

APPROVED
VIRGINIA BOARD OF FUNERAL DIRECTORS AND EMBALMERS

Preneed Committee Meeting Minutes

The Preneed Committee of the Virginia Board of Funeral Directors and Embalmers convened for a meeting on Tuesday, May 24, 2011 at the Department of Health Professions, Perimeter Center, 9960 Mayland Drive, 2nd Floor, Board Room #2, Henrico, Virginia.

COMMITTEE MEMBERS PRESENT

Michael J. Leonard, FSP, Acting Chair
Billie Watson-Hughes, FSP

COMMITTEE MEMBER ABSENT

Barry M. Murphy, FSP, Chair

BOARD MEMBERS PRESENT

Robert B. Burger, Jr., FSP, Vice-President
Blair Nelsen, FSP, Secretary-Treasurer
Randolph T. Minter, FSP
Junius Williams, Citizen Member

DHP STAFF PRESENT FOR ALL OR PART OF THE MEETING

Lisa R. Hahn, Executive Director
Lynne Helmick, Deputy Executive Director
Arne Owens, Agency Chief Deputy Director
Elaine J. Yeatts, Senior Policy Analyst
Missy Currier, Board Operations Manager

BOARD COUNSEL

Amy Marschean, Senior Assistant Attorney General

GUESTS PRESENT

Dennis W. Byers, Virginia State Manager, Preneed Funeral Program
Lynn Armstrong Patterson, Chairman, DC Board of Funeral Directors
Mark C. Neidinger, Associate General Counsel, National Guardian Life (NGL)
Barry D. Robinson, Virginia Morticians Association
Walt Dixon, Vice-President - Corporate Counsel, ForeThought Life Insurance Companies
Dan Price, Regional Director of Sales, ForeThought Life Insurance Companies
R.D. Monson, Homesteaders Life Company
Tracy Kelly, Legal Counsel, Homesteaders Life Company
Robert M. Hardy, Jr. VP & General Counsel, Investors Heritage
Karen L. Golden, President, Future Planning Services, LLC
Y.W. Scarborough III, President & CEO, Atlantic Coast Life Insurance Company
Billy Jenkins, Commonwealth Funeral Planning Inc.
Paulette Strawbridge, Virginia Morticians Association

Ben Lacy IV, Sands Anderson PC
Malcolm Oliver Ames, Ames Funeral Home, Inc.
Rusty Spencer, Regional Manager, TDW Associates
Laura S. McHale, Association of Independent Funeral Homes
Fred Carter, Virginia Morticians Association
Connie Steele, Virginia Morticians Association
Curtis L. Cunningham, Virginia Morticians Association
Ernest L. Johnson III, Life Actuary, State Corporation Commission - Bureau of Insurance
Karen Howell McPherson, McPherson Funeral Home, Inc.
Phillip Bell, Phillip Bell & Johnson
Robert B. Baker, Chinn Funeral Service
Mark S. Gutierrez, District Manager, Golden Considerations
Ashley Colvin, JLARC
Lacy Whittaker, Virginia Funeral Directors Association
Kristian L. Havard, Government Relations Associate, Advantage Strategies
Bob Oman, Virginia Funeral Directors Association
Annette Greenwood, Vice President & COO, Provider/Horizon Trust
Scott A. White, Senior Counsel, State Corporation Commission
Todd Rose, Senior Counsel, Bureau of Financial Institutions
William J. Irvin, The Irvin Law Firm
Richard Brockwell, Regional Manager, Southland National Insurance Corp.
Meredyth Partridge – Regulatory Support Services (RSS)
Harvey W. Bollinger, Jr., General Manager, SCI
Ralph De Stefano, SCI
Bernie Henderson, SCI
Thomas Bryant, Independent Funeral Planning

CALL TO ORDER

Mr. Leonard called the preneed committee meeting of the Virginia Board of Funeral Directors and Embalmers to order at 10:05 a.m. and asked the members and guests to introduce themselves.

ORDERING OF AGENDA

The agenda was reordered by moving Third Party Sellers of Pread to the beginning of the meeting.

OPENING COMMENTS

Mr. Leonard requested that all guests make sure they signed in before leaving the meeting and to leave a business card if possible so that their signatures could be correctly discerned. He also requested that if anyone had prepared comments, that they leave a copy in order to ensure the essence of their comments were captured.

The Chair explained that due to the size and interest in the meeting, the committee would receive comments on each agenda item and would allow approximately 3 minutes per person. The board members and staff may have questions following comments.

PURPOSE OF MEETING

Mr. Leonard explained that the Preened Committee meeting was being held in order to gain a deeper understanding of the issues being addressed. That in past years, the board had been solicited for comment on numerous funeral bills being proposed in Virginia Assembly and they wanted to ensure they are properly informed and able to formulate educated opinions. The meeting was an opportunity for the committee to hear comments from experts in the field in order to share with the board and assist with making recommendations or decisions. It is also the intent to share this information with the legislative committee tasked to study funeral bills.

THIRD PARTY SELLERS OF PRENEED

Mr. Leonard reiterated that the board had previously reviewed this issue and had stated that Third Party sellers of Preened are legal in Virginia as long as the seller is licensed both as a Funeral Service Licensee and licensed to sell insurance in the Commonwealth of Virginia and have a contractual relationship with the funeral home.

No other comments were made.

HB 2267

Mr. Leonard stated that HB 2267 failed during the 2011 general assembly, but that the board had been informed that the bill may be studied by a subcommittee during the upcoming summer and possibly reintroduced. He then requested comments from guests in favor and against the bill in an effort for everyone to better understand the issues and the purpose of the bill.

Comments:

- **Fred Carter** spoke on behalf of the Virginia Morticians Association (VMA) and pointed out that the bill contained a mistake in line 23, paragraph 2, section B, in that the word “actual” was supposed to be deleted and not part of the law. Mr. Carter stated that he supported the 5% rule. He also stated that scandals occurred in other states due to failure of enforcement of the laws. He believes that the consumer is confused by the term “final expense” because of the expectation that it relates to a funeral. He further stated that the disclosure forms are long and confusing to the consumer. He would rather see the term simply stated as being “life” or “funeral”. He also stated that 5 companies was a reasonable amount of competition in Virginia.
- **Walt Dixon** spoke on behalf of Forethought Life Insurance Company and Forethought Federal Savings Bank and shared that they were against HB 2267 because they were never clear what the Bill intended to address. He stated that he was unaware of any State in the Union where preneed law regulates final expense. He explained that Insurance carriers who sell Final Expense life insurance policies typically have their agents and customers sign a simple Acknowledgment Form whereby the agent and customer confirm that the only item the customer is purchasing is a life insurance policy and that the customer **IS NOT** purchasing or entering into a preneed funeral contract. Mr. Dixon

stated that he is an advocate for enforcement of existing laws and that the bill is not a remedy for the issues at hand. Mr. Dixon further explained that Medicaid Trusts are set up in accordance with a federally mandated 2 step process; (1) ownership must be transferred to a funeral home; and (2) funeral home signs it over to an irrevocable trust. In conclusion, he stated that State law needs to clearly indicate under what circumstances the state is entitled to recover such excess proceeds and provide that it is the state's duty to recover excess proceeds and not the responsibility of the insurance company or Trustee to do so.

- **Mark Neidinger** spoke on behalf of National Guardian Life and shared their opposition to HB 2267 by first stating that the way it was drafted could be an argument that all life insurance policies could be pulled into Virginia law. A CPI requirement on final expense policy would result in many insurers pulling out of the state which would further limit who the consumer could use to buy their policies.
- **Ernest Johnson** stated that he was neither opposed or for HB 2267 but wanted to provide the following technical assistance. The Commonwealth of Virginia places requirements on insurance policies sold in Virginia. He explained that for life policies with level death benefits, companies can design the plan to comply with both the federal and the state requirements. But for those with a death benefit that increases according to either the CPI index or by 5% per year, the state minimum exceeds the federal maximum so companies cannot satisfy both. For policies with an initial death benefit no larger than \$15,850 there are exemptions and special interpretations (established to facilitate preneed issues) which allow for companies to satisfy both requirements and sell the policies. But for larger initial death benefits there are no exemptions or interpretations which would permit a company to design a policy with the death benefit indexed to the CPI or increase annually by 5% and still satisfy both requirements. He concluded by stating that if HB 2267 as written were passed, companies would have no policies to sell above \$15,580 in this market. Since this is probably the largest portion of all sales up to a much higher amount, it would have a large impact on the availability of policies to Virginia consumers.
- **Bob Oman** spoke on behalf of the Virginia Funeral Directors Association (VFDA) by stating that they have been unable to get a better understanding and purpose of the bill since it was introduced. The laws are in place to protect consumers from losing money yet, they are not aware of anyone having lost money in Virginia. They are also concerned about limiting the competition in Virginia.
- **Meredyth Partridge** stated that she was neither for nor against HB 2267 but shared a story about a client of hers who had an issue with interest only being accrued on the insurance policy for 10 years rather than 15 years as required. She explained that SCC did not sanction this insurance company and neither did the board.

BREAK

With no further comments offered on SB 2267, the committee recessed at 11:00 a.m.

RECONVENE

The committee reconvened at 11:20 a.m.

TRUSTS CONFORMING TO THE 5% OR CPI RULE

Mr. Leonard explained that the Board had been asked to ponder why there is not a 5% or CPI rule for trust policies as it is required for insurance policies or annuity contracts when used to fund the preneed funeral contract. He reiterated that in a 2006 preneed meeting, the board looked at the current requirement for insurance products to pay the 5% or the CPI and it was the general consensus at the time from the insurance companies who were present as well as the board to leave the growth requirement intact. Therefore, the board is looking at the possibility of placing a similar requirement on trusts as is currently on insurance products.

Comments:

- **Mark Neidinger** provided everyone with handouts and began his discussion by stating that this rule would take choices away from funeral homes and create an unfair playing field. He stated that consumers would pay higher premiums, funeral homes would see lower commissions and product offerings, insurers would incur higher expenses and the State would see lower tax revenue from premiums and income taxes. He concluded his comments by stating that he wished to dispel the notion that a CPI rule would be good for consumers and funeral homes. He also provided the final comments regarding HB 2267 by stating that when his company receives an application for insurance that is completed correctly and the premium is paid, they process the application. He reiterated that the CPI ruling would increase premiums and companies and competition would leave the State.
- **Mr. Leonard** responded that it is the mission of the Board to safeguard citizens of Virginia, not to protect commissions. He requested that a representative explain the current position of Bank Trusts; are they sufficient to meet the current needs? Where do they currently stand? What protection is there for the consumer?
- **Walt Dixon** responded to the Committee by stating that most Trustees' are a Direct Trustee which means they will direct how the money will be invested; money can be directed into a federally insured account (FDIC). He added that mandating a CPI rule would reduce the number of final expense carriers selling in Virginia and that no states, including Virginia, have a minimum return on investment for preneed funeral trust funds. To the best of his knowledge, no funeral home had ever failed to provide the funeral goods and/or services listed in a trust or insurance-funded preneed funeral contract because the trust did not have a guaranteed minimum rate of return or because the policy used to fund the preneed contract did not have a guaranteed minimum growth rate. He also mentioned that concerns may arise from funeral directors who do not understand "Trusts".
- **Blair Nelsen** received clarification from Mr. Dixon that if a "Trust" purchases insurance, it does not need to conform to the CPI rule; that insurance funded transactions never go to a funeral home and that insurance is a lawful investment guaranteed by a State fund.

- **Fred Carter** spoke before the Committee about a “defined benefit program” that has been set up by Buddy Moore with the Chesapeake Bank which offers a 5% return. He stated that he program was “simple and clean and that nobody had ever lost a dime.” Mr. Carter simply stated that no agreements can be made to restrict the right of the consumer to choose their funeral home.
- **Thomas Bryant** expressed his concern that purchaser’s are not aware of whether or not they are buying an Insurance Policy or a Trust because perhaps the people selling the policies are inexperienced.
- **Annette Greenwood** spoke on behalf of herself, Buddy Moore and Chesapeake Bank by stating that all of their employees are licensed insurance agents and that they do not process any documentation that is illegal. She added that their bank pays a fair return and that they are proud of who they serve.
- **Lisa Hahn** reported that she is not aware of any complaint being registered against Chesapeake Bank regarding insufficient funding.

FIDUCIARY RESPONSIBILITY OF TRUSTS

Mr. Leonard stated that the board wanted to ensure that Trusts are held to the same or similar safeguards and requirements as insurance. The board also wants to understand the issues and determine if it is necessary to propose changes or determine if it is even under their authority to do so.

- **Amy Marschean** stated that her preliminary research of the Uniform Trust Law as implemented in Virginia bore out what Walt Dixon had stated previously. For trusts established under Virginia law, Va. Code § 55-548.01 provides that assets are to be invested in compliance with the Uniform Prudent Investor Act and the Uniform Principal and Income Act. She reiterated Mr. Dixon’s point that laws are in place to safeguard trusts, but it is hard to protect against persons intent on criminal fraud. She requested the audience to comment on whether those in the banking industry saw a need to propose changes to safeguard trusts used to fund preneed contracts and no one came forward.

CONCLUSION

Mr. Leonard asked if anyone felt there was a need to continue discussion or research on any of the day’s discussions.

Mark Neidinger requested that further discussion take place regarding the current CPI rule for insurance companies. The Board asked Mr. Neidinger and his staff to have something in writing by July 1, 2011 for the board to review at their next meeting.

ADJOURNMENT:

With no further business before the Board, the meeting adjourned at 12:10 p.m.

Michael J. Leonard, Chair

Date

Lisa R. Hahn, Executive Director

Date