

**BEFORE THE INSURANCE COMMISSIONER
FOR THE STATE OF ARKANSAS**

**IN THE MATTER OF
TRI-COUNTY FUNERAL
HOMES, LLC**

A.I.D. NO. 2009- 051

CONSENT AGREEMENT AND ORDER

Now on this day, the matter of Tri-County Funeral Homes, LLC (“Company”) comes before Jay Bradford, Insurance Commissioner of the State of Arkansas (“Commissioner”). The Commissioner and the Company are in agreement concerning the above-captioned matter. Therefore, the Commissioner and the Company consent and agree to the following:

1. The Commissioner has jurisdiction over the parties and the subject matter pursuant to the Arkansas Prepaid Funeral Benefits Law, Ark. Code Ann. §§ 23-40-101, *et seq.*
2. The Company, through its majority owner and with the advice of legal counsel, has knowingly and voluntarily waived any right to an administrative hearing.
3. The Company’s main office is in Hardy, Arkansas and the Company operates funeral homes in Batesville, Cave City and Hardy, Arkansas.
4. The Commissioner has jurisdiction over the Company’s trust-funded prepaid funeral benefits contracts. The Company sells prepaid funeral contracts pursuant to a permit issued by the Department as required by Ark. Code Ann. § 23-40-109.
5. Proceeds collected under contracts for prepaid funeral benefits are required to be held and maintained in trust as set forth in Ark. Code Ann. §§ 23-40-114 through 116.
6. Financial examinations of the Company’s trust funds were conducted on April 13, 14, and 20, 2009 by the Department’s Prepaid Funeral Benefits Section. A draft of each Report of Examination was mailed to the Company’s majority owner, Renee Clay-Circle (“Clay-Circle”) on or about April 22, 2009.

7. Clay-Circle owns fifty-one percent (51%) of the Company. Randy McComas ("McComas"), who passed away on April 8, 2009, was the owner of the remaining forty-nine (49%). McComas managed the Company's three funeral homes.

8. The financial examinations of the Company, and the subsequent Reports of Examination, revealed deficiencies in the Company's trust funds.

9. The Department may institute delinquency proceedings in order to conserve, rehabilitate, or liquidate a prepaid funeral benefits contracts licensee when (1) the licensee has not maintained trust funds in the manner required by Ark. Code Ann. § 23-40-114, (2) the licensee is impaired or insolvent, or (3) there is reasonable cause to believe that embezzlement, misappropriation, or other wrongful misapplication of trust funds has occurred.

10. On April 27, 2009, Clay-Circle's legal counsel met with representatives of the Department's Finance and Legal Divisions to discuss the Department's duties with regard to the impaired Company and Clay-Circle's options. Clay-Circle participated in a portion of that conference via telephone.

11. On April 29, 2009, via facsimile and electronic mail, the Commissioner submitted to legal counsel for Clay-Circle correspondence stating that steps necessary to institute delinquency proceedings would be commenced on May 7, 2009. The correspondence invited Clay-Circle's counsel to meet with the Commissioner prior to that time if they so desired, and a meeting was promptly requested.

12. On May 4, 2009, legal counsel for Clay-Circle met with the Commissioner and members of his staff to discuss the deficiencies in the trust funds and the Department's available remedies. During that meeting, the parties came to the agreement set forth herein.

13. The Company understands that the Department has a duty to commence delinquency proceedings, pursuant to Ark. Code Ann. § 23-40-123, absent an immediate infusion of capital to restore the trust funds to their statutorily required levels.

14. In exchange for the Department's forbearance in taking regulatory action as set forth herein, the Company agrees to the following terms and conditions regarding contributions to the trust funds:

(a) The Company agrees to infuse a total of one hundred thousand dollars (\$100,000.00) into the trust funds within three (3) business days of the date of execution of this Consent Agreement and Order.

(b) Within eighteen (18) months of the date of the execution of this Consent Agreement and Order, the exact date of which shall be stipulated by the parties at the time of execution, the Company agrees to infuse five hundred and twelve thousand dollars (\$512,000.00), which represents the remaining deficiency known at the time of the agreement. This payment is subject to the following terms and conditions, which have been agreed upon by the parties hereto:

(i) The payment must be made on or before the expiration of eighteen (18) months of the date of the execution of this Consent Agreement and Order, and the Company understands and agrees that the Department will not grant any requested extension of time to make said payment;

(ii) The payment will be made regardless of any activity or event occurring or discovered after the date of this agreement, regardless of whether said activity or event affects the amount of the trust fund deficiencies or any other obligation of the Company or its owner(s); and

(iii) The payment will be secured by an irrevocable letter of credit issued by a bank and in a form approved by the Commissioner prior to its issuance, in the amount of five hundred twelve thousand dollars (\$512,000.00) and with an expiration of not less than twenty (20) months from the date of the execution of this Consent Agreement and Order. The Commissioner's approval must be obtained prior to payment of any amount under the letter of credit to any person or entity other than the subject trust funds. Further, the Commissioner shall have the authority to draw upon the full amount of the letter of credit upon the expiration of eighteen (18) months from the date of the execution of this Consent Agreement and Order. The irrevocable letter of credit will serve as collateral for the agreed-upon five hundred twelve thousand dollar (\$512,000.00) payment to the trust funds.

(c) The Company understands and agrees that should additional deficiencies be discovered after the execution of this Consent Agreement and Order, those deficiencies shall be separate from and in addition to any payment(s) agreed upon herein. The Company further understands and agrees that if additional deficiencies are noted and the Company chooses only to make those infusions agreed upon herein, and not to fund any additional deficiencies, that the Commissioner and the Department will take the action necessary for delinquency proceedings pursuant to Ark. Code Ann. § 23-40-132. The Company understands that the Commissioner and the Department make no representations that they will forbear in instituting delinquency proceedings after the expiration of eighteen (18) months from the date of this agreement if the trust funds are

deficient, regardless of whether said deficiency is the result of a breach of this agreement by the Company.

15. The Company agrees to submit, within sixty (60) days of the date of this order, a corrective action plan concerning the future business and management of the trust funds. The plan shall include policies and procedures regarding management oversight and internal controls and shall address future management of the funeral homes.

16. The Company understands that the Department has placed a hold on the trust fund accounts and on accounts funded by trust funds. The Company agrees that said holds shall remain in place at the Commissioner's discretion and that no movement of funds from one account to another may occur without the Commissioner's prior written approval.

17. The Company understands that it has obligations under the prepaid funeral benefits contracts it has issued and agrees to fully honor and perform those obligations as they become due.

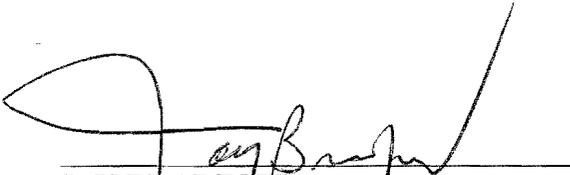
18. Pursuant to the Arkansas Prepaid Funeral Benefits Law, Ark. Code Ann. §§ 23-40-101, *et seq.*, and the regulatory powers granted the Commissioner in Ark. Code Ann. § 23-61-103 and other provisions of the Arkansas Insurance Code, the Department reserves the rights and remedies available to it should the Company commit any breach of this Consent Agreement and Order that the Commissioner, in his sole discretion, deems a material breach.

19. The Company consents and agrees that after the passage of eighteen (18) months from the date this order, the Commissioner and the Department may proceed immediately with delinquency proceedings pursuant to Ark. Code Ann. § 23-40-123 if the trust funds remain deficient for any reason. Additionally, should the Company materially breach the provisions of paragraph fourteen (14) above by failing to make the infusions as agreed, the Company

knowingly and voluntarily waives all rights to challenge or contest any order issued on or after the passage of eighteen (18) months from the date of this order relating to conservation, rehabilitation, or liquidation in any forum now or subsequently available to the Company, including the right to any administrative proceeding, circuit or federal court action, or any appeal.

20. Nothing in this Consent Agreement and Order shall be construed as a waiver or limitation of any kind on the Commissioner's or the Department's rights and available remedies under the Arkansas Prepaid Funeral Benefits Law, Ark. Code Ann. §§ 23-40-101, *et seq.*, or the Arkansas Insurance Code that may be exercised in accordance with the parties' agreement as stated herein.

IT IS SO ORDERED, DIRECTED, AND AGREED TO THIS 15th DAY OF MAY,
2009.



JAY BRADFORD
INSURANCE COMMISSIONER
STATE OF ARKANSAS

VERIFICATION

By execution hereof, Tri-County Funeral Homes, LLC consents to the entry of this Consent Agreement and Order and agrees, without reservation, to all of the above terms and conditions and shall be bound by all provisions herein. The undersigned represents that he or she has the authority to bind Tri-County Funeral Homes, LLC to the terms and conditions of this Consent Agreement and Order.

TRI-COUNTY FUNERAL HOMES, LLC

Name: RENEE CLAY-CIRCLE

Signature: *Renee Clay-Circle*

Title: member

Date: 5/14/2009

TERRY SCOTT
NOTARY PUBLIC-STATE OF ARKANSAS
PULASKI COUNTY
My Commission Expires 12-12-2012

State of Arkansas)

County of Pulaski)

The foregoing instrument was signed and acknowledged before me on this 14th day of May by RENEE CLAY-CIRCLE personally known or made known to me.

Terry Scott
NOTARY PUBLIC

My commission expires:

12-12-2012