



# South Carolina Funeral Service News

Fall 2009

## Welcome to Our Newsletter

Please forward or pass this newsletter around the office to those individuals who did not receive a copy through email. Also, please advise the Board of any changes to your address, phone number and email address. Email addresses are important as they, along with the Web site, will be used to keep you updated about the Board's recent activities, actions and changes in laws and policies.

## Office of Licensure and Compliance (OLC) Streamlines Processes

On July 1, 2008, the South Carolina Department of Labor, Licensing and Regulation (LLR) established OLC to consolidate processes dealing with initial licensure applicants, biennial renewal applicants and licensees requiring compliance of board orders. This was done to achieve consistency among professional programs.

If you have questions concerning your submitted license application or renewal, you may contact OLC at:

**Telephone Number:** (803) 896-4501 or (803) 896-4400

**Fax Number:** (803) 896-4525 or (803) 896-4570

### Supervisor of Initial Licensure (Business Boards)

[Theresa Richardson](#)

(803) 896-2365

[Betty Archie](#)

[Diana McWhorter](#)

[Jasmin Reales](#)

[Jessie Solomon](#)

[Melissa Drafts](#)

[Patrice Deas](#)

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Amy Holleman, Administrative Specialist

Tiear Williams, Administrative Specialist

You may contact us at:

Phone (803) 896-0379

Fax (803) 896-4484

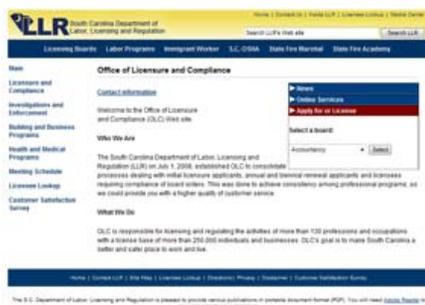
E-mail <mailto:rosej@llr.sc.gov>

[www.llr.state.sc.us/pol/funeral](http://www.llr.state.sc.us/pol/funeral)

## Questions About Pre-Need Funeral Contracts?

Pre-Need Funeral Contracts are handled through the S.C. Department of Consumer Affairs. You can contact that office at (803) 734-4291 or go to the Web site to find out more information at:

[www.sccconsumer.gov/licensing/preneed\\_funeral.htm](http://www.sccconsumer.gov/licensing/preneed_funeral.htm)



## Stay Up-to-Date with Continuing Education Lists

A list of approved continuing education courses is updated several times a month on our Web site. Go to [www.llr.state.sc.us/pol/funeral](http://www.llr.state.sc.us/pol/funeral), click on the Education link to the left of the screen and scroll down the page and click on the Approved CE Courses 2009 link.

The Board of Funeral Services went to a two-year renewal cycle in 2006; however, each licensee must continue to complete his or her three (3) CE hours during each calendar year (January through December). If you are audited, you

will have to provide proof that 3 CE hours were completed for each year.

## More About Apprenticeships

Each Apprentice must submit quarterly reports within 30 days following the completion of the quarter. If the Board receives your report after the 30-day requirement, you will not receive credit for that report and will have to submit another application to extend by another 3 months. You may call OLC to verify that your report has been received or send the report by Return-Receipt.

After apprentices achieve their 50 funeral requirement, they no longer will have to document each funeral; however, they still need to complete, sign and mail in their quarterly reports for two years.

## Take Exams Earlier



Individuals who have finished their college courses can now take the exams without having to wait until their apprenticeships are complete. This change will allow individuals the ability to take the exam while the classroom information is still fresh on their minds.

In order to prepare for the State Funeral Director/Embalmer Exam, you can contact The International Conference at <http://www.theconferenceonline.org/order-sbe-sg.shtml> to obtain the Study Guide. To prepare for the South Carolina Law Exam, individuals can go to the Board of Funeral Services Web site and either click on or copy and paste this link into your browser: [www.llronline.com/pol/accountancy/index.asp?file=laws.htm](http://www.llronline.com/pol/accountancy/index.asp?file=laws.htm).

## Funeral Facility Managers Must Appear Before Board



Managers of Funeral Facilities with an application to open must appear before the Board for approval. Applications and fees must be received no later than two weeks prior to the scheduled Board meeting to be placed on the meeting agenda. All proposed managers must physically reside and hold an active Funeral Directors license in South Carolina for at least one year.

As a courtesy, please schedule the facilities inspection two weeks prior to its opening by calling Ernest Adams at (864) 303-0851. If during an inspection, the inspector finds that the building is not structurally sound, a warning will be issued. If further non-compliance is noted, the infraction will be reported to the appropriate county officials.

If there is a change in ownership, this is considered a new facility, requiring a new application to be submitted.

All applications and pertinent statute and laws can be obtained at [www.llr.state.sc.us/pol/funeral](http://www.llr.state.sc.us/pol/funeral). **continued on page 3**

NBE Statistics (January 1, 2009 - April 30, 2009) From The Conference Report – Summer 2009						
National Board Arts Examination						
	Total Tested	Pass #	Pass %	Fail #	Fail %	Absent #
First Time	309	235	76%	74	24%	4
Repeater	106	34	32%	72	68%	6
Total	415	269	65%	146	35%	10
National Board Science Examination						
	Total Tested	Pass #	Pass %	Fail #	Fail %	Absent #
First Time	305	244	80%	61	20%	6
Repeater	116	34	29%	82	71%	6
Total	421	278	66%	143	34%	12

## Apprenticeships Clarified

James A. McAlister III, Vice President, S.C. Board of Funeral Services

In an effort to make the requirements for those wishing to serve an apprenticeship clear and easy to understand, the State Board is rewriting the current regulations with concise language. Our primary goal here is to make absolutely clear to the Apprentice his or her responsibility in meeting these requirements.

The basic elements are still the same. The apprenticeship period is still two years with 50 cases to report required. Three renewals, for a period of one year each, can be used to meet the 50-case rule or school requirements. Student permits are still available. If an individual is not licensed within a five-year period or does not complete his or her apprenticeship, commencing with the first registration date, the new rule says that the apprentice MAY be required to serve his or her apprenticeship again. This is an area where the Board may exercise its authority in the future by not granting another apprenticeship. The Board will hear each request on an individual basis. The goal is to eliminate what has become "lifetime apprentices" and license those individuals that are qualified.

## Irrevocable Trusts in Preneed Funeral Contracts

Danny R. Collins, Deputy for Regulatory Enforcement, S.C. Department of Consumer Affairs

Reprinted from *The Connection*, newsletter of the S.C. Morticians Association.



The Department has been asked several questions about the revocability of an irrevocable contract funded by a trust. Preneed funeral contracts are governed by §§ 32-710 *et seq.* of the *Code of Laws of South Carolina*. Section 32-7-25 specifically allows for preneed contracts to be made irrevocable at the purchaser's option. When the purchaser elects to make the contract irrevocable, the law gives the purchaser 30 days to revoke the contract before it becomes irrevocable. Once the 30-day time period has passed, the contract can no longer be revoked by the purchaser, the

beneficiary or the trustee.

In fact, § 32-7-30, which allows the purchaser to make a written demand for a refund of the funds paid, specifically excludes irrevocable contracts. That is, the right to demand a refund after the 30-day period does not apply to an irrevocable contract. However, if the contract is not paid in full and the purchaser fails to make the payments, the contract is avoidable at the option of the provider. S.C. *Code Ann.* § 32-7-20(K). **continued on page 4**

The case law in South Carolina supports this position. As a general rule, a trust cannot be revoked unless such a power is reserved in the trust agreement. *Chiles v. Chiles*, 270 S.C. 379, 242 S.E.2d 426 (1978); *Dodd v. Berlinsky, as Trustee*, 344 S.C. 172, 543 S.E.2d 237 (Ct App. 2001). The preneed agreement provides on its face whether it is revocable or irrevocable. In certain circumstances a court of equity can modify or revoke a trust, even an irrevocable trust. A court of equity can reform a trust that does not express the intent of the settlor of the trust, but the time for examining the intent of the settlor is at the time the trust was made, not some later time because of a change in circumstances. *Chiles, supra*. Also, a court of equity can revoke a trust if it was procured through fraud, undue influence, duress or coercion, but once again, the time period to be examined is the time the trust was made, not some later time when circumstances may have changed. *Dodd, supra*. As the court said in *Chiles* "it is the court's duty to preserve, not destroy, trusts." 242 S.E.2d at 429. When the desire for the refund arises after the time the preneed contract was purchased and was funded by the trust, there usually are no legal grounds to revoke the trust

Moreover, revoking a trust does have other legal consequences. When a trust is irrevocable, the property is out of the control of the purchaser. Since the property is not under the control of the purchaser, it cannot be used when determining the eligibility for certain government benefits, such as assisted living or Medicare benefits. If the irrevocable contract were to be revoked, then the purchaser may become ineligible for government assistance benefits. Also, the purchaser may possibly be asked to repay any benefits that have already been received. In other words, even if a court does allow revocation of an irrevocable agreement, there may be negative legal consequences.

The law also allows a preneed funeral contract to be funded by an insurance policy. S.C. Code Ann. § 32-720(E). There are specific provisions to govern the conduct of a funeral director licensed to sell this type of insurance in the insurance code. See S. C. Code Ann. § 38-55-330. This statute, however, does not apply to the preneed contracts themselves. Section 32-7-25 recognizes that preneed contracts may be funded by insurance policies and allows the purchaser to cancel the contract within 30 days and receive a refund of the full premium paid, like those contracts funded by a trust. Section 32-7-30, which allows the customer to make a written request for the money paid only applies to a contract funded by a trust. Section 32-7-35 allows an irrevocable contract funded by insurance to be transferred to another funeral home, but there is no provision allowing the revocation of an irrevocable contract. Therefore, there is no reason under the governing statutes to expect that an irrevocable contract funded by insurance that has been fully paid would be treated differently than an irrevocable contract funded by a trust.

To summarize, an irrevocable contract cannot be revoked unless it comes within one of the two statutory provisions or it is revoked by a court of competent jurisdiction. Even then the court tries to preserve a trust arrangement and will only reform or revoke it if the proper showing is made by clear and convincing evidence. Therefore, a funeral home cannot release the trust funds that do not come within the statutory provisions without a proper court order allowing it to do so.

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## Requirements for Fetal Cremations

Guang Zhao, Director, PHS IS Shae Sutton, Director, Division of Biostatistics Luanne Miles, Director, Division of Vital Records Gina Daniels, Special Assistant to PHSIS Director  
Reprinted from The Connection, Newsletter of the S.C. Morticians Association.

The Office of Public Health Statistics and Information Services is aware of a misperception that funeral homes must present a Report of Fetal Death to dispose of fetal remains by cremation.

SC Code 32-8-300, *et seq.*, the "Safe Cremation Act," contains statutory requirements for authorization of a cremation. S.C. Code 32-8-325 provides that a crematory authority shall not cremate human remains until it has received a certified copy of the death certificate, a cremation authorization form executed by the decedent or decedent's agent, a completed and executed burial transit permit, and a cremation permit secured from the coroner or medical examiner.

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There is no provision in law that requires receipt of a Report of Fetal Death to authorize a cremation. As stated above, the law requires a copy of the death certificate, which is not required to be filed or issued for a fetal death. A Report of Fetal Death is not a death certificate but an entirely different form. SC *Code Ann.* Reg. 61-19, Section 21 requires a Report of Fetal Death to be filed with the State Registrar and explicitly provides that these Reports "are statistical reports to be used only for medical and health purposes." Disclosure of the confidential personal and health information contained in the reports to other individuals or entities, or for any other purposes, may violate federal and state privacy laws.

In the case of cremation of fetal remains, a Report of Fetal Death is not required. The funeral home must have a cremation authorization form executed by the decedent's agent, a completed and executed burial transit permit, and a cremation permit secured from the coroner or medical examiner. If you have any questions, call Shae Sutton at (803) 898-1808.