

**ORDER NO. 2018-019**

<b>IN THE MATTER OF:</b>	§	<b>BEFORE:</b>
	§	
<b>BILLY F. PEEL, INDIVIDUALLY AND AS PRESIDENT OF AUSTIN PEEL AND SON FUNERAL HOME, INC.</b>	§	
	§	
<b>AND</b>	§	<b>THE BANKING COMMISSIONER OF TEXAS</b>
	§	
<b>AUSTIN PEEL AND SON FUNERAL HOME, INC.</b>	§	
	§	
<b>AUSTIN, TEXAS</b>	§	<b>AUSTIN, TRAVIS COUNTY, TEXAS</b>

**EMERGENCY ORDER TO CEASE AND DESIST ACTIVITY, AND TO SEIZE  
RECORDS AND FUNDS**

On this day, the matter of Billy F. Peel, individually and as President of Austin Peel and Son Funeral Home, Inc., and Austin Peel and Son Funeral Home, Inc. ("APS"), located in Austin, Texas (collectively "Respondents"), was submitted to the Banking Commissioner of the State of Texas ("Commissioner") for consideration and action.

**I. Findings**

1. Respondent Billy F. Peel has been the President of APS since at least February of 1986.
2. Respondent Billy F. Peel is the sole shareholder and Director of Elgin's Classic Home, Inc. ("ECH"). ECH owned Elgin Funeral Home from at least August 1995 to July 2017, at which time ECH conveyed Elgin Funeral Home to Josh Hausladen and Jamie Hausladen.
3. Respondents do not currently hold the permit required by Texas Finance Code ("Finance Code") § 154.101 to sell prepaid funeral contracts. Respondent APS formerly held permit number 750. In March 2006, Respondent APS's permit expired for failure to renew. ECH has never held the permit required by Finance Code § 154.101 to sell prepaid funeral contracts.
4. On or about July 17, 2006, the Texas Department of Banking ("Department") issued a Cease and Desist Order against Respondent APS, ordering APS to cease the sale of prepaid funeral contracts and the collection of associated funds based on APS 's holding of trust-funded prepaid funeral contracts and related funds without a current permit issued by the Department.
5. On or about September 19, 2014, Respondent Billy F. Peel sold a trust-funded prepaid funeral contract to D. G.<sup>1</sup> for \$8,352.00, which was not properly recorded, and for which funds were not properly placed in trust.

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<sup>1</sup> Initials, as used here and continuing throughout the remainder of this Order, are used to preserve privacy.

6. On or about November 30, 2015, Respondent APS sold a trust-funded prepaid funeral contract to K. K. for \$1,791.00, which was not properly recorded, and for which funds were not properly placed in trust.
7. The contract described in Paragraph 5 above was not written on the required form for authorized prepaid funeral contracts; it was written on a form used when a funeral is arranged at the time of death, which was printed on Elgin Funeral Home letterhead.
8. The contract described in Paragraph 6 above was not written on the required form for authorized prepaid funeral contracts; it was written on a form used when a funeral is arranged at the time of death, which was printed on APS letterhead.
9. On or about November 20, 2014, D. G. made final payment on the contract described in Paragraph 5 above, for which she received a receipt from Respondent Billy F. Peel, which was printed on an APS receipt.
10. On or about July 25, 2018, the Department received information regarding the existence of the contract described in Paragraph 5 above and other prepaid funeral contracts sold by Respondents. The Department also received evidence that Respondent APS currently has accounts at Wells Fargo, N.A that contain funds that relate to the sale of prepaid funeral contracts.
11. Irreparable harm is threatened to one or more beneficiaries under a prepaid funeral contract because:
  - a. Respondents have written at least two trust-funded prepaid funeral contracts in violation of the Finance Code, for which money was not properly handled;
  - b. records relating to prepaid funeral contracts that have not been tendered to the Department for examination may evidence further misappropriation of money entrusted to Respondents, or reveal further violations of law, and based on the Department's experience in past cases, when a person has written prepaid funeral contracts without complying with the laws governing prepaid funeral contracts, more illegal contracts come to light;
  - c. the records and contracts may be removed or destroyed; and
  - d. money that should have been deposited in trust for prepaid funeral contract beneficiaries may be removed or converted.

## **II. Conclusions**

12. The Commissioner is authorized by Finance Code § 154.408 to issue a cease and desist order to a person if the Commissioner finds by examination or other credible evidence that the person has violated a law of this state relating to the sale of prepaid funeral contracts, including

a violation of Chapter 154, or a final order of the Commissioner, or a rule of the Finance Commission.

13. The Commissioner finds by credible evidence that Respondents have violated Finance Code § 154.101 by selling prepaid funeral benefits, or accepting money for prepaid funeral benefits, in Texas under contracts without a permit issued under Chapter 154, Subchapter C of the Finance Code.
14. The Commissioner finds by credible evidence that Respondents have violated Finance Code § 154.151 by selling contracts for prepaid funeral benefits on sales contract forms not approved by the Department.
15. The Commissioner finds by credible evidence that Respondents have violated Finance Code § 154.159 by not properly administering money received for prepaid funeral contracts as prescribed by Finance Code § 154.253.
16. The Commissioner finds by credible evidence that Respondents have violated the Cease and Desist Order described in Paragraph 4 above by selling prepaid funeral contracts and collecting associated funds without a current permit issued by the Department.
17. The Commissioner finds these violations constitute sufficient cause for issuance of an order to cease and desist from selling prepaid funeral contracts under Texas Finance Code § 154.408.
18. The Commissioner is authorized by Texas Finance Code § 154.4081 to issue an emergency order that takes effect immediately if the Commissioner finds that immediate and irreparable harm is threatened to the public or a beneficiary under a prepaid funeral contract. As stated in Paragraph 11 above, the Commissioner finds that such harm is threatened.
19. The Commissioner is authorized by Finance Code § 154.412 to issue an order seizing records and funds that relate to the sale of prepaid funeral contracts if the Commissioner finds by examination or other credible evidence that the person failed to deposit or remit money in accordance with the requirements of Chapter 154. The Commissioner finds that Respondents have so failed to deposit or remit money.
20. The Commissioner is authorized by Finance Code § 154.412(c) to cause the seizure order to take immediate effect if the Commissioner finds that immediate and irreparable harm is threatened to the public or a beneficiary under a prepaid funeral contract. For the reasons stated in Paragraph 11 above, the Commissioner finds that such harm is threatened.

### **III. Order**

In accordance with Finance Code §§ 154.408 and 154.4081, Respondents are ORDERED to cease and desist from engaging in the sale of any trust-funded prepaid funeral contracts and the collection of associated funds.

In accordance with Finance Code § 154.412, the following is hereby further ORDERED:

1. the Department is authorized to immediately seize and take possession of the funds, contracts, and other records of Respondents that relate to the sale of prepaid funeral contracts, wherever they may be located, held, or found;
2. APS, through its officers, directors, or employees, shall immediately gather and surrender to the Department all trust-funded prepaid funeral contracts and other records relating to the sale of trust-funded prepaid funeral contracts; and
3. Wells Fargo Bank, N.A. shall immediately freeze and allow the Department to take possession of the deposit account ending in xxx5259, bearing the name of Austin-Peel and Son Funeral Home, Inc.

**IV. Effective Date**

Pursuant to Finance Code §§ 154.4081 and 154.412(c), this Order to Cease and Desist Activity, and to Seize Records and Funds will take effect immediately.

**V. Notice of Right to Hearing**

Under Finance Code §§ 154.4081(c) and 154.412(c-1), Respondents have the right to request in writing a hearing to show that the emergency order should be stayed.

**VI. Service**

This Order will be served on Billy F. Peel via personal service and via certified mail, return receipt requested, and on APS via personal service on its President or registered agent, and via certified mail, return receipt requested.

Signed on this 1<sup>st</sup> day of August, 2018.

/s/ Charles G. Cooper

Charles G. Cooper

Banking Commissioner of Texas