

MINUTES
BOARD OF FUNERAL, CEMETERY AND CONSUMER SERVICES
TELECONFERENCE MEETING
January 5, 2012 - 10:00 A.M.

1. Call to Order, Preliminary Remarks and Roll Call

Mr. Jody Brandenburg, Chair, called the meeting to order at 10:00 am.

Mr. Doug Shropshire, Director, requested to make the usual prefatory comments for the record and then take the roll.

As a preliminary matter, let me state for the record that my name is Doug Shropshire. I am Director of the Division of Funeral, Cemetery, and Consumer Services. Today is Thursday, January 5, 2012. The time is approximately 10:00am. This is a public meeting of the Board of Funeral, Cemetery and Consumer Services. Notice of this meeting has been duly published in the Florida Administrative Weekly. An agenda for this meeting had been made available to interested persons. The meeting is occurring by Teleconference with some members of the Public here with the Division staff here in the Alexander Building, in Tallahassee, Florida. The call in number has also been made available to the public. Members of the Board are participating by phone. My Assistant, Ms LaTonya Bryant-Parker, will take minutes of the meeting, which is being recorded.

Persons speaking are requested to identify themselves for the record each time they speak. Participants are respectfully reminded that the Board Chair, Mr. Brandenburg, runs the meeting. Persons desiring to speak should initially ask the Chair for permission. All persons participating by phone, other than the Chair and Board members while speaking, are asked to place their phones on mute at all times while listening. I repeat, please put your phones on mute at all times while listening. We ask this to enhance the audio quality of the Teleconference. If any Member or participant is disconnected they can call back to the same number called initially. Participants are respectfully reminded of the necessary protocol that only one person may speak at the time.

At this time I will take the roll and Board members will please respond clearly with "present" when I call their name:

PRESENT (via phone):

Joseph "Jody" Brandenburg, Chairman

Gail Thomas-DeWitt, Vice-Chairman

Jean Anderson

Andrew Clark

Lewis "Lew" Hall

Powell Helm

Nancy Hubbell

Ken Jones

Richard "Dick" Mueller

Col. Don Stiegman

Mr. Chairman we have a quorum and the Board may proceed to address the matters on the agenda.

Also noted as present:

Doug Shropshire, Executive Director

Clark Jennings, Board Legal Advisor

Anthony Miller, Assistant Director

LaTonya Bryant-Parker, Department Staff
Jasmin Richardson, Department Staff
Lashonda Morris, Department Staff

The Chair questioned whether all Board members received their packets. There were positive responses from all the Board members.

2. Action on Minutes
A. December 1, 2011

The Chair confirmed that all Board members had read the draft of the minutes of the previous Board meeting held on December 1, 2011.

MOTION: Mr. Ken Jones moved to adopt the minutes of the meeting. Mr. Lew Hall seconded the motion, which passed unanimously.

3. Application(s) for Authority to Acquire Control of an Existing Cemetery
A. Recommended for Approval with Conditions
(1) Southern Keys Cemetery, Inc. (Key West)

The application was received by the Division on July 19, 2011 and deficiencies were noted on the application. A deficiency letter was sent to the Applicant on July 26, 2011 and all items of deficiency were satisfied as of September 23, 2011. A completed background check of all officers revealed no criminal history.

The change of control will be accomplished via a stock purchase agreement, by which Stanley J. Sabuk will acquire ultimate ownership of a controlling portion of the stock of the licensee, from current controlling persons, Martina Thurmond and Gayle H. Owens. If this Application for a Change of Control is approved, the applicant will continue to operate as Southern Keys Cemetery, Incorporated. The name of the licensee as shown in the FCCS Division's records will not change if the application is approved.

This cemetery has reported gross sales as follows: CY 2010, \$9,575; CY 2009, \$14,050; CY 2008, \$13,000. The care and maintenance trustee report (Funeral Services Incorporated) for CY 2010 reports a care and maintenance trust principal balance of \$65,330, and deposits during CY 2010 totaling \$958 (which appears to be in line with the cemetery's reported gross sales for CY 2010).

The proposed new controlling person has indicated that they have development plans for the cemetery. However, they have not submitted those plans in adequate detail, and have agreed that if the change of control is approved, development plans must be submitted to and approved by the Board prior to implementation.

It should be noted that disclosure was made by Stanley J. Sabuk (a principal of applicant herein), of a judgment that was filed against him individually in connection with the entity, Skyline Builders Group, Inc, a general contractor, on March 25, 2009. All conditions concerning this judgment against Mr. Sabuk were satisfied on August 8, 2011, by the Ninth Judicial Circuit Court of Orange County. Mr. Sabuk has provided a notarized statement and court documentation disclosing the judgment as further supporting documentation.

The Applicant's financial statement as of December 31, 2010 reflects the following:

Required Net Worth	= \$ 50,000
Reported Net Worth	= \$ 59,230

Approve subject to conditions as follows:

1. The Board approval of change of control does not include approval of any development plans. If after approval of the change in control the new controlling person intends to develop the cemetery, the new controlling person shall cause development plans to be submitted to the Board for approval prior to implementing same.
2. That closing occurs within 60 days of the date of this Board meeting, and without material change in the terms and conditions of the transaction as described to the Board in this cover sheet and the materials provided to the Board herewith.
3. Receipt by the Division within 75 days of this Board meeting, of a letter signed by applicant or applicant's attorney, addressed to the Division, certifying that closing has occurred and without material change in the terms and conditions of the transaction as described to the Board in this cover sheet and the materials provided to the Board herewith.
4. Receipt by the Division within 75 days of this Board meeting, of a copy of the Stock Purchase Agreement, executed by all parties, and any and all amendments thereto, also fully executed.

Mr. Shropshire added that the Applicant, or a representative of the Applicant, is present on the line and they might perhaps be invited to address the Board as to whether they have any objections to the conditions. The Chair questioned whether the Applicant was present and requested that the Applicant identify himself for the record.

Mr. Stanley Sabuk stated that he had no objections to the conditions of the approval of the application transfer.

MOTION: Mr. Dick Mueller moved to approve the application with the conditions recommended by the Division. Ms. Gail Thomas-Dewitt seconded the motion, which passed unanimously.

At this time, The Chair welcomed Mr. Andrew Clark as a new Board member. The Chair added that he was glad to have Mr. Clark in attendance this morning.

Mr. Andrew Clark thanked the Chair.

4. Application(s) for Preneed Sales Agent

A. Informational Item (Licenses Issued without Conditions) – Addendum A

The application(s) presented are clean and have been approved by the Division. This item is informational only and does not require Board action.

B. Recommended for Approval with Conditions (Criminal History)

(1) Simonis, Peter J (Appointing Entity: Sunnyside Cemetery, Inc)

On October 11, 2011, the Department received an application from Mr. Simonis. Mr. Simonis answered "No" to Applicant Background Questions. During the review of his fingerprint results provided by FDLE it was determined Mr. Simonis had one criminal infraction that required disclosing. Mr. Simonis was asked to provide an explanation for the inaccuracy on his application.

Mr. Simonis' explanation "*My charge has appeared on Casenet and other reporting agencies as an improper lane change, and was advised by my attorney to not report the event as anything other than that. If I checked a box denying the DWI, or answered any such question asked on any application on record within your office, it was not for that reason and not for purposefully misleading of any kind*".

The criminal history includes (1) offense relating to one incident of DWI Alcohol Intoxication in 2007, which occurred in St. Charles County, Missouri. Upon request Mr. Simonis disclosed all required information.

The Department assessment is that if issued a preneed sales agent license, Mr. Simonis would not pose an unreasonable risk to the members of the public who might deal with him in preneed transactions.

The Division recommends approval subject to the terms & conditions of the attached stipulation for licensure which requires the licensee be on 12 full months of probation.

The Chair questioned whether Mr. Simonis had any questions or comments.

Mr. Peter Simonis stated that he did not have any questions or comments and is willing to accept the conditions with no problem whatsoever.

MOTION: Ms. Jean Anderson moved to approve the application subject to the terms & conditions of the attached stipulation for licensure which calls for the Licensee be on 12 full months of probation. Mr. Jones seconded the motion, which passed unanimously.

5. Application(s) for Preneed Main License
A. Recommended for Approval with Conditions
(1) Landmark Funeral Home, Inc. (Hollywood)

The Department received the application on December 9, 2011 and no deficiencies were noted on the application. A completed background check of all officers revealed no criminal history. Applicant will use the pre-approved Funeral Services, Inc. (FSI) First Florida Trust Agreement (Sabal Trust Company) and pre-arranged funeral agreement. The applicant also submitted an application for a funeral establishment license that is to be presented at this board meeting.

It should be noted that at the December 1, 2011 board meeting, in Case No. 108626-10-FC, a disciplinary action against Landmark Funeral Home, Inc. was presented to the Board, on the Recommended Order of an Administrative Law Judge. The Administrative Law Judge entered a recommended order that found Landmark guilty of violating s. 497.452(1) (a), F.S., regarding allegations that Landmark Funeral Home advertised pre-arranged funerals without a preneed license, and recommended a \$1000 penalty. The Board voted to accept the Administrative Law Judge's findings of fact, law and recommended penalty. The Final Order has not yet been issued nor has the time to appeal the Board's decision expired, so that Applicant was accurate in their application in stating that Applicant has not been disciplined as of when the application herein was filed.

The Division believes that the disciplinary violation found by the Administrative Law Judge, while significant, is not sufficient to warrant denial of this application.

The Applicant's financial statements as of December 31, 2010 reflect the following:

Acquired Preneed Contracts	= \$	0
Required Net Worth	= \$	10,000
Reported Net Worth	= \$	26,813

Approve with conditions:

- 1) That the application for the change in ownership on this meeting agenda for the qualifying funeral establishment is approved.
- 2) That the application is approved contingent upon the applicant satisfying the conditions of the Final Order to be issued in Case No. 108626-10-FC.
- 3) That the Applicant be licensed subject to a 1 year probation period.

Ms. Wendy Wiener stated that this issue, the licensure of Landmark Funeral Home and the Change of Ownership, has been the subject of many Board meetings as well as of the recently considered Administrative Hearing. It appeared from what occurred at previous Board meetings that there was the intent of the Board to limit the participation in the business of Valeria Panciera and Irv Panciera; and if there is indeed such an intention by the Board, the time to make that condition explicit is at this meeting.

Mr. Clark Jennings questioned whether Ms. Wiener represents any of the parties involved in this application.

Ms. Wiener stated that she does not represent Landmark Funeral Home or Kevin Reith. Ms. Wiener stated that she represents Boyd-Panciera Family Funeral Care, which was the complainant in the complaints, many of which became the subject of the recently considered Administrative Hearing.

Mr. Edward Holodak, representing Landmark Funeral Home, requested an opportunity to address Ms. Wiener's comments as well as the conditions placed on the recommendation by the Division. As Ms. Wiener correctly pointed out, this case has been going on for three years and was the subject matter of an Administrative Complaint and a full trial before the Administrative Law Judge (ALJ). As Ms. Wiener has incorrectly pointed out, and as the ALJ made quite clear, there were absolutely no conditions ever placed by this Board on the license granted to Landmark. As the ALJ also pointed out, it seems to be Ms. Wiener's constant interference with this application that caused many of the problems in this case and the Judge was very explicit in his thirty-page Order in highlighting so. As far as Ms. Wiener's comments are concerned, as far as she is not an Applicant or representing the Applicant, Mr. Holodak requested that Ms. Wiener's comments be stricken and ignored by this Board. Addressing the conditions that the Division has recommended, the Division has recommended approval of the license with one-year probation as far as the preneed is concerned. That is based on the Administrative Hearing that went forward. At the trial, Landmark stipulated to certain conditions related to the preneed. Landmark stipulated to the fact that we had made advertisements with the word "prearrangements" on them but we never used the word "preneed." The Division thought that was too close to the line. As soon as the Division informed Landmark of same, Landmark pulled out all of those advertisements. Subsequently, Landmark submitted voluntarily to an audit, by the Division, of the establishment. That audit revealed that there were no preneed applications ever taken, there was no money ever take and that there were no violations of the preneed statute on behalf of Landmark, but for the use of the word "prearrangements" on certain advertisements. Based upon Landmark's voluntary withdrawal of those applications, based upon the audit findings that there were no violations of the statute, no contracts, no monies taken, Landmark requests that the Board respectfully grants the preneed license without the condition of the one-year probation as recommended by the Division.

Mr. Shropshire stated that the Division's recommendation as regard to the one-year probation is simply based on the Hearing Officer's finding that the Applicant did violate Chapter 497 in regards to advertising prearranged funerals without a preneed license and recommending a \$1000 penalty. Although the Division does not believe that warrants denial of the license, the Division believes it does justify one-year probation. If the Board accepts the Division's recommendation, Mr. Shropshire suggested that the member making the motion notes that as the basis for the one-year probation.

MOTION: Mr. Jones moved to approve the application with the conditions as recommended by the Division based on the recommendations of the Recommended Order. Ms. Thomas-Dewitt seconded the motion, which passed unanimously.

6. Application(s) for Preneed Branch License

A. Recommended for Approval with Conditions – Addendum B

MOTION: Ms. Thomas-Dewitt moved to approve the application(s) with the conditions recommended by the Division. Mr. Hall seconded the motion, which passed unanimously.

7. **Application(s) for Continuing Education Course**
 - A. **Recommended for Approval without Conditions – Addendum C**
 - (1) *Florida, Cemetery, Cremation and Funeral Association #75*
 - (2) *International Cemetery & Funeral Association #74*
 - (3) *National Funeral Directors Association #136*

The Continuing Education Committee and the Division recommends approval of the application(s).

MOTION: Mr. Hall moved to approve the application(s). Mr. Mueller seconded the motion, which passed with 1 dissenting vote.

- B. **Continuing Education Course(s) for Individual Consideration**
 - (1) **Recommended for Approval by Committee**
 - (a) ***With the Push to Cremate 5 Reasons to Encourage Viewing and Ritual (Provider: National Funeral Directors Association)***

The Provider identified above has filed for approval of this proposed CE course, under Chap. 497, Florida Statutes. The proposed course and related materials was referred by the Division to the Board's CE Committee.

A majority of the Committee members voted to approve the course for the number of hours requested. However, CE Committee member Col. Don Stiegman has concerns regarding approval of the course, and has asked that the course be individually considered by the full Board, and accordingly the matter is on the agenda for full Board review. Mr. Shropshire suggested that the Chair allow Col. Stiegman to put his concerns on the record.

The Chair concurred.

Col. Don Stiegman stated he objects to the course titled “With the Push to Cremate 5 Reasons to Encourage Viewing and Ritual.” From a consumer’s point of view, this course appears to be unethical in providing the Industry with “what you can do” ideas and options to help funeral directors communicate the value of viewing and ritual to the increasing number of people who select direct cremation. The five reasons not to only have cremation are as follows: Doing something is better than doing nothing; Seeing is believing; Time is needed; Acknowledging the uniqueness of the deceased’s life is necessary; and Facing reality is needed. All those spell nothing but “GREED” to me. The five reasons are ridiculous. If a client comes into your establishment and wants to spend \$10,000 for a viewing and ritual for Uncle Bubba, do you provide five reasons to use cremation? I don’t think so. Some unscrupulous funeral establishments may already be attempting to steer customers away from cremation. A continuing education course providing the Industry bogus arguments to aid in that business pursuit is unethical.

Mr. Shropshire requested that Ms. LaTonya Bryant-Parker confirm that the Provider has been advised by the Division that this course was being presented to the full Board, and the Provider has been invited to attend the Board meeting.

Ms. Bryant-Parker answered, “Yes.”

The Chair questioned whether there was any representative of the Provider present requesting to make comment. There was a negative response.

Mr. Shropshire stated that after this meeting, if the application is disapproved, The Division will prepare a Notice of Intent and provide same to the Provider advising them that the Board intends to disapprove their application and providing them with their right to either a formal or informal hearing.

The Chair questioned if there could be a motion to approve the application should the motion to disapprove fail.

Mr. Shropshire answered, "Yes sir."

MOTION: Col. Stiegman moved to disapprove the application. Ms. Nancy Hubbell seconded the motion, which passed with 3 dissenting votes.

The Chair questioned the names of the members on the Continuing Education Committee.

Ms. Bryant-Parker stated that at the time of this action, the members were Tracy Huggins, Lew Hall, Col. Stiegman, Justin Baxley and Jill Peeples.

8. **Application(s) to Become a Continuing Education Provider**
 - A. *Recommended for Approval without Conditions – Addendum D*
 - (1) *All Star Training, Inc #15009*

The Division recommends approval of the application(s).

MOTION: Ms. Thomas-Dewitt moved to approve the application(s). Mr. Jones seconded the motion, which passed unanimously.

9. **Application(s) for Florida Law and Rules Examination**
 - A. *Recommended for Approval without Conditions – Addendum E*
 - (1) *Funeral Director and Embalmer – by Endorsement*
 - (a) *Enea, Daniel J*
 - (b) *Hinshaw, Kenneth*
 - (c) *Prindiville, Richard T*
 - (2) *Funeral Director and Embalmer – by Internship and Exam*
 - (a) *Clark III, Isaiah S*
 - (b) *Martinez, Nulka*
 - (c) *Soto, Bridgette V*
 - (d) *Telfort, Fabienne*

The Division recommends approval of the application(s).

MOTION: Mr. Hall moved to approve the application(s). Ms. Anderson seconded the motion, which passed unanimously.

10. **Application(s) for Internship**
 - A. *Recommended for Approval without Conditions – Addendum F*
 - (1) *Embalmer*
 - (a) *Fischman, Robert J*
 - (2) *Funeral Director and Embalmer*
 - (a) *Chambers, Elizabeth S*
 - ~~(b) *Ford, Dekesha*~~

(c) Washington, Frank

Mr. Shropshire stated that the application for Dekesha Ford has been removed from the Agenda and will be presented at the February meeting. The Division recommends approval of the remaining application(s).

MOTION: Mr. Jones moved to approve the remaining application(s). Mr. Powell Helm seconded the motion, which passed unanimously.

11. Application(s) for Embalmer Apprentice

A. Recommended for Approval without Conditions – Addendum G

(1) Harrison, William H

(2) Prince, Tewannah C

The Division recommends approval of the application(s).

MOTION: Mr. Hall moved to approve the remaining application(s). Ms. Nancy Hubbell seconded the motion, which passed unanimously.

12. Change in Location of Establishment

A. Informational Item (Licenses Issued without Conditions) – Addendum H

(1) B&T Enterprises of Tampa Bay LLC d/b/a Community Cremations (F060511) (Palm Harbor)

The application(s) presented are clean and have been approved by the Division. This item is informational only and does not require Board action.

13. Registration(s) as a Training Facility

A. Recommended for Approval without Conditions – Addendum I

(1) Funeral Directing

(a) American Burial & Cremation Center at Jennings Funeral Home (F041030) (Ft Lauderdale)

(b) Aycock Funeral Home (F041060) (Stuart)

The Division recommends approval of the application(s).

MOTION: Ms. Thomas-Dewitt moved to approve the application(s). Mr. Hall seconded the motion, which passed unanimously.

14. Consumer Protection Trust Fund Claims

A. Recommended for Approval without Conditions – Addendum J

The Division recommends approval of the claim(s).

MOTION: Mr. Hall moved to approve the claim(s). Ms. Hubbell seconded the motion, which passed unanimously.

15. Application(s) for Monument Establishment Sales Agents

A. Informational Item (Licenses Issued without Conditions) – Addendum K

The application(s) presented are clean and have been approved by the Division. This item is informational only and does not require Board action.

16. Application for Broker of Burial Rights

A. Recommended for Approval without Conditions

(1) Associated Consultants of the Funeral Industry, Inc. (Brooksville)

The application was received on October 12, 2011 and deficiencies were noted on the application. A deficiency letter was sent to the applicant on October 24, 2011 and all deficiencies were resolved as of November 21, 2011. The Department completed a background check of all officers which revealed no criminal history.

MOTION: Ms. Hubbell moved to approve the application. Ms. Anderson seconded the motion, which passed unanimously.

17. Application(s) for Cinerator Facility

A. Recommendation for Approval with Conditions

(1) County Cremation Services LLC (Port St. Lucie)

An application for a Cinerator Facility was received on November 16, 2011. The application was complete when submitted. The fingerprint cards for all principals were returned with no criminal history. The Funeral Director in Charge will be Leon Warren (F046262). The Division is recommending approval with the condition that the establishment passes an on-site inspection by a member of the Division staff.

MOTION: Mr. Mueller moved to approve the application subject to the condition that the establishment passes an on-site inspection by a member of the Division staff. Ms. Thomas-Dewitt seconded the motion, which passed unanimously.

(2) Seminole Crematory Inc (Longwood)

An application for a Cinerator Facility was received on December 5, 2011. The application was incomplete when submitted. All deficient items were returned on December 19, 2011. The fingerprint cards for all principals were returned with no criminal history. The Funeral Director in Charge will be Gregory Collison (F043365). The Division is recommending approval with the condition that the establishment passes an on-site inspection by a member of the Division staff.

MOTION: Ms. Hubbell moved to approve the application subject to the condition that the establishment passes an on-site inspection by a member of the Division staff. Mr. Mueller seconded the motion, which passed unanimously.

18. Application(s) for Direct Disposal Establishment

A. Recommended for Approval with Conditions

(1) County Cremation Services LLC (Port St. Lucie)

An application for a Direct Disposal Establishment was received on October 31, 2011. The application was incomplete when submitted. All deficient items were returned on November 15, 2011. The fingerprint cards for all principals were returned with no criminal history. The Funeral Director in Charge will be Leon Warren (F046262). The Division is recommending approval with the condition that the establishment passes an on-site inspection by a member of the Division staff.

MOTION: Mr. Hall moved to approve the application subject to the condition that the establishment passes an on-site inspection by a member of the Division staff. Ms. Thomas-Dewitt seconded the motion, which passed unanimously.

(2) McGan Cremation Service LLC (Hernando)

An application for a Direct Disposal Establishment was received on December 9, 2011. The application was incomplete when submitted. All deficient items were returned on December 21, 2011. The fingerprint cards for all principals were returned with no criminal history. The Funeral Director in Charge will be Sean McGan (F020006). The Division is recommending approval with the condition that the establishment passes an on-site inspection by a member of the Division staff.

MOTION: Ms. Hubbell moved to approve the application subject to the condition that the establishment passes an on-site inspection by a member of the Division staff. Mr. Clark seconded the motion, which passed unanimously.

19. Application(s) for Funeral Establishment
A. Recommended for Approval with Conditions
(1) Funeraria San Juan Inc (Kissimmee)

An application for a Funeral Establishment was received on November 15, 2011. The application was incomplete when submitted. All deficient items were returned on November 22, 2011. The fingerprint cards for all principals were returned with no criminal history. The Funeral Director in Charge will be Aracely Carmona (F022821). The Division is recommending approval with the condition that the establishment passes an on-site inspection by a member of the Division staff.

MOTION: Ms. Thomas-Dewitt moved to approve the application subject to the condition that the establishment passes an on-site inspection by a member of the Division staff. Mr. Clark seconded the motion, which passed unanimously.

(2) Landmark Funeral Home Inc (Hollywood)

The application was received by the Division on November 14, 2011. The application was incomplete when submitted. All deficient items were returned on November 22, 2011. The fingerprint cards for all principals were returned with no criminal history. The FDIC for the establishment will be Kevin Rieth (F028016). The Division is recommending approval subject to the condition(s) as follows:

- (1) That the closing occur within 60 days of the date of this Board meeting.
- (2) Receipt by the Division within 75 days of this Board meeting, of a letter signed by applicant or applicant's attorney, addressed to the Division, certifying that closing has occurred.
- (3) Receipt by the Division within 75 days of this Board meeting, of a copy of the Bill of Sale, executed by all parties, and any and all amendments thereto, also fully executed.
- (4) That the establishment passes an on-site inspection by a member of the Division staff.

MOTION: Mr. Jones moved to approve the application subject to the conditions recommended by the Division. Ms. Hubbell seconded the motion, which passed unanimously.

20. Contract(s) or Other Related Form(s)
A. Recommended for Approval with Conditions
(1) Preneed Contract
(a) Anderson-McQueen Company d/b/a Anderson-McQueen Funeral Homes (F038703) (St Petersburg)

The applicant, Anderson McQueen Company d/b/a Anderson McQueen Funeral Homes (F038703), submitted a Preneed Funeral Agreement to be used solely for the sale of preneed through its preneed licensed establishments and branches. Anderson-McQueen is filing this as an amendment to its previously approved preneed funeral agreement. The Division is recommending approval with the condition that the Department receives within 60 days two full-sized print-ready copies.

MOTION: Mr. Hall moved to approve the contract with the condition that the Department receives within 60 days two full-sized print-ready copies. Mr. Mueller seconded the motion, which passed unanimously.

21. Executive Director's Report

A. Procedure for Full-Board Review of Certain Proposed Continuing Education Courses

Every month various CE providers submit to the Division proposed CE courses which the provider requests approval of for CE credit. The Division (LaTonya Bryant-Parker) typically emails the materials submitted by the provider to the Board's CE Committee members for review. The individual Committee members each review the material, and each individually respond to LaTonya. Most times the individual Committee member has no issues with the submission, and simply emails LaTonya "Approved." Sometimes the Committee member may ask LaTonya to obtain additional information about the course from the provider, and LaTonya will obtain same and provide it to the Committee member; that Committee member at some point makes up their mind and advises LaTonya of that Committee member's decision.

LaTonya adds up the number of votes for and against approval for a particular CE submission. There are typically five CE Committee members. If a majority of the Committee members vote for approval, LaTonya puts the CE Course on a consent agenda for the next available Board meeting, showing it as approved by the CE Committee.

It is relatively rare for a CE Committee member to vote to disapprove a course. The Division estimates in the range of 98% of CE courses submitted for approval are approved by the Committee without dissent.

Under present procedures the CE Committee does not meet in person or by teleconference regarding the courses submitted to the Committee members for review, and the Committee members do not interact with each other concerning the courses they review. They individually review the materials and simply advise LaTonya of their decision, and she records same. There are several reasons it is done this way. Under the Sunshine Law the CE Committee members could only talk to each other about a course submission if they were at an official meeting of the CE Committee duly published in advance in the Florida Administrative Weekly, with a meeting agenda prepared and made available a week in advance of the meeting. Such a meeting would require getting a mutually convenient meeting time and date for all the Committee members. Committee members who have no problem with the course would presumably have to participate in the official meeting, which would be a drain on their time. These factors would significantly delay and complicate the process for reviewing and approving CE course submissions. Given how relatively rare it has been that a Committee member votes against a CE course, it has seemed advisable to use the present procedure.

However, it has been suggested, and the Division agrees, that it would be prudent to provide a mechanism by which a Committee member who votes to disapprove a CE course, and who feels strongly about the matter, may have that particular CE course individually presented to the Board, with all the same supporting materials as were provided to the Committee, at a regular Board meeting, as a separate agenda item in the CE section of the meeting agenda. The Committee member making such a request for full Board presentation would thereby be committing themselves to address the Board at that meeting, to explain their opposition and reason for asking for full Board review of the course.

Note that under the suggested procedure, a CE Committee member may vote against the course approval without asking for full Board review of the course. Many Committee members will be satisfied to simply cast their vote and let the majority vote of the Committee decide the matter, as under the present procedure.

Below is the new procedure which will implement the above described changes. Unless directed otherwise by the Board, the Division intends to implement this modified procedure starting in Jan. 2012.

CE Course Review Procedure

(Jan. 2012)

(1) Any member of the continuing education (CE) Course Review Committee who objects to approval of a specific CE course may make request to the Division (LaTonya Bryant-Parker), that the course and all supporting materials be presented to the full Board for individual consideration by the Board.

(2) LaTonya will place that course on the agenda for the next available in person Board meeting. The matter will be scheduled to follow immediately after the consent list of CE courses recommended for approval. The matter will be shown on the agenda in the following illustrative format:

CE Course(s) for Individual Consideration
Recommended for Approval by Committee

(1) "Increasing Sales in the Coming Year." Provider: Acme Funeral Home Consulting, LLC.

(3) LaTonya will advise the CE Committee member and the Provider by email that the course is being placed on the agenda for the full Board meeting on [date]. The CE Committee member will be asked to participate in the Board meeting by stating their concerns regarding the course, when the item comes up on the agenda. LaTonya will advise the Provider that they may participate in the Board meeting, but are not required to do so; and that if they choose to participate, they may make a brief presentation to the Board after the CE Committee member does so, to address the concerns that have been raised.

(4) LaTonya will prepare a cover sheet for the item. The cover sheet will indicate that the proposed CE course is on the agenda for full Board discussion and decision, at the request of CE Committee member [name]. Under the cover sheet LaTonya will place the application for the course's approval, and all supporting material provided by the Provider, and supplemental material (if any) obtained by LaTonya at the request of any CE Committee member. LaTonya will include the cover sheet and all the materials referred to above, in the Board package, for review by the Board Members.

(5) At the Board meeting, when that individual CE course comes up on the agenda, the CE Committee member who requested that the matter be put on the agenda, upon being recognized by the Board Chair, will make presentation concerning the issues or concerns they have regarding the course. If the Provider's representative is present, the Chair will invite the Provider to make a brief presentation to the Board; the Board may question the Provider if present. The Chair will then ask for a Motion to approve or disapprove the course for the number of hours requested by the provider. Upon a second, and any discussion by the Board, the Chair will call for a vote. If the votes approve the course, the matter is at an end. If the Board votes to disapprove the course, the Division office will prepare the necessary Notice of Intent with statement of rights, and serve same upon the provider.

Mr. Shropshire added that an actual implementation of this procedure was presented today. The procedure was provided to the Board for comment or objection.

Mr. Mueller stated that there should be some provision to for the possibility that the Committee Member making the objection is not present at the meeting the item was presented to be discussed. Perhaps the item could be delayed until the next meeting.

The Chair stated that there is currently a provision to handle every case on the Agenda and the Board has the ability to continue, rather than deny, any item on the Agenda.

Mr. Mueller questioned whether he could have made a motion to defer the item had Col. Stiegman not been present today to make his presentation.

The Chair concurred.

Mr. Jones stated that that there is a Committee that oversees the courses and approves them by majority vote and questioned why the Board is deviating from that practice.

Mr. Shropshire concurred and added that majority vote always has in the past and still controls what the CE Committee's position would be. For instance, on the item that was presented today, the CE Committee recommended approval of that item; however, at Col. Stiegman's request, the course was placed on the Agenda for full Board consideration. So the Board is informed when they look at the matter that the CE Committee has by majority vote recommended approval and one member identified in the record has asked that it be subject to full Board review. The reason for placing the item on the Agenda really has to do with the fact that the CE Committee members do not get an opportunity to discuss the matter among themselves because of the requirement that if they do, the Division has to notice that meeting in the FAW, get a time/date and declare it a public meeting. The workload as such on the CE Members, both for reviewing this and reviewing the Board materials and running their businesses is considered excessive.

B. Escheatment of Preneed Funds – Preliminary Analysis

(1) The Division of Funeral, Cemetery and Consumer Services has been asked for its position on the question of whether preneed trust funds may in some instances be transferred to the state as abandoned property. The transfer of unclaimed property to the state is sometimes referred to as "escheatment."

(2) This memo will set forth the FCCS Division's preliminary analysis and position on this issue. The FCCS Division's position may change if input from the Board or other sources identifies errors in the Division's preliminary analysis. In this regard, the FCCS Division is seeking input from the state's Unclaimed Property Bureau and the Bureau's input may have special significance.

Preliminary Conclusion

(3) It is the FCCS Division's preliminary conclusion that, without enactment of additional legislation, preneed trust funds cannot be considered to be subject to escheatment to the state as abandoned property.

Discussion

(4) The SEC describes escheatment as follows:¹

All states require financial institutions, including brokerage firms, to report when personal property has been abandoned or unclaimed after a period of time specified by state law – often five years. Before a brokerage account can be considered abandoned or unclaimed, the firm must make a diligent effort to try to locate the account owner. If the firm is unable to do so, and the account has remained inactive for the period of time specified by state law, the firm must report the account to the state where the account is held. The state then claims the account through a process called "escheatment," whereby the state becomes the owner of the account.

(5) The Florida Unclaimed Property Bureau provides the following overview:²

Unclaimed property is primarily an intangible property liability that has been inactive on the books of an entity for a period of time (dormancy period), and for which there has been no owner generated activity. The intangible property liability does not become unclaimed property until it reaches the end of the required dormancy period as provided by law.

(6) It should be noted initially that if it is determined that preneed trust funds are subject to the abandoned property law, the ruling would presumably apply to all preneed licensees, and compliance would not be optional with individual licensees. Compliance with Chapter 717 would apparently require ongoing reports by the preneed licensee to the Bureau of Unclaimed Property. There may be penalties imposed and payable to the Bureau of Unclaimed Property, for non-compliance with Chapter 717, if that law is determined to be applicable to preneed trust funds.

(7) A fundamental reason why preneed trust funds are not, in the FCCS Division's opinion, subject to the abandoned property law is that Sections 497.457(1), F.S. states that all funds paid pursuant to a preneed contract are the sole property of the preneed licensee. We recognize the fact that preneed trust funds must be used by the preneed licensee, to the extent necessary, for fulfillment of the preneed contract, but nevertheless, Chapter 497 currently says that those funds are the property of the preneed licensee. The preneed licensee would thus be escheating funds which, per the statute, the preneed licensee owns. Whereas, the abandoned property law contemplates that the property to be escheated is held by a holder who cannot locate the owner of the property.

(8) Another fundamental problem is that under Chapter 497, the preneed licensee is specifically authorized to retain income and earnings on trust principle upon cancellation of the contract, whereas it appears that the General Rule under Chapter 717 is that income and earnings on the property held must be escheated along with the principle.

(9) Chapter 717, Florida Statutes and Chapter 591-20, Florida Administrative Code, are the statutes and rules relating to escheatment of unclaimed property.

(10) Chapter 717 is a lengthy law, containing over 60 separate statutes. Chapter 717 provides a "General Rule" at s. 717.102, regarding when property is deemed to be abandoned property, but then follows that General Rule with numerous individual statutes that address particular types of property and provide individual instructions and guidance for when and how the particular property is considered to become abandoned property, and what is transferred to the state. There are individual statutes on a wide range of types of property, including but not limited to life insurance policies, bank demand accounts, travelers checks, gift certificates, utility deposits and wages. It appears that these individual statutes applicable to particular types of property resolve legal questions and provide the guidance that makes the abandoned property law workable as regards that particular type of property.

(11) There is no individual statute in Chapter 717 that addresses preneed trust funds, and such a statute would, in the FCCS Division's opinion, be needed if the legislature intends that preneed trust funds are subject to escheat under Chapter 717. Preneed trust funds are held pursuant to a preneed contract between the preneed licensee and the consumer. There are numerous detailed contract rights involved in that preneed contract. Without clear authority from the legislature, and detailed instructions in a statute, it appears to the FCCS Division that a ruling that preneed trust funds be escheated, would result in uncertainty, controversy and litigation, to the detriment of both preneed licensees and consumers.

¹Source: SEC website, <http://www.sec.gov/answers/escheat.htm>.

²Florida Unclaimed Property Reporting Instructions Manual, at s. 1.2, published by the Bureau of Unclaimed Property, Florida Department of Financial Services.

Ms. Michele Hood questioned whether or not this would apply to the alternative contracts under s. 497.464, F.S.

Mr. Shropshire stated if those contracts also are subject to the statutory provision stating that those funds likewise are the sole property of the trustee.

Ms. Wiener stated that they are not.

Mr. Shropshire added that being the case, this analysis set forth by the Division does not really reach that sub-issue.

Ms. Wiener stated that the Division's position paper actually also concludes that part of the reason that the funds are not subject to the abandoned property statutes is because the Licensee is entitled to interest or earnings on the contract and that applies equally in both cases of the alternative contracts and of the 70/30 contracts. Therefore, it appears the analysis would hold up for both.

Col. Stiegman questioned who requested the Division's position on this matter.

Mr. Shropshire stated that Mr. Hall raised the issue with the Division but even prior to that the Division received an inquiry from Stewart Enterprises. In relation to that, the Division received an inquiry from the Abandoned Property Bureau as to what the Division's position was on this issue. In that regard Mr. Shropshire noted that this preliminary position paper has been referred to the Abandoned Property Bureau and they in turn have referred it to their attorney and indicated that they would get back to the Division once the subject has been reviewed.

Ms. Debi Thornsburg stated that the initial request went in to Mr. Aldon Asher. Stewart was looking at performing a project on preneed contracts that we have determined a death has occurred and the burial has been handled elsewhere. Stewart would basically take the statistical records from the Social Security Administration. At that point, we would try to contact the estate of the deceased or the next of kin basically to perform a cancellation process. The question is in regards to preneed contracts where we cannot locate the initial holder, or they are deceased or any next of kin. They are just staying basically on our receivables indefinitely and we would like to know what to do with these contracts.

Mr. Hall stated that was the same type of issue that arose in his firm. There are multiple people from old preneed contracts, ages 108 – 110. A number of those people are deceased according to the Social Security Administration's records and the families cannot be located. Therefore, our question was the same as Stewart. In speaking with Ms. Wiener, she has advised that there are statutes for everything from default to cancellation to fulfillment, but there is nothing in our statutes that helps us with this issue.

The Board voted to acknowledge the Division's position.

C. Report: Payment of Disciplinary Fines and Costs -- Informational

Licensee	Board Meeting	Case No.	Total Fine & Cost Due	Date Due	Paid in full?
Guerry FH	Oct-11	119612-11-FC	\$3,000	11/19/2011	YES
William Guerry	Oct-11	119611-11-FC	\$2,000	11/19/2011	YES
Riverview Memorial Inc d/b/a Riverview Memorial Gardens	Oct-11	101938-09-FC 110895-10-FC	\$2,500	11/19/2011	YES
Summers FH	Oct-11	114637-11-FC	\$1,750	11/19/2011	YES
Trinity Memorial Cemetery	Oct-11	114209-11-FC	\$4,000	11/19/2011	YES
Willie Lucas	Oct-11	114639-11-FC	\$1,000	11/19/2011	YES
Omega Funeral Services LLC d/b/a American Family Funerals & Cremations	Oct-11	111335-10-FC	\$2,250	11/19/2011	YES

Alan Trueba	Oct-11	113850-10-FC	\$2,250	11/19/2011	YES
Tony Tanner Funeral Services, Inc.	Dec-11	117957-11-FC	\$2,000	1/14/2012	NO
Holmes Funeral Directors	Dec-11	105281-09-FC	\$2,000	1/20/2012	NO
Deliria Holmes	Dec-11	105280-09-FC		See Note C	
Landmark Funeral Home	Dec-11	108626-10-FC		See Note C	
Aaron Duncan	Dec-11	114642-11-FC		See Note C	
Golden's Funeral Home, Inc.	Dec-11	114643-11-FC		See Note C	

NOTES:

- A. When payment becomes past due, the FCCS Division works with the DFS Legal Division to enforce payment.
- B. Once fines and costs are paid in full, the licensee is kept on this report 3 months, showing Paid in Full, and is then dropped of this report.
- C. The Order re this case is still in process, so no Due date is yet established.

The Chair stated that the Board appreciates the report as it is easy to follow.

Mr. Mueller questioned whether the Division is certain now that this information will prevent occurrences like the previous issue where the Division did not have documentation to support that a fine had been paid.

Mr. Shropshire answered, "Yes."

22. Adjournment

The meeting was adjourned at 10:48 a.m.