

How to Correctly Prepare an Irrevocable Preneed Contract

Many of my clients continue to make a mistake when preparing irrevocable preneed contracts: misidentifying the “Purchaser.” This often happens when working with preneed customers who want to purchase irrevocable preneed contracts in order to qualify for the types of public assistance identified in Chapter 497, Florida Statutes.

Consider the following scenario: An elderly mother and son visit your funeral home. The elderly mother is suffering from low-level dementia, and the son holds a power of attorney enabling him to act for her. The elderly mother is transitioning to a skilled nursing facility that accepts Institutional Care Program Medicaid. The son is in the process of an asset “spend down” for her, so that the elderly mother can qualify for the program. You write up a funeral on your FSI provided Prearranged Funeral Agreement (PAFA) form and mark it irrevocable. The elderly mother is unable to write legibly, so the son will sign the PAFA and initial in the space making the contract irrevocable.



Who should be identified as “Purchaser” on the PAFA?

If you said the elderly mother, you are CORRECT! Even though the elderly mother is unable to participate fully in the prearrangement conference with you, her funds are those that will be used to pay for the preneed contract, and thus, she is the Purchaser *and* the Beneficiary of the PAFA.

In this scenario, the son should sign the PAFA, as he holds power of attorney for the elderly mother. However, if the son did not have a power of attorney for his elderly mother, the elderly mother should still be identified on the PAFA as Purchaser and Beneficiary and her signature should be obtained in whatever way possible, even as an “X,” with a notation about her inability to write legibly.

The 2016 revisions to the relevant law are clear, that in order for a contract to be made irrevocable lawfully, **the Purchaser must be the Beneficiary.**

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