

Republic of the Philippines
CONGRESS OF THE PHILIPPINES
Metro Manila

Fourteenth Congress
Third Regular Session

Begun and held in Metro Manila, on Monday, the twenty - seventh day of July, two thousand nine.

Republic Act No. 9829

AN ACT ESTABLISHING THE PRE-NEED CODE OF THE PHILIPPINES

Be it enacted by the Senate and House of Representatives of the Philippines in Congress assembled:

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CHAPTER VIII
TRUST FUND

Section 30. Trust Fund. - To ensure the delivery of the guaranteed benefits and services provided under a pre-need plan contract, a trust fund per pre-need plan category shall be established. A portion of the installment payment collected shall be deposited by the pre-need company in the trust fund, the amount of which will be as determined by the actuary based on the viability study of the pre-need plan approved by the Commission. Assets in the trust fund shall at all times remain for the sole benefit of the planholders. At no time shall any part of the trust fund be used for or diverted to any purpose other than for the exclusive benefit of the planholders. In no case shall the trust fund assets be used to satisfy claims of other creditors of the pre-need company. The provision of any law to the contrary notwithstanding, in case of insolvency of the pre-need company, the general creditors shall not be entitled to the trust fund.

Except for the payment of the cost of benefits or services, the termination values payable to the planholders, the insurance premium payments for insurance - funded benefits of memorial life plans and other costs necessary to ensure the delivery of benefits or services to planholders, no withdrawal shall be made from the trust fund unless approved by the Commission. The benefits received by the planholders shall be exempt from all taxes and the trust fund shall not be held liable for attachment, garnishment, levy or seizure by or under any legal or equitable processes except to pay for the debt of the planholder to the benefit plan or that arising from criminal liability imposed in a criminal action.

The trust fund shall at all times be sufficient to cover the required pre-need reserve.

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Section 32. *Terms and Conditions of a Trust Fund.* - A trust fund must be established separately for each type of pre-need plan with the trust department of a trust company, bank or investment house doing business in the Philippines. No trust fund shall be established by a pre-need company with an affiliate trust entity subject to Section 38 hereof.

The trust agreement shall be submitted to the Commission for approval before execution and shall contain the following salient provisions, among others:

- (a) The manner in which the trust fund is to be operated;
- (b) Investment powers of the trustee with respect to trust deposits, including the character and kind of investment;
- (c) Auditing and settlement of accounts of the trustee with respect to the trust fund;
- (d) Basis upon which the trust fund may be terminated;
- (e) Provisions for withdrawals from the trust fund;
- (f) That the trustee shall submit to the power of the Commission to examine and verify the trust fund;
- (g) An undertaking by the trustee that it shall abide by the rules and regulations of the Commission with respect to the trust fund; and
- (h) An undertaking by the trustee that it shall submit such other data or information as may be prescribed by the Commission.

Section 33. *Responsibilities of the Trustee.* - The trustee shall:

- (a) Administer and manage the trust fund with utmost good faith, care and prudence required by a fiduciary relationship;
- (b) The trustee shall have the exclusive management and control over the funds and the right at any time to sell, convert, invest, change, transfer or otherwise change or dispose of the assets comprising the funds within the parameters prescribed, by the pre-need company and provided these parameters are compliant with the Commission's regulations; and
- (c) Not use the trust fund to invest in or extend any loan or credit accommodation to the pre-need company, its directors, officers, stockholders, and related interests as well as to persons or enterprises controlling, owned or controlled by, or under common control with said company, its directors, officers, stockholders and related interests except for entities which are direct providers of pre-need companies.

Section 34. *Investment of the Trust Fund.* - To ensure the liquidity of the trust fund to guarantee the delivery of the benefits provided for under the plan contract and likewise obtain sufficient capital growth to meet the growing actuarial reserve liabilities, all investments of the trust fund/s of a pre-need company shall be limited to the following and subject to limitations, to wit:

- (a) Fixed income instruments. - These may be classified into short - term and long - term instruments. The instrument is short - term if the maturity period is three hundred sixty - five (365) days or less. This category includes:

(1) Government securities which shall not be less than ten percent (10%) of the trust fund amount;

(2) Savings/time deposits and unit investment trust funds maintained with and managed by a duly authorized bank with satisfactory examination rating as of the last examination by the BSP;

(3) Commercial papers duly registered with the SEC with a credit rating of "1" for short - term and "A.AA" for long - term based on the rating scale of an accredited Philippine Rating Agency or its equivalent at the time of investment.

The maximum exposure to long - term commercial papers shall not exceed fifteen percent (15%) of the total trust fund amount while the exposure to each commercial paper issuer shall not exceed ten percent (10%) of the allocated amount; and

(4) Direct loans to corporations which are financially stable, profitable for the last three (3) years and have a good track record of paying their previous loans.

These loans shall be fully secured by a real estate mortgage up to the extent of sixty percent (60%) of the zonal valuation of the property at the time the loan was granted.

The property shall be covered by a transfer certificate of title registered in the name of the mortgagor and free from liens and encumbrances.

The maximum amount to be allocated for direct loans shall not exceed five percent (5%) of the total trust fund amount while the amount to be granted to each corporate borrower shall not exceed ten percent (10%) of the amount allocated.

The maximum term of the loan should be no longer than four (4) years.

Direct loans to planholders are exempt from the limitations set forth under this section: *Provided*, That such loans to planholders shall not exceed ten percent (10%) of the total trust fund amount.

(b) Equities. - Investments in equities shall be limited to stocks listed on the main board of a local stock exchange.

Investments in duly registered collective investment instruments such as mutual funds are allowed hereunder: *Provided*, That such funds are invested only in fixed income instruments and blue chips securities, subject to the limitations prescribed by laws, rules and regulations.

These investments shall include stocks issued by companies that are financially stable, actively traded, possess good track record of growth and have declared dividends for the past three (3) years. Notwithstanding the prohibition against transactions with directors, officers, stockholders and related interests, the trustee may invest in equities of companies related to the trustee provided these companies comply with the foregoing criteria provided in this paragraph for equity investments.

The amount to be allocated for this purpose shall not exceed thirty percent (30%) of the total trust fund while the investment in any particular issue shall not exceed ten percent (10%) of the allocated amount. The investment shall be recorded at the aggregate of the lower of cost or market.

Existing investments which are not in accordance herewith shall be disposed of within three (3) years from the effectivity of this Act.

(c) Real Estate. - These shall include real estate properties located in strategic areas of cities and first class municipalities. The transfer certificate of title (TCT) shall be in the name of the seller, free from liens and encumbrances and shall be transferred in the name of the trustee in trust for the planholders unless the seller/transferor is the pre-need company wherein an annotation to the TCT relative to the sale/transfer may be allowed. It shall be recorded at acquisition cost.

However, the real estate shall be appraised every three (3) years by a licensed real estate appraiser, accredited by the Philippine Association of Real Estate Appraisers, to reflect the increase or decrease in the value of the property. In case the appraisal would result in an increase in the value, only sixty percent (60%) of the appraisal increase is allowed to be recorded in the books of the trust fund but in case of decline in value, the entire decline shall be recorded. Appraisal increment should not be used to cover up the required monthly contribution to the trust fund.

The total recorded value of the real estate investment shall not exceed ten percent (10%) of the total trust fund amount of the pre-need company. In the event that the existing real estate investment exceeds the aforesaid limit, the same shall be leveled off to the prescribed limit within three (3) years from the effectivity of this Code. I

Investment of the trust fund, which is not in accordance with the preceding paragraphs, shall not be allowed unless the prior written approval of the Commission had been secured: *Provided, further*, That no deposit or investment in any single entity shall exceed fifteen percent (15%) of the total value of the trust fund: *Provided, finally*, That the Commission is authorized to adjust the percentage allocation per category set forth herein not in excess of two percentage (2%) points upward or downward and no oftener than once every five (5) years. The first adjustment hereunder may be made no earlier than five (5) years from the effectivity of this Act. The pre-need company shall not use the trust fund to extend any loan to or to invest in its directors, stockholders, officers or its affiliates.

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Section 37. Liquidity Reserve. - The trustee shall at all times maintain a liquidity reserve which shall be sufficient to cover at least fifteen percent (15%) of the trust fund but in no case less than one hundred twenty - five percent (125%) of the amount of the availing plans for the succeeding year. For this purpose, the pre-need company shall timely submit to the trustee a summary of benefits payable for the succeeding year.

The following shall qualify as investments for the liquidity reserve:

(a) Loans secured by a hold - out on assignment or pledge deposits maintained either with the trustee or other banks, or of deposit substitute of the trustee itself or mortgage and chattel

mortgage bonds issued by the trustee;

(b) Treasury notes or bills, other government securities or bonds, and such other evidences or indebtedness or obligations the servicing and repayment of which are fully guaranteed by the Republic of the Philippines;

(c) Repurchase agreements with any of those mentioned in Item "b" above, as underlying instruments thereof; and

(d) Savings or time deposits with government - owned banks or commercial banks.

Section 38. Trustees. - Upon approval of the Commission or when the Commission requires for the protection of planholders, the pre-need company shall entrust the management and administration of the trust fund to any reputable bank's trust department, trust company or any entity - authorized to perform trust functions in the Philippines: *Provided*, That no director and/or officer of the affiliate or related trust entity: *Provided, further*, That no trust fund shall be established by a pre-need company with a subsidiary, affiliate or related trust entity. However, such may be allowed: *Provided*, That the following conditions are complied with:

(a) A written approval of the Commission has been previously obtained; and

(b) Public disclosure of the affiliation with the trust entity be included in all materials in whatever form.

The Commission shall have the authority to prescribe appropriate rules that shall ensure that the yield of the trust fund is maximized, consistent with the requirements of safety and liquidity.

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Approved,

PROSPERO C. NOGRALES

Speaker of the House of Representatives

JUAN PONCE ENRILE

President of the Senate

This Act which is a consolidation of Senate Bill No. 2077 and House Bill No. 6407 was finally passed by the Senate and the House of Representatives on September 30, 2009 and September 29, 2009, respectively.

MARILYN B. BARUA-YAP

Secretary General House of Representatives

EMMA LIRIO-REYES

Secretary of the Senate

Approved: DEC. 03, 2009

GLORIA MACAPAGAL - ARROYO

President of the Philippines