

Final committal

Texas problems WITH PRE-PAID FUNERAL SERVICES

*and other tales of
mishandled,
misrepresented,
or overpriced
funeral and burial services.*



A Report Prepared by Consumers Union SWRO
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Consumers Union's Southwest Regional Office is dedicated to advocating the consumer interest, particularly of low-income consumers, and to promoting the growth of the public interest movement in the Southwest.

Executive Summary

Consumers Union SWRO reviewed nearly 300 consumer complaints related to funeral services (filed from Jan. 1998 to Dec. 1999) and found a pattern of problems in the sale of funeral services, as well as problems with the enforcement of existing laws.

In Texas, the funeral services industry comes under the jurisdiction of four different state agencies, a fragmented bureaucracy that leaves citizens without a clear advocate. A single complaint can raise issues that must be addressed by two or more different bureaucracies. Each of these agencies has different policies and procedures with respect to complaints, and interagency cooperation is poor even after three of the agencies signed a mutual cooperation agreement in 1993. Almost 15 percent of complaints were sent to the wrong state agency or are beyond the purview of any agency.

Sometimes the elderly are victimized by unscrupulous salesmen who have clearly violated existing consumer protection laws. Although several state agencies handle such consumer problems, consumers who have been defrauded do not necessarily get their money back.

More than 14 percent of all complaints relate to services provided by funeral homes, including mishandled bodies, damaged or incorrect coffins and failure to file a death certificate in a timely manner. These complaints fall under the jurisdiction of the Funeral Service Commission.

An additional seven percent of consumers complained about the price, particularly the high cost of the non-declinable "Basic Services" fee, which covers overhead and can range from a few hundred dollars to more than \$2,000. The Federal Funeral Rule permits the fee, but does not specify the "non-declinable" services it covers. Consumers struggle to understand the pricing scheme and work out an affordable funeral.

Thirteen percent of complaints related to monument companies, which require a substantial downpayment to fill the customized orders. When they do not place the gravestone as promised, consumers can experience frustration trying to get a refund. Unfortunately, laws protecting a consumer's money when prepaying for funeral services do not apply to monument purchases.

Seven percent of complaints related to cemeteries--including run down cemetery conditions and misplaced bodies. The Department of Banking maintains complaint files for only one year, so this number understates the proportion of complaints that are actually filed about cemetery services.

The largest category of complaints, representing almost a third, relate to preneed arrangements. Consumers often purchase their funeral in advance ("preneed") because the funeral home guarantees the delivery of a funeral service many years in the future at today's prices. But, insurance backed preneed contracts sometimes lock-in today's prices by requiring the buyer to pay *substantially more* over time than the cost of today's funeral, and refunds can be small.

Nearly 20 percent of complaints related to requests for refunds on cancelled or changed preneed policies. Although most preneed arrangements are designed like savings plans, to allow consumers to save for their future, state law allows the funeral home to keep a substantial portion of the early payments. So if a consumer changes his or her mind, the refund may be minimal. And refunds for preneed contracts funded by insurance policies are even smaller because consumers only receive the "cash surrender value" of the policy.

Further, preneed contracts lock families into a single arrangement

with a particular funeral company. Once a preneed policy is written, any changes to the funeral arrangement itself (called "partial cancellation" in most contracts) can void the contract or create problems accessing benefits.

In some cases, consumers may find that a portion of their funeral arrangement is purchased on a standard preneed contract while another portion (the cemetery plot, monument, "opening and closing" the grave, or an outer burial container) is purchased on a retail installment contract with a finance charge. According to one major company's *Sales Counselor Sales Guide* for cemetery sales, preneed interment services and recording fees are subject to finance charges "except in states that do not allow finance charges to be imposed on undelivered services." Texas allows such charges.

Many items required at a funeral are not typically part of preneed contracts, including interment charges, flowers, vaults and more. When the funeral home charges families for services that were not covered, family members start looking for the interest from a trust account. Unfortunately, under current law the interest will not be used to cover services not included in the original contract, even if it is more than enough to cover price inflation on the covered items. The funeral home may keep the excess interest, and families often pay taxes on interest they never see.

Other states have passed reforms to their funeral laws to curb some of the worst abuses in the preneed and at-need markets, including prohibitions on finance charges for preneed contracts and fair refund policies for both funeral and cemetery contracts. California created a single state agency to ensure fair regulation of all aspects of the funeral including cemetery practices, while Georgia now requires funeral homes, cemeteries and casket companies to meet the same regulations, and regulates preneed monument sales. New York State prohibits insurance backed preneed contracts, and many states require funeral homes and cemeteries to place in trust all the money a consumer pays into a preneed contract. California sets a small administrative fee and consumers can get their money back with interest.

Recommendations

Consolidate funeral regulation into a single agency designed to assure regulation of all funeral services, preneed services and both preneed and at-need monument sales. The agency should provide accessible consumer information regarding complaints, inspections, and prices.

Reform preneed laws to ensure consumer value for the money invested and contract portability

- Give consumers a 30 day cancellation period for all preneed contracts.
- Prohibit preneed contracts backed by insurance policies where premium payments exceed the face amount of the policy.
- Guarantee consumers who cancel a preneed contract after 30 days a full refund of all payments plus interest, less a nominal administrative fee, since no services have been provided. Require minimum cash surrender values for insurance backed contracts to be equivalent to refunds available from a trust-backed preneed contract.
- Standardize preneed contracts. Require this standard contract to provide for reasonable consumer modification of funeral services at need without penalty.
- Require all preneed contracts to be fully transferable, including both principal and interest earned over time.
- Restore previous Texas prohibition against finance charges for the time purchase of funeral-related products and services that will not be delivered at the time of purchase.
- Require insurance companies to pay any benefits in excess of the cost of the funeral at time of death to the deceased's estate or a named beneficiary other than the funeral home.

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Few of life's purchases cost three to fifteen thousand dollars, and those that do—a car or a home improvement—we often research carefully, collect bids, and compare service quality before laying down money. But a funeral and burial is less a purchase than a life event, fraught with grief and confusion, for which none of us can be fully prepared.

Unfortunately, funerals and burials are *also* an expensive product and the devastation of a recent death is only compounded if families face “sticker shock” or poor care from a funeral home, monument company, insurer or cemetery. While many families try to ease the stress by pre-paying for a funeral service, preneed arrangements can be just as difficult to navigate and create new areas of confusion when finally used.

In Texas, the funeral and burial industries come under the jurisdiction of four different state agencies, a fragmented bureaucracy that leaves citizens without a clear advocate. Each of these agencies has different policies and procedures with respect to complaints, and interagency cooperation is sometimes poor even after three of the agencies signed a mutual cooperation agreement in 1993.¹

M e t h o d

Consumers Union Southwest Regional Office (CU) reviewed nearly 300 complaints filed with the Funeral Services Commission (FSC), the Texas Department of Insurance (TDI), the Texas Department of Banking (TDB), and the Attorney General (AG) in 1998 and 1999.² Clearly, these complaints do not reflect the experience of satisfied families who receive good service from funeral homes, cemeteries and insurance companies. At the same time, not all families who are dissatisfied actually find a regulator and file a formal complaint. Therefore issues identified by these customers probably occurred to others. While some of these complaints related to highly individualized incidents, most reveal a pattern of problems shared among many consumers that should be addressed through a stronger and more coherent regulatory system.

G e n e r a l F i n d i n g s

Consumers filed complaints about rude funeral home employ-

ees, improper preparation of the body, damaged or incorrect coffins, poor burials or graveside services, and shoddy cemetery or mausoleum conditions.

But the largest category of complaints, representing almost a third, relate to preneed arrangements. Current regulations allow insurance companies and trusts to keep a substantial portion of a policyholder's money when a contract is cancelled, and many consumers were shocked to receive very little after making substantial payments. In general, complainants expressed confusion about the terms and benefits associated with the preneed contract, although the terms and benefits were usually spelled out in the small print of the contract itself.

More than 14 percent of all complaints relate to services provided by funeral homes. Consumers found employees rude, uncooperative and deceitful, and describe incidents of mishandled bodies, damaged or incorrect coffins and failure to file a death certificate in a timely manner. These complaints fall under the jurisdiction of the Funeral Service Commission, which sometimes took months to investigate them.

An additional 7 percent of consumers complained of the high cost of a funeral, particularly the high cost of the non-declinable “Basic Services” fee. This fee covers funeral home overhead, and can range from a few hundred dollars to over \$2,000—on top of the costs of the service itself, the casket, the flowers, transportation, a chapel in the funeral home and more. The Federal Funeral Rule permits this fee, but funeral establishments can include different services in the non-declinable charge, making it more difficult for consumers to work out an affordable funeral.

More than 10 percent of complaints related to monument companies, which require a substantial downpayment to fill the customized orders. When they do not place the gravestone as promised, consumers can experience frustration trying to get a refund. Unfortunately, monument companies are the least regulated provider in the funeral service.

Seven percent of complaints related to cemeteries, although this number would probably be higher if the Department of Banking maintained complaint files over a period longer than one year. Problems included run down cemetery conditions and misplaced bodies.

Almost 15 percent of complaints are sent to the wrong state agency



or are beyond the purview of any agency. Consumers are confused about which department has jurisdiction over which part of the funeral industry.

Funeral Sales Practices: The Hard Sell

Funeral companies, monument companies and preneed funeral companies still send salesmen door to door to find the elderly people worried about their funeral arrangements—and sell them something. Sometimes the elderly are victimized by unscrupulous solicitors who have clearly violated existing consumer protection laws.

Soila Trevino of Harlingen purchased a headstone from a door-to-door agent, who picked up \$40 monthly payments at her home. After she had fully paid, she discovered that the salesman had not worked for the cemetery in more than a year. When she went to the local police, he promised to pay her money back, but he did not. After she contacted the Attorney General, the man again promised her a refund within 30 days, but the AG had no record of whether that payment was made. According to Ms. Trevino, the salesman paid back \$75 then stopped making payments and disappeared. Neither the AG nor the local police have gotten her money back for her to date.³

Consumers like Ms. Trevino may never see their refund because small time con-artists are the hardest group to prosecute for their crimes. They typically have few assets for the Attorney General to sue over in civil court, and criminal prosecution is at the discretion of the local prosecutor who may prioritize violent crimes and drug prosecution on a day to day basis.

But hard sell tactics are not limited to con-men. Consumers complain of pushy sales from large funeral service companies as well. Melvin Geiser of Edgewater, Florida wrote to the Texas Attorney General after SCI Funeral Services, the country's largest funeral service chain, refused to refund two membership fees for memberships in the "National Cremation Society," an SCI affiliate. The memberships were part of the cost of pre-paid cremation and travel contracts. Within two days of purchase the Mr. Geiser and his wife went to the office and requested cancellation in writing. The company refunded the cost of the contracts, but not the two \$55 membership fees.

"We had insisted to your representative," Mr. Geiser wrote to the company, "that we did not want to complete the applications at this time and would like more time to consider the whole matter. However, your representative persisted that we would have three days to cancel the whole matter and get all our money fully refunded. There was absolutely no mention of any non-refundable portion(s)...I con-

sider your unnecessary "pushy" salesmanship habits and refund-delaying tactics as unethical business practices." After intervention from the Texas Attorney General, SCI refunded the membership fee. "Our policy is that membership fees are non-refundable," wrote Denise Skerritt, of SCI's Society. "Since you were not told that, we are refunding your membership fees."⁴

When a consumer complains to the Attorney General or another regulatory agency about hard-sell tactics, the funeral companies involved sometimes dismiss the complaint as a simple misunderstanding. Misrepresentation is hard to prove because no one else can verify the consumer's version of statements made by a salesperson.

A salesperson came to the home of Emilio and Zoila N., Portland, Texas, and successfully sold them burial plots. According to the Nunez' complaint (filed by their son-in-law), she told them they would get a \$600 discount if they signed up that day only. She also told them they could have side-by-side plots, their only *absolute stipulation*. Over the years, the company sold them another preneed contract and a cemetery plot for a grandchild—another "one time only" offer. But when the couple finally received the deed for their burial plots, they learned that the plots were not side-by-side as they had stipulated, but stacked.

The couple's children first went to a lawyer, and then filed a complaint with the Attorney General, but according to all the papers, they had indeed purchased a stacked vault. "What you assert was a misrepresentation, in all probability was simply a misunderstanding between the parties," the company wrote to their lawyer. The company offered to change the contract to side-by-side spaces for an additional charge of \$900, and the couple would have to purchase outer burial containers separately upon internment. After intervention by the Attorney General, the company dropped the additional \$900 charge.⁵

Consumers Union generally advises that consumers avoid making major purchases under pressure from a sales person—especially at home. Federal law gives consumers a three day window to cancel a contract and get a full refund, but this means consumers must very quickly assess their decisions.

Recommendations:

Texas legislators should enact:

- a waiting period between a sales home visit and payment for preneed contracts; and
- a 30 day "free look" period during which a consumer can change his or her mind and get a full refund.



Funeral Industry Prices

Funerals are expensive, and families sometimes feel cheated when they select a cost effective, no frills option within their budget and yet still pay thousands. One of the most expensive parts of a funeral—and one that causes sticker shock among buyers—is the “Basic” or “Professional” services fee. The Federal Trade Commission (FTC) Funeral Rule allows funeral homes to charge this non-declinable fee to every customer. The amount of the fee is unregulated, and funeral homes do not necessarily include exactly the same services in it.

In general, it covers funeral home overhead (for example, some funeral homes cite the 24 hour availability of staff as a service covered by this fee). This fee is *in addition* to the separate charges for embalming, visitation, memorial services, or transportation, and the significant markup on caskets, urns and vaults.⁶ Texas price lists from 1997 to 2000 indicated that this fee ranges from a few hundred dollars to more than \$2,000, or 26% to 47% of the total cost of a low end funeral (see sample price table, page 10). The fee is added to every bill and included in the price of immediate burial (no service) or cremation.

Harry Tate of Durango, Colorado, paid \$2,984 for a cremation with no services. He asked the Texas Funeral Services Commission to help him get a refund of his \$1595 basic services fee, because the funeral home provided no funeral or memorial services. But the funeral home said he had been told about the charges. “They (the funeral home) contacted me to say that they have overhead, and charge this fee whether people use the service or not,” Mr. Durango told Consumers Union. The FSC closed the file.⁷

Marcia K. of Garland tried to handle most of her relative’s funeral services herself. She dressed the body and hair, placed the obituary, and bought a casket and outer burial container at a discount shop. But she still had to pay the funeral services fee of \$1995, nearly half the total cost of the funeral. The funeral director sent a letter of apology, but maintained that the basic service charge is fair and offered no refund.⁸

Consumers who attempt to save money by shopping around for high cost items like the casket may be told that there will be an extra fee associated with the use of a different casket. In 1998, a Longview casket store filed a complaint against a funeral home, alleging that the director threatened to charge an \$800 fee if the family purchased their casket from the casket store. “Not being about to afford an additional \$800, the family were essentially forced to purchase the casket offered by the funeral home,” wrote De’Lores Arline of the Arline Casket Store.⁹ The FTC Funeral Rule prohibits funeral homes from adding such fees or otherwise preventing consumers from purchasing the casket from any distributor.¹⁰

Last year the FTC reopened discussion of the non-declinable charge as part of its review of existing rules. According to the National Funeral Directors Association, the charge primarily covers the time funeral directors spend consulting with a family, time making arrangements, and the time to obtain and file the death certificate. But consumer advocates note that it significantly curtails the consumer’s ability to control funeral costs when it rises to 40% of the total charge, and many families don’t need or want all the services included.¹¹

Recommendations:

Texas legislators should establish a single state agency (outlined in more detail below) charged with funeral service consumer protection, and direct that agency to:

- study the use of the non-declinable charge and determine which services currently included could be itemized and then declined by consumers who wish to handle more of the funeral arrangements themselves, and investigate capping the non-declinable charge at 10 percent of the funeral services costs (not including merchandise); and

- collect funeral service and cemetery price lists regularly and publish (in paper and electronic formats) updated consumer price guides similar to those produced by the Department of Insurance for Medicare Supplement and auto insurance.





Monuments

Monument companies take orders for gravestones and other markers. They take a custom order and request a down payment. Whether the company makes the monument on its own premises or sends the order to a factory, it takes some time before the order can be filled and the monument placed. This, in and of itself, is not unusual. However, where orders take months and companies are unresponsive, consumers begin to file complaints with the Attorney General—who may act under his general consumer protection authority under the Deceptive Trade Practices Act.

Michael C. of Farmers Branch paid \$1623.83 to a monument company after the death of his 17 year old son. He waited months for delivery. Then he called, only to find the phone number out of service, and the company itself no longer at the address on the business card. The monument company responded to the Attorney General (eight months after the initial order), saying that the order was unusual, would take more time, and did not provide an expected completion date. The AG closed the file.¹²

Gloria C. of Grand Prairie paid a \$869.25 downpayment on a marker and waited six months for it to arrive. The company did not return her calls and she began to worry, so she wrote to the AG. The company told the AG that it had recently changed suppliers and the monument should be ready soon. But two months later she wrote to the state again because she still had no marker on the grave. The AG files documented no further action.¹³ At least three other customers of this same monument company filed similar complaints with the AG in the fall of 1998.¹⁴

Unlike other companies that provide funeral services, monument companies are unregulated by any specific funeral service laws. Complaints related to firms that manufacture and place headstones, markers and monuments must be sent to the Attorney General, the state's enforcement agency for general consumer protection. The Funeral Services Commission has no jurisdiction over monument companies. For the most part, the Attorney General acts as a mediator between monument companies and consumers, but rarely pursues legal action. If the company does not voluntarily cooperate with the Attorney General, a family may be forced to pursue private legal action to get the monument they purchased placed on a loved one's grave.

Recommendation:

- Incorporate the regulation of preneed and at-need monument sales into the regulations for other funeral products through a single state agency;
- Require monument companies to offer to fully refund a consumer's payment if the monument cannot be delivered within a reasonable time; and
- Extend a 30 day cancellation period to those who purchase a monument on a preneed basis, as recommended for other preneed funeral merchandise and services (see pp. 18-19).

Preneed Funeral Arrangements

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any Texans hope to help their families by arranging and paying for their funerals well in advance. An AARP national survey found that 43 percent of people age 50 or older report being solicited about preneed funeral arrangements, and 36 percent report having paid in advance for either funeral or burial arrange-

ments. Preneed contracts can cover everything from coffins and memorial services to cemetery plots and headstones. There are even "associations," such as the National Cremation Society and the Medical Air Services Association, where membership benefits include cremation or payment for the flight of a body.¹⁵

In general, preneed contracts cover most aspects of a funeral and may be financed through an insurance policy, a trust fund arrangement, or may even be purchased like an appliance using a retail installment contract. Preneed contract are regulated by different agencies, depending on the finance mechanism. The Banking Department regulates trusts while the Insurance department oversees insurance policies and the Consumer Credit Commission regulates retail installment contracts. Texas law give consumers different rights depending on the type of preneed arrangement purchased. Further, insurance backed preneed arrangements may be backed by a whole life insurance policy or an annuity, each with its own rules.

Inflation Protection

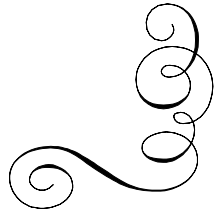
Consumers purchase preneed insurance in part because funeral homes say that pre-arrangement will lock in today's prices for tomorrow's funeral--a "guaranteed" contract. Preneed contracts are a hedge against inflation. If funeral prices inflate faster than a consumer's investment would grow in an ordinary long term investment account, including the effect of compounding interest, then preneed contracts may offer a true value.

Bureau of Labor statistics indicate that funeral prices have been rising faster than current inflation rates since 1990. Funeral costs increased 3.9% in 1998 over 1997 levels.¹⁶ While this inflation rate is significant, we note that it is lower than the compound interest rates available through many secure long-term investments.

At current average interest rates, a consumer who puts money in a five year CD earns 6.7% annual percentage yield. Five year CD's can be purchased with as little as \$100, and a Texas consumer investing at least \$1000 can purchase a 5-yr CD earning 7.25% or more. Money market accounts earning over 6% are available in most Texas cities with a minimum deposit of either \$100 or \$1,000.¹⁷

Most preneed contracts place payments in a trust account, and the consumer pays monthly or annually until the original funeral cost is paid in. The funeral home bets that the interest on the trust will more than cover funeral inflation.

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Funeral Price Lists Show Considerable Price Variation

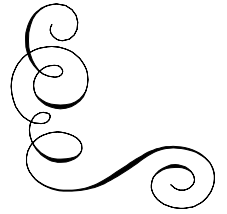


Table 1

	Price List Date	Non-declinable Service Charge	Non-declinable Charge as a % of Funeral	Embalming	Other Preparation of the Body	One Visitation Day (no service)	Body Transfer to Mortuary	Funeral Cars (including hearse and one family limo)	Memorial package (register, cards, folders)	Lowest Price Casket, usually fiberboard or pine	Mid-range Casket-18 ga. steel, crepe interior	Lowest cost Concrete vault/grave liner	Total with lowest Price Casket *	Total with moderate Casket*
Roy Akers, San Antonio	1/99	\$1,395	30.7%	\$595	\$190	\$250	\$170	\$300	\$150	\$895	\$2,950	\$595	\$4,540	\$6,595
Lowe, Quitman	5/97	\$995	26.7%	\$350	\$175	\$150	\$95	\$225	no prices listed	\$795	\$2,575	\$940	\$3,725	\$5,505
Earthman, Houston	5/97	\$2,065	29.4%	\$430	\$200	\$215	\$380	\$595	\$150	\$1,995	\$3,445	\$975	\$7,005	\$8,455
Laurel Land, Ft. Worth	11/97	\$1,995	37.3%	\$550	\$100	\$325	\$235	\$300	\$143	\$950	\$3,595	\$750	\$5,348	\$7,993
Huff, Whitesboro	1/97	\$1,290	32.8%	\$295	\$170	\$55	\$135	\$215	\$75	\$1,195	\$3,095	\$495	\$3,925	\$5,825
Goodnight, Bartlett	8/97	\$1,395	37.5%	\$325	\$200	\$135	\$150	\$300	\$35	\$695	\$2,595	\$485	\$3,720	\$5,620
Brookside, Houston	3/98	\$1,345	26.8%	\$595	\$295	\$215	\$200	\$475	\$236	\$995	\$1,895	\$650	\$5,006	\$5,906
Lewis, San Antonio	3/00	\$875	28.4%	\$275	\$150	\$200	\$150	\$325	\$47.50	\$780	\$2,893 description did not include interior material	\$275	\$3,077	\$5,190
Focus Look at Austin Funeral Home Prices														
Weed Corley-Fish	3/1/2000	\$1,395	38.6%	\$340	\$150	\$235 (unlimited days, flat fee)	\$225	\$365	price not listed	\$450	\$1,995	\$450	\$3,610	\$5,155
All Faiths	2/16/2000	\$695	28.9%	\$250	\$50	\$75	\$125	\$275	\$70	\$435	no comparable, metal range \$450-\$1,895	\$425	\$2,400	\$3,860
Angel	1/1/2000	\$1,950	45.8%	\$330	\$75	\$595	\$195	\$300	\$107.50	\$225	\$2,995	\$475	\$4,253	\$7,023
Cook Walden	4/1/2000	\$1,325	32.2%	\$595	\$150	\$225 (two days)	\$250	\$320	\$155	\$595	\$2,495	\$495	\$4,110	\$6,010
Wilke-Clay Fish Funeral Home	3/1/2000	\$1,395	38.6%	\$340	\$150	\$235	\$225	\$365	prices not listed	\$450	\$1,995	\$450	\$3,610	\$5,155
King Tears Mortuary	1/1/2000	\$1,355	36.8%	\$495	\$125	\$95	\$150	\$500	\$70	\$395	\$1,995	\$495	\$3,680	\$5,225
Fuller Sheffield	5/1/2000	\$1050	33%	\$300	\$120	\$110	\$125	\$400	\$35	\$695	\$2,195	\$350	\$3,185	\$4,685
Harrell	9/99	\$1,250	35%	\$395	\$180	\$185	\$185	\$380	\$105	\$395	\$1,975	\$495	\$3,570	\$5,150

* Totals do not include charges that could not be compared from one price list to the next (flowers, opening/closing costs) nor do they include additional charges like death certificates, a graveside or memorial service, police escort, charges for use of cemetery equipment, restoration of the body, a lead car for the procession or a flower car. This comparison does include most of the services that would be required for a basic funeral for a price conscious family. The mid-range casket selected for this comparison is the lowest price 18g with crepe interior offered. These models may vary considerably.



...Continued from Page 9

Sometimes, however, preneed contracts lock-in today's prices by requiring the buyer to pay *substantially more* over time than the cost of today's funeral (see story, pp. 12-13). In addition, aggregate inflation estimates for the funeral industry as a whole, as well as average price estimates, mask significant price variation at any given time.

We reviewed price sheets for funeral services and found that a basic funeral using the lowest priced casket ranged from \$2,400 to \$7,005. Prices from some funeral companies in 1997 were higher than current prices from other companies. In Austin, prices on individual items like the funeral service fee, embalming or visitation time vary by hundreds of dollars (see table for low and high values on individual items).¹⁸ If a consumer elects to place money every month in a long term investment account, not only will there be more money at the end of the line, but the family will be able to choose among funeral providers and services and spend that money in the most effective way.

Partial Cancellation

Unlike the flexibility of a CD, preneed funeral contracts lock families into a single arrangement with a particular funeral company. Once a preneed policy is written, any changes to the funeral arrangement itself can void the contract or create problems accessing benefits. Such modifications (contract language calls this "partial cancellation") include changing caskets, using a different funeral home, or switching from burial to cremation.¹⁹ Once a contract is altered, the funeral home does not have to honor the original prices and any hedge against inflation is lost.

Pearl W. of Conroe Texas purchased a prepaid funeral insurance policy from Mission Life in 1980. In 1999, the family was surprised to discover that the prepaid funeral contract didn't cover the cost of the Funeral Director and assistant, the chapel, the music, the stateroom for viewing, the flower van, the police escort, the limousine, the hearse or the graveside services. According to the insurance company, this was because the family had elected to change funeral homes. "The prepaid funeral contract laws provide that a contract cannot be canceled in part," wrote Mission, attaching a copy of the statute. "The funeral provider could have charged current prices for the services provided, because of the family's desire to change the pre-planned



service." The original funeral home used the proceeds from the insurance for a casket, dressing the body, and transportation to the new home. The family had to pay an additional \$2,442 to the second funeral home for the actual funeral service.²⁰

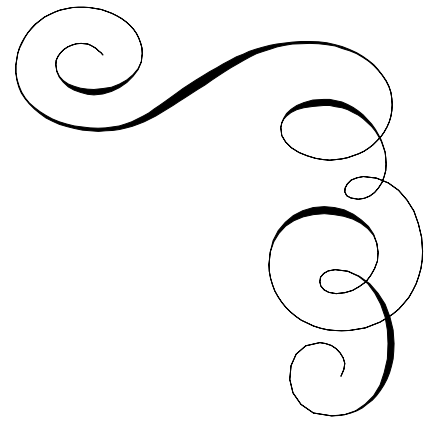
If a family elects to use a different funeral home, this change can significantly reduce the value of a preneed contract funded by a trust, as well. If a family changes funeral homes, the original home may keep 10 percent of the amount paid in, and transfer to the new funeral home only the remaining 90 percent of the "face amount" of the originally purchased funeral service, NOT principal plus interest.²¹ And the new funeral home may charge current prices.

In 1971, John and Dorothy B. of Abilene agreed to prepay for a funeral, and purchased a contract with a face amount (funeral cost at that time) of \$1005. They paid \$15.50 per month into a trust account with the funeral home until the contract price was paid in full. When Mrs. Blocker died in 1999, the trust account should have contained enough money—due to the compound interest earned over 28 years—to pay for a funeral, but the family elected to use a different funeral parlor. The funeral company holding the trust first stated that they would pay principal and interest to the new funeral home, and the family proceeded with arrangements. Halfway through the process, the new funeral home learned that it would receive only principal and no interest from the trust account (the \$1005 "face amount" of the contract). Suddenly the family owed thousands of dollars, and the interest on the account had evaporated.

"If Mom had just put \$5 a month in a savings account on January 2, 1972, instead of the Preneed Funeral Arrangements," her son wrote to the Funeral Services Commission, "at only 5 percent interest there would now be over \$3,400. ... It is going to be my cause in life to inform the public not to purchase a "Preneed" policy, but to put their money in a savings account."²²

Recommendations:

Texas legislators should:



- eliminate the 10 percent “retention” that funeral homes may keep from the payment consumers make into the trust, and instead determine a reasonable administrative fee since no services have been provided;

- require trust accounts to be payable in full--principle and interest, less this nominal administration fee--to a new funeral home if the family elects to change funeral providers; and

- require disclosure to the consumer on an annual basis the amount of principal and interest and the annualized rate of earnings for any trust funded preneed contract.

Items not Covered

Consumers in Texas also wrote to various state agencies about the unexpected extra charges for interment, and other items not covered under preneed contracts. Preneed funeral contracts typically do not cover cemetery products and services like vaults or interment

(putting the body in the grave), and fees for flowers or document handling. Consumers with preneed contracts wrote to complain about additional fees for death certificates, insurance, extra liners, and more.²³

But most of all, they wrote about interment charges. “Opening and closing” charges often fall outside the contract because they are part of a cemetery’s costs, not the funeral home’s costs, and independent cemeteries were often not licenced to sell preneed services. As large corporate funeral home companies buy cemeteries, the new owner (having a preneed license) may solicit customers who already purchased crypts or plots to pre-pay for “opening and closing.” Those customers who thought they had already covered all the costs of the funeral and burial were shocked to discover that these additional charges can range from \$800 to \$1,000.²⁴

Joe and Janette Young of Dallas purchased crypts for \$795 and preneed contracts for \$2,487.00 in 1965. According to their complaint to the AG, the saleswoman told them the contract was “all inclusive.” In 1999, the company wrote to the couple to tell them that their pre-paid contract did not cover “opening and closing of the mausoleum crypt,” and they could now purchase this service for an additional \$1700. They went to a lawyer, who noticed that their contract specified a list of services plus “many other items.”

“If you sell this standard funeral service, the casket, and the crypt,” their lawyer wrote to the company, “and the “many other items” does not include putting the casket *in* the crypt *at* the standard funeral service, just what does the “many other items” include?”²⁵ The attorney calculated that their 1965 investment, earning 10% per annum

Investment Values Generally Build Faster than Funeral Inflation

Consumers who pay monthly into an account over ten years with no downpayment may not keep up with funeral inflation

The Time Value of Money--Sample values for an investment of \$5,100 set aside to pay for a future funeral.	1998	2008	2018	2028
Cost of a \$5,100 funeral at 4% inflation	\$5,100	\$7,623	\$11,284	\$16,703
Value of a \$5,100 investment at 4% compounded monthly	\$5,100	\$7,675	\$11,437	\$17,044
Value of a \$5,100 investment at 6.72% compounded monthly	\$5,100	\$10,066	\$18,578	\$35,284
Value of a \$5,100 investment at 8% compounded monthly	\$5,100	\$11,422	\$25,333	\$56,185
Value of a \$5,100 investment at 10% compounded monthly	\$5,100	\$13,936	\$37,710	\$102,041
Value of an investment at 4% interest paid in monthly installments of \$42.92, no money down	\$43	\$6,318	\$9,416	\$14,031
Value of an investment at 6.72% interest paid in monthly installments of \$42.92, no money down	\$43	\$7,315	\$13,893	\$26,387
Value of \$5,000 deposited at a rate of \$1,000 each year in a CD at 6.72% for five years then rolled over	\$1,000	\$7,848	\$14,906	\$28,312



compounded monthly, should now be worth about \$96,000, more than enough to inter two people in considerable luxury at any funeral home and cemetery of their choice (see table of investment values, p. 15). The company dropped the fee.

Current Texas law requires preneed contracts to be in writing, and state the benefits to be provided under the contract (including the materials used in caskets or vaults). Most contracts reviewed for this report were in very small print and did, in fact, disclose exactly the services that were covered under the contract. Some contracts clearly disclosed services not covered as well. In other cases, a consumer would need to have previous experience with funerals to know the additional services that would not be covered.

Recommendations:

Texas legislators should:

- standardize written preneed contracts in at least 10 point type;
- include in the standard contract disclosure of services not covered and a statement that these non-covered services can add significantly to the cost of a funeral.

Phantom interest/Real taxes

When the funeral home charges families for services that were not covered in the preneed contract, family members start looking for the interest that should be available from the trust account. Mrs. Trudy Adelmeier bought a preneed funeral service contract and mausoleum space for a total of \$4,745.50 in 1984. In 1998, the funeral home sent a letter pressing Mrs. Adelmeier to pre-pay for entombment as well. "In 1992 it [entombment] cost only \$400. Today, six years later, it has doubled in cost to \$850, rising \$100 in just the last few months," the company told her. "Since this cost is climbing rapidly, I urge you to freeze the current cost at this time. You can do so with monthly pay-

ments of only \$25, at no interest."

But her family wanted to know what had happened to the earned interest on her account. At current CD rates, the value of her account should have doubled. "What happened to the accumulated interest," her son-in-law asked the Funeral Service Commission.²⁶ Unfortunately, under current law the interest will not be used to cover services not included in the original contract, even if it is more than enough to cover price inflation on the covered items. A typical contract reads, "Excess benefits--The funeral provider agrees to guarantee prices though current retail prices may exceed death benefits at the time of performance. If death benefits at

that time exceed current retail prices, any excess death benefits may be retained by the funeral provider."²⁷ The funeral home may keep the excess interest.

In addition to any charges not covered by the preneed contract, families who use a pre-paid funeral trust or annuity to cover funeral expenses also discover that they must pay taxes on the interest income earned by the trust, even though all the interest income goes to the funeral home.

In 1993 and 1994, Cynthia Strauss pre-paid \$500 per month for her mother's funeral, a total cost of \$9,122. She received annual notices of the interest income reported to the IRS—more than \$3,000 by 1999. Yet, when her mother died, the funeral home said she would need to pay an additional \$1,200. "At that time, I asked the home what had happened to the interest," she wrote to the Attorney General. "After all, I had been receiving 1040 notices that the income had been filed with the IRS. The director said he did not know what would happen to this money, but to his knowledge no one ever got it back."²⁸

Claud Herring of Houston purchased a pre-paid funeral agreement in 1985, funded through an annuity. When he died in 1998, his surviving wife wrote to the Texas Department of Insurance to ask about the tax bill. In its response, the insurance company told her that the funeral home keeps the interest in order to cover the higher costs of a funeral with inflation. However, Mrs. Herring was the owner

of the annuity, and therefore would have to pay taxes on the interest even though that interest income was never reported to her until it was finally distributed to the funeral home upon her husband's death.

"Is this standard practice," she asked. "Have I overlooked something in that too-small-print to read in the contract?"²⁹ Unfortunately, it is standard practice. According to the Texas Department of Banking, IRS Ruling 87-127 requires families to pay tax on the interest income even though all the interest is retained by the funeral home. This holds true even if the consumer cancels the contract and the funeral home does not have to actually perform funeral services but still retains the interest on the account.³⁰

Minda Dominguez of Houston wrote to the Funeral Service Commission to complain when she received a tax bill on \$1067 in interest accrued on her mother's annuity backed preneed policy.

"Had we known our monies were going to be invested in an annuity, we could have done that ourselves instead of paying upfront for my mother's funeral expenses," Ms. Dominguez said.³¹

But if consumers save for future funeral needs on their own, there wouldn't be money for the funeral insurance industry. A handful of insurance companies specialize in funding preneed funeral contracts. According to these company annual reports to the Texas Department of Insurance, preneed funeral is a lucrative niche business.

Funeral Directors Life Insurance Company, primarily a Texas preneed insurer, collected \$47.3 million in 1998 Texas premiums, and paid dividends and benefits of just \$19.9 million. The company reported an increase in net income of 93.3% from 1997, and "extremely positive cash flow."³² Forethought Life, an affiliate of Batesville Casket Company with \$2 billion in assets, collected \$21.7 million in Texas premiums and paid out only \$10.3 million. The company reported record insurance revenues for the second quarter of this year.³³ American Memorial Life Insurance Company, a subsidiary of SCI with business primarily in Texas, California and Washington, collected \$110.3 million in premiums and paid out only \$54.6 million in 1998.³⁴

Altogether, these companies reported loss ratios (the ratio of benefits paid out to premiums collected) of less than 50%, making preneed

insurance policies comparable in value to credit life insurance—a notoriously bad deal from the perspective of the consumer.

Recommendations:

Texas legislators should:

- require the fiduciary to generate a simple annual report to consumers of principal and interest in a trust account or annuity and any taxes paid on the earned interest; and

- require the insurance company or trust fiduciary to report, at time of death, the amount of benefits paid to the funeral home under the policy, and require any benefit in excess of the cost of the funeral at the time of death (as described in the current price sheet) to be payable to the family or a designated beneficiary.

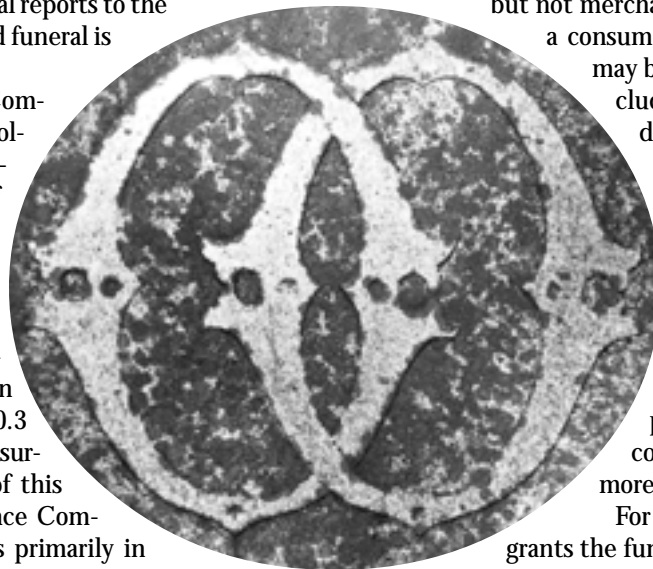
Cancellation and small refunds

Funeral homes must deposit payments for preneed funeral services or merchandise into a trust. But, the funeral home keeps a substantial portion of the early payments. Cemeteries must place in trust money for preneed cemetery services (like "opening and closing")

but not merchandise (monuments, plots, crypts). So if a consumer changes his or her mind, the refund may be minimal, especially if the purchase includes both funeral and cemetery merchandise. Nearly 20 percent of complaints related to requests for refunds on cancelled or changed preneed policies for funeral or cemetery merchandise and service.

Winell W. cancelled her preneed funeral contract, but the company refunded only half of the money she had paid in. But according to the company, her refund was in accordance with Department of Banking regulations, and the consumer should have read her contract more closely.³⁵

For trust funded arrangements, Texas law grants the funeral home one half of each payment until 10% of the original funeral cost has been covered.³⁶ For most consumers, this means that about half of their total payment will be refunded if they cancel in the first year. After that, the payments are fully deposited into the trust and the consumer may get





the amount in the trust (or 90% of the amount paid) back—but not the earned interest.³⁷

If a consumer wants to cancel a preneed whole life insurance policy, current law requires the insurance company to refund only the “cash surrender value” of that policy—a fraction of the amount actually paid in premiums (see sidebar on whole life insurance, p. 12).

Finally, a consumer’s cancellation rights may be affected by clauses that “irrevocably assign policy ownership” to the funeral home. Such clauses assist those on Medicaid (often in nursing homes) because the insurance is not counted as an asset. However, once a consumer signs ownership of the policy over to the funeral home, even the cash value will not be refunded upon cancellation.

Maria G. of Harlingen bought a preneed contract in November, 1996 with payments over ten years. About a year later, she decided to cancel it, but according to the company “at the time of application she had elected to irrevocably assign her policy ownership to the American Memorial Funeral Trust. This election does not allow for surrender of the policy and we advised Ms. Gonzalez that she did not have the option of surrendering her policy. Under the trust agreement, payment of the policy values is only authorized to the funeral home or mortuary providing funeral services and merchandise.” In other words, she would not receive even the minimal cash value of her policy back.³⁸

Consumers do not always understand the effect of “irrevocable assignment” when they buy a policy. Carlos Garza of Edinburg initialed a box on his preneed contract stating that he “designates this Agreement as: Irrevocable.” According to Mr. Garza, the agent told him that this clause would protect him from cancellation by the insurance company. “As it turns out, they are protecting themselves from the insured person canceling the insurance,” he wrote to the AG.³⁹

Irrevocable assignment may serve a good purpose for people who are spending down their assets in order to qualify for nursing care through Medicaid. In Texas older individuals are eligible for Medicaid if their monthly income is less than \$1,536, and they must have fewer than \$2,000 in assets other than a homestead. Couples may have an income of \$3,072 each month and \$3,000 in assets. People on a small fixed income with few or no assets to protect, people already eligible for Medicaid, and people who do not intend to use Medicaid do not need to sign their policy away.

Recommendations:

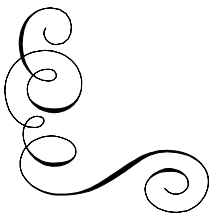
Texas legislators should:

- require 100 percent of a consumer’s payment to be placed in trust;
- give consumers who cancel after the 30 day “free look” a full refund of payments plus interest less a nominal administrative charge representing the actual cost of setting up the account; and
- increase the cash value available from an insurance backed contract to ensure that refunds will be no worse than refunds available from trust backed preneed contracts.

The Regulatory Environment

The Federal Trade Commission sets minimum standards for the sale of funeral service and merchandise (but not cemeteries), and several agencies share jurisdiction over complaints related to funeral services.

The Department of Insurance regulates insurance policies used to finance preneed contracts. The Department of Banking has jurisdiction over most cemeteries and preneed contracts financed by trust funds. The Consumer Credit Commission takes complaints related to preneed merchandise and services purchased on a retail install-



ment contract (see sidebar, p. 11). The Funeral Services Commission regulates funeral homes. The Attorney General handles all consumer complaints that may involve a deceptive trade practice, and is the only agency that takes complaints related to monument companies.

This complex system is the source of much confusion for both consumers and agency complaint handlers. While TDI, TDB and FSC have developed a single complaint form for all three agencies, with a paragraph at the top that outlines their respective jurisdictions, complaints routinely wind up at the wrong department. The three agencies adopted a Joint Memorandum of Understanding to address their shared regulation of funeral services in 1993. It outlines how referrals and followup should be handled between departments. Unfortunately, the process is not always followed.

Almost nine percent of complaints were classified as non-jurisdictional complaints—meaning they were immediately forwarded to another agency for handling. For many of these cases, the originating department keeps no documentation--no copy of the complaint form, but only the letter of referral. While the JMOU outlines followup procedures for reporting back to the originating agency, this often does not occur.

For example, in four cases staff at the Funeral Services Commission attempted to learn the status of cases forwarded to the Department of Banking. They received an answer in only one of these cases, which was that the file had either been lost, or the case was resolved, but the TDB was not sure which.⁴⁰

In one of these cases, a consumer wrote first to TDI February 24,

1999. TDI forwarded the case to FSC, March 16. On March 30, the consumer wrote to FSC to try and track down the status of her complaint. On April 23, 1999 the Funeral Department forwarded the complaint to the Banking Department, but also retained it for investigation. The Funeral Department asked the Banking Department to advise when the complaint was resolved. By August 6, 1999, FSC wrote again to Banking to track down this complaint. There was no further documentation in the file.⁴¹

In general, agencies handle complaints using a paper process. Witnesses are rarely contacted. Agencies generally write an initial letter to the company or funeral home, and forward the copy of the company's answer to the consumer with a closing cover letter. Even this process can take months. Until last fall, many complaints at the FSC remained open for about a year.⁴²

The FSC has an unusual step in their complaint resolution process that adds unnecessary time. The Commission members must together review and approve the closure of every file. Cases that contain no statutory violations can be closed immediately, but if there is an indication of possible legal issues, the process takes longer. Companies can appeal any determination of a violation in a consumer complaint file.

Many consumers still benefit from the process, because agency letters pressure the insurance company or funeral home to respond. TDI, TDB and FSC all have statutory requirements that companies respond to them within a certain period of time. While not all cases are resolved to the satisfaction of the consumer, some consumers get

a full or partial refund, or the company otherwise makes a greater effort to work out the problem.

The AG's authority to investigate funeral complaints is especially problematic. The AG is not part of the JMOU among agencies that regulate funeral services, although the agency received more than 130 complaints in 1998 and 1999. Instead, the AG serves as the state's general consumer protection enforcement agent and treats complaints related to funerals under this umbrella.

The AG must be able to demonstrate that a company intentionally misrepresents its product or service. A review of the unresolved complaints from that agency indicate that the AG will sometimes recommend that the consumer seek a private attorney or file an action in small claims court rather than pursue a case itself. Gloria Gonzales of La Pryor paid \$700 to a monument company before she discovered that it had closed with no forwarding address. The AG sent at least four letters but received no response from the company. Six months after she filed her complaint, the AG wrote her to say that since it could not reach the company it was closing its file and suggested small claims court.⁴³

The Funeral Services Commission has the most authority to directly handle consumers complaints, although their authority to handle complaints related to preneed is limited. In conjunction with the Banking Department, the FSC can address problems relating to the actual services of the funeral director and preneed moneys held in trust. The Department of Banking enforces the trust laws through complaint investigations and periodic examinations.

The Department of Banking provided very few complaints for our review. This agency may receive fewer complaints than the other agencies. However, TDB also has a policy of destroying complaints older than a year. The Department keeps certain files, where TDB examiners discover more serious violations, like selling preneed policies without a license. According to the files provided, the Department has authority to pursue funeral homes selling preneed without

a license, and such complaint investigations have resulted in satisfactory settlements for consumers.⁴⁴ The Department also manages a fund—currently totaling more than \$800,000—that guarantees funeral services backed by bankrupt preneed trusts. In 1999 Banking seized records and preneed funds from four funeral homes in east and south Texas.⁴⁵ However, Banking is not equipped to address complaints when they discover the trust is backed by insurance and don't always forward these to TDI.⁴⁶

While the Texas Department of Insurance has authority to elicit information from companies in response to a consumer's complaint, the agency has limited authority to address the types of complaints people file about preneed funeral contracts funded by insurance. Texas insurance law does not authorize the department to regulate rates for life insurance, so the Department does not do anything about complaints related to the cost and value of the policy. The department has limited authority over policy forms as well.

In 1995, TDI issued draft rules intended to correct a number of problems with preneed funeral policies. The rules required agents to tell consumers if the funeral home would collect excess benefits under the policy, and that the deceased's family would have to pay taxes on the interest earned under an annuity contract. Further, the rules established a minimum death benefit of at least the total premiums paid in plus 5% interest, and addressed problems with policies that have "graded" or "indexed" death benefits (benefits that increase according to an external index like the Consumer Price Index).⁴⁷ The industry responded that TDI had no rulemaking authority over these plans, and the draft rules were never even published.

Recommendations:

Texas legislators should create a single state agency for the funeral industry to:

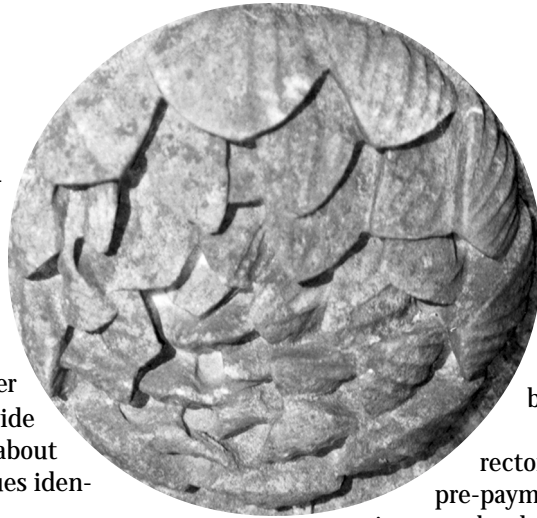
- assure regulation of all funeral services, including preneed services and monuments;



- provide complete information regarding complaints, inspections, and prices easily accessible to consumers investigating a company before they invest funds;

- promptly review consumer complaints and institute appropriate action;

- retain and analyze records of consumer complaints and identify emerging issues. Provide consumers and policymakers with statistics about funeral and burial services, including the issues identified by consumers as problems.



Other State Programs

Other states have passed reforms to their funeral service laws to curb some of the worst abuses in the preneed and at-need markets and ensure efficient regulation.

California brought the regulation of at-need and preneed funeral and burial services under one roof—at the Department of Consumer Affairs. The California Cemetery and Funeral Bureau licenses and regulates both the funeral and cemetery industries, and investigates complaints related to funeral homes, crematories, and cemeteries. California did not incorporate the regulation of insurance policies or monument companies into its single-state-agency approach. On the other hand, California did come up with a sound way to ensure a fair refund of preneed money when consumers cancel. All of a consumer's payment must be placed in the trust, but funeral providers may take from the interest an amount equal to 10 percent of the amount paid in as a revocation fee.

Georgia recently passed a new statute to require funeral homes, cemeteries and casket stores to meet the same registration and licensing requirements, a major step in the direction of a unified regulatory apparatus. In particular, the legislation equalized the refunds consumers can expect if they cancel a preneed agreement for a funeral service, monument, vault or other item. Now all money from items purchased on a preneed basis, including caskets, monuments and vaults, is 100 percent refundable until the time of death.⁴⁸

According to a 1997 survey by the International Cemetery and Funeral Association, at least 17 states require funeral homes to place 100% of consumer funds in trust. Ten of these states extend this protection to preneed cemetery services.⁴⁹ 21 states require funeral homes to refund the amount placed in trust *plus interest* upon request of the consumer at any time.⁵⁰ At least 13 states prohibit finance charges on preneed contracts.⁵¹ Twenty two states do not specifically authorize the use of insurance policies to fund preneed contracts, although only a handful actually prohibit these policies altogether.⁵²

Washington state law ensures that a consumer who cancels a preneed contract will get a reasonable refund equal to 90% of the cash price of the contract *plus interest*.⁵³ The Washington State Department of Insurance defined as an unfair practice the sale of any life insurance where the premiums exceed the benefits. Under Washington insurance regulations, life insurance benefits must equal at

least the amount of premiums paid plus 5% interest compounded annually.⁵⁴

Indiana requires funeral directors and cemeteries to trust 100% of the preneed money paid in by consumers, and any excess interest in the trust that exceeds the cost of the funeral (at the time of its delivery) must be refunded to the consumer's estate.⁵⁵

New York preneed laws apply to funeral directors, cemeteries and monument companies (for pre-payment of any services "wherein the merchandise is not to be delivered or the personal services are not to be rendered until the occurrence of death") and ensure that 100% of the money collected plus interest earned remains the property of the consumer. Consumers who purchase preneed contracts receive an annual statement of principal and interest, and at any time can withdraw the full amount in the account without penalty.⁵⁶ According to the New York Funeral Director's Association (NSFDA), the Association's own trust account—invested in jumbo CDs and earning a conservative 5.3% interest—is more than enough to cover funeral cost inflation and families often get money back after the funeral is over.⁵⁷

New York also prohibits the sale of small whole life insurance policies to back preneed contracts, and the state Funeral Director's Association supports this prohibition in an ongoing battle with the insurance industry. "The yield on cancelled policies is very low," the organization says. "Oftentimes there is nothing. If the consumer stops paying they lose all benefits. Often there is no underwriting. Consumers living a long time will actually pay more for the policy than the death benefit represents." The NSFDA also endorses New York's existing prohibition on funeral directors accepting commissions from insurance companies or any other vender of preneed products.⁵⁸

Like many other states, Maine also requires funeral homes and cemeteries to trust 100% of a consumer's payments. New consumer protections passed last year ensure that the funeral home may withdraw only the reasonable expenses incurred for actual administration of the trust account.⁵⁹ Maine has also prohibited funeral homes from soliciting preneed business altogether.⁶⁰

High profile complaints from consumers all over the country recently spurred Congressional hearings on problems in the preneed market, and the Federal Trade Commission has recently taken testimony on its rules related to funeral services in general. But, reform of the funeral business is primarily a state issue, and Texas must fix its problems at home.

Consumers Union supports the following Texas reforms.

Legislative Recommendations

Consolidate funeral regulation into a single, consumer oriented agency.

- Assure regulation of all funeral services, including preneed and at-need monument sales.

- Provide complete information regarding complaints, inspections, prices easily accessible to consumers investigating a company

before they invest funds.

- Collect funeral service and cemetery price lists and publish (brochures and electronically) a regularly updated consumer price guide.

- Study the use of the non-declinable charge to determine which services currently included could be itemized and then declined by consumers who wish to handle more of the funeral arrangements themselves. Investigate capping the non-declinable charge at a flat, affordable rate.

- Require prompt review of consumer complaints and appropriate action. Retain readily available records of consumer complaints for at least two years. Do not destroy complaint records for at least five years. Provide consumers and the public with statistics about complaints against funeral and preneed insurance companies, including the type of problems identified by consumers.

Protect consumers from overly aggressive home sales by:

- enacting a mandatory waiting period between a sales home visit and payment for a preneed contract; and

- creating a 30 day “free look” period during which a consumer can change his or her mind and get a full refund of all payments made as long as no merchandise or services have been delivered.

Reform the preneed market to ensure consumer value for the money invested and contract portability.

- Simplify and standardize preneed contracts to ensure that consumers clearly understand what is not covered. Require preneed contracts to be printed in at least 10 point type.

- Require this standard contract to provide for reasonable consumer modification of funeral services at need without penalty.

- Eliminate the 10 percent “retention” that funeral homes may keep from the payments consumers make into the trust and substitute a reasonable administrative fee to be paid out of the interest earnings. Consumers who cancel a trust funded preneed contract should receive a full refund of all payments plus interest, less a nominal administrative fee, since no services have been provided.

- Require an annual disclosure to consumers the amount of principal and interest and the annualized rate of earnings for any trust backed preneed contract.

- Require all trust funded preneed contracts to be fully transferable, including both principal and interest earned over time. Require the full value of an insurance backed preneed contract including additional insurance purchased through dividends or other policy “growth” due to indexed or other increase—to be transferable to any funeral home selected by the family.

- Stop the practice of charging interest for products and services to be delivered at an indeterminate time in the future altogether. Repeal provisions authorizing the use of retail installment contracts for preneed funeral goods and services.

- All funeral services purchased by a consumer at one time from a single entity should be incorporated into a single preneed contract.

- Prohibit preneed contracts backed by insurance policies where premium payments exceed the face amount of the policy. The face amount should equal a minimum of the total premium payments plus 5% interest.

- Require the insurance company to report at the time of death the amount of benefits paid to the funeral home under the policy, and require any benefits in excess of the cost of the funeral at time of

death to be payable to the family or designated beneficiary, not the funeral home.

- Require refunds under insurance backed preneed contracts to be, at a minimum, equivalent to refunds available through trust backed preneed contracts when a consumer cancels.

Footnotes to Main Article

¹ 28 Texas Administrative Code, Part 1, Chapter 3, Section 3.9002, Joint Memorandum of Understanding, effective July 19, 1993.

² There were far more complaints filed with each of these agencies than Consumers Union was allowed review. Some were not provided to us because the investigation remained open, while others were not provided because the Department of Banking destroys complaints older than one year—everything prior to mid-1998 had already been destroyed at the time we asked for the information. Finally, the Texas Department of Insurance blacked out a considerable amount of information from the complaints, making some too difficult to analyze.

³ Office of the Attorney General, Consumer Complaint File M9812-0007.

⁴ Office of the Attorney General, Consumer Complaint File M9903-0349.

⁵ Office of the Attorney General, Consumer Complaint File M9811-0060.

⁶ According to testimony provided to Congress by the National Funeral Directors Association, the markup on caskets is about 2.5 times cost. Senator Charles Grassley stated that markups are even higher than that. Death Care Business Advisor, *NFDA's followup focuses on portability, revocability*, Vol. 4 No. 20, May 10, 2000.

⁷ Office of the Attorney General, Consumer Complaint File D9903-0323.

⁸ Funeral Service Commission, Consumer Complaint File 99-021.

⁹ Office of the Attorney General, Consumer Complaint File D9810-0291.

¹⁰ FTC Funeral Rule Sec. 453.4(b).

¹¹ Federal Trade Commission, Docket No. P984407, In the Matter of Funeral Rule Review Working Group, November 18, 1999, pp. 206, 209-211, 218-220, 224.

¹² Office of the Attorney General, Consumer Complaint File D9812-0182.

¹³ Office of the Attorney General, Consumer Complaint File D9811-0312.

¹⁴ Office of the Attorney General, Consumer Complaint Files D9811-0273, D9811-0240, D9809-0882.

¹⁵ Testimony of Robert Shreve, Chairman of the Board, AARP, before the Special Committee on Aging, April 10, 2000; Office of the Attorney General, Consumer Complaint File H9903-0349 and M9809-0048.

¹⁶ General Accounting Office, *Funeral Related Industries: Complaints and State Laws Vary, and FTC Could Better Manage Funeral Rule*, GAO/GGD-99-156, September 1999, p. 5.

¹⁷ “Today’s National Averages from Bank Rate Monitor,” Bankrate.com, June 9, 2000.

¹⁸ Consumers Union collected FTC required current price sheets from funeral homes in the central Austin area during the week of June 12 to 16, 2000. We also reviewed price sheets included in consumer complaint files from around the state.

¹⁹ Tex. Fin. Code, Title 3, Subtitle E, Section 154.155(c).

²⁰ Consumer Complaint File TDI 394471.

²¹ Tex. Fin. Code, Title 3, Subtitle E, Section 154.254.

²² Office of the Attorney General, Consumer Complaint File

A9909-0059.

²³ Funeral Services Commission, Consumer Complaint Files 98-028, 99-160, 99-108.

²⁴ Funeral Services Commission, Consumer Complaint File 99-015, Office of the Attorney General, Consumer Complaint Files M9807-003, D9803-0580, S9802-0288, L9803-0044.

²⁵ Office of the Attorney General, Consumer Complaint File D9904-0110.

²⁶ Funeral Services Commission, Consumer Complaint File 99-048.

²⁷ Preneed Funeral Agreement and Assignment Price Guaranteed, Homesteaders Life Company, Rev. 03/01/95.

²⁸ Office of the Attorney General, Consumer Complaint File S9903-0008.

²⁹ Texas Department of Insurance, Consumer Complaint File 377616.

³⁰ Letter to Cynthia Strauss from Lucy Pena, Texas Department of Banking, May 19, 1999. IRS Ruling 87-127, Situation 4.

³¹ Funeral Service Commission, Consumer Complaint File 99-118.

³² Funeral Director's Life Insurance Company, Statutory Annual Statement, 1998.

³³ Forethought Life Insurance Company, Statutory Annual Statement, 1998.

³⁴ American Memorial Life, Statutory Annual Statement, 1998.

³⁵ Office of the Attorney General, Consumer Complaint File M9907-0016.

³⁶ Tex. Fin. Code Sec. 154.252.

³⁷ Tex. Fin. Code Sec. 154.254 . Texas law requires the funeral home to refund at least 90% of the amount actually paid by the consumer, but does not require payment of interest on the account.

³⁸ Texas Department of Insurance, Consumer Complaint File 359230.

³⁹ Office of the Attorney General, Consumer Complaint File M9810-0081.

⁴⁰ Funeral Services Commission, Consumer Complaint Files 99-048, 99-114, 99-115, 99-124.

⁴¹ Funeral Services Commission, Consumer Complaint File 99-114.

⁴² Funeral Services Commission, Consumer Complaint Files 99-033, 99-032, 99-030, 99-026, 99-023, 99-021, 99-010, 99-012, 99-015, 99-034, 99-035, 99-043, 99-008, 99-011, 99-005 and more. The Funeral Services Commission has recently hired new complaint investigation staff. The new team had not reviewed many of the complaints currently closed at the time we commenced our study, therefore our analysis reflects the work of the previous staff.

⁴³ Office of the Attorney General, Consumer Complaint File S9810-0045.

⁴⁴ Department of Banking, Consumer Complaint File 98070058, Anderson Funeral Home, San Antonio, 1998 and 1999.

⁴⁵ Department of Banking, Special Audits Division, "A Regulatory Update for Sellers of Preneed Funeral Contracts and Licensed Perpetual Care Cemeteries," December 1999, p. 6.

⁴⁶ Department of Banking, Consumer Complaint File 1999-31.

⁴⁷ Texas Department of Insurance, "Rough Draft of Proposed Rules Relating to Life Insurance and Annuity Policies Used to Fund Pre-paying Funeral Benefits Contracts," December 27, 1995.

⁴⁸ California Department of Consumer Affairs, Cemetery and Funeral Bureau, home page, downloaded 8/25/00. California Business and Professions Code, Sec. 7735. "Final Passage of New Cemetery and Funeral Law is Good News for Georgia Consumers," Office of Cathy Cox, Secretary of State, March 23, 2000.

⁴⁹ International Cemetery and Funeral Association, ICFA Survey of Cemetery and Funeral Home Statutes and Regulations, Merchandise and Service Trust, Printed 8/26/97, Updated 12/31/98.

⁵⁰ Eskin, Sandra and Sharon Hermanson, "Preneed Funeral and Burial Agreements: A Summary of State Statutes," AARP Public Policy Institute, December 1999. Also ICFA Survey.

⁵¹ ICFA Survey.

⁵² AARP Survey.

⁵³ Washington Statutes, RCW 18.39.250 (2), (5) and (7).

⁵⁴ Washington Insurance Regulations, WAC 284-23-550. This regulation applies generally to life insurance policies with a benefit amount less than \$25,000.

⁵⁵ ICFA Survey and Indiana Code 30-2-10-5(6).

⁵⁶ New York Consolidated Laws, General Business, Art. 28-A, Sec. 453(1)(a) and (2). The full refund is not available to those who select irrevocable trusts in order to qualify for Medicaid.

⁵⁷ Phone interview with Bonnie Tippy, New York State Funeral Directors Association, July 17, 2000.

⁵⁸ New York State Funeral Directors Association, "Insurance as a vehicle for pre-funding funerals: Position of the New York State Funeral Directors Association," May 1997.

⁵⁹ ME Chapter 21 Subchapter I, 32 Sec. 1401.

⁶⁰ ME Chapter 21 Subchapter I, 32 Sec. 1402.

Footnotes to Whole Life, p. 12-13

¹ Consumer Complaint File, Texas Department of Insurance 418266

² Consumer Complaint File, Texas Department of Insurance 407288

³ Bamford, Janet et al, The Consumer Reports Money Book, Third Edition, 1997, p. 219.

⁴ Although Texas law requires a life insurance policy to allow consumers to take policy loans after the policy has been in force for three years (TIC 3.44(6)), pre-need funeral contracts that accompany the insurance policy will specify that the policyholder *cannot* take policy loans.

⁵ Pre-need funeral contracts for Guaranty Plan, Inc, The Mission Plan, The IEIS Fidelity Plan, and Homesteaders Life.

⁶ Consumer Complaint File, Texas Department of Insurance 364175

⁷ Consumer Complaint File, Office of the Attorney General M9912-0098

Footnotes to Layaway, p. 11

¹ Texas Department of Insurance, Consumer Complaint File 403243.

² Office of the Attorney General, Consumer Complaint File M9808-0099.

³ SCI Sales Counselor and Reference Guide, July 10, 1997, pp. 6-5, 8-7.

⁴ Acts of the 73rd Legislature, Chapter 808. H.B. 2499 by Marchant.

⁵ H.B. 2499, Senate Amendments, 2nd Printing, May 11, 1993, adding new sections 2 and 3 amending the Credit Code to authorize retail installment contracts for pre-need funeral services and allowing retail installment interest rates under Vernons Tex Civ Stat 5065.

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