

January 8, 2010

Congressman Bobby L. Rush
Chicago District Office
700-706 E. 79th St.
Chicago, IL 60619

Dear Congressman Rush,

I am writing today on behalf of consumers of cemetery products and services and to give you my full support to direct the Federal Trade Commission to establish rules to prohibit unfair or deceptive acts or practices related to the provision of funeral services. My family has owned and operated a monument company in Chicago for over 130 years. Monument retailers are small in number and have virtually no lobbying power compared to the cemeteries. However, cemetery customers and our customers are one and the same. These customers will often share with us their experiences at the cemetery. It is through their sharing and our own dealings with cemeteries that we've become so familiar with how the tactics of some cemetery operators benefit only themselves, at the expense of the consumer.

I'll be the first to say that many cemeteries operate in a lawful and forthright manner. Unfortunately, there are many others that do not. I would like to call your attention to just a few issues that warrant review if cemetery consumers are to enjoy greater protections in the future.

1. **Issue:** Public access to written rules and regulations

Description of issue:

Consumers are often required to select a burial plot under times of great stress. The rules and regulations at many cemeteries have become so complex that a consumer could not possibly be expected to know what questions to ask in order to make an informed decision and cemetery personnel are not always forthcoming with all relevant information. You would find that the written rules and regulations that many cemeteries would produce upon request today, if they could produce any at all, would be grossly inconsistent with what is actually happening in that cemetery.

Proposed solution:

A. Cemetery personnel should be expected to know the rules for their own cemetery and to enforce them consistently. The cemetery authority should pay a fine when they neglect to follow their own rules.

B. Provide a copy of the cemetery's rules and regulations free of charge. After a consumer has paid thousands of dollars to the cemetery for merchandise and services, charging them for a copy of the rules seems unnecessary. It's in the cemetery's best interest that the consumer understand the rules so providing them in writing is just good business.

C. Require religious and municipal cemeteries to comply with this article.

2. **Issue:** Memorial foundations and installations

Description of issue:

Most all cemeteries in the Chicago area prohibit anyone other than themselves from providing a memorial foundation to be constructed on a grave, generally citing terms of their respective union agreements. This policy gives the cemetery a complete monopoly on providing this product and has resulted in the charging of exorbitant fees by some cemetery operators. In a number of instances, cemeteries that tend to bury low income individuals and minorities have some of the highest installation fees. Additionally, the price charged is not necessarily related to the quality of the foundation provided. Some cemeteries will simply place a 4" thick slab of concrete under a memorial and will charge \$600 for the work. The consumer has no choice of foundation providers and often ends up paying an outrageous amount for a foundation that will do nothing to prevent the memorial from sinking or tilting as the years go by. Cemeteries selling memorials often are adjusting the foundation fee to suit themselves in competing for the memorial sale.

Proposed solution:

- A. The merchandise and services purchased comply with cemetery rules and regulations and applicable law. In no event may a cemetery authority require that any merchandise or service be purchased exclusively from the cemetery. Consumers should be assured of freedom of choice.
- B. Charges for installation of markers, monuments and vaults in cemeteries must be the same without regard to where the item is purchased. Consumers have the right to purchase foundation and installation services through a third party vendor without incurring a penalty or additional charge by the cemetery authority.
- C. To protect the consumer, we recommend a cap on foundation fees and establish uniform regulations when building foundations (e.g. foundations built to the depth of the frost line).

As an aside, in July 1982, ruling of the 9th Circuit Court in the Moore vs. Jas. H. Matthews & Co. case whereby the court ruled that the cemeteries' exclusive installation rule constituted an illegal tie-in which violated anti-trust laws.

3. **Issue:** Access to burial location

Description of issue:

Relatives who wish to visit the grave of the deceased should not be required to jump through hoops to get burial location information from the cemetery office. The more tightly a cemetery can control this information, the easier it will be for abuses to occur. This information should be made available to a consumer or a consumer's agent via telephone as well as through the cemetery office. Requiring a person to physically go to the cemetery office, request this information in writing or pay photocopy fees is unnecessary and are tactics often employed by cemeteries to make using the services of a third party vendor more difficult.

Proposed solution:

- A. The cemetery authority shall open the cemetery map or plat and index to public inspection. The cemetery authority shall make available a copy of the overall cemetery map or plat upon reasonable request and shall, if practical, provide a copy of a segment of the cemetery plat where interment rights are located without fees.

4. **Issue:** Right to decline

Description of issue:

Many cemeteries will allow a consumer to prearrange and prepay for future burial expenses. However, some, including religious cemeteries in the area, will only allow prepayment of a package or bundle of products or services. If a consumer wants to prepay, they must purchase, for example, all of the following: the opening and closing of the grave, the grave marker and the vault. This forces a consumer into purchasing merchandise or services now from the cemetery authority that they would otherwise defer and perhaps choose to purchase from a third party vendor.

Proposed solution:

A. *In no event may a cemetery authority require that any merchandise or service be purchased exclusively from the cemetery.* Consumers should be assured of freedom of choice and escape the illegal tying practices that have existed for decades.

5. **Issue:** Trust fund participation

Description of issue:

Religious cemeteries bury tens of thousands of people every year. To exclude these cemeteries from the trust fund requirements leaves a large percentage of consumers unprotected and an almost unthinkable potential liability for the State of Illinois should these funds be misappropriated.

Proposed solution:

Require religious and municipal cemeteries engaging in more than 25 annual interments to comply with the current bill.

6. **Issue:** Correct location of burials

Description of issue:

Cemeteries should be required to have survey markers, commonly referred to as lot & block markers, every 12-15 feet within the cemetery. Many already follow this practice but others do not, especially as newer sections have been developed. Because graves are often quite narrow – 3 – 4 feet in most cemeteries – the grave digger only needs to be off by 1 foot or so a couple of times before they will run into problems with future burials. If these survey markers are not consistently present, one can hardly blame the grave digger for any error that may occur. Similarly, it can be very difficult for a family member to find a loved one in a cemetery section that is several acres in size if there are no coordinates to reference. Many families that testified at the hearings following the Burr Oak scandal spoke of how they could not find the grave of their loved one. These survey markers would go a long way towards eliminating that problem.

Proposed solution:

Require cemeteries to install lot and block markers in all developed cemetery sections.

7. **Issue:** Pre-Need Memorial Sales:

Description of issue:

We have experienced that family heirs or executors of estates are often unaware of a pre-need memorial purchase. After a person is buried, the cemetery fails to inform the family heirs or executors that a memorial was purchased as a pre-need sale. Consequently, the memorial is never made or the family orders another memorial unaware of the pre-need sale.

Proposed solution:

Some documentation or trigger mechanism is needed to alert the cemetery sales staff of their obligation to produce the memorial they sold through the pre-need sale.

8. Issue: Grave Sizes:

Description of issue:

The length of a single grave generally measures 8 ft. long (varies per cemetery). The problem with this length is that the foundation is built on top of the grave box. In cases where a memorial exists, the memorial must be removed in order to make a burial and in some cases the foundation has to be remade adding additional costs to the consumer.

Proposed solution:

We recommend grave sizes to be at least 9 ft. in length for all single marker graves and 10 ft. in length for monument graves. This will allow the proper space for a concrete foundation without interference to the grave box, monument or burial in the future.

9. Issue: Regulation of Memorial Sizes:

Description of Issue:

Traditionally, cemeteries established guidelines for memorial type and size based on lot size and location in the cemetery. In recent times, monument companies have had difficulty with cemeteries who routinely adjust their regulations in order to increase their own memorial sales. Often, the cemeteries ignore their regulations to offset mistakes made by their salesperson in order to close the sale. This practice is unfair to the lot owners who were not given the same monument or memorial privilege. The adjustment of size or error compensation provides the upper hand to the cemetery when closing the sale over the monument company that has followed the cemetery regulations and guidelines. The customer is often confused when the memorial information from the cemetery salesperson and the local monument company does not match.

Proposed solution:

Regulation of the memorial size provides consistency to the consumer along with a fair selling atmosphere between the monument company and cemetery.

10. Issue: Package Sales:

Description of Issue:

Cemetery offers a grave space, burial vault, opening & closing of the grave, grave marker and foundation at a package price. This package sale plan may offer a convenience to the consumer but does not give the consumer a choice. The plans are aimed to eliminate cemetery's competition with funeral director's vault sales and monument company's selling of markers or monuments. The price is manipulated by higher fees for some items and lower fees for other items such as – a high foundation price and a low grave marker price (below market price). The high foundation fee covers the actual dollar lost in the grave marker price. Since the cemetery makes the foundation, the cemetery profits on the high foundation fee even though the marker sale may have been made by a monument company. The cemetery's creative pricing schemes are confusing to the consumer and unfair practice to competing monument companies and funeral homes.

Proposed solution:

Impose fines for price manipulation.

Prior to World War II, cemeteries operated as cemeteries and were not involved with other businesses such as selling monuments, grave markers, burial vaults or other products associated in the death care industry. Similarly, funeral homes only conducted funerals and monument companies made only monuments. As cemeteries have expanded their business (offering other products such as markers, monuments or burial vaults), the consumer has been led to believe that they can only buy from the cemetery and are pressured by the cemetery

salesperson at a time when the consumer is most vulnerable – the death of a loved one. Integrity has fallen and greed has risen.

As it stands now, the consumer is at the mercy of the cemetery operator. After a grave space is purchased, the consumer is subject to the cemetery's fees along with changes in regulations or standards. If your objective is to restore dignity and respect to all cemetery lot owners nationwide, please consider our recommendations to the above issues when creating new consumer protections. We would be delighted to discuss these issues or any other cemetery related issues you may have.

Respectfully,

Thomas J. Gast, AICA
President
Gast Monuments, Inc.
"Chicago's Oldest Monument Company"