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The State of South Carolina



Office of the Attorney General

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January 24, 1990

The Honorable Robert C. Cleveland
Commissioner of Banking
State of South Carolina
Board of Financial Institutions
1015 Sumter Street, Room 309
Columbia, South Carolina 29201

Dear Commissioner Cleveland:

Attorney General Medlock has referred your letter of September 18, 1989 to me for inquiry and reply.

You inquired therein whether the State Board of Financial Institutions could require that all funds from the sale of burial vaults, preneed by funeral homes, be deposited in financial institutions as trust funds. You enclosed a copy of an Act ratified by the General Assembly, and approved by the Governor, effective on or about July 21, 1989, concerning Sections 32-7-10 et seq. of the Code of Laws of South Carolina.

My response to your question is that the Board can request that the funds from the sale of burial vaults from a preneed burial contract be deposited as trust funds in financial institutions. However, this advice is given not without some concern, concerning what appears to be inconsistent language in the statute. Our research has indicated that the legislature's amendments to Chapter 7 of Title 32 of the Code were intended to protect consumers by enabling them to revoke preneed burial contracts. The amendments required that all funds received from the preneed burial contract be deposited in a trust account, and not be paid to the provider of funeral services until the services have been rendered and the merchandise associated therewith delivered. There are protections in the statute should the provider under the contract become insolvent, or the consumer desire for other reasons to change providers.

Robert C. Cleveland
Page Two
January 24, 1990

According to our inquiries at the Medical, Military, Public and Municipal Affairs Committee at the House of Representatives, the subsection pertaining to burial vaults was added to include the sellers of vaults as part of cemetery lot sales. Some contracts for the sale of cemetery lots also include the sale of a vault. The sale of cemetery lots is excluded from the new Act, at Section 32-7-20. Section 32-7-20(A)(2) brings the sale of a vault as part of a cemetery lot sale within the provisions of the Act.

The conflicting language appears to be regarding the amount that has to be deposited into the trust account. Section 32-7-20(A)(1) refers to "all payments" of money pursuant to these contracts being held as trust funds. It goes on to say, at subsection (2), that when a vault is sold preneed in accordance with the Code of Laws "100% of the actual cost to the seller at the time of payment" must be held as trust funds deposited in a financial institution. Later, at Subsection (C) there is a reference to "all payments" being held and remaining as trust funds until the death of the beneficiary and until the delivery of all merchandise in full performance of the services called for by the contract. At Subsection (A) there is again a reference "to all funds" received by the provider pursuant to the provisions of a contract being placed in a trust in a federally insured account.

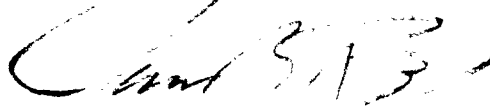
The apparent conflict, would be between the references to "all funds" or "all payments in full", and to "actual cost to the seller". For example, a seller may enter into a preneed burial contract with a buyer that includes the purchase of a burial vault. The contract price of the vault quoted to the buyer is a \$1000. The seller's actual cost of the vault, from a wholesaler or other source, is \$500. The contract may call for the buyer to deposit \$100 at the signing of the contract, and then pay \$100 a month for the next nine months. The seller must then deposit \$500 into a trust account, even though he has only received \$100 up front. As the buyer continues to make payments, the seller may have no way to recoup the \$400 advanced to the buyer, since, under the statute, all payments made by the buyer pursuant to the contract must go in into the trust fund.

The authority appears to be clear regarding the Board's requiring of all the funds from the sale of burial vaults, preneed, be deposited in the financial institutions as trust funds. The question, and the apparent conflict in the statute, concerns the definition of "all funds", since there is at least one reference to the "cost to the seller".

Robert C. Cleveland
Page Three
January 24, 1990

It would appear that legislative clarification is needed.
If further information is desired, please advise.

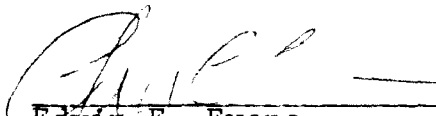
Sincerely yours,



James G. Bogle, Jr.
Assistant Attorney General

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