

STATE OF MINNESOTA  
BEFORE THE COMMISSIONER OF HEALTH

In the Matter of [REDACTED]

STIPULATION AND  
CONSENT ORDER

IT IS HEREBY STIPULATED AND AGREED, by [REDACTED]

("Regulated Party") and the Minnesota Department of Health ("Department"):

1. The purpose of this Stipulation and Consent Order ("Stipulation") is to resolve violations identified by the Minnesota Department of Health concerning the Minnesota Funeral Director's Association's Master Funeral Trust ("MFDA Master Trust"). The Regulated Party is a member of the Minnesota Funeral Director's Association and has deposited and maintained funeral pre-need consumer funds in the MFDA Master Trust.

2. Minnesota law requires that all funds accepted for the prepayment of funeral or burial goods or services, and that are to be used in connection with the final disposition of human remains ("pre-need arrangements"), be deposited in a banking institution, savings or building and loan association, or credit union organized under state or federal law. Minn. Stat. § 149A.97, subd. 5 (2004). The funds must also be deposited in accounts that are insured by an instrumentality of the federal government. *Id.*

3. Minnesota law requires that pre-need arrangements must be placed in a separate account, with the name of the depositor and the purchaser as trustees for the beneficiary. Minn. Stat. § 149A.97, subd. 5 (2004).

4. Minnesota law prohibits funeral providers from assessing finance charges on pre-need arrangements. Minn. Stat. § 149A.97, subd. 4a (2004).

5. Minnesota law authorizes the Commissioner of Health ("Commissioner") to take enforcement action against any person for any violation of statutes or rules applicable to pre-need arrangements for funeral services. This enforcement authority includes the authority to issue correction orders, administrative penalty orders, and cease and desist orders, as well as the authority to revoke, refuse to re-issue or limit a license or permit, or to seek injunctive relief for violations of any law which the Commissioner is empowered to regulate, enforce, or issue. Minn. Stat. §§ 149A.05-149A.10, and 149A.97, subd. 12 (2004).

6. The Department has determined that the MFDA Master Trust is in violation of Minnesota Statutes for three reasons: (1) money held in the MFDA Master Trust is not in individual bank accounts (a violation of Minn. Stat. § 149A.97, subd. 5); (2) money held in the MFDA Master Trust is not deposited in federally insured accounts (a violation of Minn. Stat. § 149A.97, subd. 5); and (3) administrative fees are being withdrawn from the MFDA Master Trust (a violation of Minn. Stat. § 149A.97, subd. 4a).

7. The Regulated Party is a licensed funeral provider. The Regulated Party is required to follow all Minnesota laws and rules with respect to the administration of pre-need arrangements. The MFDA Master Trust, in which the Regulated Party currently maintains pre-need funds, is in violation of State law as set forth above.

8. In order to resolve this matter and thus avoid the expense and uncertainty of enforcement proceedings under Minn. Stat. § 149A.97, subd. 12, including the possibility of hearings and appeals, the Regulated Party agrees to the following corrective actions:

- A. The Regulated party will withdraw all funds currently invested in the MFDA Master Trust by August 15, 2005. In so doing, the Regulated Party will request detailed documentation from MFDA which sets forth

the current value of each consumer's account the Regulated Party maintains in the MFDA Master Trust, the Guaranteed Value (defined below) of each account the Regulated Party maintains in the MFDA Master Trust, and the amount of the Deficiency (defined below) associated with that account, if any.

- B. If any Deficiency exists in a consumer's account at the time the Regulated Party withdraws the funds from the MFDA Master Trust, the Regulated Party must add the amount of that Deficiency to the account.
- C. Once each individual account is fully funded at the Guaranteed Value, the Regulated Party must reinvest all consumer funds in federally insured accounts, that are appropriately segregated, from which administrative fees are not being withdrawn, and in full compliance with Minn. Stat. § 149A.97.
- D. Upon completion of the re-investment of all consumer funds, the Regulated Party must submit documentation to the Department showing that the Regulated Party has fully funded each consumer account, and properly transferred each account into a separate, federally insured account from which administrative fees are not being withdrawn.
- E. The Regulated Party will provide notice to each consumer regarding the transfer of the consumer's account and any changes to the balance of his or her account.

9. For purposes of this Stipulation, a "Deficiency" exists if the value of the consumer's account on the date the Regulated Party withdraws funds from the MFDA Master

Trust is less than the Guaranteed Value of that account. The amount of a deficiency is determined by subtracting the value of the consumer's account on the date of withdrawal from the Guaranteed Value on the same day. For purposes of this Stipulation, "Guaranteed Value" means the amount that each consumer would have been entitled to receive under that consumer's pre-need contract had the consumer died on the date the Regulated Party withdrew the funds.

10. If the Regulated Party accomplishes all items listed in Paragraph 8 above, the Department will not take any enforcement action against the Regulated Party.

11. This Stipulation shall not in any way or manner limit or affect the authority of the Commissioner to proceed against the Regulated Party by initiating a contested case hearing or by other appropriate means on the basis of any act, conduct, or admission of the Regulated Party justifying enforcement which is not the subject of the Stipulation.

12. The Regulated Party hereby acknowledges that the Regulated Party has read, understood, and agrees to the Stipulation and has freely and voluntarily executed it.

13. Any appropriate federal or state court may, upon application by the Commissioner, enter an order of enforcement of any or all of the terms of the Stipulation and Consent Order.

14. This Stipulation contains the entire agreement between the parties, there being no other agreement of any kind, verbal or otherwise, that varies the terms of the Stipulation.

15. All rights inure to, and obligations bind, successors and assignees of all parties involved.

16. This Stipulation may not be modified or amended except in writing. Any modifications or amendments must be signed by all parties.

17. Nothing in the Stipulation shall be construed as a waiver of any private rights, causes of action, or remedies of any consumer or other person against the Regulated Party or others responsible for the violations set forth in Paragraph 6 above.

18. This Stipulation is a public document pursuant to the Minnesota Data Practices Act, Minn. Stat. §§ 13.01-13.99.

19. The Regulated Party agrees that service of the Stipulation by regular United States mail addressed to the Regulated Party at the address on the funeral establishment license shall be sufficient service upon them.

**By their signatures below, the undersigned represent that they have authority to bind the parties they represent and their agents, contractors, and subsidiaries.**

Dated:  \_\_\_\_\_

Dated: 8/4/05 \_\_\_\_\_

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