

CHAPTER 105
STANDARDS OF CONDUCT, PROHIBITED PRACTICES,
AND DISCIPLINARY PROCEDURES

191—105.1(523A) Purpose. This chapter is intended to establish certain minimum standards and guidelines of conduct for preneed sellers and sales agents by identifying required actions and prohibited acts or practices.

191—105.2(523A) Numbering purchase agreements. Preneed sellers shall assign numbers, in sequential order, to each purchase agreement sold during a calendar year.

105.2(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.

105.2(2) The copy of the purchase agreement given to the purchaser shall include the contract number assigned to the purchase agreement.

105.2(3) If a correction to the contract number is required, the correction shall be recorded in the sales logs required by subrule 105.3(3), and documentation that retains evidence of the initial number used shall be maintained.

105.2(4) A numbering system that consists of a two-part number separated by a hyphen would satisfy this rule. The first portion of the number would be the date the contract was written. The second portion of the number would be sequential and indicate the number of contracts executed by the preneed seller, to date, in the applicable calendar year. A preneed seller with multiple locations may use a prefix to identify each location by number. A preneed seller with multiple sales agents may use a numerical suffix to identify the sales agent.

191—105.3(523A) Records maintenance.

105.3(1) *Transaction records to be kept by preneed sellers.* A preneed seller shall document all customer transactions and maintain accurate copies and records of all purchase agreements. If no other legal provision governs record retention, a preneed seller shall keep all customer records for a minimum of three years after the date of the death of the beneficiary. The preneed seller shall keep records and the identity of individuals in the records confidential.

105.3(2) *Deposit records to be kept by preneed sellers.* If purchase payments made to a preneed seller are commingled and deposited with funds not related to a purchase agreement subject to Iowa Code chapter 523A, or if deposits involve more than one purchase agreement, the preneed seller shall retain a detailed summary of each deposit. This information shall be maintained and shall be available for inspection by the commissioner for a minimum of four years after the deposit.

105.3(3) *Sales log to be kept by preneed sellers.* Preneed sellers shall maintain a sales log for purposes of assigning numbers to purchase agreements. The sales log shall be maintained for a minimum of four years after the date of sale.

105.3(4) *Sales log to be kept by sales agents.* A sales agent shall maintain a sales log for a minimum of four years. The sales log shall include all of the information required for the sales agent's annual report set forth in subrule 105.4(2).

[ARC 1975C, IAB 4/29/15, effective 6/3/15]

191—105.4(523A) Annual reports.

105.4(1) *Annual reports by preneed sellers.* A licensed preneed seller shall file a completed annual report form with the commissioner on or before April 1 each year. The form and instructions may be obtained through the commissioner's Web site. The report shall include a list of contracts sold during the year covered by the report, including the date of each contract, the total purchase price, the name of the purchaser, the name of the beneficiary and, for each contract sold after July 1, 2007, the number assigned to the contract. Along with submitting the report, the preneed seller shall submit a filing fee, as set forth in Iowa Code section 523A.204.

105.4(2) *Annual reports by sales agents.* A licensed sales agent shall file a completed annual report form with the commissioner on or before April 1 each year, pursuant to Iowa Code section 523A.502A.

The form and instructions may be obtained through the commissioner's Web site. The report shall include the following:

- a. Names of applicable licensed preneed sellers and their license numbers; and
- b. A list of contracts sold during the year covered by the report, including the date of the contract, the total purchase price, the name of the purchaser and the name of the beneficiary and, for each contract sold after July 1, 2007, the number assigned to each contract. If the sales agent was appointed by more than one preneed seller, the list of contracts required by this paragraph shall be divided according to each preneed seller.

105.4(3) *Failure to file timely.* If a preneed seller or sales agent fails to file an annual report as required by this subrule on or before the date the annual report is due, the penalties of subrule 105.12(3) shall apply. Additional sanctions pursuant to rule 191—105.6(523A) and Chapter 105 also may be imposed.

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191—105.5(523A) Fidelity bond or insurance. A preneed seller shall obtain and maintain a fidelity bond or similar insurance in an amount not less than \$50,000 to protect against the loss of purchaser payments not placed in trust, as required by Iowa Code section 523A.201(5) unless the preneed seller only uses the trusting alternatives set forth in Iowa Code sections 523A.401 to 523A.405 or unless the preneed seller deposits 100 percent of each payment into a trust fund. This requirement may be satisfied by a cash deposit held and administered in trust for the benefit and protection of purchasers and beneficiaries in this state, pursuant to a trust agreement filed with and acceptable to the commissioner.

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191—105.6(523A) Grounds for discipline. The commissioner may impose sanctions as set forth in Chapter 105 if the commissioner finds that a licensee or that an owner, partner, member, director, shareholder or manager of a licensed business entity has violated or failed to comply with Iowa Code chapter 523A, or any associated rules or implementing orders, including but not limited to the following acts or practices:

105.6(1) *Fraudulent or deceptive applications.* Engaging in fraudulent or deceptive acts in procuring a license, including but not limited to:

- 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; or
- e. Falsifying documents.

105.6(2) *Conviction of a criminal offense.* 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.

105.6(3) *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:

- a. Making untrue or improbable statements in advertisements;
- b. Falsifying business records; or
- c. Misappropriating funds.

105.6(4) *Insolvency or 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:

- a. The licensee's or license applicant's net worth;
- b. 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;

- c. 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;
- d. Untimely payment by the licensee or license applicant of business obligations in a manner that threatens the operation of the business;
- e. Untimely placement by the licensee of consumer funds into trust;
- f. Failure of the licensee or license applicant to pay sales, unemployment or other tax owed in the course of business; or
- g. 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.

105.6(5) *Unethical, harmful or detrimental conduct.* Engaging 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 not in the best interests of the beneficiary;
- b. Failure to leave a residence when requested to do so;
- c. Intimidation or physical abuse, including improper sexual contact or conduct; or
- d. Any other act or practice that takes unfair or unreasonable advantage of the vulnerability of a client or prospective client based on age, poor health, infirmity, impaired understanding, restricted mobility, or disability.

105.6(6) *Failure to maintain records.* Failure to maintain records as required by Iowa Code chapter 523A or any associated rules or orders.

105.6(7) *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 chapter 523A or any associated rules or orders.

105.6(8) *Late filings or the failure to submit a report.* Filing reports after the filing deadline or failing to file a report as required by Iowa Code chapter 523A or any associated rules or orders.

105.6(9) *Inability to perform.* A preneed seller's failing to be able to provide the cemetery merchandise, funeral merchandise, funeral services, or combination thereof 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.

105.6(10) *Sale of business without notice.* Selling all or part of a licensee's business without proper notice to the commissioner, pursuant to rule 191—103.3(523A).

105.6(11) *Improper sale or transfer of purchase agreements.* Selling or transferring purchase agreements as part of the sale of a business or the assets of a business, if an audit expressing the auditor's opinion of the adequacy of funding related to the purchase agreements to be sold or transferred has not been performed by a certified public accountant and filed with the commissioner, as required by Iowa Code section 523A.207.

105.6(12) *Sales prohibited by order.* The applicant or licensee has been named in an order issued pursuant to Iowa Code section 523A.807(3).

105.6(13) *Failure to complete continuing education.* Failure of a licensee to timely complete the continuing education required for license renewal.

105.6(14) *Law violations.* 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:

- a. The provisions of Iowa Code chapter 156 pertaining to the licensure of funeral directors in the state of Iowa;
- b. Regulations promulgated by the Federal Trade Commission relating to funeral services, or funeral or cemetery merchandise, or funeral or cremation establishments;
- c. Applicable tax or public health laws, ordinances or regulations; or

d. 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.

105.6(15) *Unsafe practice.* Having any impairment, drug or alcohol addiction, or other act, conduct or condition which adversely impacts the licensee's ability to perform in a safe, competent manner.

105.6(16) *Failure to maintain fidelity bond or similar insurance.* A preneed seller's failure to maintain a fidelity bond or similar insurance as required by rule 191—105.5(523A) and Iowa Code section 523A.201(5).

105.6(17) *Responsibility for sales activities of others.* A preneed seller's consent or acquiescence to violation of 191—Chapters 100 through 105 or Iowa Code chapter 523A by any person acting on the preneed seller's behalf.

[ARC 1975C, IAB 4/29/15, effective 6/3/15]

191—105.7(523A) Prohibition on sales activities and practices without a license or without an appointment.

105.7(1) *License required.* No person shall advertise, sell, promote, or offer to furnish cemetery merchandise, funeral merchandise, funeral services, or a combination thereof when performance or delivery may be more than 100 days following the initial payment of the account unless the person either:

a. Holds an active preneed seller license issued by the commissioner pursuant to Iowa Code section 523A.501; or

b. Holds an active sales agent license issued by the commissioner pursuant to Iowa Code section 523A.502, and the person is an appointed sales agent of a person holding a preneed seller license issued by the commissioner pursuant to Iowa Code section 523A.501.

105.7(2) *Prohibited activities.* A person to whom a license has not been issued by the commissioner, a licensee whose license has expired, is inactive, or is suspended, or a sales agent who is not appointed by a preneed seller, may not:

a. Conduct any of the activities for which a license is required pursuant to Iowa Code chapter 523A or rule 191—103.1(523A);

b. Post or display the licensee's license;

c. Use a license certificate or a license number;

d. Agree to perform any term of an agreement, whether or not pursuant to a written purchase agreement, to furnish cemetery merchandise, funeral merchandise, funeral services, or a combination thereof, if the sale of the merchandise or services is subject to Iowa Code chapter 523A and the sale is after the renewal date of the license;

e. Execute an agreement or agree to perform any term of an agreement or, unless the agreement was entered into while the licensee had an active license issued by the commissioner, accept any payment or funding, including the assignment of ownership of or proceeds from an insurance policy or annuity, whether or not pursuant to a written purchase agreement, related to the purchase of cemetery merchandise, funeral merchandise, funeral services, or a combination thereof, if the sale of the merchandise or services is subject to Iowa Code chapter 523A and the sale is after the renewal date of the license. This rule does not prevent payments to an unlicensed person upon the person's delivery of cemetery merchandise, funeral merchandise or funeral services after the death of a beneficiary, including the payment of the proceeds of an insurance policy or annuity at the time of death of the insured listed on the insurance policy or annuity.

[ARC 1975C, IAB 4/29/15, effective 6/3/15]

191—105.8 to 105.10 Reserved.

191—105.11(523A) 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.

[ARC 1975C, IAB 4/29/15, effective 6/3/15]

191—105.12(17A,523A) Penalties. Persons violating Iowa Code chapter 523A or rules adopted or orders issued pursuant thereto may be subject to one or more of the following penalties.

105.12(1) Criminal penalties. A person who willfully violates Iowa Code section 523A.501(1), concerning the requirement for a preneed seller license, or Iowa Code section 523A.502(1), concerning the requirement for a sales agent license, is guilty of a Class D felony. Licensed and unlicensed persons who violate other provisions of Iowa Code chapter 523A and rules adopted or orders issued pursuant thereto including, but not limited to, a failure to properly place trust funds into trust, pursuant to Iowa Code section 523A.201, 523A.202, 523A.404 or 523A.405, are subject to prosecution for crimes including, but not limited to, fraudulent practice under Iowa Code section 523A.703, theft under Iowa Code chapter 714, or ongoing criminal conduct under Iowa Code chapter 706A. 191—Chapters 100 through 105 do not limit the power of the state to punish any person for any conduct which constitutes a crime under any other statute.

105.12(2) Consumer fraud Act. A violation by a licensed or unlicensed person of Iowa Code chapter 523A or 191—Chapters 100 through 105, or an order issued pursuant to those chapters, is a violation of the Iowa consumer fraud Act, Iowa Code sections 714.16 and 714.16A.

105.12(3) Administrative sanctions.

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 an administrative penalty of \$500. The license is suspended on the date the annual report was due until the overdue report is filed and the administrative penalty paid. The licensee is not authorized to solicit or execute 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 payment for the license or renewal was returned by a bank without payment to the commissioner, or that the credit card company does not approve or cancels or refuses amounts charged to the credit card, the license shall be immediately suspended 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. If the commissioner issues or renews a sales agent license and subsequently determines that the sales agent is not appointed by a preneed seller, the license shall be immediately suspended until the sales agent obtains such an appointment and provides satisfactory evidence to the commissioner of the appointment, at which time the license may be reinstated at the request of the sales agent.

d. The commissioner may impose the following disciplinary sanctions, alone or in combination, against a licensee or as a condition of licensure of an applicant for an initial or renewal license:

- (1) Issue a warning letter or a letter of reprimand.
- (2) Require additional education or training.
- (3) Order mediation pursuant to Iowa Code section 523A.804.
- (4) Issue a cease and desist order pursuant to Iowa Code section 523A.805 or 523A.807.
- (5) Require certain specified procedures or methods of operation.
- (6) Order the payment of consumer restitution.
- (7) Place a licensee on probationary status with or without the imposition of reasonable conditions to control or monitor conduct, such as periodic reports.
- (8) Refuse to issue or renew a license.
- (9) Suspend a license for an indefinite or specific period of time.
- (10) Revoke a license.
- (11) Accept the voluntary surrender of a license.
- (12) Impose costs associated with the commissioner's investigation and enforcement activities.
- (13) Impose civil penalties pursuant to Iowa Code section 523A.807.
- (14) Impose any other sanction allowed by law, as the commissioner deems appropriate.

e. A person with an inactive, expired, or suspended 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.

f. In addition, or as an alternative to the administrative process described in this chapter, the commissioner may take action as described in Iowa Code chapter 523A, including but not limited to seeking an injunction in district court, referring the matter for criminal prosecution, entering into a consent agreement, issuing an informal cautionary letter, referring the matter to the attorney general, or referring the matter to a licensing entity with regulatory authority and jurisdiction over the unlicensed person, such as the mortuary science board established under Iowa Code chapter 156.

g. The following factors may be considered by the commissioner in determining the nature and severity of the disciplinary sanction to be imposed:

- (1) The facts of the particular violation, such as the circumstances leading to the violation, the severity of the violation, and the clarity of the issues, laws and rules involved;
- (2) Evidence that the violation is not an isolated event and is part of a widespread practice;
- (3) Evidence that the acts or practices were willful and intentional;
- (4) The economic benefits gained by the licensee or applicant as a result of the violation;
- (5) Evidence that the violation occurred while the licensee was on probation or had an inactive or suspended license;
- (6) The number of prior warning letters or reprimand letters;
- (7) The number of complaints;
- (8) The number of prior violations, especially evidence of repetitive violations of a like kind;
- (9) The seriousness of prior complaints or violations;
- (10) The length of time since the violation occurred;
- (11) Whether the violation involved an element of deception;
- (12) Whether the actions violated a prior order of the commissioner, court order, cease and desist agreement, consent order, or similar document;
- (13) Whether the person acted in bad faith;
- (14) The extent to which the licensee or applicant cooperated with the commissioner;
- (15) Evidence of reform or remedial action;
- (16) The amount of restitution paid or to be paid;
- (17) The risk of harm created by the acts or practices involved in the violation;
- (18) The public interest in ensuring competency and a high standard of ethical and professional conduct by licensees;
- (19) The public interest in protecting consumers and preventing the acts or practices involved in the violation;
- (20) Whether the penalty will act as a substantial deterrent and reduce the likelihood of future violations; and
- (21) Any other extenuating facts or other countervailing considerations.

[ARC 1975C, IAB 4/29/15, effective 6/3/15]

191—105.13(17A,523A) Administrative procedures.

105.13(1) Notice of sanctions. If the commissioner finds cause to impose a sanction against a person pursuant to Iowa Code chapter 523A or subrule 105.12(3), the commissioner shall provide notice to the person. Delivery of the notice shall be accomplished in the manner set out in 191—paragraphs 3.5(1) “*a*” and “*b*.” The notice shall include the following:

- a.* A statement of the legal authority and jurisdiction under which the order would be issued;
- b.* Reference to the particular sections of the statutes and rules involved;
- c.* A short, plain statement of the alleged unlawful practices;
- d.* The dollar amount of the proposed civil penalty and the nature of the intended order to require compliance with Iowa Code chapter 523A, including any required restitution;
- e.* Notice of the unlicensed person’s right to a hearing and the time frame in which hearing must be requested; and

f. The address to which written request for hearing must be made.

105.13(2) Requesting a hearing regarding sanctions imposed. If the commissioner imposes any administrative sanctions against a person pursuant to Iowa Code chapter 523A or subrule 105.12(3), the person may request a hearing pursuant to 191—Chapter 3 within 30 days of receipt of the notice. Applicable procedures of this chapter, of 191—Chapter 3, and of Iowa Code chapter 17A shall apply. A failure to timely request a hearing shall constitute a failure to exhaust administrative remedies. A request for hearing must be in writing and is deemed made on the date of the nonmetered United States Postal Service postmark or the date of personal delivery to the commissioner's office.

105.13(3) If a request for hearing is not timely made, the commissioner may issue an order imposing the administrative penalty and requiring compliance with Iowa Code chapter 523A, as described in the notice. The order may be served in the same manner as the notice of intent to impose administrative penalty, and may additionally be provided in a manner reasonably calculated to provide actual notice.

105.13(4) If a request for hearing is timely made, the commissioner shall issue a notice of hearing, following the procedures applicable to a contested case in 191—Chapter 3. Hearings are open to the public.

105.13(5) A person may waive the right to hearing and all attendant rights and enter into a consent order imposing an administrative penalty and requiring compliance with Iowa Code chapter 523A at any stage of the proceeding upon mutual consent of the commissioner.

105.13(6) The notice of intent to issue an order and the order are public records available for inspection and copying in accordance with Iowa Code chapter 22.

105.13(7) A person aggrieved by the commissioner's issuance of an administrative order, including an order imposing a civil penalty, may seek judicial review in accordance with Iowa Code section 17A.19. [ARC 1975C, IAB 4/29/15, effective 6/3/15]

These rules are intended to implement Iowa Code chapters 17A, 22, and 523A.

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