



Are Consumers Getting Fair Funeral Deals?



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According to a General Accounting Office report, Americans arrange more than two million funerals each year. The average cost of a funeral, with casket and vault, runs around \$5,500. Add burial costs and total expenses reach \$8,000, and as much as \$10,000 in some markets. Given the expense and the sensitive nature of funeral arrangements, regulators have sought to protect consumers--through the federal "Funeral Rule" and various state statutes--from unscrupulous deals.

Recent hearings by the Senate Special Committee on Aging examined these matters in some detail, but were not able to establish whether consumer abuse has expanded as some activists charge. The following provides two perspectives that serve to outline areas of concern and offer some data on the overall consumer experience with the industry.

--Ed.

Industry Problems ...

--From the testimony of Dr. Robert Shreve, Past Chairman of the AARP.

Over the past decade significant change has taken place in the funeral and burial industries. Changes include: consolidation of funeral homes and cemeteries; cemeterians providing funeral goods and services and funeral directors providing burial goods and services; an increase in third-party providers, Internet shopping, and preneed contracts.

These changes provide consumers with a mixed bag of results, some good, some not so good. The Funeral Rule, implemented by the Federal Trade Commission (FTC) in 1984, was designed to ensure that "consumers have access to sufficient information...." In addition, it banned the bundling of goods and services, thereby enabling consumers to pick and choose only those items they want, and prohibited misrepresentations "used to influence consumers' decisions on which goods and services to purchase." The Rule, however, could not have anticipated the changes the industry has undergone. In the interest of both consumers and industry, AARP has recommended that the Rule be expanded to include all providers of funeral and burial goods and services.

Expansion of the Funeral Rule by the FTC would better protect consumers and provide a "level playing field" to all participants in the funeral and burial goods and services marketplace. Even expansion of the Rule, however, would not alleviate some of the problems that AARP has identified in the funeral and burial industry.

Funeral Practices. AARP recognizes that the majority of funeral directors are reputable, caring, well-respected businesspeople who represent their industry well in the communities that they serve. Our concern lies with those funeral directors who don't comply with the Funeral Rule, who misrepresent fact or law, and who in many cases do irreparable harm either to a consumer directly or to the family of a deceased person. In this regard, AARP has received a variety of "horror stories" from its members. We believe that the number of complaints we have received from our members does not even begin to measure the actual problem cases that exist. AARP contracted with Market Facts, Inc. to conduct a survey of individuals who arranged or prearranged a funeral or burial in the 18 months preceding the interview. While the focus of the survey was compliance with the FTC's Funeral Rule, the findings illustrate broader problems that consumers face when engaging in the funeral goods and services marketplace. Some of the more interesting findings regarding compliance include:

- * Of those funeral arrangers who viewed caskets on display for purchase or rental, one-third were not given written casket price lists before they began looking at the merchandise.

- * One-fourth of the 1999 funeral arrangers indicated they were not asked for their permission before the body was embalmed.

- * One-third of arrangers in the 1999 study did not receive price information before talking about specific funeral goods and services.

In addition to these findings of non-compliance, the survey shows that funeral directors are engaging in misrepresentations. One area where misrepresentations are a major concern involves claims regarding the preservative value of caskets. According to the Funeral and Burial Providers Survey conducted in July 1999, 34% of the persons who had arranged a funeral within the past 18 months reported being told by the funeral director that protective features of a casket would help preserve the body indefinitely.

Problems exist with regard to embalming as well. AARP's survey research has found that 25% of survey participants were not asked for permission prior to embalming the body, in clear violation of the law. Further, there are still cases when a provider misrepresents the law regarding the necessity of embalming a body. Because of inconsistent state statutes and the ignorance of the public on this issue, most consumers are unaware that the provider has misrepresented the law.

Cemetery Practices. Withholding price information and misrepresenting the facts are practices that

can also be found in the sales of burial goods and services. Even though consumers find price information to be helpful, AARP's survey research indicates that 36% of those purchasing a burial plot did not receive a price list, and one in five of those purchasing other goods and services received no price list. AARP's 1997-98 cemetery "mystery shop" report also indicates that many of those provided "price lists" did not receive pre-printed lists, but fill-in-the-blank forms, hand-scribbled notes or simply an adding-machine tape. Unfortunately, consumers do not even have the limited protections of the Funeral Rule when dealing with cemeteries.

Apparently, large numbers of cemeteries also misrepresent the preservative and protective value of their goods. The 1999 AARP survey asked those burial arrangers who purchased a burial plot or other burial goods and services: "Did anyone you spoke with about purchasing burial goods or services tell you that the protective features of a grave liner or burial vault would help preserve the body indefinitely?" More than one-fourth (29%) of the respondents answered yes.

In addition to problems with cemeteries failing to provide printed price lists, the 1997/98 Cemetery Mystery Shop describes other questionable sales tactics regarding the marketing of vaults and mausoleums. Some of these include the failure to provide financial information, incorrectly telling shoppers that state law requires a vault or liner, and the marketing of extras like insurance to transport the body.

Cremations. The use of cremation for final disposition is becoming more popular for a variety of reasons, including the fact that it can be a less costly alternative. Unfortunately, over the years, the findings of various media investigations and court cases reveal cremation practices that are shocking and intolerable, such as:

--multiple cremations,

--harvesting of body parts or items of value without specific written authorization,

--returning more or less remains than were actually removed from the cremation chamber,

--misrepresenting the identity of remains, and

--failure to scatter remains as promised.

In addition to these horrific instances, consumers must be aware of practices within the funeral and burial goods and services industry to misrepresent "direct cremations" by tacking on additional cost items that are not provided to the consumer in advance. To protect consumers against such practices, AARP has recommended that the Funeral Rule be amended to include within its scope unfair and deceptive practices by crematories.

Third Party Providers and Internet Sales. Retail casket sellers and electronic commerce vendors have recently emerged as non-traditional providers of funeral and burial goods and services. Approximately 300 casket stores are now in existence, according to a National Casket Retailers Association publication. Additionally, traditional providers such as cemeteries and monument dealers have begun selling goods and services outside of their traditional product lines.

While the entry into the marketplace of alternative providers is welcome, AARP is concerned about consumer harm. Already, cases of misrepresentation and product alteration by independent casket retailers have been cited and we are not convinced that the situation will improve unless these providers are included under the umbrella of the Funeral Rule.

Electronic commerce vendors present a different set of problems. The Internet has unleashed an avalanche of Web-site marketing by funeral, burial and cremation businesses. Caskets are now routinely ordered over the Internet and shipped overnight across state lines. Many such Internet businesses offer lower prices. Some, however, do not provide prices for their on-line product offerings, disclosing instead a phone number to call to inquire about prices. Others give only a brief description of the product without providing enough details for a consumer to comparison-shop.

Industry Consolidation. As cemeteries, monument dealers and third-party businesses begin to offer funeral services, the fact that they are not subject to the provisions of the Rule creates problems for consumers. Without federal jurisdiction, consumers must rely on the states to provide a consumer protection framework. Unfortunately, state laws are very inconsistent. And in many cases, laws that govern funeral directors do not govern cemeteries or others. This affects consumers in at least two ways. First, if a dispute arises, it becomes more difficult for a consumer to reconcile it. For instance, a person moving to Florida may deal with the same company, but be subjected to completely different rules. Second, inconsistent state laws permit unscrupulous funeral and/or burial providers to mislead or deceive consumers.

Preneed Contracts. AARP is quite concerned over business practices occurring with respect to prearrangement of and pre-payment for funeral and burial goods and services by consumers.

While every state except Alabama has a law regulating some aspect of funeral and burial preneed arrangements, there are a number of states that do not address preneed burial contracts. Goods covered by one state's preneed funeral law may or may not be included in another's burial statute and only ten states have consumer protection recovery funds. Many state laws allow preneed sellers to put a smaller percentage of funds than actuarial standards would dictate into trust, raising concerns about the security of the consumer's purchase. Other states prohibit sellers from withdrawing earned income until the contract has been fulfilled. To sidestep this requirement and to avoid some of the taxes associated with revocable trusts, preneed sellers have moved aggressively into insurance-based products, with commissions based on the value of the funeral and the age of

the applicant.

Because of uneven state regulation, and lack of adequate supervision of these accounts, uniform minimum standards for preneed contracts should be incorporated into the Funeral Rule or a set of Model Rules should be established.

But Consumers Satisfied ...

--From the statement of Paul M. Elvig, on behalf of the International Cemetery and Funeral Association (ICFA).

The ICFA believes that consumer education is the key to consumer protection.

There exists a wide variety of options and price ranges for consumers to consider in making final arrangements, either for themselves or for others. This information is widely disseminated by industry members, consumer groups, memorial societies and, increasingly, through the Internet. The types of arrangements selected will vary according to each individual based on his or her personal preferences, ethnic background, and religious beliefs. Obviously, these decisions should not be made under the stress and bereavement of a death, or even of an imminent death, in the absence of adequate thought and planning. The greatest challenge confronting the goal of consumer protection is the necessity for consumers to explore their options before the need arises.

State Laws More Effective. The ICFA believes that state level regulation of the industries is considerably more effective and more efficient than similar federal regulation because cemetery and funeral home consumer transactions are local in nature. While the specific regulation of cemeteries and funeral homes has historically occurred at the state level, an increasing number of businesses must comply with federal and state laws covering the same issue. For example, cemeteries and funeral homes in Florida are subject to the FTC's three-day "Cooling Off" Rule in addition to the state's 30-day "Cooling Off" period for prearrangements. Common sense may dictate that sellers should simply observe the longer time frame but, in fact, they must comply with the requirements of both state and federal laws. Since we believe that few state laws would be preempted by similar federal regulation, the ICFA is concerned with confusing and duplicative oversight.

In 1997, after a two-year effort, the ICFA published a Survey of State Cemetery and Mortuary Laws and Regulations, with the cooperation of many state funeral and cemetery boards. Due to the volume of continuous amendments to strengthen these laws by state legislatures, the survey became outdated almost as soon as it was published.

No doubt selected states should consider additional regulation or enforcement on given issues but,

overall, 48 states have laws regulating cemeteries and 49 states have laws regulating funeral homes. Last year the ICFA collected copies of all relevant state laws, numbering approximately 10,000 pages, and a summary of citations to those laws, numbering approximately 30 pages. In terms of sheer volume, these data highlight the fallacy of claims by industry critics that there are "no state laws" regulating the cemetery and funeral home industries.

Perhaps due to this misinformation, often repeated by the media, members of the public may be unaware that most reported acts of misconduct are already against the law. For example, based on poor reporting, consumers may not realize that it is already illegal to sell a cemetery lot to more than one customer; it is already illegal to disinter human remains in order to resell the grave, or to rebury the remains without authorization from the next of kin. It is already illegal to dispose of cremated remains unethically. It is already illegal to invest or withdraw and spend trust funds in violation of the trust agreement, or the contract with the consumer, or state law. These violations, few and far between, seem to comprise the majority of the incidents reported in the media.

These acts of misconduct and deception also violate the ICFA Code of Ethics which is subscribed to by the 5,000 members of this Association. Violation of the Code not only results in expulsion from the ICFA but the Code itself provides that the wrongdoing will be reported to the appropriate law enforcement authorities.

Consumer Satisfaction. The ICFA tracks survey data from a variety of consumer and industry groups to determine whether there exist emerging patterns of abuse. Survey data collected in recent years suggest that consumers, under the somber circumstances involved, have a positive perception of the industry. For example, a 1995 study was conducted by the University of Kansas Medical Center on Aging (funded through an AARP grant) among families that experienced the death of a loved one, age 50 or older, within the previous five months. Of the 163 families surveyed, one-third had no previous experience with funeral homes while 46% had no previous experience with cemeteries. Asked whether they were treated with respect, dignity, and concern at the funeral home, 94% said that they were "treated very well."

Other aspects of the University of Kansas study corroborate findings made by the respected Wirthlin polling organization in three industry-sponsored telephone surveys. A benchmark national survey conducted in 1990 polled 1,000 consumers on their experience with and attitudes toward the industry. Sixty-five percent had positive remarks about industry members while only 11% mentioned anything negative. Three out of four believed that prearranging their own funerals or burial made good sense and over half 53%, already owned cemetery property. More than one in four had already preplanned their own funeral and over half of that number had prepaid them.

The Wirthlin Group conducted a follow-up national telephone survey in 1995 among 1,000 consumers and found, among other things, that 68% of those surveyed at that time had positive remarks about industry members while only 15% had negative remarks.

Wirthlin has published a new survey this year finding that consumers' positive ratings of the industry have increased to 69%, up from 68% and 65% in 1995 and 1990, respectively. According to the Wirthlin Year 2000 Report, "this exceeds what is normally considered to be a healthy ratio of 3:1 for a typical industry. Overall, there is a 5:1 ratio of positive to negative comments."

In 1997, the ICFA commissioned a telephone survey by Walker Information of consumers who had preplanned and prepaid either their funeral or burial arrangements. A total of 400 interviews were conducted of purchasers in the Indianapolis, Indiana area, equally divided between cemetery and funeral home consumers. Seventy-five percent of cemetery preplanners rated the experience as excellent or very good. Only three percent rated the experience poor. Among funeral preplanners, the rating of excellent and very good climbed to 81%, with only 1% finding the experience poor.

Recently, AARP published a number of surveys concerning consumers' experiences with cemeteries. A 1999 Funeral and Burial Planners Survey contacted 2,600 consumers by phone but found only 358 individuals who bought cemetery lots, merchandise or services. While this survey has been publicized for finding that "one-third of the consumers were not given written price lists by the cemetery," in fact that statistic refers to only one-third of the 8% who said they bought cemetery property. More importantly, the AARP survey contains no allegation that the information provided by cemeteries to consumers, whether written or oral, was not accurate and truthful.

Another recent AARP publication, The Cemetery Mystery Shop Report, readily admits it is "anecdotal evidence" and "not quantitative research that allows us to generalize to other for-profit cemeteries. "However, these disclaimers have not inhibited AARP from circulating the report as if it were quantitative research. AARP volunteer "shoppers" visited 106 cemeteries but shopped 64 cemeteries twice, thus resulting in double counting of the results. As with the burial planners survey, AARP complains that "two-thirds of all shoppers were not shown written prices" yet acknowledges that 98% of the cemeteries volunteered price information on lots. Again there is no allegation that the information provided was not truthful and accurate. Of particular interest, the report noted that 96% of the shoppers left the cemeteries with all their questions answered and 87% felt no pressure to buy anything.

Clearly, the survey data from a variety of sources indicate that most consumers react positively to their experiences in making funeral and burial arrangements when made in advance of need. The polling data confirm ICFA's position that incidences of consumer dissatisfaction decrease in direct proportion to the amount of preplanning and, where appropriate, prefinancing made by consumers.

The 'Funeral Rule'

The Federal Trade Commission has issued a trade rule entitled Funeral Industry Practices--more commonly called the Funeral Rule.

The Funeral Rule was designed to (1) ensure that consumers receive the information necessary to make informed purchasing decisions and (2) lower existing barriers to price competition in the market for funeral goods and services. The Rule, which became fully effective in April 1984, declares it an unfair or deceptive act or practice for funeral providers to (1) fail to furnish accurate price information to funeral consumers, (2) require consumers to purchase items they do not want to buy, and (3) embalm deceased human remains for a fee without authorization. The Rule further declares it a deceptive practice for funeral providers to make certain misrepresentations, such as that embalming is required by law when it is not, that caskets must be used for cremation, or that funeral goods and services have certain preservation and protection capabilities.

To prevent those practices, providers of funeral goods and services are to, among other things, (1) give detailed printed information about prices, including certain legal disclosures, to consumers who inquire about funeral arrangements; (2) allow consumers to select only those goods and services they desire (rather than offering goods and services only in predetermined packages); and (3) seek express approval before embalming the deceased for a fee. Since the Funeral Rule's inception, it was amended once in 1994. In April 1999, FTC announced that it was beginning to review the Funeral Rule to determine if it should be further amended, maintained as is, or repealed.

-- U.S. General Accounting Office

Why Consumers May Not Complain

Comprehensive information on consumer complaints that would indicate the overall nature and extent of problems that consumers experienced with various aspects of death care industries was not available for a variety of reasons. One reason is that consumers can complain to a variety of organizations about death-care issues and can lodge the same complaint to more than one organization. Another reason is that no single organization or combination of organizations collects and compiles all complaints into one database. Also, each organization can have its own way of compiling and maintaining complaint information, which would confound efforts to compile and analyze aggregate complaint data. Although the organizations we contacted were able to provide some data, the number of complaints about death care was generally low compared to complaints about other categories of consumer issues.

Reasons Consumers May Not Complain. Clearly consumers may not complain about the goods and services they receive from death-care providers because they are satisfied. However, there are also factors that might inhibit complaints. Officials from organizations at all levels told us that consumers often did not report problems because of the emotional component of death care or because they did not want to dwell on negative occurrences about the death of a loved one. One Federal Trade Commission (FTC) official said that, although he was not aware of any study to

support it, anecdotally, consumers tended not to complain because of embarrassment or ignorance. Further, users of preneed arrangements may leave no one in a position to complain.

Also, consumers may not be aware of the FTC Funeral Rule and states' laws relating to death-care industries. Without knowing about the Funeral Rule and the laws, consumers may not know they have the right to complain. FTC officials said that they believe that consumers are not comparison-shopping when they enter into funeral transactions and that the lack of comparison-shopping could be related to the lack of consumer information about FTC and its Funeral Rule. Thus, if consumers do not get price lists from funeral homes or cemeteries when they are supposed to, they probably do not know that they are entitled to such lists.

Finally, in a 1978 report on funeral industry practices, FTC stated that consumer complaints generally do not provide a complete gauge of consumer problems. The report also stated that even under consideration, the number of consumer complaints filed against funeral directors was modest. Despite the low number of complaints, FTC was able to promulgate the Funeral Rule because, among other things, it believed that "the emotional trauma of bereavement, the lack of information, and time pressures place the consumer at an enormous disadvantage in making funeral arrangements. These conditions mean that the funeral consumer lacks much of the information and freedom of choice available in most other consumer transactions."

--General Accounting Office, September 1999

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