

TITLE 365. INSURANCE DEPARTMENT
CHAPTER 25. OTHER LICENSEES
SUBCHAPTER 9. PREPAID FUNERAL BENEFITS

365:25-9-1. Purpose

The purpose of this subchapter is to set forth rules and procedural requirements which the Commissioner deems necessary to carry out the provisions of "The Act". The information called for by the regulations of this subchapter is hereby declared to be necessary and appropriate in the public interest.

365:25-9-2. Contract approval

No organization shall in any way use any sales Contract without having received prior written approval from the Insurance Commissioner to do so. The original and two copies of any such Contract, including any amendments thereto, shall be submitted to the Insurance Commissioner for approval.

[Source: Amended at 10 Ok Reg 1507, eff 5-1-93]

365:25-9-3. Forms**(a) General requirements.**

(1) **Application for prepaid funeral benefits permit form.** An application for Prepaid Funeral Benefits form shall be filed using the Prepaid Funeral Benefits Permit Original Application as set forth in Appendix C of this chapter. The application must be filed with and approved by the Insurance Commissioner before any contracts covered by this act may be marketed. The statutory fee of \$50.00 must accompany this application. An NAIC UCAA Biographical Affidavit must be submitted for each owner(s) of the organization and each designated agent as defined by Section 6126 of the Act.

(2) **Bond form requirements.** Appendix D of this chapter is a sample bond to be used in connection with "The Act". Any variance from this form must have the prior written approval of the Insurance Commissioner. If any bond required by "The Act" is canceled for any reason, a thirty (30) day written notice must be given by the insurer to the Insurance Commissioner.

(3) **Conversion Forms.** Applications for Conversion from a trust funded prepaid funeral benefit to an insurance-funded prepaid funeral benefit shall be filed with and approved by the Insurance Commissioner before any contracts covered by "The Act" may be converted. Applications for Conversion shall be filed using the Application for Conversion form as set forth in Appendix R of this chapter. Any variance from this form must have prior written approval by the Insurance Commissioner.

(4) **Notice of Sale.** The seller of a prepaid funeral benefits permit holding funeral home must make application forty-five (45) days prior to the transfer of ownership using the Sellers Notice to the Insurance Commissioner (PFSN 2009) form as set forth in Appendix X of this chapter. In addition to the notice, the seller must also submit a listing of unrealized prepaid funeral contracts. Insurance funded contracts should be listed independently from trust funded contracts. The listing will, at minimum, reflect the

contract holder's name, contract number, contract value, the name of the insurer and the policy's face value (when applicable), and the trust value at the time of notice (when applicable).

(5) **Assumption Affidavit.** The buyer of a prepaid funeral benefits permit holding funeral home must notify the Commissioner of their intent to purchase thirty (30) days prior to transfer of ownership using the Assumption Affidavit (PFAA 2009) form as set forth in Appendix Y of this chapter.

(6) **Application for Renewal.** The application for renewal of a prepaid funeral benefits permit must be filed with the Commissioner no later than December 31 of each year, using the Application for Renewal (PFBR 2009) form as set forth in Appendix M of this chapter, in order to renew the permit for the succeeding calendar year. The statutory fee of \$50.00 must accompany the application.

(b) **Additional general requirements.**

Annual reports.

(A) Annual reports must be filed in accordance with Section 6128 of "The Act". Such reports should be submitted in columnar form in alphabetical order according to the last name of the contract holder. A complete annual report shall be composed of the following items arranged in the order shown below:

- (i) PF-1-a
- (ii) PF-1-b
- (iii) PF-1-c
- (iv) PF-1-d
- (v) PF-2-a
- (vi) PF-2-b
- (vii) PF-2-c
- (viii) PF-3

(B) Computer print-outs may be submitted in lieu of the reports listed above so long as each legibly provides no less information than shown in the Insurance Commissioner's sample forms. Not less than one page of each annual report form shown above, other than the PF-2-b, shall be submitted. However, where a particular form is not relevant to the operations of a given permitholder, it may be submitted clearly marked, "Not Applicable".

(2) **Annual statement of financial condition.** An Annual Statement of Financial Condition-Reconciliation of Trust Accounts (form PF-3) must be filed in accordance with Section 6129 of "The Act".

[Source: Amended at 10 Ok Reg 1507, eff 5-1-93; Amended at 17 Ok Reg 1701, eff 7-14-00; Amended at 25 Ok Reg 1660, eff 7-14-2008; Amended at 26 Ok Reg 1654, eff 7-14-09; Amended at 27 Ok Reg 1551, eff 7-14-10]

365:25-9-4. Deposit reports and conversion reports

(a) **Deposit Reports.** In addition to any other requirements of this subchapter, the seller shall upon written request provide a report reflecting the funds deposited and all related details to the

Insurance Commissioner, trust account depository and to any buyer requesting same, so far as the requested information relates to the individual buyer's contract.

(b) **Conversions.** A permit holder subject to this section shall maintain a file copy of the original trust-funded prepaid funeral contracts that have been converted to insurance funded and the payment history records for each converted contract prior to conversion.

[Source: Amended at 17 Ok Reg 1701, eff 7-14-00]

365:25-9-5. Prohibited acts

(a) **Assignment not to exceed the maximum amount allowed by statute.** Any officer, director, agent or employee of any organization subject to the terms of 36 O.S. §6121 (1981), as amended, or any licensed funeral director, personally or through the act of a representative or employee, may receive an assignment, not to exceed the statutory limits, of the benefits from any life or accident insurance policy, or from any other lawful contract of insurance, for the direct or indirect payment of funeral costs, subject to the following conditions:

(1) The assignor shall retain the right to revoke the assignment at any time prior to the date the assignee furnishes or causes to be furnished the funeral merchandise and/or services contracted for, unless the assignment has been made irrevocable.

(2) The assignor shall retain the right to designate and change the beneficiary of any lawful contract of insurance, unless the assignment has been made irrevocable.

(3) The assignee shall not exercise its right to surrender the contract of insurance prior to such time as it furnishes the funeral merchandise and/or services contracted for.

(4) Any such assignment not made irrevocable shall provide that in the event the assignor should desire to cancel the assignment prior to performance thereunder by the assignee, such cancellation may be accomplished by the assignor giving prior notice in writing to the assignee. Upon receipt of such cancellation notice by the assignee, assignee shall promptly execute an assignment release relinquishing its interest in the contract of insurance.

(b) **Prohibited acts.** In connection with any such assignment contemplated by (a) of this section, no officer, director, agent or employee of any organization subject to the terms of 36 O.S. §6121 et seq. (1981), as amended, or any licensed funeral director, personally or through the act of a representative or employee, may:

(1) Take possession from any person of a policy of life or accident insurance, or any other lawful contract of insurance, or any evidence of insurability under any such policy or contract while, directly or indirectly, furnishing funeral merchandise or services.

(2) Make a claim on said policy or contract, or forward any claim on any such policy or contract to the insurer involved, unless the merchandise or services have been furnished prior to the making of any such claim.

[Source: Amended at 10 Ok Reg 1507, eff 5-1-93]

365:25-9-6. Amendments

Amendments to any filing(s) required under "The Act" shall be submitted to the Insurance Commissioner in the same manner as the original filing.

[Source: Amended at 10 Ok Reg 1507, eff 5-1-93]

365:25-9-7. Severability provision

If any provisions of this subchapter, or the application thereof to any person or circumstance, is held invalid, such invalidity shall not affect other provisions or application of this subchapter which can be given effect without the invalid provision or application, and to that end the provisions of this subchapter are severable.

365:25-9-8. Conversion from trust to insurance funded contracts

(a) Conversion permitted only on forms approved by Oklahoma Insurance Department. Pursuant to Title 36 Okla. Stat. § 6136.18 existing prepaid funeral contracts that utilize trust funded benefits may be converted to insurance funded prepaid funeral benefits provided the application for such conversion is made on forms approved by the Oklahoma Insurance Department which meet the requirements of the Oklahoma Insurance Code and this subchapter.

(b) Definitions. The words and terms used in this section shall be defined according to this title, unless otherwise defined herein or unless the context clearly indicates otherwise.

(1) "Applicant" means a permit holder who files an application with the Oklahoma Insurance Department to convert its trust-funded prepaid funeral benefit contract(s) under existing contracts to insurance funded prepaid funeral benefit contract(s).

(2) "Cash Surrender Value" means the net amount due the policy owner from the insurer upon surrender of an insurance policy, which will never be less than the amount of the trust funds transferred from the trust to the insurance policy as of transfer date.

(3) "Death Benefit" means the total of all contract principal payments collected and accumulated earnings that are transferred at conversion, together with all future gross premiums paid and all accumulated interest earned annually on accumulated interest thereon. Interest must be compounded annually and calculated on gross premiums paid. The post-conversion death benefit can never be less than the pre-conversion death benefit.

(4) "Insurance policy" means either:

(A) A standard life or accident insurance policy; or

(B) An individual or group fixed annuity contract relating to an insurance conversion application.

(5) "Load" means any commission, allowance, surrender charge or other compensation, expense load, premium expense, administrative charge or expense, policy fees, or other fee or expense paid to an Oklahoma Insurance Department licensed agent associated with or occurring by reason of sale, issuance, lapse, surrender, or redemption of an insurance policy in connection with the conversion of any trust-funded prepaid funeral contract to insurance funded prepaid funeral contract.

(6) "Post-conversion Administrator" means the administrator, who shall be the funeral home requesting conversion or an administrator selected by the funeral home requesting

conversion, of the prepaid funeral benefits contracts who holds and administers the prepaid funeral contracts after conversion and assumes responsibility for receiving the proceeds of the insurance policy upon maturity of a contract and processing payment to the funeral provider after verifying that the funeral service and merchandise under the prepaid funeral contract have been delivered.

(7) "Required reserves" means the reserve liabilities for all outstanding insurance contracts valued or calculated pursuant to actuarial standards and statutory accounting standards not inconsistent with the Oklahoma Insurance Code.

(c) Applications. When applying for permission to convert trust funded benefits under existing prepaid funeral contracts to insurance funded benefits, an applicant shall:

- (1) Hold a valid permit issued by the Oklahoma Insurance Department;
- (2) Be in good standing with the Oklahoma Insurance Department;
- (3) Submit a completed conversion application to the Oklahoma Insurance Department; and
- (4) Not have been found to be in violation of any applicable laws or regulations relating to the Oklahoma Insurance Code or not have any other deficiencies of any significance that have not been remedied or corrected to the satisfaction of the Oklahoma Insurance Department.

(d) Included in application. Each application for conversion must include:

- (1) A copy of a letter to the applicant from an insurer authorized to do business in Oklahoma evidencing the policy form number and setting out the insurer's agreement to issue insurance policies to convert the prepaid funeral contracts from trust-funded benefits to insurance funded benefits; and
- (2) A copy of the written commitment to the Commissioner containing the agreement between or among the insurer, the applicant, and the post-conversion administrator regarding the transfer, receipt, and the application of the trust funds upon conversion, which commitment must require that a copy of each insurance policy issued be furnished to the owner of the insurance policy and that a copy be made available to the respective prepaid funeral contract purchasers upon request, in the event they are not the owners of the policies;
- (3) A pre-conversion summary of the individual prepaid funeral contracts, which must include, at a minimum, the following information (as of a date within thirty (30) days of the date of the application), as well as aggregated totals for each category of information, if appropriate:
 - (A) Individual prepaid funeral benefits contract purchaser's name;
 - (B) Individual prepaid funeral benefits contract owner's name if other than the purchaser;
 - (C) Date of execution of pre-converted prepaid funeral contract;
 - (D) Face amount of the contract;
 - (E) Amount paid in and the unpaid balance;
 - (F) Accumulated earnings;
 - (G) Amount due the prepaid funeral contract purchaser upon cancellation and the amount due the applicant upon death of the prepaid funeral contract owner,

- assuming death or cancellation were to occur on or about the date of the application;
- (H) Amount retained by the applicant under the Okla. Stat. tit. 36, § 6125; and
- (I) Whether the pre-converted contract is or was a contract pursuant to Okla. Stat. tit. 36, § 6125(B)(1) or § 6125 (B)(2).
- (4) A post-conversion summary of the individual prepaid funeral contracts, which must include, at a minimum, the following information (as of the same date as the pre-conversion summary), as well as aggregated totals for each category of information, if appropriate:
- (A) Name of insured or annuitant;
 - (B) Owner of insurance policy or annuity if other than the insured or annuitant;
 - (C) Original prepaid funeral contract amount;
 - (D) Amount paid in and the unpaid balance;
 - (E) Amount applied to the purchase of the insurance policy;
 - (F) Initial cash surrender value and initial death benefit under the insurance policy; and
 - (G) Amount retained by the applicant under the Okla. Stat. tit. 36, § 6125
- (5) A copy of the proposed negative response notification letter, as required in Okla. Stat. tit. 36, § 6136.18(C)(2), to the prepaid funeral contract purchasers from the applicant containing a statement explaining the purchaser has sixty (60) days to file a written request with the Department to have the contract converted back to trust fund benefits;
- (6) An actuarial certification certifying that the reserves to be held by the insurance company with respect to the conversion will be adequate to pay claims as they become due (dated no more than six (6) months prior to the date of the application);
- (7) A copy of the form of assignment, if any, to be used in assigning insurance policy rights or proceeds to the post-conversion administrator.
- (e) Standards for approval of application. An application for conversion will be approved by the Commissioner if, in the Commissioner's opinion, the rights and interests of the prepaid funeral contract purchasers under the insurance funded contract arrangement will be safeguarded to at least the same degree as provided under the trust-funded benefits contract. An application may be approved without the necessity of a hearing.
- (1) In order for insurance funded contracts under an application for conversion to be considered to safeguard the rights and interests of the prepaid funeral contract purchasers to at least the same degree as the trust-funded benefits, insurance benefits must comply with this subsection.
- (A) The transfer of the trust funds to the insurance company must be at least equal to the full sum required to be deposited as trust principal by the applicant pursuant to the Insurance Code under the trust-funded prepaid funeral contract proposed for conversion, plus all net earnings accumulated with respect thereto, as of the transfer date. No load may be deducted from the trust funds transferred pursuant to the conversion application.
 - (B) No provision in the insurance policy may allow for contesting coverage, limit death benefits in the case of suicide, refer to physical examination, or otherwise operate as an exclusion, limitation or condition other than requiring submission of

proof of death or surrender of the policy at the time the prepaid funeral contract is funded, matures, or cancels, as the case may be.

(C) The insurance company must demonstrate that, in the previous seven years, the average death benefit growth under the same or substantially similar insurance policies issued by the insurance company to fund prepaid funeral contract has been at least 3.0% of accumulated premiums based on gross premiums paid. If the insurance company cannot so demonstrate, then the insurance policy must provide for guaranteed growth of the death benefit of no less than 2.0% annum compounded annually on gross premiums paid beginning in the first year of the policy.

(D) The post-conversion administrator is responsible for payment of all death and cancellation claims pursuant to the terms of the prepaid funeral benefits contract and in accordance with Okla. Stat. tit. 36, § 6125.

(E) Any insurance policy issued on any individual must be for an amount not less than the amount of principal and interest transferred for that individual to the insurance company, and any supplemental insurance policy issued to cover the unfunded portion of the contract must have a face amount that is at least as great as the unfunded principal balance. No credit or reduction may be made for interest earned or accrued on the paid-in principal balance.

(F) The insurance policy must provide each prepaid funeral contract purchaser with a cash surrender value or cancellation benefit that is at least the same the amount of the trust funds transferred from the trust to the insurance policy as of transfer date and for the duration of the prepaid funeral contract less any amount due to the purchaser from the funeral home, if any, as set forth in Okla. Stat. tit. 36, § 6125. If a prepaid funeral contract is canceled at the initiative of the purchaser after the 60-day initial conversion cancellation period or the purchaser requests withdrawal of monies prior to death and in accordance with Okla. Stat. tit. 36, § 6125, the Funeral Home/Applicant or post conversion administrator must remit at least the applicable cancellation benefit directly to the purchaser in accordance with the provision of the prepaid funeral contract and in accordance with Okla. Stat. tit. 36, § 6125(B)(1).

(G) The post-conversion administrator must submit to the department, within 90 days of the date of transfer of the trust funds as authorized by the Commissioner's order, a post-conversion summary of the individual prepaid funeral contracts as of the conversion date, which must include, at a minimum, the following information, as well as aggregated totals for each category of information, if appropriate:

- (i) Insured's name;
- (ii) Insured's policy number;
- (iii) The original prepaid funeral contract amount;
- (iv) Amount paid in;
- (v) Unpaid balance of the prepaid funeral contract;
- (vi) Amount retained by the applicant under Okla. Stat. tit. 36, § 6125;
- (vii) Amount applied to the purchase of the insurance policy; and

(viii) Initial cash surrender value and initial death benefit under the insurance policy.

(H) The applicant shall relinquish to the post-conversion administrator the individual prepaid funeral contract ledgers reflecting the amount paid and the amount left owing on the prepaid funeral contract, if any. The post-conversion administrator shall be responsible for maintaining such ledgers to reflect the principal balance of the converted contract as well as any outstanding balances.

(I) Within 90 days of the execution of the conversion order, the post-conversion administrator must submit a notarized statement to the department attesting that the insurance policies have been issued and funded on behalf of the contract purchasers listed in the original post-conversion summary included in the conversion application and that all notices required under subsection (c)(3)(I) of this section have been given. Within 120 days of the execution of the conversion order, all requirements under this section for completion of a conversion must be met, if they are not, the conversion order is void without further action of the department. (J) If for any reason the Commissioner deems it necessary before final approval of the conversion order, the Commissioner may order a financial examination of the trust. The cost of said financial examination shall be paid by the applicant and conducted in accordance with Section 6129.1 of Title 36 of the Oklahoma Statutes, as the Commissioner deems warranted. The applicant shall demonstrate compliance with the Oklahoma Insurance Code, and if the applicant fails to do so, the Commissioner may request an examination of the trust as set forth in Section 6129.1 of Title 36 of the Oklahoma Statutes.

(K) The Commissioner may hold a hearing on an application. Hearings shall be conducted pursuant to the Oklahoma Insurance Code, Insurance Department rules and regulations, and the laws of the State of Oklahoma. The applicant shall have the burden to demonstrate by a preponderance of the evidence the existence of all factors necessary to entitle the applicant to convert to insurance funded benefits from trust-funded benefits.

[Source: Added at 17 Ok Reg 1701, eff 07-14-00; Amended at 17 Ok Reg 3281, eff 07-14-00 (emergency); Amended at 18 Ok Reg 1302, eff 07-14-01; Amended at 26 Ok Reg 1654, eff 7-14-09]