

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]