

Funeral Consumers Alliance of E. Mass.
The Memorial Society, Inc.
66 Marlborough St.
Boston, MA 02116

September 8, 2003

Board of Registration in Embalming and Funeral Directing
239 Causeway St.
Boston, MA 02114

Re: Revisions to 239 CMR 4.00, Preneed Funeral Contracts

Dear Board Members and Staff,

The proposed revisions are a great improvement over the present (1992) regulations. They will better protect consumers and also be easier for funeral establishments to follow.

Allowing only a financial institution to be trustee will avoid most of the risks we have seen so far to the safety of preneed trust funds. Requiring 100% trusting will make it clear that all the funds belong to the client until services are provided.

The standardized contract form will reduce confusion for both customer and funeral establishment. Some present contracts bury important terms in overly-complex language in miniscule type. The customer will be aided by a form in simple language and in readable type. The establishment operator will be spared the need to understand and comply with the specifications in the present regulations as to what must be contained in a preneed funeral contract.

Requiring funeral establishments to furnish copies of records on request of the beneficiary will be a help to those persons who are unable, because of poor health, distance, or lack of transportation, to go the the establishment to examine the records in person.

There are some areas where the regulation could be improved.

For new contracts the regulations on transfers in case of sale or closing of and establishment need additional work. For example, what happens if the beneficiary doesn't sign any authorization to transfer the contract?

Existing contracts should be regulated, not just new ones. There are at least four types of funding for existing contracts:

1. Insurance
2. Trust – Establishment as trustee
3. Trust – Banking institution as trustee
4. Other – none of the above, probably commingled with operating funds

For each type there need to be detailed regulations on transfer or cancellation and on reporting to beneficiary and to the Board. For example, the Board has (in consent agreements) required establishments to come up with the money (including imputed interest) to transfer or refund contracts in the "Other" category; this policy should be formalized. Upon transfer of an existing contract the funds should go only into funding mechanisms allowed for new contracts. Where an administration fee was taken at the beginning of a contract, that fee should be credited in the at-need accounting if the services

are provided by the original FH or added back into the amount transferred to another FH when it ceases business (as in NC regs). Annual notice of contract status should be mandated for all types of existing contracts.

Insurance funding for preneed funeral contracts is more complicated than the proposed regulations assume. Neither the existing nor the proposed regulations are adequate. An example — Forethought Life Ins. Co. asks purchaser to irrevocably assign *ownership* of the policy/certificate (not just the right to receive the death benefit) to the Funeral Firm and then asks the Funeral Firm to transfer that ownership to The Forethought Trust. Nothing about this trust is disclosed to the purchaser and I do not believe it meets the proposed requirements for a Funeral Trust Account. The proposed regulations take no account of these transfers of ownership. The Board should better understand the insurance process before finalizing the regulations.

Insurance-funded contracts need additional disclosures before money is paid in. When the 1992 regulations were drafted the majority of such insurance was in the form of individual whole-life insurance *policies*, for which the Div of Insurance has good pre-sale disclosure regulations. Since then insurance companies selling preneed life insurance have almost entirely switched to selling *certificates* under a single group master policy issued in another state. Such group life insurance is totally exempt from disclosure requirements. The Board's preneed regulations should protect consumers by mandating pre-sale disclosure of:

1. Death benefit vs. time, constant or escalating, and, if escalating whether the rate of escalation is guaranteed or discretionary.
2. Cash surrender value vs. time, i.e. how much money do you get back if you cancel.
3. Who will receive a commission on the sale of the insurance.

Section 4.11(4) should be deleted or reworded so it is clear that it is legal and proper for a FD or FH to compete, market, or advertise to induce a person to transfer of a pre-existing funeral contract to his FH, whether that transfer is executed as an actual transfer or by revoking the pre-existing contract and making a new one. Otherwise it looks like an old-fashioned anti-competition measure, inappropriate in modern times.

Careful professional editing of the final regulations is an important step that should be included in the process. So far only Mr. Anliot has written and edited the text, certainly following suggestions from the Board. But no formal editing has occurred. We have all seen the difficulties caused by ambiguities in the 1992 regulations. No author can edit his own material — he is too close to it! That is why professional editors and copy editors exist. Legal draftsmanship is not at all simple.

I have been critical of Mr. Anliot's draftsmanship in portions of the existing regulations, but please recall that I have also vigorously defended his wording of other sections of the same regulations. The request for professional editing should not be taken as a personal attack on Mr. Anliot — *every* author needs an editor — but rather a request that an important procedural step not be omitted.

Thank you for your attention,

Sincerely,

Byron E. Blanchard, Treasurer