

CHAPTER 103
LICENSING OF PRENEED SELLERS AND SALES AGENTS

191—103.1(523A) Requirement for a preneed seller license or a sales agent license.

103.1(1) No person may sell or offer to sell cemetery merchandise, funeral merchandise, funeral services, or a combination thereof, in Iowa if the sale of the merchandise or services is subject to Iowa Code chapter 523A, unless the person holds an active license.

103.1(2) No person may 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, in Iowa if the sale of the merchandise or services is subject to Iowa Code chapter 523A, unless the person holds an active license.

103.1(3) At the time a purchase agreement is entered into, a person may not accept any payment or funding, including the assignment of ownership of or proceeds from an insurance policy or annuity, related to the purchase of cemetery merchandise, funeral merchandise, funeral services, or a combination thereof, in Iowa if the sale of the merchandise or services is subject to Iowa Code chapter 523A, unless the person holds an active 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.

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191—103.2(523A) Application and licensing of preneed seller or sales agent.

103.2(1) *Preneed seller application.* A person that desires to be licensed as a preneed seller must satisfy the following requirements:

- a. Submit a completed application form, designated by the commissioner, as set forth in subrule 103.2(3);
- b. Appoint at least one sales agent, except if the preneed seller is a sole proprietor;
- c. Submit a signed waiver allowing the commissioner to request and obtain criminal history data information, pursuant to Iowa Code section 523A.501(3), for each owner and manager 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 who has the ability to control or direct control of trust funds under Iowa Code chapter 523A, as determined by the commissioner;
- d. Provide a financial history, if requested by the commissioner, pursuant to Iowa Code section 523A.501(4), for each owner and manager 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;
- e. Provide evidence of a fidelity bond or insurance if required by rule 191—105.5(523A);
- f. Have not committed any act that is grounds for denial under subrule 103.2(4); and
- g. Pay the appropriate license fee as set forth in rule 191—100.4(523A).

103.2(2) *Sales agent application.* An individual who desires to be licensed as a sales agent pursuant to Iowa Code section 523A.502 must satisfy the following requirements:

- a. Be at least 18 years of age;
- b. Be appointed by at least one preneed seller and submit evidence of that appointment;
- c. Submit a completed application form, designated by the commissioner, as set forth in subrule 103.2(3);
- d. Submit a signed waiver allowing the commissioner to request and obtain criminal history data information, pursuant to Iowa Code section 523A.501(3);
- e. Have not committed any act that is grounds for denial under subrule 103.2(4); and
- f. Pay the appropriate license fee as set forth in rule 191—100.4(523A).

103.2(3) *Application form.* A person applying for a preneed seller license or sales agent license shall complete an application form designated by the commissioner in accordance with the instructions

supplied with the form. The appropriate application form and instructions may be obtained from the commissioner's Web site.

103.2(4) Approval or denial of applications.

a. 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 send a deficiency letter to the applicant, identifying the problems with the license application and listing any required corrective action. The commissioner shall suspend review of the application until the applicant successfully provides the necessary information. If an applicant does not satisfy the terms of the deficiency letter within two months, the application will expire and a new application form must be submitted.

b. 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 section 523A.501(3).

c. The commissioner shall conduct the criminal history data request and other investigations pursuant to Iowa Code section 523A.502(4). The commissioner's investigation of criminal history data and financial history shall be limited to persons who have the ability to control or direct control of trust funds under Iowa Code chapter 523A, as determined by the commissioner.

d. In order to determine whether to approve or deny an application for license, the commissioner shall review all information that is submitted with the application, submitted at the commissioner's request, obtained through criminal history investigation, and obtained through the financial history review, pursuant to Iowa Code sections 523A.501(3) and 523A.502(4).

e. If the commissioner approves the application and accompanying information, the commissioner shall issue a license, the term of which shall be four years.

f. The commissioner may deny a license application based on information received during the application process or on any ground provided to discipline a license in 191—Chapter 105 or Iowa Code chapter 523A.

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191—103.3(523A) Change of ownership or sale of business of preneed seller.

103.3(1) If there is a change in the ownership of a preneed seller, including any change of controlling interest in any corporation or other business entity, the preneed seller shall notify the commissioner of the change within 30 days of the sale and shall provide information as requested by the commissioner to obtain a new preneed seller license.

103.3(2) If all or part of a business entity that has a preneed seller license is sold in whole or in part, and the business entity has not canceled the license nor has the purchaser of that entity applied for a new license in the purchaser's name within 30 days of the sale, the license shall automatically terminate. For purposes of this rule, sale of a business entity includes any change of controlling interest in any corporation or other business entity.

103.3(3) Failure to notify the commissioner of a change of ownership or sale of all or part of a business as set forth in this rule may be a ground for penalty under 191—subrule 105.6(10).

191—103.4(523A) License renewal.

103.4(1) License expiration.

a. Preneed seller licenses expire on the last day of the month of the four-year anniversary of the issue date of the license.

b. Sales agent licenses expire on the last day of the birth month of the licensee four years after the issue date of the license.

103.4(2) Application for renewal. A licensee must submit an application for renewal to the commissioner at least 60 days in advance of the expiration date of the license. The licensee is responsible for renewing the license.

103.4(3) *Renewal application form.* An application to renew a preneed seller's license or a sales agent's license shall be submitted on a form required by the commissioner, as directed on the commissioner's Web site, and a renewal applicant shall comply with all instructions on the commissioner's Web site. In addition:

a. The renewal application shall be accompanied by a fee as set out in rule 191—100.4(523A). Failure to include the proper amount shall be cause for suspension of the application pursuant to subrule 103.4(4).

b. A sales agent must have completed the continuing education required by 191—Chapter 104 and submit with the application documentation verifying completion, as directed on the commissioner's Web site.

103.4(4) *Deficiencies in the 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 will send a deficiency letter to the applicant, identifying the problems with the license application and listing any required corrective action, and the commissioner will suspend review of the application until the applicant successfully completes the application form in accordance with the instructions. If an applicant does not satisfy the terms of the deficiency letter within two months, the application shall expire, and a new application form must be submitted. If a licensee fails to submit a timely and sufficient renewal application, the license shall expire.

103.4(5) *Failure to file annual statement.* A sales agent license shall not be renewed if the sales agent did not comply with the requirement to file an annual report, as set forth in 191—paragraph 105.12(3) "a" and Iowa Code section 523A.502A.

103.4(6) *Inactive license, voluntary surrender and license reinstatement.*

a. If a licensed preneed seller does not have at least one appointed sales agent, or if a sales agent is not appointed with at least one preneed seller, the license shall be inactive until a sales agent has been appointed.

b. A preneed seller licensee or a sales agent licensee that has stated an intent to exit the preneed business may voluntarily surrender the license or request that the commissioner place the licensee's license on inactive status.

c. A preneed seller or sales agent must request an inactive status from the commissioner or must surrender the license to the commissioner before the renewal due date or the license shall expire.

d. In no event may a license be inactive for more than 12 months.

e. A preneed seller or sales agent may apply for reinstatement of an inactive license up to 12 months after the license expiration date by submitting the following:

(1) An application for reinstatement, which may be obtained from the commissioner's Web site;

(2) A consent and waiver form required for a background check, if determined necessary by the commissioner;

(3) A financial history for the interim time period after the license became inactive and before the application for reinstatement, if determined necessary by the commissioner;

(4) For a preneed seller, the name of at least one appointed sales agent or, for a sales agent, the name of at least one preneed seller;

(5) For a sales agent, proof of completion of continuing education requirements found in 191—Chapter 104; and

(6) A license fee as set forth in rule 191—100.4(523A), if determined applicable by the commissioner.

f. A preneed seller or sales agent that surrendered a license for a nondisciplinary reason more than 90 days before the expiration date of the license and stated an intent to exit the preneed business may file a request to reinstate the license. The request must be received by the commissioner within 90 days of the date the license was terminated by the commissioner and should include the information set forth in paragraph 103.4(6) "e." The request will be granted if the preneed seller or sales agent is otherwise eligible to receive the license. If the request is not received within 90 days, the preneed seller or sales agent must apply for a new license.

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191—103.5(523A) Denial of license applications or of applications for renewal.

103.5(1) *Notice of denial.* When the commissioner denies an application for an initial preneed seller license or for the renewal of a preneed seller 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.

103.5(2) *Appeal.* An applicant that desires to contest the denial of an application may request a hearing before the commissioner pursuant to 191—Chapter 3 within 30 calendar days of the date the notice of denial is mailed. If a request for hearing is timely made, the commissioner shall promptly issue a notice of contested case hearing on the grounds asserted by the applicant. A failure to timely request a hearing constitutes failure to exhaust administrative remedies.

103.5(3) *Hearings.* 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.

191—103.6(523A) Reinstatement or reissuance of a license after suspension, revocation or forfeiture in connection with disciplinary matters; and forfeiture in lieu of compliance.

103.6(1) The term “reinstatement” as used in this rule means the reinstatement of a suspended license. The term “reissuance” as used in this rule means the issuance of a new license following either the revocation of a license or the forfeiture of a license in connection with a disciplinary matter. This rule does not apply to the reinstatement of an expired or inactive license.

103.6(2) Any preneed seller whose license has been revoked or suspended by order, or that forfeited a license in connection with a disciplinary matter, may apply to the commissioner for reinstatement or reissuance in accordance with the terms of the order of revocation or suspension or the order accepting the forfeiture.

a. All proceedings for reinstatement or reissuance shall be initiated by the applicant that shall file with the commissioner an application for reinstatement or reissuance of a license. Instructions regarding how to complete and file an application can be found on the commissioner's Web site.

b. An application for reinstatement or reissuance shall allege facts which, if established, will be sufficient to enable the commissioner to determine that the basis of revocation, suspension or forfeiture of the applicant's license no longer exists and that it will be in the public interest for the application to be granted. The burden of proof to establish such facts shall be on the applicant.

c. A preneed seller or sales agent may request reinstatement of a suspended license prior to the end of the suspension term.

d. Unless otherwise provided by law, if the order of revocation or suspension did not establish terms upon which reinstatement or reissuance may occur, or if the license was forfeited, an initial application for reinstatement or reissuance may not be made until at least one year has elapsed from the date of the order of the suspension (notwithstanding paragraph 103.6(2) “*c*”), revocation, or acceptance of the forfeiture of a license.

103.6(3) All proceedings upon the application for reinstatement or reissuance, including matters preliminary and ancillary thereto, shall be held in accordance with Iowa Code chapter 17A. Such application shall be docketed in the original case in which the original license was suspended, revoked, or forfeited, if a case exists.

103.6(4) An order of reinstatement or reissuance shall be based upon a written decision which incorporates findings of fact and conclusions of law. An order granting an application for reinstatement or reissuance may impose such terms and conditions as the commissioner deems desirable, which may include one or more of the types of disciplinary sanctions provided by 191—Chapter 105 or Iowa Code chapter 523A. The order shall be a public record, available to the public, and may be disseminated in accordance with Iowa Code chapter 22.

103.6(5) A request for voluntary forfeiture of a license shall be made in writing to the commissioner. Forfeiture of a license is effective upon submission of the request unless a contested case proceeding is pending at the time the request is submitted. If a contested case proceeding is pending at the time of the request, the forfeiture becomes effective when and upon such conditions as required by order of the commissioner. A forfeiture made during the pendency of a contested case proceeding is considered disciplinary action and shall be published in the same manner as is applicable to any other form of disciplinary order.

103.6(6) A license may be voluntarily forfeited in lieu of compliance with an order of the commissioner with the written consent of the commissioner. The forfeiture becomes effective when and upon such conditions as required by order of the commissioner, which may include one or more of the types of disciplinary sanctions provided by 191—Chapter 105 or Iowa Code chapter 523A.

103.6(7) When a preneed seller's license has been suspended for a period of time which extends beyond the preneed seller's license expiration date, the license will terminate on the license expiration date, and the preneed seller must apply for a new license. If suspension for a period of time ends prior to the preneed seller's license expiration date, the commissioner shall reinstate the license at the end of the suspension period. The commissioner is not prohibited from bringing an additional immediate action if the preneed seller has engaged in misconduct during the period of suspension.

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191—103.7(252J) Suspension for failure to pay child support.

103.7(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 to the sales agent's last-known address by regular mail.

103.7(2) The notice shall contain the following items:

- a. A statement that the commissioner intends to suspend the sales agent's application, request for renewal or current insurance license in 30 days;
- b. A statement that the sales agent must contact the CSRU to request a withdrawal of the certificate of noncompliance;
- c. 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;
- d. 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;
- e. A statement that the filing of an application with the district court will stay the proceedings of the commissioner;
- f. A copy of the certificate of noncompliance.

103.7(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.

103.7(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.

103.7(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 subrule.

191—103.8(261) Suspension for failure to pay student loan.

103.8(1) The commissioner shall deny the issuance or renewal of a sales agent license upon receipt of a certificate of noncompliance from the college student aid commission (CSAC) according to the procedures set forth in Iowa Code sections 261.126 and 261.127. In addition to the procedures contained in those sections, this rule shall apply.

103.8(2) Upon receipt of a certificate of noncompliance from the CSAC according to the procedures set forth in Iowa Code sections 261.126 and 261.127, 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 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.

103.8(3) The notice shall contain the following items:

- a. A statement that the commissioner intends to deny the sales agent's application or request for renewal or suspend the sales agent's license in 60 days;
- b. A statement that the sales agent must contact the CSAC to request a withdrawal of the certificate of noncompliance;
- c. A statement that the sales agent's application or request for renewal will be denied or the sales agent's license will be suspended if the certificate of noncompliance is not withdrawn or, if the current license is on suspension, a statement that the sales agent's license will be revoked;
- d. 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 261.127;
- e. A statement that the filing of an application with the district court will stay the proceedings of the commissioner;
- f. A copy of the certificate of noncompliance.

103.8(4) The effective date of revocation or suspension of a sales agent license, as specified in the notice required by Iowa Code section 261.126, shall be 60 days after service of the notice upon the sales agent.

103.8(5) In the event an applicant or licensed sales agent timely files a district court action pursuant to Iowa Code section 261.127, 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.

103.8(6) If the commissioner does not receive a withdrawal of the certificate of noncompliance from the CSAC 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.

103.8(7) Upon receipt of a withdrawal of the certificate of noncompliance from the CSAC, 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 Iowa Code section 261.126.

103.8(8) 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's license is reinstated following the commissioner's receipt of a withdrawal of the certificate of noncompliance.

103.8(9) Notwithstanding any statutory confidentiality provision, the commissioner may share information with the CSAC for the sole purpose of identifying a sales agent subject to enforcement under Iowa Code chapter 261.

191—103.9(523A) Suspension for failure to pay state debt.

103.9(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 rule shall apply.

103.9(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.

103.9(3) The notice shall contain the following items:

- a.* A statement that the commissioner intends to suspend the sales agent's application, request for renewal or current sales agent license in 60 days;
- b.* 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;
- c.* A statement that the sales agent's application, request for renewal or current sales agent license will be suspended or denied 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;
- d.* 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;
- e.* A statement that the filing of an application with the district court will stay the proceedings of the commissioner; and
- f.* A copy of the certificate of noncompliance.

103.9(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.

103.9(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.

103.9(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.

103.9(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.

103.9(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.

103.9(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.

103.9(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.

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