

REPORT TO THE GENERAL ASSEMBLY
SUMMARIZING THE PRE-NEED ACTIVITIES
OF THE
NORTH CAROLINA BOARD OF FUNERAL SERVICE

Section 90-210.70(d) of the General Statutes requires a Record of Complaints, Auditing and Enforcement be presented in an Annual Report from the Board to the General Assembly. This report covers the period from January 1, 2010 to December 31, 2010.

SECTION I- COMPLAINTS

This report covers complaints related to the pre-need activities of licensees of the Board. When a consumer complaint is filed, an inquiry or investigation is undertaken to determine accurately the facts of the situation. The licensee is notified that a complaint has been lodged, the nature of the complaint, and asked to respond to the allegations. If a determination is made that a licensee is in violation, appropriate action is undertaken.

Our office received numerous inquiries and/or complaints during this period representing disputes, misunderstandings, and criticisms of service received, many of which were resolved between the parties.

During 2010, a total of 36 pre-need complaints were filed. Of these, 26 were made by consumers and 10 were initiated by the Board's staff. The complaints initiated by the staff were subsequent to on-site examinations of pre-need funeral establishments and/or infractions involving reports or filings in the Board office. In addition to the complaints initiated by the staff, the Board cited some pre-need funeral establishments for minor infractions that did not rise to the level of a disciplinary action. These infractions were detected by the Board during on-site examinations or as result of filings with the Board office. The pre-need funeral establishments involved were directed to correct these deficiencies. The directives required acknowledgment of the deficiencies, the corrective action taken by the establishment and in some cases notification

to the Board when the deficiencies were corrected. Follow-up examinations are often conducted to determine compliance with the directives.

Specific information concerning the complaints handled by the Board from January 1, 2010 to December 31, 2010 is available upon request.

SECTION II- AUDITING

As of December 31, 2010 there were 662 funeral establishments licensed to sell pre-need funeral contracts. During 2010 the Board conducted an examination of the pre-need records for 189 of those establishments.

SECTION III- ENFORCEMENT

Article 13D of Chapter 90 of the General Statutes gives the Board the authority to enforce the provisions of this Act.

A. -ACTIONS RELATED TO ANNUAL RENEWALS

Five pre-need establishments and five pre-need sales licensees failed to renew licenses on or before the statutory deadline. In addition to paying the statutory late fee, all of the establishments and one preneed sales license were subject to disciplinary action because they conducted preneed activities between the expiration date of the licenses and when the licenses were renewed. Three establishments and the individual preneed sales licenses entered into consent order agreements to resolve the matters. Two of the establishments and the individual were assessed civil penalties of \$250.00 each. One establishment was assessed a civil penalty of \$500.00 due to the second consecutive late renewal. This was included in the total of penalties reported below in subsection C, entry 6. The preneed license of the remaining establishment was revoked as part of a consent order that also resolved matters reported below in subsection C, entry 3.

Two establishments did not obtain a surety bond as prescribed under 90-210.67(b) and the Board revoked the preneed licenses of both firms.

B. - ACTIONS RELATED TO ANNUAL REPORTS

Twenty-two (22) pre-need establishments failed to file annual reports by the statutory deadline and each paid the statutory late fee. Six (6) establishments were also subject to disciplinary action because of the late filing. One (1) establishment voluntarily surrendered its pre-need licenses. Four (4) establishments entered into consent order agreements with the Board. Three (3) were placed on a period of probation of two (2) years and assessed \$1,000.00 civil penalties; one (1) was placed on probation for a period of one (1) year and assessed civil penalties of \$1,500.00. The Board held a hearing for the remaining establishment and placed the firm on a period of probation of one (1) year and assessed a \$1,000.00 civil penalty.

C.- ACTIONS RELATED TO COMPLAINTS OR VIOLATIONS FOUND DURING AUDITS

Resolutions to the matters described below represent separate actions unless otherwise noted. In some cases the Board imposed other sanctions for violations unrelated to preneed laws and regulations. For the purpose of this report references to civil penalties and other sanctions are for preneed violations only.

1. After mediation for the appeal of a final agency decision, the Board entered into a consent order with an individual licensee. The Board found the individual practiced without renewing licenses and permits for 2007 and 2008, violated the terms of a previous consent order, committed fraud in the practice of funeral service and preneed planning and committed numerous violations of regulation

regarding handling and filing of preneed funeral funds. This matter was also summarized in the 2009 Report. The consent order upheld the Board action imposed by the final agency decision revoking the funeral establishment license, preneed establishment license, all ancillary preneed sales licenses and the funeral directors license of the individual. The consent order also requires restitution to the Preneed Recovery Fund for approved claims paid at the time the consent order was executed, and to the Recovery Fund or consumers for future proven claims.

2. During a preneed examination, the Board inspector found the establishment failed to comply with preneed recordkeeping standards and failed to timely file preneed contracts and certificates of performance. The Board entered into a consent order revoking the establishment's preneed license and the preneed sales license of an individual. The Board required the individual to complete the Board's preneed continuing education course as a prerequisite to receiving another preneed license.
3. During a show cause hearing the Board found the establishment failed to keep accurate preneed records in violation of a previous consent order. The Board entered a final agency decision in which the funeral establishment permit was placed on probation for 1 year and assessed civil penalties of \$3000.00 for preneed violations. The Board also ordered completion of the Board's preneed continuing education course for the licensees.
4. The Board found an establishment and its licensed owner violated the terms of a previous consent order, failed to file its 2008 preneed annual report, and failed to

provide all information requested by the Board. The Board entered into a consent order that extended the probation on the owner's funeral director license for one year and placed the funeral establishment license on probation for one year. The Board revoked the establishment's preneed license and the preneed sales license of the owner.

5. During a hearing, the Board found the establishment and its licensed owner violated the terms of a previous final agency decision and failed to prove financial solvency which is required by law to hold a preneed license. The Board revoked the establishment's preneed license and preneed sales license of the owner. The Board also suspended the firm's establishment permit for thirty (30) days.
6. During a preneed examination, the Board inspector found several recordkeeping deficiencies. The firm also failed to renew one or more of its licenses on time in 2009 and 2010, thereby engaging in unlicensed practice. The Board entered into a consent order placing the preneed license and all sales licenses on probation one year and ordered the licensees to take continuing education. The Board also assessed \$1,000.00 in civil penalties.
7. The firm failed to remit an initial insurance premium and failed to file a preneed contract until a consumer complained. During an inspection, the firm also had other preneed recordkeeping issues. The Board adopted a consent order placing the establishment's preneed license and owner's preneed sales license on probation for two (2) years and assessed a \$2,000.00 civil penalty.

8. During an examination, the Board found several recordkeeping violations, some of which repeated from a previous examination. The Board entered into a consent order placing the preneed establishment license on probation for two (2) years and assessing a \$500.00 penalty.
9. An establishment with a preneed license closed one of its branch locations in 2006. The establishment did not properly transfer one or more preneed contracts from the closed location. The Board adopted a consent order placing the establishment's preneed licenses on probation for two (2) years and placing the location manager on probation for two (2) years. The parties also paid \$2,250.00 in civil penalties.

The Board forwarded \$15,000.00 collected from civil penalties related to pre-need violations to the State Education Fund as required by the statute.

SECTION IV- PRENEED CONTRACTS REGISTERED

From January 1, 2010 to December 31, 2010, the Board processed 19,406 contracts. Of that total 3,435 were bank trusted and 15,971 were insurance funded contracts.

SECTION V- PRENEED RECOVERY FUND

The Preneed Recovery Fund is established under G. S. 90-210.66 to reimburse purchasers of preneed contracts who have suffered financial loss due as a result of the malfeasance, misfeasance, default, failure or insolvency of any licensee under Article 13D of Chapter 90 of N. C. G. S. \$2.00 from each preneed contract registration fee collected by the Board is deposited into the Fund. These deposits totaled \$38,812 for the fiscal year 2010. The

Fund balance as of December 31, 2010 was \$413, 460. The Fund is invested with the State Treasurer and receives interest earnings that remain in the account. The Board approved an interest rate of 3/4 of one percent for Fund claims filed and approved in 2010. A total of \$18,294 in claims were approved and paid in the fiscal year 2010. The Board is investigating several claims related to the individual subject of entry 1, Section III-C. The Board plans to pursue subrogation rights under the provisions of G. S. 90-210.66(h).

The foregoing report summarizes the Pre-need activities of the North Carolina Board of Funeral Service insofar as Complaints, Auditing and Enforcement of pre-need contracts are concerned. Additional information is available upon request.

Respectfully submitted,

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North Carolina Board of Funeral Service

Paul Harris
Executive Director