

## **Position Statement of the Funeral Consumers Alliance Concerning Prepaid Funerals**

This position statement about prepaid funeral contracts is intended to ensure that consumers who purchase funeral services in advance of need make informed decisions, deal only with licensed funeral directors, and have the right to cancel contracts or transfer prepaid funds from one funeral service provider to another as they determine.

### **General provisions**

1. Prepaid funeral contracts shall be in writing on forms promulgated or approved by the state licensing agency, identify all of the parties, and identify all of the funeral goods and services provided for in the contract so that a third party with no knowledge of the goods and services purchased would be able to understand what goods and services have been purchased without the need for additional information.
2. Consumers should always have a choice of the financing method used with a prepaid funeral contract. Consumers must be told in writing, in a plain language disclosure, the cost of each method of funding using the example of a hypothetical \$5,000 funeral, including the amount of funds returned to the consumer in the event of cancellation after one year, three years, five years, ten years, and the amounts of funds paid that are transferred from the proceeds of the transaction to any party.
3. No goods may be delivered until time of need. This would specifically prohibit constructive delivery, or warehousing by the funeral provider.
4. The prepaid funeral contract must prominently disclose a list of at least 15 goods and services that cannot be included in the contract because the items cannot be anticipated in advance (such as charges for preparation of the body after an autopsy) or because the items are provided by third parties and the cost cannot be determined in advance of need (such as the cost of a police escort or a crematory fee), and this disclosure must be initialed by the consumer to indicate acknowledgment of potential funeral costs not included.
5. No prepaid funeral contract may be made irrevocable as a condition of the contract and under no circumstances can it be made irrevocable until 15 days have elapsed from the date of its execution and a consumer has signed an addendum or amendment to the original contract making it irrevocable.

### **Financing methods**

6. If funds are used to purchase insurance, a copy of the policy written in a plain language format should be attached to the contract so that a consumer can have it reviewed by advisers of the consumer's choice during a 15-day period following the contract conference.
7. If funds are to be trusted, 100% of all funds paid by the consumer must be placed in the trust and the contract shall disclose the institution receiving the trust funds, when the funds will be deposited, the name of the trustee, and that reports will be given annually to the consumer about the trust earnings.
8. If funds are to be trusted, trustee fees or other administrative costs that will be deducted from the trust shall not exceed 25% of net annual interest earned.
9. If funds are placed in trust, the contract must prominently disclose who will be responsible for paying taxes on earnings of the trust account.

10. No trust-funded prepaid contract may be converted to an insurance or annuity funding vehicle without the express written consent of the consumer, which consent may not be given until after the foregoing requirements have been satisfied just as though the consumer was originally purchasing a prepaid contract that is insurance or annuity funded.

### **Portability, cancellation, and substitutions**

11. Cancellation of a revocable prepaid funeral contract must be permitted, with 100% of principal and interest returned to the purchaser.

12. After the contract conference, when all terms of the contract are determined and disclosed, the consumer shall have a non-waivable right to consult with advisers of the consumer's choice and a right to cancel the contract for a minimum 15-day period.

13. At the purchaser's or disposition agent's request, a prepaid funeral contract must be transferred to another funeral provider at any time before it is completely performed. If the charges for the goods and services provided for in the contract are less at the funeral service transferred to than those charges provided in the contract, the deceased's estate shall receive a refund of the difference.

14. In order to provide for a fair substitution for prepaid funeral contract merchandise that is not available at the time of need, a substitution of merchandise shall be subject to approval by the deceased's disposition agent and shall be approved by the agent if it is of the same general description and quality as that included in the prepaid funeral contract.

### **Marketing**

15. Prepaid funeral sellers and their sales agents must be licensed by the state as funeral directors.

16. Written proof of licensing as a funeral director must be provided to a consumer at a contract conference at the same time the General Price List is provided, which must be prior to the time prices of funeral goods or services are discussed.

17. Consumers may be solicited by telephone, fax, or email communications only if they have elected in writing to receive such solicitations.

18. The direct or indirect solicitation of a consumer in a hospital, retirement facility, nursing home, group home, or health care facility, without having been expressly requested to do so by that consumer or a representative of that consumer is prohibited.

**Adopted by the Board of Directors of the Funeral Consumers Alliance on June 13, 2004**

**Amended by the Board of Directors of the Funeral Consumers Alliance on October 10, 2008 (amendment deleted requirement that all prepaid funerals be price-guaranteed)**