

REGULATED INDUSTRIES

CHAPTER 100

SALES OF CEMETERY MERCHANDISE, FUNERAL MERCHANDISE
AND FUNERAL SERVICES

[Prior to 11/25/15, see Chs 100 to 105]

191—100.1(523A) Purpose. This chapter is promulgated to implement and administer Iowa Code chapter 523A, which regulates the sale of cemetery merchandise, funeral merchandise, funeral services and any combination of those items.

[ARC 2258C, IAB 11/25/15, effective 12/30/15; ARC 2730C, IAB 9/28/16, effective 11/2/16]

191—100.2(523A) Definitions. The definitions in Iowa Code chapter 523A are incorporated by this reference. In addition, the following definitions shall apply to this chapter:

“*Active license*” means a license that is in effect and in good standing.

“*Commissioner*” means the Iowa insurance commissioner or staff of the Iowa insurance division as designated by the commissioner.

“*Commissioner’s Web site*” means the Web site of the Iowa insurance division, www.iid.iowa.gov.

“*Continuing education*” means planned, organized learning acts designed to maintain, improve, or expand a licensed person’s knowledge and to maintain and improve the safety and welfare of the public.

“*Credit*” means at least 50 minutes spent by a licensed person in actual attendance at and in completion of an approved continuing education activity.

“*Insurance*” means life insurance policies and annuity contracts, except where the context indicates otherwise.

“*License*” means an authorization to act issued by the commissioner, authorizing a person to act as preneed seller or a sales agent.

“*Licensed person*” means any person who holds a preneed seller or sales agent license pursuant to Iowa Code chapter 523A, including any person who holds an active or restricted license.

“*Merchandise or services*” means cemetery merchandise, funeral merchandise, funeral services, or a combination thereof, as defined in Iowa Code section 523A.102, unless the context clearly indicates otherwise.

“*Person*” means an individual; corporation; business trust; estate; trust; partnership; limited liability company; association; cooperative; joint venture; government; governmental subdivision, agency, or instrumentality; public corporation; or any other legal or commercial entity.

“*Purchase agreement*” means an agreement to furnish merchandise or services when performance or delivery may be more than 120 days following the initial payment on the account.

“*Restricted license*” means an active license that has been placed on restricted status by the commissioner.

“*Sales log*” means a record of each sale of a purchase agreement.

[ARC 2258C, IAB 11/25/15, effective 12/30/15]

191—100.3(523A) Contact and correspondence.

100.3(1) Contact information. All mailed complaints, inquiries and correspondence shall be sent to Securities and Regulated Industries Bureau, Iowa Insurance Division, 1963 Bell Avenue, Suite 100, Des Moines, Iowa 50315. Telephone inquiries may be made at (877)955-1212. Electronic submissions and correspondence may be made through the commissioner’s Web site.

100.3(2) Complaints, inquiries and correspondence. The commissioner may receive and process any complaint made regarding merchandise or services, or regarding a sales agent or a preneed seller, that alleges certain acts or practices which may constitute one or more violations of the provisions of this chapter. Where appropriate, the commissioner may refer complaints, in whole or in part, to other agencies. Any member of the public or the industry, or any federal, state, or local official, may make and file a complaint with the commissioner. If required by the commissioner, complaints shall be made on forms prescribed by the commissioner.

100.3(3) *Forms and instructions.* Copies of all required forms and instructions are available on the commissioner's Web site.

[ARC 2258C, IAB 11/25/15, effective 12/30/15; Editorial change: IAC Supplement 9/23/20]

191—100.4 to 100.9 Reserved.

191—100.10(523A) License status. Preneed seller licenses and sales agent licenses have the following three statuses:

100.10(1) *No license.* A person has no current preneed seller or sales agent active or restricted license issued by the commissioner.

100.10(2) *Active license.* A person has had a license issued by the commissioner, it is current in renewals, and it is otherwise in good standing.

100.10(3) *Restricted license.* A person has had an active license issued by the commissioner, the license is current in renewals, but the active license has been placed on restricted status by the commissioner.

a. The commissioner may place a license in restricted status for various reasons including, but not limited to, the following:

- (1) Disciplinary action.
- (2) Failure to pay state debt or child support.
- (3) Nondisciplinary reason if requested by the person.
- (4) Cessation of business.

b. A person whose license is restricted shall not enter into purchase agreements or sell merchandise or services, but may perform administrative duties related to sales made before the license was placed on restricted status.

c. A person whose license is restricted and who wishes to maintain a restricted status license shall meet the requirements for license renewal in rule 191—100.15(523A) by the required date. If the restricted license is not renewed, the license shall lapse at the end of its term.

[ARC 2258C, IAB 11/25/15, effective 12/30/15; ARC 4848C, IAB 1/1/20, effective 2/5/20]

191—100.11(523A) Application for license. To obtain a preneed seller license as required by Iowa Code section 523A.501 or a sales agent license as required by Iowa Code section 523A.502, a person must submit an application to the commissioner pursuant to this rule. A person shall not accept any payment or funding, including the assignment of ownership of or proceeds from insurance, related to the purchase of merchandise or services in Iowa, if the sale of the merchandise or services is subject to Iowa Code chapter 523A, unless the person holds an active license. Application forms and instructions may be obtained from the commissioner's Web site.

100.11(1) *Preneed seller application.* A person that desires to be licensed as a preneed seller must submit all of the following:

a. A completed application form.

b. A signed waiver and the required fee allowing the commissioner to request and obtain, pursuant to Iowa Code section 523A.501, criminal history data information for each owner and director of the applicant, including, but not limited to, for each sole proprietor, partner, director, officer, managing partner, member, shareholder with 10 percent or more of the stock, or other person with a financial interest in the preneed seller, who has the ability to control or direct control of trust funds under Iowa Code chapter 523A, as determined by the commissioner.

c. A financial history, if requested by the commissioner, for each owner and director of the applicant, including, but not limited to, for each sole proprietor, partner, director, officer, managing partner, member, or shareholder with 10 percent or more of the stock.

d. Evidence of a fidelity bond or insurance or a statement that demonstrates compliance with Iowa Code section 523A.201.

e. Payment of the appropriate license fee.

100.11(2) *Sales agent application.* An individual who desires to be licensed as a sales agent must satisfy the following requirements:

- a. Be at least 18 years of age.
 - b. Submit a completed application form.
 - c. Submit a signed waiver and the required fee allowing the commissioner to request and obtain criminal history data information, pursuant to Iowa Code section 523A.501.
 - d. Pay the appropriate license fee.
- [ARC 2258C, IAB 11/25/15, effective 12/30/15]

191—100.12(523A) Processing of application for a license.

100.12(1) *Information to be reviewed for evaluation of application for a license.* In order to determine whether to approve or deny an application for a license, the commissioner shall review all information that is submitted with the application, obtained through criminal history investigation pursuant to Iowa Code sections 523A.501(3) and 523A.502(4), and submitted pursuant to a commissioner's request.

a. The commissioner may require any documents reasonably necessary to verify the information contained in the application or to verify that the individual making application has the character and competency required to receive a license. The commissioner also may request fingerprints and reimbursement of costs for investigating a criminal history, pursuant to Iowa Code sections 523A.501(3) and 523A.502(4).

b. The commissioner shall conduct the criminal history data request and other investigations pursuant to Iowa Code sections 523A.501(3) and 523A.502(4). For purposes of preneed sellers' licenses, pursuant to Iowa Code section 523A.501(3), the commissioner's investigation of criminal history data and financial history shall be limited to persons who have the ability to control or to direct the control of trust funds under Iowa Code chapter 523A, as determined by the commissioner. The commissioner may deny the application for a license based on an applicant's conviction in any jurisdiction for a criminal offense involving dishonesty or a false statement.

100.12(2) *Incomplete application.* If the application form is not completed according to the instructions, or if all of the information in the instructions or requested by the commissioner is not provided, the commissioner shall reject the application and send a notice to the applicant identifying the problems with the license application and listing any corrective action necessary before the resubmission of an application.

[ARC 2258C, IAB 11/25/15, effective 12/30/15]

191—100.13(523A) Approval and denial of license applications; issuance of license.

100.13(1) *Approval of license application.* If the commissioner approves a license application, the commissioner shall issue a license, the term of which shall begin the day the license is issued and end April 15.

100.13(2) *License denial.* The commissioner may deny a license application based on information received during the application process, on any ground listed in Iowa Code section 523A.503 or rules 191—100.16(523A) and 191—100.40(523A).

a. *Notice of denial.* When the commissioner denies an application for a preneed seller or sales agent license, the commissioner shall send a denial letter to the applicant by certified mail, return receipt requested, or in the manner of service of an original notice. The denial letter shall serve as notice of the denial and shall explain why the commissioner denied the application.

b. *Appeal.* An applicant that desires to contest the denial of an application may request a contested case proceeding pursuant to 191—Chapter 3 within 30 calendar days of the date the notice of denial is mailed. A failure to timely request a hearing constitutes failure to exhaust administrative remedies. License denial hearings under this chapter shall be conducted pursuant to 191—Chapter 3. License denial hearings and all documents related thereto are contested cases open to the public pursuant to Iowa Code chapters 17A and 22. While each party shall have the burden of establishing the matters asserted, the applicant shall have the ultimate burden of persuasion as to the applicant's qualification for licensure.

[ARC 2258C, IAB 11/25/15, effective 12/30/15]

191—100.14(523A) Continuing education requirements. For each license term, each licensed sales agent shall complete a minimum of three credits of continuing education in courses acceptable to the commissioner, which may include independent study courses, pursuant to paragraph 100.14(2)“g.” Completion of the required continuing education is mandatory for the renewal of a sales agent license. “Independent study” means a subject, program or activity that a person pursues autonomously that meets the requirements of this rule and that includes a test at the conclusion of the independent study. Independent study includes but is not limited to programs conducted using television, the Internet, video, sound-recorded programs, correspondence work, and other similar media.

100.14(1) Exemption. The requirements of this rule do not apply to:

- a. A licensed funeral director.
- b. A licensed insurance producer.
- c. A licensed sales agent who served full time in the U.S. armed forces on active duty during a substantial part of the continuing education term and who submits evidence of such service.

100.14(2) General rules for continuing education credits.

a. The topic of at least one of the three continuing education credits earned each license term must be business ethics.

b. Proof of completion of a continuing education course shall, at a minimum, include all of the following, in a format acceptable to the commissioner:

(1) The date of the course, the location of the course, the course title, the course subject, and the identity and qualifications of the presenters.

(2) The number of course credits.

(3) Proof of successful completion of the course provided by the person conducting or sponsoring the course.

c. A sales agent cannot receive continuing education credit for courses taken prior to the issuance of an initial license.

d. A sales agent cannot receive continuing education credit for the same course twice in one license term.

e. A sales agent cannot carry over to the next license term more than three continuing education credits earned in excess of the sales agent’s license term requirements.

f. An instructor of a course is entitled to the same credit as a student completing that course; the instructor may receive such credit once during a license term, regardless of how many times the instructor teaches the class.

g. A sales agent may receive continuing education credit for independent study courses that are part of a recognized national designation program. A sales agent may receive up to three continuing education credits for independent study courses during a license term. A sales agent shall maintain a record from the course provider that the course was completed and the examination was passed.

100.14(3) Maintenance of records of completion of continuing education requirements. A sales agent shall maintain for three years after the license term during which the course was taken the original proof of completion and descriptions and outlines of all completed continuing education courses.

100.14(4) Standards for acceptable continuing education courses. The commissioner shall find a continuing education course acceptable if it meets all of the following criteria:

a. The course constitutes an organized program of learning which contributes directly to the professional competency of the licensee.

b. The course is conducted by individuals who have specialized training concerning the subject matter of the course.

c. The person conducting or sponsoring the course provides proof of attendance to attendees.

d. The activity pertains to subject matters which integrally relate to the sale of merchandise or services and purchase agreements subject to Iowa Code chapter 523A.

(1) The following are examples of acceptable course topics:

1. Ethics.

2. Mortuary science law; public health; and technical standards, requirements and issues regarding the handling and interment of deceased human remains.

3. Insurance.
 4. Iowa laws and administrative rules related to Iowa Code chapters 523A and 523I.
 5. Technical information related to merchandise or services used in the death care industry.
 6. Medicaid and the Iowa estate recovery law, Iowa Code section 249A.5(2) and 441—subrule 76.12(7).
 7. Relevant federal laws and regulations such as the Federal Trade Commission Funeral rule (16 CFR Part 453).
 8. Information provided in programs or courses offered or sponsored by a state or national funeral association that otherwise meets the criteria in this subrule.
- (2) The following are examples of course topics that are not acceptable for continuing education credit:
1. Sales.
 2. Motivation.
 3. Purchaser prospecting.
 4. Supportive office skills (e.g., typing, filing, computer systems).
 5. Other subjects not specifically related to the death care industry.

[ARC 2258C, IAB 11/25/15, effective 12/30/15]

191—100.15(523A) License renewal.

100.15(1) Procedure for renewal. The commissioner shall renew preneed sellers' licenses, pursuant to Iowa Code section 523A.501(7), or sales agents' licenses, pursuant to Iowa Code section 523A.502(5), for both active and restricted status licenses, if the preneed sellers or sales agents provide to the commissioner all of the following, which must be received by the commissioner on or before April 15 of each year:

a. Annual report. A preneed seller or sales agent shall file a complete and accurate annual report in the form and manner directed by the commissioner. A preneed seller's report must include information on affiliated sales agents as provided in the instructions. The form and instructions may be obtained through the commissioner's Web site.

b. Verification of completion of continuing education. A sales agent shall have completed the continuing education required by rule 191—100.14(523A) and shall attest to completion of the continuing education and compliance with all instructions on the commissioner's Web site.

c. Renewal fee. A preneed seller or sales agent shall submit a renewal fee as set out in rule 191—100.18(523A). Failure to include the proper amount shall be cause for the renewal to be rejected.

100.15(2) Renewal of a restricted license. A preneed seller or sales agent whose license is in restricted status and who seeks to continue to conduct actions administering purchase agreements created before the license is placed in restricted status must comply with the renewal process of this rule.

100.15(3) Lapse of license. If one of the items required by subrule 100.15(1) is not provided by April 15 of each year or is incomplete or if no application for renewal is received, the preneed seller or sales agent license shall lapse. The commissioner shall notify the preneed seller or sales agent of the reason for the lapse.

100.15(4) Commissioner's option not to permit renewal. The commissioner may choose not to renew a license for any of the reasons listed in Iowa Code section 523A.503 or rules 191—100.16(523A) and 191—100.40(523A).

[ARC 2258C, IAB 11/25/15, effective 12/30/15; ARC 2730C, IAB 9/28/16, effective 11/2/16]

191—100.16(523A) Prohibited activities related to licensing.

100.16(1) Fraudulent or deceptive acts in procuring a license. An individual shall not engage in fraudulent or deceptive acts in procuring a preneed seller or sales agent license. Prohibited acts include but are not limited to the following:

- a.* False representations of a material fact, whether by conduct or by false or misleading statements.
- b.* Concealing or omitting anything that should have been disclosed or included with the application.
- c.* Filing a false identification.

- d. Filing an untrue certification or affidavit.
- e. Falsifying documents.

100.16(2) Prohibited activities by persons without a preneed seller or sales agent license.

a. A person to whom a license has not been issued by the commissioner, or a person whose license has expired or is restricted, shall not conduct any of the activities for which an active license is required pursuant to Iowa Code chapter 523A or this chapter, including the following:

- (1) Post or display the person's license;
- (2) Use a license certificate or a license number, except in communications with the commissioner;
- (3) Agree to provide any merchandise or services subject to Iowa Code chapter 523A after the date the license expired or became restricted, unless the merchandise or services are provided pursuant to an existing purchase agreement.

b. This subrule does not prohibit payments to an unlicensed person upon the person's delivery of merchandise or services after the death of a beneficiary, including the payment of the proceeds of insurance at the time of death of the insured.

[ARC 2258C, IAB 11/25/15, effective 12/30/15]

191—100.17(523A) Reinstatement of a restricted license.

100.17(1) Definition. The term "reinstatement" as used in this rule means changing the status of a license from restricted to active.

100.17(2) Application for reinstatement. Any preneed seller or sales agent whose license is restricted may request reinstatement by filing an application for reinstatement with the commissioner. Instructions can be found on the commissioner's Web site. If the licensed person meets all conditions of licensure, the commissioner shall reinstate the license.

100.17(3) Reinstatement after disciplinary action. If the restricted status of the license was the result of a disciplinary action, or was a forfeiture by the preneed seller or sales agent in connection with a disciplinary action, reinstatement must be in accordance with the terms of the applicable order or consent agreement. An application for reinstatement shall allege facts which, if established, will be sufficient to enable the commissioner to determine that the basis for placing the license in restricted status no longer exists. Before determining whether to grant reinstatement, the commissioner may review a financial history report for the time period during which the license was restricted.

100.17(4) Reinstatement after preneed seller's change of ownership or cessation of business operations. If the restricted status of a preneed seller's license was the result of the preneed seller's change of ownership or cessation of business operations under rule 191—100.35(523A), an application for reinstatement shall allege facts which, if established, will be sufficient to enable the commissioner to determine that the basis for placing the license in restricted status no longer exists. Before determining whether to grant reinstatement, the commissioner may review a financial history report for the time period during which the license was restricted.

100.17(5) Reinstatement after failure to pay child support. If the restricted status of the license was the result of a suspension for failure to pay child support pursuant to paragraph 100.40(2) "j," the application for reinstatement shall include proof from the Iowa child support recovery unit that the outstanding child support has been paid.

100.17(6) Reinstatement after failure to pay student loan debt. Rescinded IAB 1/1/20, effective 2/5/20.

100.17(7) Reinstatement after failure to pay state debt. If the restricted status of the license was the result of a suspension for failure to pay state debt pursuant to paragraph 100.40(2) "l," the application for reinstatement shall include proof from the centralized collection unit of the department of revenue that the outstanding state debt has been paid.

[ARC 2258C, IAB 11/25/15, effective 12/30/15; ARC 4848C, IAB 1/1/20, effective 2/5/20]

191—100.18(523A) Payment of fees.

100.18(1) Manner of payment. Fees shall be paid by electronic payment as permitted by the commissioner.

100.18(2) Nonrefundable. Fees are not refundable.

100.18(3) Specific fees. Fees are set by Iowa Code chapter 523A and by this chapter.

a. The license fee for a preneed seller applicant is \$25, plus \$15 for each criminal history request made on each individual for whom a criminal history is required by Iowa Code section 523A.501(3).

b. The license fee for a sales agent applicant is \$10, plus \$15 for each criminal history background check.

c. The fee for a license renewal is \$15 for a preneed seller and \$10 for a sales agent.
[ARC 2258C, IAB 11/25/15, effective 12/30/15]

191—100.19(523A) Master trusts.

100.19(1) Creation of master trusts. Pursuant to Iowa Code section 523A.203, a preneed seller may commingle the care funds of multiple beneficiaries in a master trust. When a preneed seller enters into a master trust agreement and establishes a master trust agreement at a financial institution:

a. The title of the financial account shall include the name of the preneed seller and be identified as a master trust account.

b. Either the preneed seller or the financial institution shall be the trustee of the master trust account.

c. Either the preneed seller or the financial institution shall maintain the detailed listing as required by Iowa Code section 523A.203(3) by keeping the following:

- (1) One listing of the amount deposited in trust for each beneficiary; and
- (2) A separate accounting of each purchaser's principal, interest, and income, and balance in trust for each beneficiary who has care funds in the master trust account.

100.19(2) Reporting of master trusts.

a. As part of the preneed seller's annual report required by paragraph 100.15(1) "a," a preneed seller shall submit all of the following:

- (1) The aggregate amount of deposits made to the master trust account during the calendar year.
- (2) The aggregate amount of withdrawals made from the master trust account during the calendar year.

(3) Information detailing the name of any beneficiary related to a deposit to or withdrawal from the master trust account with the amount deposited or withdrawn by the beneficiary. The report shall include aggregate amounts of deposits and withdrawals for each beneficiary.

(4) Transactions, as described in the division's instructions for the annual report, for the calendar year in which the transactions took place.

b. A financial institution shall submit a report annually that includes all of the following information relating to activities in the master trust:

(1) The aggregate amount of deposits made to the master trust account for each beneficiary during the calendar year.

(2) The aggregate amount of withdrawals made from the master trust account for each beneficiary during the calendar year.

(3) Transactions, as described in the division's instructions for the annual report, for the calendar year in which the transactions took place.

(4) A copy of the bank account statement for the master trust account.

[ARC 2730C, IAB 9/28/16, effective 11/2/16]

191—100.20(523A) Trust interest or income. A preneed seller may withdraw interest or income, as defined by Iowa Code section 523A.102(16), from trusts holding funds which are established pursuant to Iowa Code section 523A.201(8) and which are related to purchase agreements executed on or after July 1, 1987, in accordance with this rule.

100.20(1) Amount of trust interest or income which may be withdrawn. Trust interest and income must remain in trust and cannot be withdrawn by a preneed seller, except that a preneed seller may withdraw from a purchase agreement trust fund any interest and income credited to the trust during the preceding calendar year in excess of the sum of the following amounts, which sum must be retained in trust:

a. Fifty percent of the total interest and income credited to the trust during the preceding calendar year, and

b. An additional amount necessary to adjust the trust funds for inflation, as set by the commissioner based on the consumer price index pursuant to rule 191—100.22(523A).

100.20(2) Allocation of trust interest or income to purchasers' accounts. Interest and income not withdrawn from a purchase agreement trust fund shall be allocated pro rata to the purchase agreement accounts remaining in the trust at the end of the month in which the withdrawal was made.

100.20(3) Credit for trust interest or income withdrawn. The early withdrawal of interest or income under this rule does not affect the purchaser's right to a credit of such interest or income in the event of a nonguaranteed price agreement, cancellation of the purchase agreement, or nonperformance by the preneed seller.

100.20(4) Time period during which trust interest or income may be withdrawn. Interest or income withdrawals permitted by this rule shall be made up to 180 days after the calendar year in which the interest or income was earned.

100.20(5) Application of contract law. A purchase agreement may limit or prohibit a preneed seller's ability to withdraw income or interest. However, in the event of a conflict with the limitations set forth in this rule, the preneed seller must comply with the requirements of this rule.

[ARC 2258C, IAB 11/25/15, effective 12/30/15]

191—100.21(523A) Cancellation refunds. The requirement set forth in Iowa Code section 523A.602(2) "b"(1) applies to any purchase agreement executed on or after July 1, 2001.

[ARC 2258C, IAB 11/25/15, effective 12/30/15]

191—100.22(523A) Consumer price index adjustment. The inflation factor adjustment to be used for Iowa Code sections 523A.201(8) and 523A.602(2) "b"(1), for years 1987 and later, shall be the consumer price index for all urban consumers (CPI-U) issued by the U.S. Department of Labor's Bureau of Labor Statistics.

[ARC 2258C, IAB 11/25/15, effective 12/30/15]

191—100.23(523A) Preneed seller's use of surety bond in lieu of trust.

100.23(1) In lieu of the trust requirements of Iowa Code section 523A.405 as amended by 2015 Iowa Acts, House File 632, section 36, a preneed seller may file with the commissioner a surety bond. The surety bond shall be in the form as directed by the commissioner and as available on the commissioner's Web site.

100.23(2) A surety bond claimant, for purposes of this rule, includes any purchaser whose purchase agreement predates the effective date of the surety bond or was executed during the surety bond's period of coverage and whose purchase agreement has not been rescinded, fulfilled, or secured by another bond, by other insurance, or by trust funds.

100.23(3) Except as provided in subrule 100.23(6), no suit or action shall be commenced by a surety bond claimant later than one year after the expiration date of the surety bond.

100.23(4) Any surety bond claimant as set forth in subrule 100.23(2) may maintain an action on the surety bond. A surety's aggregate liability shall not exceed the penal sum of the bond.

100.23(5) A surety shall not cancel a surety bond except upon written notice of cancellation given by the surety to the commissioner by certified mail. The effective date of the cancellation shall not be less than 60 days after the commissioner receives the surety's notice. The surety shall specify the reason for the cancellation.

100.23(6) The surety shall not be liable for any surety bond claim related to the preneed seller's insolvency or cessation of business unless the surety claim is made within five years of the date of insolvency or business cessation.

100.23(7) If the surety notifies the preneed seller that the surety intends to cancel a surety bond, the preneed seller, within 30 days, shall:

a. Submit to the commissioner a substitute surety bond complying with this rule; or

b. Deposit funds in an amount as required by Iowa Code chapter 523A to a trust account established by the preneed seller.

100.23(8) A preneed seller shall maintain an adequate surety bond and shall continuously monitor the surety amount to assure its adequacy. The surety bond amount shall be calculated based on the value of the purchase agreements sold and not performed or canceled and for which no trust fund or insurance is in place.

[ARC 2258C, IAB 11/25/15, effective 12/30/15]

191—100.24 Reserved.

191—100.25(523A) Funeral and cemetery merchandise warehoused by preneed sellers.

100.25(1) Applicability. This rule applies only to storage existing on or before July 1, 2007, under purchase agreements executed between July 1, 1987, and July 1, 2007.

100.25(2) Warehousing not permitted. After July 1, 2007, warehousing shall not be used as an alternative to the trust requirements of Iowa Code chapter 523A.

100.25(3) Approval of storage facilities by commissioner. Notwithstanding subrule 100.25(2), if a preneed seller receives approval in writing from the commissioner pursuant to subrule 100.25(4), the trust requirements of Iowa Code sections 523A.201 and 523A.202 do not apply to either:

- a. Payments for outer burial containers made of either polystyrene or polypropylene; or
- b. Cemetery merchandise delivered to the purchaser or stored in a storage facility not owned or controlled by the preneed seller.

100.25(4) Storage facility application. The commissioner shall approve a preneed seller's application to have a storage facility designated as an approved storage facility for purposes of subrule 100.25(3) if the following conditions are met:

a. *Insurance coverage and financial condition.* The storage facility shall demonstrate that adequate insurance against loss and damage has been purchased and that the storage facility's financial condition is commensurate with any financial obligations assumed. Proof of the storage facility's financial condition shall include submission of audited financial statements completed in accordance with generally accepted accounting principles, which shall include the following:

- (1) A balance sheet prepared as of a date within 120 days prior to the application; and
- (2) A profit and loss statement and any changes in financial position for each of the three fiscal years preceding the date of the balance sheet or, if the storage facility has been in existence less than three years, for the period of the storage facility's existence.

b. *Records system and maintenance.* The storage facility must demonstrate that it has a system that adequately records:

(1) For each item in storage: an identification and a description; the ownership; name and address of the preneed seller; an order number; the order date; and the storage date.

(2) An aggregate listing and numerical totals for the entire storage facility and for each state or province.

c. *Title, delivery, identification, payments.* The storage facility shall agree to comply with subrule 100.25(5).

d. *Storage requirements.* The storage facility shall provide storage that adequately provides both accessibility and protection against damage.

e. *Consent to audits and inspections.* The storage facility shall provide written consent to authorize audits, reviews and inspections by the commissioner pursuant to paragraph 100.25(5) "e" and written consent to provide reports requested pursuant to paragraph 100.25(5) "g."

f. *Compliance with law.* The storage facility shall be in compliance with all applicable laws regulating the applicant's activities as a warehouse keeper, manufacturer, supplier, or preneed seller of cemetery or funeral merchandise.

100.25(5) Storage facility duties.

a. *Title.* The storage facility shall provide to the preneed seller a minimum of two copies of a title certificate. The title certificate should not be issued until the merchandise is stored in substantially

complete condition. Each preneed seller shall deliver at least one copy of the title certificate to the purchaser and shall retain one copy in the preneed seller's records.

b. Delivery requirements. The storage facility shall not accept prepayment of delivery expenses or charges. The storage facility shall provide written disclosure to the preneed seller that delivery costs will be billed at the time of delivery. The storage facility shall require the purchaser's signature, or the signature of the purchaser's legal representative, prior to the delivery of the cemetery or funeral merchandise.

c. Storage requirements. The storage facility shall adequately provide accessibility to the stored merchandise and adequately protect the stored merchandise against damage.

d. Identification of merchandise. The storage facility shall allow for visual inspection and counting; have storage by type or style; identify the location of the item by a shelf and bin- or slot-type system or reasonable alternative; and keep totals for each type of merchandise item in storage.

e. Audits and examinations. The storage facility shall allow the commissioner to examine the books, papers, records, memoranda or other documents of the storage facility and stored merchandise for the purpose of verifying compliance with Iowa Code chapter 523A and this rule. Unless waived by the commissioner in writing, the transportation, meal and lodging expenses of the auditors and examiners shall be reimbursed by the storage facility.

f. Identification of merchandise. All cemetery merchandise must be appropriately marked, identified and described in a manner to distinguish it from other similar items of merchandise, unless the commissioner has given to the seller prior written waiver of this requirement upon a showing of good cause.

g. Reports. The commissioner may request reports containing information about the storage facility, including but not limited to the following:

(1) A description of the storage facility, including the name, address of the principal business office, state or province of organization, date of organization, type of entity (e.g., corporation or partnership), and location of all storage facilities;

(2) A description of the storage program; and

(3) A detailed description of all merchandise currently in storage, which shall include all of the following:

1. The date the merchandise was first placed in storage;

2. The full name of the purchaser or the person on whose behalf the merchandise was purchased;

3. The location of the merchandise, which shall include the location within the facility utilizing a numbering system that provides the exact location of each item;

4. The name and address of the preneed seller;

5. The total number of items, by category, in storage at the facility for preneed sellers located in this state; and

6. The total number of items, by category, in storage at the facility.

[ARC 2258C, IAB 11/25/15, effective 12/30/15]

191—100.26 to 100.29 Reserved.

191—100.30(523A) Standards of conduct for preneed sellers and sales agents. Rules 191—100.30(523A) through 191—100.36(523A) are intended to establish certain minimum standards and guidelines of conduct for preneed sellers and sales agents by identifying required actions or practices. Failure to comply with these rules may be grounds for action under Iowa Code chapter 523A or rule 191—100.40(523A) or 191—100.41(523A).

[ARC 2258C, IAB 11/25/15, effective 12/30/15]

191—100.31(523A) Advertisements, sales practices and disclosures.

100.31(1) Advertising.

a. A preneed seller or sales agent shall not engage in any act or practice that violates Iowa Code section 523A.702 or 523A.703, whether or not actual harm or injury occurs, including but not limited to making untrue or improbable statements in advertisements.

b. An advertisement for the solicitation or sale of a purchase agreement which is to be funded by insurance shall adequately disclose the following:

- (1) The fact that insurance is to be involved or used to fund a purchase agreement, and
- (2) The nature of the relationship among the sales agent, the preneed seller, the provider of merchandise or services, and any other person.

100.31(2) *Unethical, harmful or detrimental sales practices.* A preneed seller or sales agent shall not engage in any act or practice which may be harmful or detrimental to the public, whether or not actual harm or injury occurs, while engaged in activities regulated by Iowa Code chapter 523A, or materially related to such activity, including but not limited to:

a. Encouraging cancellation of a purchase agreement if cancellation is not in the best interests of the purchaser.

b. Encouraging a change in the funding method of a purchase agreement, including a change from one insurance company to another, if the change is not in the best interest of the purchaser.

c. Failure to leave a residence when requested to do so.

d. Intimidation or physical abuse, including improper sexual contact or conduct.

e. Any other act or practice that takes unfair or unreasonable advantage of the vulnerability of a purchaser or prospective purchaser based on age, poor health, infirmity, impaired understanding, restricted mobility, or disability.

100.31(3) *Disclosures.*

a. Reserved.

b. Prior to accepting an application, initial premium, or deposit for insurance which is to fund a purchase agreement, a preneed seller or sales agent must adequately disclose to the potential purchaser in writing all of the following:

(1) The relationship of the insurance to the funding of the purchase agreement and the nature and existence of any guarantees relating to the purchase agreement.

(2) The impact on the purchase agreement of any of the following:

1. Changes in the insurance including, but not limited to, changes in the assignment, beneficiary designation or use of the proceeds;

2. Penalties to be incurred by the policyholder as a result of failure to make premium payments;

3. Penalties to be incurred or moneys to be received as a result of cancellation or surrender of the insurance.

(3) All merchandise or services to be supplied pursuant to the contract or purchase agreement and all relevant information concerning the price of the funeral services, including an indication that the purchase price is either guaranteed at the time of purchase or to be determined at the time of need.

(4) All relevant information concerning what occurs and whether any entitlements or obligations arise if there is a difference between the proceeds of the insurance and the amount actually needed to fund the purchase agreement.

(5) Any penalties including, but not limited to, penalties for the inability of the preneed seller to deliver merchandise or services or to fulfill the purchase agreement guarantee.

(6) Any restrictions including, but not limited to, geographic restrictions.

(7) Whether any sales commission or other form of compensation is being paid related to the insurance and the identity of the individual or entity to which the compensation is to be paid. It is not necessary that the amount be disclosed.

c. Reserved.

d. Regardless of the type of funding for the purchase agreement, at the time of providing a written itemized cost estimate for the purchase of preneed merchandise or services:

(1) The sales agent shall provide to the potential purchaser a copy of the Iowa insurance division's Guide to Prearranged Funeral Plans, or a document in similar format and with substantially similar language.

(2) The sales agent shall include on the cost estimate clear statements indicating:

1. The date after which the estimate or proposal expires.

2. That prices are subject to change after the cost proposal expires.

3. That the prices provided are a nonbinding estimate and do not create a binding contract or agreement with the preneed seller.

(3) The sales agent shall provide a copy of the cost estimate to the potential purchaser and shall retain a copy of the cost estimate in the preneed seller's records for at least five years.

For purposes of this rule, a price list is not a cost estimate.

e. Regardless of the type of funding for the purchase agreement, a purchase agreement that describes the purchase price as "guaranteed" shall disclose the nature and details of the guarantee. For items described as "guaranteed," the purchaser, beneficiary and the beneficiary's estate shall not be obligated to pay additional costs if costs at the time merchandise or services are delivered or provided are greater than the funds available from the allocable portion of payments and accumulated income or growth, as long as the funding is not limited in any manner, such as by the failure to make contractual or premium payments.

f. If a purchase agreement is to be funded by a trust, the purchase agreement shall disclose that 100 percent of all payments related to merchandise or services described in the purchase agreement as "nonguaranteed" shall be placed in trust in accordance with Iowa Code section 523A.201(2).

[ARC 2258C, IAB 11/25/15, effective 12/30/15]

191—100.32 Reserved.

191—100.33(523A) Records maintenance and retention.

100.33(1) *By preneed sellers.*

a. Time for retaining records. If no other legal provision governs record retention, a preneed seller shall keep all records required to be kept by this rule either from the date of the preneed seller's last examination by the commissioner or for a minimum of five years after the date of the death of the beneficiary, whichever is sooner.

b. Confidentiality. The preneed seller shall keep social security numbers confidential.

c. Sales log and numbering of purchase agreements. A preneed seller shall maintain a sales log of purchase agreements, assigning numbers in sequential order to each purchase agreement sold during a calendar year.

(1) Prenumbered contracts are not required. If a contract is not prenumbered, the sales agent shall write the contract number on the purchase agreement at the time it is executed or in a document provided later to the purchaser.

(2) The copy of the purchase agreement given to the purchaser shall include the contract number assigned to the purchase agreement.

(3) If a correction to the contract number is required, the correction shall be recorded in the sales logs, and documentation that retains evidence of the initial number used shall be maintained.

(4) Preneed sellers shall use the following numbering system, unless they receive written permission from the commissioner to use a different system.

1. The first portion of the number shall be the year the contract was written.

2. The second portion of the number shall be sequential and indicate the number of contracts executed by the preneed seller, to date, in the applicable calendar year.

3. Additional suffixes may be used as follows:

- A preneed seller with multiple locations may use a suffix to identify each location by number.
- A preneed seller with multiple sales agents may use a numerical suffix to identify the sales agent.

4. Each part of the number shall be separated by a hyphen.

An example of the numbering system is provided on the commissioner's Web site.

d. Transaction records. A preneed seller shall document all transactions with purchasers and prospective purchasers and maintain accurate copies and records of all purchase agreements.

e. Deposit records. Preneed sellers shall maintain records of all deposits made into accounts related to purchase agreements. If purchase agreement payments made to a preneed seller and funds not related to a purchase agreement are commingled and deposited together in a single account, or

if a deposit to an account involves purchase agreement payments related to more than one purchase agreement, the preneed seller shall retain a detailed summary of each deposit showing the amounts related to the different purchase agreements.

f. Record of sales agents. A preneed seller shall maintain a list of all sales agents who sold purchase agreements on behalf of the preneed seller during each calendar year. The records shall include the license number of each sales agent and the dates of the sales agent's employment. Upon the commissioner's request, these records shall be provided to the commissioner.

100.33(2) *By sales agents.* A sales agent shall maintain a sales log for a minimum of five years after the sale. The sales log shall include all of the information required for the sales agent's annual report. Instructions and an example are available on the commissioner's Web site.

[ARC 2258C, IAB 11/25/15, effective 12/30/15; ARC 2730C, IAB 9/28/16, effective 11/2/16]

191—100.34(523A) Changes in funding methods for or terms of purchase agreements. When a preneed seller or sales agent changes the funding method for a prepaid purchase agreement, this rule applies.

100.34(1) *Change in funding of a purchase agreement.* When a purchaser changes the funding source for a purchase agreement from a bank account or trust account to funding through insurance, or from insurance funding from one insurance company to another:

a. This type of change is deemed to be an amendment to the purchase agreement, not a cancellation of the original purchase agreement.

b. The amendment to the purchase agreement may include other minor updates to the statement of goods and services.

c. The preneed seller shall do all of the following:

(1) Obtain a written, signed and dated statement from the purchaser requesting the change in funding and acknowledging the transaction in a way that demonstrates the purchaser understood the change in funding transaction. A copy of the signed statement shall be provided to the purchaser, and a copy shall be retained by the preneed seller.

(2) Describe the change in funding in a written amendment to the purchase agreement. The amendment shall be signed and dated by the purchaser and the preneed seller. A copy of the signed amendment shall be provided to the purchaser, and a copy shall be retained by the preneed seller.

(3) If the funding change is from a bank account to an insurance account, record the amendment on the preneed seller's annual report as a reduction in cash accounts and an increase in insurance accounts.

(4) If the funding change is from a trust account to an insurance account:

1. Confirm that the policy shall have an increasing benefit, as specified in Iowa Code section 523A.401(6).

2. Record the amendment on the preneed seller's annual report as both a withdrawal from trust and an addition of insurance. Instructions are available on the commissioner's Web site.

3. Comply with record-keeping and reporting requirements for the sale of new insurance in Iowa Code sections 523A.401 and 523A.402.

(5) If the change in funding is from one insurance company to another:

1. Document compliance with the disclosure requirements of rule 191—15.8(523A).

2. Comply with the replacement requirements of rule 191—16.24(507B).

3. Record the amendment on the preneed seller's annual report as a change in funding from one insurance company to another. Instructions are available on the commissioner's Web site.

(6) For record maintenance purposes, use the number for the original purchase agreement, not a new assigned number.

100.34(2) *Cancellation of a purchase agreement.* When a purchaser makes substantive changes to a purchase agreement:

a. This type of change is deemed to be a cancellation of the existing purchase agreement and requires the preneed seller to execute a new purchase agreement.

b. The preneed seller shall do all of the following:

(1) Obtain a written signed and dated statement from the purchaser which cancels the existing purchase agreement. A copy of the signed statement shall be provided to the purchaser, and a copy shall be retained by the preneed seller.

(2) Obtain a written signed and dated statement from the purchaser which demonstrates that the purchaser understood the change from one purchase agreement to the other. A copy of the signed statement shall be provided to the purchaser, and a copy shall be retained by the preneed seller.

(3) Comply with the rescission requirements of Iowa Code section 523A.602.

(4) For record maintenance purposes, assign a new number for the new purchase agreement.

(5) Record the cancellation of the initial purchase agreement on its annual report.

[ARC 2258C, IAB 11/25/15, effective 12/30/15]

191—100.35(523A) Preneed seller's change of ownership and cessation of business operations.

100.35(1) *Sale or transfer of purchase agreements or of business.* A preneed seller shall not change ownership of a business, sell all or part of a business, cease business, or sell or transfer purchase agreements as part of the sale of a business or the assets of a business, unless:

a. The preneed seller has notified the commissioner of the change at least 90 days prior to the sale or transfer.

b. The person receiving assets and purchase agreements has an active preneed seller's license at the time of the sale or transfer.

c. A certified public accountant has performed and filed with the commissioner an agreed-upon procedures (AUP) report or other audit acceptable to the commissioner, as required by Iowa Code section 523A.207.

d. The commissioner has conducted an examination of the sales and market practices of the preneed seller, if the commissioner requests.

e. The preneed seller has provided the commissioner with any other information required for the commissioner to approve the sale or transfer.

100.35(2) *Cessation of business by a preneed seller.* At least 90 days prior to the cessation of business operations, if a preneed seller voluntarily or involuntarily ceases doing business, and the preneed seller's obligation to provide merchandise or services has not been assumed by another preneed seller holding an active preneed seller's license, the preneed seller shall:

a. Send a notice to the commissioner, in a manner as directed by the commissioner. Pursuant to subrule 100.10(3), the commissioner shall place the preneed seller's license on restricted status when the preneed seller ceases doing business.

b. Send written notice of the proposed cessation of business to the purchaser and beneficiary, if different than the purchaser, of each purchase agreement by certified mail, return receipt requested. The notice shall indicate the preneed seller's ability to transfer any trust funds and transfer the proceeds from any insurance to another licensed preneed seller.

c. During the 90 days prior to the cessation of business operations, the preneed seller shall work with financial institutions and insurance companies to modify the title to financial accounts and modify assignments and ownership of annuities and insurance policies as necessary or distribute trust funds to the purchaser or transfer to another licensed preneed seller.

100.35(3) *Failure to notify the commissioner of a change of ownership, sale of a business, or cessation of business.*

a. A preneed seller's failure to notify the commissioner, as set forth in this rule, of a change of ownership of a business, sale of all or part of a business, cessation of business, or sale or transfer of purchase agreements as part of the sale of a business or the assets of a business may be a ground for penalty under rule 191—100.40(523A) or 191—100.41(523A).

b. If trust funds are transferred without compliance with this rule or with Iowa Code sections 523A.207 and 523A.602, the commissioner may petition for the appointment of a receiver pursuant to Iowa Code section 523A.811.

100.35(4) Annual reports. A preneed seller holding a restricted license shall continue to file annual reports pursuant to Iowa Code section 523A.204 regarding any purchase agreement not transferred to another seller holding a current preneed seller's license through an assumption agreement or otherwise.

For purposes of this rule, the sale of a business shall include any change of controlling interest in any corporation or other business entity.
[ARC 2258C, IAB 11/25/15, effective 12/30/15]

191—100.36 to 100.39 Reserved.

191—100.40(523A) Prohibited practices for preneed sellers and sales agents.

100.40(1) The commissioner may impose sanctions as set forth in Iowa Code section 523A.807 and rules 191—100.40(523A) and 191—100.41(523A), or place a license in restricted status, if the commissioner finds that a preneed seller, sales agent, or owner, partner, member, director, shareholder or manager of a licensed business entity has violated or failed to comply with Iowa Code chapter 523A, this chapter, or any associated rules or implementing orders, or is otherwise unable to conduct activities as a preneed seller or sales agent.

100.40(2) Grounds for discipline include but are not limited to the following acts or practices:

a. *Fraudulent or deceptive practices.* Engaging in any act or practice that violates Iowa Code section 523A.701, 523A.702 or 523A.703, whether or not actual harm or injury occurs, including but not limited to:

- (1) Falsifying business records; or
- (2) Misappropriating funds.

b. *Responsibility for sales activities of others.* A preneed seller's consent or acquiescence to violation of this chapter or Iowa Code chapter 523A by any person acting on the preneed seller's behalf.

c. *Law violations.*

(1) Violating any state or federal law applicable to the conduct of the applicant's or licensee's business including, but not limited to, the following:

1. The provisions of Iowa Code chapter 156 pertaining to the licensure of funeral directors in the state of Iowa;
2. Regulations promulgated by the Federal Trade Commission relating to merchandise or services, or funeral or cremation establishments;
3. Applicable tax or public health laws, ordinances or regulations; or
4. Laws, rules, ordinances, or regulations occurring outside of Iowa if the commissioner determines that such violation may adversely implicate the licensee's or applicant's compliance with Iowa laws, rules, orders, ordinances, or regulations.

(2) Conviction of a criminal offense, in any jurisdiction, involving dishonesty or a false statement, including but not limited to fraud, theft, misappropriation of funds, falsification of documents, deceptive acts or practices, or other related offenses. "Conviction" shall include a plea of guilty or a finding of guilt and shall include a deferred judgment.

d. *Sales prohibited by order.* The sale of merchandise or services by a preneed seller or sales agent who has been prohibited from selling services or merchandise in an order issued pursuant to Iowa Code section 523A.807(3).

e. *Returned checks or declined credit transactions.* Submitting to the commissioner an electronic payment which is returned to the commissioner by a bank without payment, or submitting a payment to the commissioner by credit card which the credit card company does not approve, or canceling or refusing amounts charged to a credit card by the commissioner.

f. *Failure to maintain records.* Failure to maintain records as required by Iowa Code chapter 523A or any associated rules or orders.

g. Failure to cooperate with an examination or investigation. Failure to submit to an examination, failure to comply with a reasonable written request of an examiner, or failure to cooperate with an investigation conducted by the commissioner as required by Iowa Code sections 523A.206, 523A.803, 523A.808 and 523A.811 and any associated rules or orders.

h. Insolvency or unsound financial condition. Being or becoming insolvent or of unsound financial condition, the determination of which shall be based on but not limited to the following factors:

- (1) The licensee's or license applicant's net worth;
- (2) Whether a financial institution has closed or otherwise taken adverse action against an account held by or on behalf of the licensee or license applicant;
- (3) The licensee or license applicant has exhibited a pattern of writing bad checks or otherwise overdrawing a business or trust account as a result of insufficient funds;
- (4) Untimely payment by the licensee or license applicant of business obligations in a manner that threatens the operation of the business;
- (5) Untimely placement by the licensee of consumer funds into trust;
- (6) Failure of the licensee or license applicant to pay sales tax, unemployment tax or other tax owed in the course of business; or
- (7) Any other act, practice or omission that provides a reasonable basis to question the ability of the licensee or license applicant to comply with the requirements of Iowa Code chapter 523A and related regulations.

i. Inability to perform.

(1) Inability to provide the merchandise or services which the licensee purports to sell, including but not limited to failing to employ or have a contractual arrangement with at least one person who is licensed to perform mortuary science services, as described in Iowa Code chapter 156, if such services are included in a purchase agreement.

(2) Inability to reasonably provide merchandise or services due to an impairment, drug or alcohol addiction, or other act, conduct or condition. A licensee who has had a physical or mental impairment or illness during the license period may request to be placed on restricted status by the commissioner. Any such request shall be submitted on a form as specified by the commissioner and must include a signed statement of a licensed health care professional which attests to the existence of a disability or illness during the license period.

j. Suspension for failure to pay child support.

(1) Upon receipt of a certificate of noncompliance from the child support recovery unit (CSRU), the commissioner shall issue a notice to the sales agent that the sales agent's pending application for licensure, pending request for renewal, or current license will be suspended 30 days after the date of the notice. Notice shall be sent by regular mail to the sales agent's last-known address.

(2) The notice shall contain the following items:

1. A statement that the commissioner intends to suspend the sales agent's application, request for renewal or current license in 30 days;
2. A statement that the sales agent must contact the CSRU to request a withdrawal of the certificate of noncompliance;
3. A statement that the sales agent's application, request for renewal or current license will be suspended if the certificate of noncompliance is not withdrawn;
4. A statement that the sales agent does not have a right to a hearing before the commissioner, but that the sales agent may file an application for a hearing in district court pursuant to Iowa Code section 252J.9;
5. A statement that the filing of an application with the district court will stay the proceedings of the commissioner; and
6. A copy of the certificate of noncompliance.

(3) The filing of an application for hearing with the district court will stay all suspension proceedings until the commissioner is notified by the district court of the resolution of the application.

(4) If the commissioner does not receive a withdrawal of the certificate of noncompliance from the CSRU or a notice from a clerk of court that an application for hearing has been filed, the commissioner

shall suspend the sales agent's application, request for renewal or current license 30 days after the notice is issued.

(5) Upon receipt of a withdrawal of the certificate of noncompliance from the CSRU, suspension proceedings shall halt, and the named sales agent shall be notified that the proceedings have been halted. If the sales agent's license has already been suspended, the license shall be reinstated if the sales agent is otherwise in compliance with rules issued by the commissioner. All fees required for license renewal or license reinstatement must be paid by sales agents, and all continuing education requirements must be met before a sales agent license will be renewed or reinstated after a license suspension or revocation pursuant to this paragraph.

k. Suspension for failure to pay student loan. Rescinded IAB 1/1/20, effective 2/5/20.

l. Suspension for failure to pay state debt.

(1) The commissioner shall deny the issuance or renewal of a sales agent license upon receipt of a certificate of noncompliance from the centralized collection unit of the department of revenue according to the procedures in Iowa Code chapter 272D. In addition to the procedures set forth in Iowa Code chapter 272D, this subrule shall apply.

(2) Upon receipt of a certificate of noncompliance from the centralized collection unit of the department of revenue according to the procedures set forth in Iowa Code chapter 272D, the commissioner shall issue a notice to the sales agent that the sales agent's pending application for licensure, pending request for renewal, or current sales agent license will be suspended 60 days after the date of the notice. Notice shall be sent to the sales agent's last-known address by restricted certified mail, return receipt requested, or by personal service in accordance with the Iowa Rules of Civil Procedure. Alternatively, the applicant or licensed sales agent may accept service personally or through authorized counsel.

(3) The notice shall contain the following items:

1. A statement that the commissioner intends to suspend the sales agent's application, request for renewal or current sales agent license in 60 days;

2. A statement that the sales agent must contact the centralized collection unit of the department of revenue to schedule a conference or to otherwise obtain a withdrawal of the certificate of noncompliance;

3. A statement that the sales agent's application, request for renewal or current sales agent license will be denied or suspended if the commissioner does not receive a withdrawal of the certificate of noncompliance from the centralized collection unit of the department of revenue within 60 days of the issuance of notice under this rule; or, if the current sales agent license is on suspension, a statement that the sales agent's current sales agent license will be revoked;

4. A statement that the sales agent does not have a right to a hearing before the commissioner, but that the sales agent may file an application for a hearing in district court pursuant to Iowa Code section 272D.9;

5. A statement that the filing of an application with the district court will stay the proceedings of the commissioner; and

6. A copy of the certificate of noncompliance.

(4) Sales agents shall keep the commissioner informed of all court actions and all actions taken by the centralized collection unit of the department of revenue, and sales agents shall provide to the commissioner, within seven days of filing or issuance, copies of all applications filed with the district court pursuant to all court orders entered in such actions and copies of all withdrawals of certificates of noncompliance by the centralized collection unit of the department of revenue.

(5) The effective date of revocation or suspension of a sales agent license shall be 60 days following service of the notice upon the applicant or sales agent.

(6) In the event an applicant or licensed sales agent timely files a district court action following service of a notice by the commissioner, the commissioner's suspension proceedings will be stayed until the commissioner is notified by the district court of the resolution of the application. Upon receipt of a court order lifting the stay, or otherwise directing the commissioner to proceed, the commissioner shall continue with the intended action described in the notice. For purposes of determining the effective date

of the denial of the issuance or renewal of a sales agent license, the commissioner shall count the number of days before the action was filed and the number of days after the court disposed of the action.

(7) If the commissioner does not receive a withdrawal of the certificate of noncompliance from the centralized collection unit of the department of revenue or a notice from a clerk of court that an application for hearing has been filed, the commissioner shall suspend the sales agent's application, request for renewal or current sales agent license 60 days after the notice is issued.

(8) Upon receipt of a withdrawal of the certificate of noncompliance from the centralized collection unit of the department of revenue, suspension proceedings shall halt, and the named sales agent shall be notified that the proceedings have been halted. If the sales agent's license has already been suspended, the license shall be reinstated if the sales agent is otherwise in compliance with this chapter. All fees required for license renewal or license reinstatement must be paid by the sales agent, and all continuing education requirements must be met before a sales agent license will be renewed or reinstated after a license suspension or revocation pursuant to Iowa Code chapter 272D.

(9) The commissioner shall notify the sales agent in writing through regular first-class mail, or such other means as the commissioner deems appropriate in the circumstances, within ten days of the effective date of the suspension or revocation of a sales agent license, and shall similarly notify the sales agent when the sales agent license is reinstated following the commissioner's receipt of a withdrawal of the certificate of noncompliance.

(10) Notwithstanding any statutory confidentiality provision, the commissioner may share information with the centralized collection unit of the department of revenue for the sole purpose of identifying sales agents subject to enforcement under Iowa Code chapter 272D.

[ARC 2258C, IAB 11/25/15, effective 12/30/15; ARC 4848C, IAB 1/1/20, effective 2/5/20]

191—100.41(523A) Disciplinary procedures.

100.41(1) Investigations. The commissioner is authorized by Iowa Code sections 17A.13(1) and 523A.803 to conduct such investigations as the commissioner deems necessary to determine whether any person has violated or is about to violate Iowa Code chapter 523A. The commissioner is authorized to issue and enforce subpoenas to compel testimony and to compel the production of books and records, as more fully described in Iowa Code section 523A.803. Upon the commissioner's determination that probable cause exists to commence a disciplinary proceeding, the procedures contained in 191—Chapter 3 shall apply.

100.41(2) Legal relationship of sales agent to preneed seller. For purposes of Iowa Code section 523A.502(1), a sales agent offering preneed services on behalf of a preneed seller is deemed to have a legal relationship as an agent of the preneed seller. The determination of whether a sales agent and a preneed seller have a principal-agent relationship will be made by the commissioner based on the totality of the circumstances surrounding the business relationship.

100.41(3) Factors used to determine whether a preneed seller has agreed to provide merchandise or services.

a. Unless the lack of a mutual agreement has been appropriately documented in the preneed seller's preneed purchaser file records, a preneed seller has agreed "to furnish cemetery merchandise, funeral merchandise, funeral services, or a combination thereof" and received an "initial payment," for purposes of Iowa Code section 523A.102(23), if:

(1) A sales agent of the preneed seller has met in person, or had an interactive discussion by telephone or another form of electronic communication, and discussed specific items of merchandise or services and the price of the applicable merchandise or services with a potential purchaser and the potential purchaser did any of the following:

1. Transferred ownership of insurance to the preneed seller,
2. Assigned proceeds of insurance to the preneed seller, or
3. Established a financial account made payable on death to the preneed seller.

(2) A sales agent of the preneed seller has met in person, or had an interactive discussion by telephone or another electronic communication, and discussed specific items of merchandise or services and the applicable prices with the owner of a financial account for which the preneed seller has been

named as the pay-on-death beneficiary to receive funds upon the death of the owner of the financial account.

b. Written documents retained in the preneed seller's records may rebut the presumption that a purchase agreement exists.

100.41(4) Penalties. Persons violating Iowa Code chapter 523A, this chapter, or any associated rules or implementing orders may be subject to one or more of the following penalties.

a. Pursuant to Iowa Code sections 523A.204(4) and 523A.502A, the failure of a licensee to timely file an annual report shall result in the license being placed on restricted status. The licensee is not authorized to solicit or execute or amend any purchase agreement under Iowa Code chapter 523A until the license has been reinstated.

b. If the commissioner issues or renews a license and subsequently determines that the payment method was declined or returned without payment to the commissioner, the license shall be immediately placed on restricted status until the payments are made and any fees or penalties charged by the commissioner are paid, at which time the license may be reinstated at the request of the applicant.

c. The commissioner may impose the disciplinary sanctions of Iowa Code chapter 523A, and of this chapter, alone or in combination, against a preneed seller or sales agent, or as a condition of licensure of an applicant for a preneed seller license or sales agent license or as a condition of renewal of a license. Sanctions include but are not limited to the following:

- (1) Issuing a warning letter or a letter of reprimand.
- (2) Requiring additional education or training.
- (3) Requiring certain specified procedures or methods of operation.
- (4) Ordering the payment of consumer restitution.
- (5) Placing a licensee on probationary status with or without the imposition of reasonable conditions to control or monitor conduct, such as periodic reports.
- (6) Imposing costs associated with the commissioner's investigation and enforcement activities.
- (7) Imposing any other sanction allowed by law.

d. A person with a restricted or expired license is subject to disciplinary action, injunctive action, criminal sanctions and any other available legal remedies in the event of any violation of Iowa Code chapter 523A, or any rules adopted or orders issued pursuant thereto.

[ARC 2258C, IAB 11/25/15, effective 12/30/15]

These rules are intended to implement Iowa Code chapter 523A.

[Filed ARC 2258C (Notice ARC 2173C, IAB 9/30/15), IAB 11/25/15, effective 12/30/15]

[Filed ARC 2730C (Notice ARC 2667C, IAB 8/3/16), IAB 9/28/16, effective 11/2/16]

[Filed ARC 4848C (Notice ARC 4713C, IAB 10/23/19), IAB 1/1/20, effective 2/5/20]

[Editorial change: IAC Supplement 9/23/20]