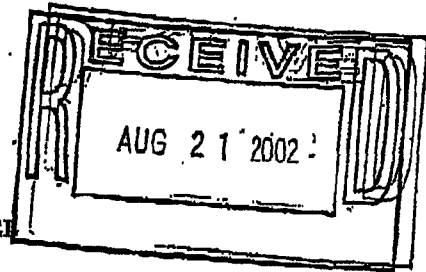
www.unichoiccoop.com

7441 Allentown Blvd. ♦ Harrisburg, PA 17112

TOLL FREE 877.468.4824 PHONE ♦ 717.545.7335 PHONE ♦ 717.545.7360 FAX



COMMONWEALTH OF PENNSYLVANIA
GOVERNOR'S OFFICE OF GENERAL COUNSEL
DEPARTMENT OF STATE
LEGAL OFFICE
116 PINE STREET, P.O. BOX 2649
HARRISBURG, PA 17105-2649



Thomas A. Blackburn, Assistant Counsel
Council Division

Telephone: (717) 783-7200
FAX: (717) 787-0251
E-Mail: tblackburn@state.pa.us
Department's Website: www.dos.state.pa.us

August 16, 2002

Kathleen K. Ryan, Esquire
Pennsylvania Funeral Directors Assoc.
7441 Allentown Boulevard
Harrisburg, PA 17112-9982

Dear Ms. Ryan:

I have received your recent request for approval of the revised form master pre-need trust agreement and pre-need and individual trust agreement that your association will provide to members who participate in the SecurChoice program.

As a general rule, the Board does not review forms for any entity other than a licensed funeral establishment. However, because of the large number of licensees who participate in this program and who will use these forms, I am reviewing these forms for their benefit. Any member who participates in this program and who uses these forms must receive from you a copy of this letter and must maintain that letter in the member's files as if I had reviewed and approved the forms specifically for that member. In addition, the only changes that may be made to these forms, in order to continue applicability of this review, are the insertion of the name and address of the funeral establishment and the name, if applicable, of the supervisor.

I assume that each member who participates will attach as Exhibit A to the pre-need and individual trust agreement a completed statement of funeral goods and services that the Board has separately approved. Additionally, I assume that each member who participates in this program will include the name of the supervisor, if applicable, with the name of the funeral establishment. Upon my review, on these assumptions, it appears that the submitted pre-need and individual trust agreement is in compliance with the Funeral Director Law¹ and regulations promulgated there under. As such, the Board approves this revised form for use by the various members who participate in this

¹ Act of January 14, 1952 (P.L. 1951-1898, No. 522), as amended; 63 P.S. § 479.1 et seq.

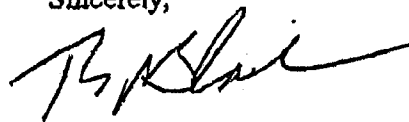
14

Ms. Ryan
August 16, 2002
Page 2

program. However, this review does not extend to any other body of law, such as contracts, or to requirements of other agencies, such as the Federal Trade Commission.

I have not reviewed the master pre-need trust agreement. In contrast to the Board regulations at 49 Pa. Code § 13.204 (regarding written agreement) and 49 Pa. Code § 13.224(f) (regarding funding and reporting of prepaid burial contracts) that authorize the Board to review a contract between a funeral establishment and a customer, no regulation provides for review of an agreement between the trustee and the funeral establishment.

Sincerely,



Thomas A. Blackburn, Counsel
State Board of Funeral Directors

cc: Michelle T. DeMerice, Administrator
State Board of Funeral Directors

13



August 16, 2002

Dear Funeral Director:

For your files, enclosed is the signed "Funeral Home Copy" of the SecurChoice Master Pre-need Trust Agreement.

If you have any questions or would like to order SecurChoice-Trust forms or SecurChoice - Insurance Trust forms, please feel free to contact our office at (1-800-692-6068).

Sincerely,

Ruth A. Carrera
SecurChoice - Trust Administrator

Enclosure

SecurChoice*a prearranged funeral program*

August 26, 2002

Dear SecurChoice Trust User:

The State Board of Funeral Directors has recently approved SecurChoice's new master pre-need trust agreement and the individual trust agreement that PFDA will provide to members who participate in the SecurChoice Program. Enclosed please find a copy of the letter of approval. As indicated by Board Counsel, each of you **"must maintain that letter in [your] files as if [he] had reviewed and approved the forms specifically for that member."**

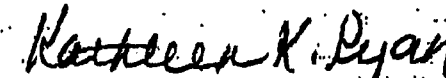
Further, you may **not** make any changes to these forms except to insert the name and address of your funeral establishment and the name of the supervisor, if applicable.

If you are not using the Statement of Funeral Goods and Services provided by Unichoice, you must have your Statement of Funeral Goods and Services approved by the State Board **independently** of the trust documents prior to use. If you have not had your Statement of Funeral Goods and Services approved within the past 2 years, it would be advisable to have it done now. If you need to have your document approved, send it to Thomas Blackburn, Esquire, State Board of Funeral Directors, 116 Pine Street, Harrisburg, PA., 17105.

Finally, it is important you understand that the approval is only for SecurChoice's trust documents with the caveats listed above. To use them with any other trust program or unapproved forms is illegal and could result in legal action.

If you have any questions, please do not hesitate to call.

Very truly yours,


Kathleen K. Ryan, Esquire

Enclosure

7441 Allentown Blvd. ♦ Harrisburg, PA 17112
PRE-NEED TRUST OFFICE: TOLL FREE 877.468.4824 PHONE ♦ 717.545.7360 FAX
PRE-NEED INSURANCE OFFICE: TOLL FREE 800.627.7526 PHONE ♦ 717.540.1303 PHONE ♦ 717.540.1496 FAX
www.unichoicecoop.com WEBSITE

SecurChoice™

(a pre-arranged funeral program owned and endorsed by the Pennsylvania Funeral Directors Association)

PART I

Pre-Need and Individual Trust Agreement ("The Agreement")

This Agreement is made this ____/____/____ by and between
DATE

Funeral Home _____
NAME

Address _____
BUSINESS ADDRESS

and the Purchaser (hereinafter "You") _____ (M) (F)
NAME D/O/B SOCIAL SECURITY #

_____ ADDRESS

for the Benefit of (If Beneficiary's is different from the Purchaser) _____ (M) (F)
NAME D/O/B SOCIAL SECURITY #

_____ ADDRESS

ANNUAL PERCENTAGE RATE The cost of Your Credit as a yearly rate. 0.00%	FINANCE CHARGE The dollar amount the credit will cost You. 0.00%	Amount Financed The amount of credit provided to You or on Your behalf. \$ _____	Total of Payments The amount You will have paid after You have made All payments as scheduled. \$ _____	Total Sale Price The total cost of Your purchase on Credit, including Your down-Payment of \$ _____ \$ _____
--	--	---	--	---

If not paid in full, Your Payment Schedule will be:

No. of payments	Amount of payments	When Payments Are Due
	\$ _____	Monthly beginning ____/____/____ Mo. Day Year

See reverse side for any additional information about Nonpayment and default.

Itemization of Amount Financed	
Cash Price	\$ _____
Total Downpayment	- \$ _____
Unpaid Balance of Cash Price & Amount Financed	= \$ _____

You hereby agree to buy and Funeral Home hereby agrees to sell the funeral goods ("Merchandise"), funeral services ("Services") and cash advance items for 3rd party charges ("Cash Advances") which are described in itemized list attached as Exhibit A for a Total Sale Price of \$ _____ (see paragraph 5 on the reverse side for price details)

After payment of the Total Sale Price and all other payments required to be made, the Funeral Home will render, upon the death of the Beneficiary, all the Merchandise, Services and Cash Advances described on attached Exhibit A. This Agreement is subject to the terms and conditions shown above and on the reverse side of this page, which you have read and accepted.

You hereby elect that this Agreement shall be:
 irrevocable upon payment in full of the Total Sale Price Revocable by You at Your option at all times

You and the Funeral Home agree that Services and Merchandise shown on Exhibit A are:
 Guaranteed by the Funeral Home upon timely payment of the Total Sale Price Not Guaranteed by the Funeral Home

You and the Funeral Home agree that Cash Advances shown on Exhibit A are:
 Guaranteed by the Funeral Home upon timely payment of the Total Sale Price Not Guaranteed by the Funeral Home

EXCLUSION WARRANTIES: THE FUNERAL HOME IS NOT PROVIDING TO YOU ANY WARRANTY OF MERCHANTABILITY OR WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE FOR THE MERCHANDISE. The only warranties You are receiving for the Merchandise are the express written warranties, if any, which are provided by the manufacturers of the Merchandise sold to You under this Agreement. Only the manufacturer shall have any liability to You under such warranties.

You and the Funeral Home have signed this Agreement on the day and year written above and intend to be legally bound. By signing this Agreement, the Funeral Home, as agent for the Purchaser, hereby agrees to establish an Individual trust with the Trustee under the Master Pre-Need Trust Agreement (the "Master Trust") between the Funeral Home and the Trustee (the "Trust").

Signature of Licensed Funeral Director

Signature of Purchaser

License Number of Funeral Director _____

SUBJECT TO TERMS AND CONDITIONS ON REVERSE SIDE: You acknowledge receipt of a completed copy hereof. You, the buyer, may cancel this transaction at any time prior to midnight of the third business day after the day of this transaction. See the attached Notice of Cancellation form for an explanation of this right.

PART II

FOR OFFICE USE ONLY		
The Trustee hereby accepts the Trust herein created for the Beneficiary under the Master Pre-Need Trust Agreement with the Funeral Home.		
By: _____	_____	_____
BANK	AUTHORIZED PERSON	DATE
White Copy - PFDA	Yellow Copy - Funeral Home	Pink Copy - Purchaser
		PFT 601-01-06

NOTE: If no option is selected, funds will be invested in the short term fund.

SecurChoice™

(a pre-arranged funeral program owned and endorsed by the Pennsylvania Funeral Directors Association)

PART II

Pre-Need and Individual Trust Agreement ("The Agreement")

This Agreement is made this _____ / _____ / _____ by and between
DATE

Funeral Home _____
NAME

Address _____
BUSINESS ADDRESS

and the Purchaser _____ (M) (F)
(hereinafter "You") NAME D/O/B SOCIAL SECURITY #

ADDRESS

for the Benefit of _____ (M) (F)
(if Beneficiary is NAME D/O/B SOCIAL SECURITY #
is different from the Purchaser)

ADDRESS

Investment Direction Form

SHORT TERM FUND & MUTUAL FUND OPTIONS

Indicate below (X) your investment direction for the funds deposited to the above-captioned SecurChoice™ Pre-Need and Individual Trust Agreement held by PNC Bank, National Association (PNC Bank) under Agreement with the Pennsylvania Funeral Directors Association. Funds may be placed in one investment or split among two or three options and one of the options must be the Short Term Fund, even if the percentage is zero. Indicate below the percentage you would like invested in each of the options; the percentages must total 100%. (does not include annuity).

- _____ Short Term Fund – PNC Bank, trustee & investment manager
- _____ BlackRock INTERMEDIATE GOVERNMENT BOND PORTFOLIO – PNC Bank, trustee & investment manager
- _____ Fidelity's INVESTMENT GRADE BOND FUND* – PNC Bank, trustee; Fidelity Investments, investment manager
- _____ Vanguard's LIFESTRATEGY INCOME FUND* – PNC Bank, trustee; The Vanguard Group, investment manager
- _____ Vanguard's LIFESTRATEGY CONSERVATIVE GROWTH FUND* – PNC Bank, trustee; The Vanguard Group, investment manager
- _____ Fidelity's ASSET MANAGER FUND* – PNC Bank, trustee; Fidelity Investments, investment manager
- _____ BlackRock SELECT EQUITY FUND – PNC Bank, trustee & investment manager
- _____ Vanguard's 500 INDEX FUND* – PNC Bank, trustee; The Vanguard Group, investment manager
- _____ Fidelity's MAGELLAN FUND* – PNC Bank, trustee; Fidelity Investments, investment manager

(* I understand these "funds" or portfolios in these funds are not managed by PNC Bank and I and/or my successors hereby hold harmless and indemnify PNC Bank of any and all liability and responsibility due to investment in these "funds" or portfolios in these funds. I understand that the investment style of these "funds" or portfolios in these funds may cause fluctuation of market value including the potential of significant realized or unrealized losses. I understand and am willing to accept the higher degree of risk inherent by investing in these "funds" or portfolios in these funds.)

I understand that securities available through PNC Bank are not backed by or guaranteed by PNC Bank, National Association or its affiliates and are not bank deposits, nor are they insured by, issued by, guaranteed by or obligations of the FDIC or Federal Reserve Board. Such securities involve investment risks, including possible loss of value. For more complete information about any mutual fund selected, including charges and expenses, refer to the prospectus. I acknowledge (i) that I understand the information set forth herein and (ii) receipt and review of the prospectus for any mutual fund selected.

I understand that this selection will remain in effect until changed by me by submitting a revised Investment Direction Form (properly executed) to PNC Bank, National Association, trustee.

ANNUITY OPTIONS

_____ The Funeral Home hereby directs the investment of all funds deposited to the above-captioned SecurChoice™ Pre-Need and Individual Trust Agreement and held in trust by PNC Bank, National Association, trustee, under the Master Trust with the Funeral Home, in an annuity contract issued by Funeral Directors Life Insurance Company.

_____ The Funeral Home hereby directs the investment of all funds deposited to the above-captioned SecurChoice™ Pre-Need and Individual Trust Agreement and held in trust by Mellon Bank, National Association, trustee, under the Master Trust with the Funeral Home, in an annuity contract issued by Trans American Life Insurance Company.

The Funeral Home hereby agrees that no claim or demand of any kind or nature whatsoever shall be made upon or asserted against the Trustee as a result of any direction with respect to such annuity given by the Funeral Home of P.F.D.A. and should any such demand or claim be made, the Funeral Home shall defend, indemnify, and hold Trustee harmless.

I understand that this selection will remain in effect until the death of the annuitant. A change of investment before the death of the annuitant will most likely result in a penalty assessed by the insurance company for early withdrawal.

FUNERAL DIRECTOR'S SIGNATURE

PRINTED NAME & TITLE

White Copy – PFDA Yellow Copy – Funeral Home

PFT 501-01-05

19

PART III**OTHER TERMS AND CONDITIONS OF THE
PRE-NEED AND INDIVIDUAL TRUST AGREEMENT**

In addition to the terms and conditions of the other side of this Agreement, You and the Funeral Home also agree to the following:

1. **Creation of Trust.** You authorize and direct the Funeral Home, as Your Agent, to establish an individual trust (the "Trust") with a bank as trustee (the "Trustee") on Your behalf. The Funeral Home will transfer all cash payments You make and life insurance policies You assign under this Agreement into the Trust. The Trust will be administered and the money in the Trust invested under a master pre-need agreement (the "Master Trust"). If the Funeral Home so directs the Trustee, such investments may include investment in annuity contracts issued by insurance companies. Under the Master Trust the Trustee, at the direction of the Funeral Home, invests the funds of a number of separate Pre-Need Funeral Trusts which have been established through the Funeral Home. The Funeral Home will provide You with a copy of Trustee's acceptance of the Trust and the Master Trust if You ask for one. Any dividends paid on any life insurance policies assigned to the Trust will be used to acquire additional insurance under the policy if the policy so provides.

2. **Transfer of Payments.** The Funeral Home will transfer the total amount of each payment received to the Trustee within ten (10) calendar days after You pay the Funeral Home. After the money is deposited in the Trust, it is invested under the terms of the Master Trust and this Agreement. The terms of the Master Trust apply to this Agreement and the money You pay to the Funeral Home pursuant to this Agreement.

3. **Default.** If You fail to make any installment payment required under this Agreement within ninety (90) days after it is due, then this Agreement may be cancelled at the Funeral Home's option. If the Funeral Home cancels this Agreement, then the Funeral Home will instruct the Trustee to refund to You the current market value of all the payments You have paid, together with income earned less fees and reassigns any insurance policies in the Trust to You.

4. **Termination.** The Trust created pursuant to this Agreement can also be terminated by either You or the Funeral Home at any time prior to the Beneficiary's death.

To terminate this Agreement and the Trust created pursuant to it, You must give the Funeral Home written notice of termination and the Funeral Home must give written acknowledgment of Your notice.

If You terminate the Agreement, the Funeral Home will instruct the Trustee to refund to You the current market value of all the money You have paid under this Agreement, together with income earned less fees and reassigns any insurance policies in the Trust to You. If Your monies were placed in an annuity contract You may incur penalties for early withdrawal.

If the Funeral Home terminates this Agreement, the Funeral Home will instruct the Trustee to refund to You the current market value of all the money You have paid under this Agreement, together with income earned less fees and reassigns any insurance policies in the Trust to You. If Your monies were placed in an annuity contract You may incur penalties for early withdrawal.

This Agreement and Trust created pursuant to it cannot be terminated at any time after the Beneficiary has died.

Important Notice: If you are pre-planning in conjunction with the spend down process in order to qualify for Medicaid or other government benefits, you should be aware that cancellation of this contract may jeopardize your eligibility and/or result in the government's entitlement to a refund.

5. **Price Protection Option.** If You selected the "Guaranteed" option/s on the front of this Agreement, then the Funeral Home must provide the Services and Merchandise or the Cash Advances set forth on The Statement of Funeral Goods and Services form (Exhibit A), but only if all the payments to be received from You and other sources listed in this Agreement are received by the Funeral Home. If all of those amounts are not received by the Funeral Home, then You must pay the difference between all amounts listed on the front of this Agreement and the amounts actually received by the Funeral Home. You must pay the Total Sale Price on or before the date the Services are rendered. Merchandise is provided and arrangements are made for the Cash Advance items. The Funeral Home will receive all amounts in the Trust whether or not such amounts are more or less than the prevailing charges for the Services and Merchandise or the Cash Advances.

If the Total Sale Price has not been paid or You selected the "Not Guaranteed" option/s on the front of this Agreement, then the Funeral Home will provide the Services and Merchandise or the Cash Advances listed on Exhibit A at the prices prevailing when the Services and Merchandise or the Cash Advances are provided. You will receive credit against the prevailing prices for all payments You have made under this Agreement, for all net income earned by the Trust, the death benefit and any other amounts paid under any insurance policy assigned to the Trust, and all other amounts received by the Funeral Home on Your behalf. The Funeral Home does not have to perform the Services or deliver the Merchandise or make arrangements for the Cash Advance items unless there are sufficient funds available to pay for such Services and Merchandise or the Cash Advances at the time they are to be provided.

6. **Services Not Covered.** This Agreement is not for the purchase or care of a cemetery lot, mausoleum space, columbarium space or other places of burial.

In addition to the Purchaser's payment of the Total Sales Price, the Beneficiary's estate or survivors will be responsible, under the circumstances described below, for paying the additional fee, if any, that the Funeral Home customarily charges at the time of the Beneficiary's death for providing services on a Saturday, Sunday or a legal holiday if the Beneficiary's funeral is held on one of those days.

7. **Death Outside of Service Area.** You authorize the Funeral Home to make transportation arrangements to the Funeral Home if the Beneficiary dies outside the Service Area. The actual cost of transportation and any other reasonable amounts paid by the Funeral Home in connection with such arrangements will be paid by the Beneficiary's estate or survivors.

8. **Rights Reserved.** If the Funeral Home is prevented from or delayed in providing the Services because of circumstances beyond its control, such as a labor dispute, strike, government action, epidemic, fire, or other disaster or the unavailability of Merchandise, it may make a reasonable substitution of comparable Services and Merchandise and will not be responsible for any inconvenience, delay, loss or damage to You, the Beneficiary's family, or their legal representatives caused by such substitution.

9. **Change of Beneficiary.** The Beneficiary of this Agreement and Trust created pursuant to it is the person for whom the funeral Services and Merchandise will be provided upon his or her death. You are the Beneficiary unless You designate

someone else as the "Beneficiary" on the front of this Agreement. If You checked the "Revocable" box on the front of this Agreement, then You may change the Beneficiary of this Agreement and Trust at any time by providing written notice to the Funeral Home and the Trustee unless the Trust's assets are invested in an annuity contract or unless the Trust is funded with a life insurance policy on the life of the original Beneficiary.

10. **Change of Trustee.** The Funeral Home and, under certain circumstances, the Pennsylvania Funeral Directors Association (PFDA), may change the Trustee. In the event of such change, the Funeral Home will notify You of the name and address of the new Trustee.

11. **Appointment of Agent.** You appoint the Funeral Home as Your agent to do the following things on behalf of You or the Beneficiary:

(a) Execute and establish the Trust under the Master Trust with the Trustee;
(b) Change the Trustee as permitted under the Master Trust or this Agreement;
(c) Amend the Master Trust as permitted under the Master Trust Agreement or this Agreement;

(d) Make certifications to the Trustee for the withdrawal of funds as permitted under the Master Trust; and

(e) Take all actions necessary to obtain the death benefits under any insurance policy assigned to this Trust, apply policy dividends to the death benefit under the life insurance policy, and otherwise take such actions as it deems necessary regarding any such insurance policies.

(f) Take any other action that may be necessary or appropriate to carry out this Agreement or the Master Trust.

12. **Substitution of Merchandise.** If the Merchandise is not readily available at the time of death of the Beneficiary, the Funeral Home may substitute other merchandise that is of substantially similar or better quality. The Funeral Home will determine whether the substitute merchandise is of substantially similar or better quality.

13. **Taxes.** Under the current Internal Revenue Service rulings, You may be subject to federal and state income taxes on any income earned by the Trust during the life of the Beneficiary. No distributions will be made from the Trust to enable You to pay such taxes.

You hereby authorize the Trustee to pay any taxes that may be imposed on the Trust or its assets. You agree that neither the Trustee or the Funeral Home shall be liable for any payment of taxes by the Trust.

14. **Change of Address.** You agree to promptly notify the Funeral Home and Trustee of any change of Your address or the Beneficiary's address.

15. **Protection of Trustee.** You agree for Yourself and the Beneficiary that no claim of any kind shall be made against the Trustee for anything the Trustee does in reliance on any written instruction that appears to be binding on the Trustee including the Trustee's compliance with the Funeral Home's or Investment Manager's investment directions. You agree for Yourself and the Beneficiary that the Trustee will not be liable to anyone for any action taken or not taken under this Agreement unless the Trustee acts in a grossly negligent manner or intentionally does something the Trustee knows to be unauthorized.

16. **Provision Regarding Life Insurance Policies:**

(a) Under no circumstances will the Funeral Home or Trustee be responsible to pay any premiums on any life insurance policies assigned to the Trust. It is intended that this Trust be funded only with fully "paid-up" life insurance on the life of the Beneficiary.

(b) The Trustee shall own all incidents of ownership, rights, powers, interest and benefits of any kind on account of any insurance policies assigned this Trust.

(c) Upon the death of the Beneficiary or the earlier maturity of any insurance contracts payable to the Trustee, the Trustee shall collect the proceeds and the benefits thereof. The Trustee shall furnish the necessary proofs of death to the insurance companies. The Trustee may, but shall have no duty to, take any and all steps which it deems necessary or appropriate for the collection of such proceeds and benefits or to keep the contracts in effect during the lifetime of the Beneficiary, including the institution of proceedings at law or in equity, and it shall be entitled to indemnify itself out of any property held in trust for all expenses incurred by it in connection therewith. The Trustee is further authorized to compromise and settle any and all claims arising out of the insurance contracts or any of them on such terms and conditions as it deems advisable, and the decision of the Trustee shall be binding on all interested parties. The Trustee shall be authorized to give the respective insurance companies all of the necessary and proper releases and acquittances to full discharge of all of their liabilities under such policies. No insurance company that has issued or shall issue a contract of insurance subject to this Agreement shall have any obligation to inquire into the terms of this Agreement or sue to the application of the proceeds or benefits of such contract. The receipt of the Trustee to any such insurance company shall effectively release the insurance company from any liability as a result of such contract and shall be binding upon all parties.

17. **Miscellaneous.**

(a) This Agreement and Trust is made in the Commonwealth of Pennsylvania. It is intended to comply with the Pennsylvania Funeral Director Law (Act of January 4, 1952, P.L. 1898, as amended) and the rules and regulations issued under that Law and shall be interpreted in accordance with such Laws. Any questions about the terms of this Agreement will be interpreted as to comply with Pennsylvania Law. Without limiting the generality of the foregoing, the interest or earnings on all payments received and invested by the Trustee shall be retained in the Trust with the principal amount and shall be held, accounted for and transferred in the same manner at the Trustee's address which has been given to You with this Agreement.

(b) All notices that You and the Funeral Home send to each other must be in writing. Any notices must be delivered in person or mailed by first class mail. Notices to the Trustee must be given in a similar manner at the Trustee's address which has been given to You with this Agreement.

(c) Transfer. This Agreement may be assigned or transferred to another funeral home at any time by You. The Funeral Home can assign the Agreement only with Your consent. You may need to enter into a new agreement with the funeral home receiving the transfer.

(d) This Agreement and the documents referenced in this Agreement contain the entire contract between You and the Funeral Home. This Agreement binds You and Your heirs and personal representatives and the Beneficiary. It also binds the Funeral Home, its successors and anyone to whom the Funeral Home assigns this Agreement.

20

FROM : BEAN FUNERAL HOME

FAX NO. : 6107753022

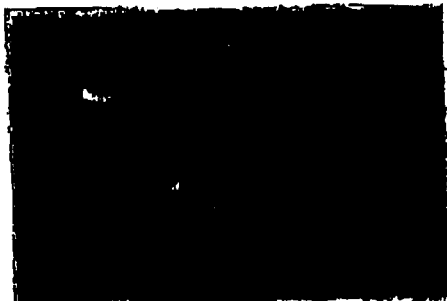
Apr. 06 2003 03:52PM P2

04/06/03 20:48
Merchandise Trust

FAX 717 394 6630

PRE-NEED GROUP

Page 1 of 1



The Pennsylvania Funeral Merchandise Trust

A Priced Merchandise Trust...That Gives You Money Now!!

Today's priced market is more challenging than ever. Everyone selling merchandise needs financial resources **UPFRONT**, in order to compete.

That's why PFDA created the Pennsylvania Funeral Merchandise Trust. After careful legal research, a method has been established that allows a separate merchandising corporation to put 70 percent of the retail price of the merchandise in trust under the terms of the Pennsylvania Future Interment Act - and makes 30 percent available to **MEET THE COMPETITION** with other merchandising companies.

The Pennsylvania Merchandise Trust is designed to be used by **ANY SIZE** operation.

It doesn't require an insurance license.

It Does create new opportunities for funeral service.

It Does create cash flow to advance priced sales.

Don't cut back on the priced operations that are the future of your business.

Protect the margins on merchandise that make up the largest part of a funeral transaction.

If you would like more information on the Pennsylvania Funeral Trust, or the Pennsylvania Merchandise Trust, contact: M. Kenneth Baylor at 1-800-692-6068.

- ▶ **Members Area**
- ▶ **Return to Home Page**



<http://pfda.org/members/marub.htm>

21

3/23/99

CB/

PENNSYLVANIA FUNERAL DIRECTORS ASSOCIATION

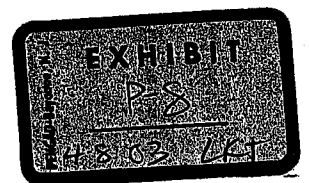
MODEL INCORPORATION KIT

FOR

PENNSYLVANIA MERCHANDISE CORPORATIONS

October, 1996

22



The Pennsylvania Funeral Directors Association Model Incorporation Kit for Pennsylvania Merchandise corporations is intended to illustrate to members of the Association some of the current forms of the basic documentation necessary to establish a Pennsylvania Merchandise corporation. Incorporating, like embalming, is not a "do it yourself" thing. Careful consideration must be given to a number of legal and tax issues, which only attorneys and accountants are competent to handle. It is therefore, necessary for members to consult with their attorneys and accountants in the incorporation of their merchandise business.

23