



Ohio Revised Code

Section 4717.36 Funeral goods and services payments held in trust.

Effective: September 29, 2017

Legislation: House Bill 49 - 132nd General Assembly

(A) This section applies only to preneed funeral contracts that are funded by any means other than an insurance policy or policies, or an annuity or annuities.

No money in a preneed funeral contract trust shall be distributed from the trust except as provided in this section.

(B) A seller of a preneed funeral contract that stipulates a fixed or firm or guaranteed price for funeral services and funeral goods to be provided under a preneed funeral contract may charge an initial service fee not to exceed ten per cent of the total amount of all payments to be paid under the preneed funeral contract for such guaranteed price funeral services and funeral goods. If the amount to be paid by the purchaser is to be paid in installments, not more than one-half of any payment may be applied to the initial service fee. If the preneed funeral contract is revoked by the purchaser, any portion of the initial service fee that has not been paid under the preneed funeral contract is no longer due and payable to the seller.

(C) All payments made by the purchaser of a preneed funeral contract, except for the initial service fee permitted by division (B) of this section and any applicable sales tax, shall be made in the form of a check, cashier's check, money order, or debit or credit card, payable only to the trustee of the preneed funeral contract trust. Within thirty days of the seller receiving any form of payment made payable to the trustee, the seller shall remit the payment to the trustee unless the purchaser rescinds the preneed funeral contract in accordance with division (A) of section 4717.34 of the Revised Code. The funds deposited with the trustee shall remain intact and held in trust for the contract beneficiary.

(D) The seller shall establish a preneed funeral contract trust at one of the following types of institutions and shall designate that institution as the trustee of the preneed funeral contract trust:

(1) A trust company licensed under Chapter 1111. of the Revised Code;



(2) A national bank, federal savings bank, or federal savings association that pledges securities in accordance with section 1111.04 of the Revised Code;

(3) A credit union authorized to conduct business in this state pursuant to Chapter 1733. of the Revised Code.

(E) Moneys deposited in a preneed funeral contract trust fund shall be held and invested in the manner in which trust funds are permitted to be held and invested pursuant to Chapter 1111. of the Revised Code.

(F) The seller shall establish a separate preneed funeral contract trust for the moneys paid under each preneed funeral contract, unless the purchaser or purchasers of a preneed funeral contract or contracts authorize the seller to place the moneys paid for that contract or those contracts in a combined preneed funeral contract trust. The trustee of a combined preneed funeral contract trust shall keep exact records of the corpus, income, expenses, and disbursements with regard to each purchaser and contract beneficiary for whom moneys are held in the trust. The terms of a preneed funeral contract trust are governed by this section and the payments from that trust are governed by Chapter 1111. of the Revised Code, except as otherwise provided in this section.

A trustee of a preneed funeral contract trust may pay taxes and expenses for a preneed funeral contract trust and may charge a fee for managing a preneed funeral contract trust. The fee shall not exceed the amount regularly or usually charged for similar services rendered by the institutions described in division (D) of this section when serving as a trustee.

(G) If the purchaser of a preneed funeral contract that is revocable elects to cancel the contract, the purchaser shall provide a written notice to the seller of the contract and the trustee of the preneed funeral contract trust stating that the purchaser intends to cancel the contract. Fifteen days after the purchaser provides that notice to the seller and trustee, the purchaser may cancel the contract. Upon canceling a preneed funeral contract pursuant to this division, one of the following shall occur, as applicable:

(1) If the preneed funeral contract does not stipulate a firm or fixed or guaranteed price for funeral goods and funeral services to be provided under the preneed funeral contract, the trustee shall give to



the purchaser all of the assets of the trust that exist at the time of cancellation, less any fees charged, distributions paid, and expenses incurred by the trustee pursuant to division (F) of this section.

(2) If the preneed funeral contract does stipulate a firm or fixed or guaranteed price for funeral goods and funeral services to be provided under the contract, the purchaser may request and receive from the trustee all of the assets of the trust at the time of cancellation, less a cancellation fee that the original seller may collect from the trustee that is equal to or less than ten per cent of the value of the assets of the trust on the date the trust is cancelled, provided, however, that to the extent the original seller took an initial service fee as permitted by division (B) of this section, the aggregate amount of the cancellation fee and the initial service fee may not exceed ten per cent of the value of those assets. In addition to any cancellation fee, there may also be deducted any fees charged, distributions paid, and expenses incurred by the trustee pursuant to division (F) of this section.

If more than one purchaser enters into the contract, all of those purchasers must request cancellation of the contract for it to be effective under this division, and the trustee shall refund to each purchaser only those funds that purchaser has paid under the contract and any income earned on those funds in an amount that is in direct proportion to the amount of funds that purchaser paid relative to the total amount of payments deposited in that trust, less any fees charged, distributions paid, and expenses incurred by the trustee pursuant to division (F) of this section, the amount of which are in direct proportion to the amount of funds that purchaser paid relative to the total amount of payments deposited in that trust.

(H) The purchaser of a preneed funeral contract that is irrevocable may transfer the preneed funeral contract to a successor seller. A purchaser who elects to make such a transfer shall provide a written notice of the designation of a successor seller to the trustee and the original seller. Within fifteen days after receiving the written notice of the new designation from the purchaser, the trustee shall list the successor seller as the seller of the preneed funeral contract and the original seller shall relinquish and transfer all rights under the preneed funeral contract to the successor seller. The trustee shall confirm the transfer by providing written notice of the transfer to the original seller, the successor seller, and the purchaser. If the preneed funeral contract stipulates a firm or fixed or guaranteed price for the funeral goods and funeral services to be provided under the preneed funeral contract, the original seller may collect from the trustee a transfer fee from the trust that equals up to ten per cent of the value of the assets of the trust on the date the trust is transferred, provided, however, that to the



extent the original seller took an initial service fee as permitted by division (B) of this section, the aggregate amount of the transfer fee and the initial service fee may not exceed ten per cent of the value of those assets. If the preneed funeral contract does not stipulate a firm or fixed or guaranteed price for funeral goods and funeral services to be provided under the preneed funeral contract, no transfer fee shall be collected by the original seller.

(I) If a seller of a preneed funeral contract elects to transfer a preneed funeral contract trust from an institution listed in divisions (D)(1) to (3) of this section to a different institution, the trustee of the original trust shall notify the purchaser of the preneed funeral contract of that transfer in writing within thirty days after the transfer occurred and shall provide the purchaser with the name of and the contact information for the institution where the new trust is maintained. Upon receipt of the trust, the trustee of the transferred trust shall notify the purchaser of the receipt of the trusts in accordance with division (A) of section 4717.33 of the Revised Code.

(J) If a seller receives a notice that the contract beneficiary has died and that funeral goods and funeral services have been provided by a provider other than the seller, except as otherwise specified in this section, the seller shall direct the trustee, within thirty days after receiving that notice, to pay to the provider that provided the funeral goods and services, if still unpaid, or the estate of the contract beneficiary all funds held by the trustee, less any fees charged, distributions paid, and expenses incurred by the trustee pursuant to division (F) of this section. In the event the preneed funeral contract stipulates a firm or fixed or guaranteed price for funeral goods and funeral services that were to be provided under the preneed funeral contract, the seller may collect from the trustee a cancellation fee not exceeding ten per cent of the value of the assets of the trust on the date the trust is transferred, provided, however, that to the extent the original seller took an initial service fee as permitted by division (B) of this section, the aggregate amount of the transfer fee and the initial service fee shall not exceed ten per cent of the value of those assets. If the preneed funeral trust does not stipulate a firm or fixed or guaranteed price for funeral goods and funeral services to be provided under the preneed funeral contract, no cancellation fees shall be collected by the original seller.

(K) A certified copy of the certificate of death or other evidence of death satisfactory to the trustee shall be furnished to the trustee as evidence of death, and the trustee shall promptly pay the accumulated payments and income, if any, according to the preneed funeral contract. Such payment of the accumulated payments and income pursuant to this section and, when applicable, the preneed



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funeral contract, relieves the trustee of any further liability on the accumulated payments and income.