

GETTNER/GIVNISH  
FUNERAL HOME, INC.  
*A Life Celebration™ Home*

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September 21, 2007

Dear Board Members:

Thank you for the opportunity to comment on the proposed rulemaking concerning preneed funeral arrangements (Reference No. 16A-4815).

As background, for three generations and nearly eighty years, my family has owned and operated funeral businesses in the Commonwealth of Pennsylvania. I have been a licensed funeral director for nearly thirty years and my four brothers have all been licensed funeral directors for most of their adult lives. Our family business has actively marketed preneed since 1978. Therefore, I feel that I am qualified to comment on the proposed rulemaking.

The ability to prearrange their funeral is a valuable benefit to consumers. Leading consumer organizations have hailed pre-arrangement as an important tool for estate planning by seniors. Pre-arranging a funeral has three major benefits. First, it allows families to obtain the peace of mind that comes with knowing that your wishes will be met. Second, it allows consumers avoid the "emotional overspending" that often occurs at the time of a loved ones passing. Third, a properly established prearrangement may assist an individual in qualifying for Medicaid.

The Board has determined that the regulations regarding preneed funeral arrangements need to be updated to "conform to existing practices in the funeral industry and to provide adequate protection to the consumer..." In proposing new regulations, it is important that the Board give consideration to, and be consistent with: (1) The Federal Trade Commission; (2) The Future Interment Law; (3) Pennsylvania Funeral Directors Law, (4) Federal and state court decisions; and (5) The Boards purpose of *enforcing the law and formulating regulations that are not inconsistent with the law and are necessary to provide safeguards to the public.*

In reviewing the proposed rulemaking, it is apparent that the "updating" of the regulations would have the following effect: First, funeral directors would be required to completed additional, unnecessary paperwork. Second, the reporting requirements would

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restrict the privacy rights of funeral directors and consumers alike. Third, the restrictions on partnering or owning a merchandise company would interfere with the right to contract currently enjoyed by consumers and funeral directors. Fourth, the proposals, in total, serve to diminish the value of existing preneed contracts held by funeral directors and virtually eliminate the availability of preneed funerals to the public. I fail to see how these regulations serve the purposes stated by the Board.

Specifically, I offer the following:

### **Depositing Prepaid Funds**

Proposed § 13.224(a) would require a funeral entity to deposit the entire amount of the funds received for prepaid services *and* merchandise in trust within 10 days. Additionally, § 13.224(a) proposes to limit the ability of funeral directors to create, control or otherwise use a merchandise company, for the purposes of depositing less than 100% of the funds in trust.

The greatest protection the Board can provide to consumers is to propose regulations that promote the availability of pre-arranged funerals. Prearranging provides consumers the opportunity to eliminate the emotional overspending that often occurs at the time of loss, while ensuring that ones wishes will be met at their time of need. In keeping with that understanding, The Future Interment Law allows for the retention of 30% of the funds deposited by consumers for merchandise purchases. In doing so, this provides merchandise companies the ability to not only offer prearranged merchandise, but to promote prearranging to their clients.

The current regulations do not restrict a funeral entity from using a merchandise company for the sale of preneed merchandise. Proposed §13.224(a) would restrict the creation, control or otherwise use of a merchandise company by a funeral director for the purpose of retaining 30% money. If adopted, the proposed rules will provide a competitive advantage to third party merchandise sellers in the sale of preneed merchandise, reducing the number of funeral directors offering prearrangements, thereby limiting the options available to consumers. Proposed § 13.224(a) is inconsistent with both the Future Interment Law and current practice within the industry and I fail to see how it will provide added protection for consumers. In fact, as proposed, the regulations will eliminate the leverage currently held by consumers.

### **Reporting Requirements**

Under proposed §§ 13.224(b) through 13.224(d)(3), a funeral director would be required to report to the Board all preneed accounts on a quarterly basis. The report would need to include (1) a list of all accounts of preneed funeral funds held at any time during the quarter by the funeral entity; (2) the date the funds were received; (3) the name and address of the person for whose benefit the funds are received; (4) the name and address of the banking institution in which the account is held; (5) the account balance at the beginning of the period, (6) principal added, (7) interest or other earnings (8) disbursements or other transfers; and (9) the balance at the end of the period.

Currently, a funeral director must submit to the Board a written report every time the funeral director enters into a prepaid contract or performs under a prepaid contract. The Board states that the current reports are "time-consuming to prepare and review", and "the reports provide little value to the Board, the regulated community or the public". While this may be true, it is clear that the proposed regulations will create additional issues for consumers and funeral directors alike. First, the proposed rules would require funeral directors to provide personal and financial information about their customers to the Board, an entity comprised in part of competing funeral directors. Second, the rules would infringe on the right to privacy currently enjoyed by preneed consumers. Third, it is difficult for me to understand how the Board can properly review this additional information if, by their own admission, the current reports are time-consuming to review.

While I do not agree that the current structure provides inadequate safeguards to the public, the information requested could be made available without jeopardizing the expectation of privacy held by consumers and without undue burden on funeral directors. In New Jersey, for example, much of the information required by the proposed rule is required to be maintained by the funeral home and to be made available for inspection.

Section 13.224(d)(4) would require a funeral entity that has sold or otherwise ceased all or part of its preneed business to report to the Board how the preneed funds were distributed. Each distribution should identify the recipients and the amounts of the funds.

Currently, if a funeral entity ceases or sells their preneed business, the funeral home taking over the business is required to certify that they will honor the preneed contracts of the predecessor.

This proposal would require funeral directors to provide personal and financial information regarding their customer lists to the Board. For the reasons stated above, I urge the Board to reconsider their approach to this matter.

### **Preneed Contract Limitations**

Under the proposed rulemaking in §13.227, (1) all preneed contracts must be in writing; (2) a funeral director could not collect fees that exceed the fees for the goods and services on the funeral entity's general price list at the time of the service; and (3) a preneed contract could not incorporate a contract for funeral merchandise entered into by someone other than a funeral director.

We agree that all funeral contracts should be in writing. Not allowing a funeral director to collect fees that are not currently on their GPL at the time of service is also a reasonable proposition. However, not allowing a funeral home to incorporate a contract for funeral merchandise entered into by a non funeral director serves no legitimate purpose.

Currently, there are no licensure restrictions on the sale of funeral merchandise. In fact, retailers such as Costco and online merchandisers have recently entered this arena. On an at-need basis, the National Funeral Directors Association guides that "a funeral home

should never refuse to service a family because they indicate that they will be using a third-party casket. The funeral home may not discriminate in any manner against the family..." While not allowing a funeral director to incorporate a contract for third party merchandise on a pre-need basis, but requiring him to accept third party merchandise on an at-need basis, the proposed regulation not only fails to conform to existing practice in the industry, it is contrary to the existing practices.

### **Transfer of Preneed Funds to Another Funeral Entity**

Proposed § 13.228 would require a funeral director to allow a consumer to transfer their preneed funeral account and funds to another funeral director or funeral entity of the customer's choosing. The funeral director would be required to forward the entire amount of the preneed funds within 30 days of notice from the consumer.

While we currently allow consumers to cancel their contract within thirty days of signing, and we routinely transfer preneed funds to competing funeral homes, it is neither proper nor necessary for the Board to mandate that we do so. This is a matter of contract between the parties and should not be dictated by the Board. The proposed regulations would expand current protections provided by state and federal law, at the cost of eliminating the competitive advantage enjoyed by those firms that allow for the transfer and/or cancellation of the contract.

As proposed, the rules provide an additional quandary for funeral directors, one on which the Board must provide guidance. The regulations in no way address how a funeral director should handle the transfer of a contract of an individual receiving assistance, or an otherwise irrevocable contract. Additionally, the regulations do not limit the transferability of the contracts in any way. In not addressing these issues, the Board is an area ripe for fraudulent and deceptive activity by consumers and funeral directors alike. At a minimum, the Board should provide additional guidance with respect to these areas.

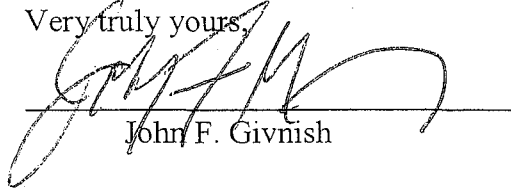
### **Acquiring or Ceasing a Preneed Business**

Proposed § 13.229 would require (1) a funeral entity that acquires the preneed contracts or funds from another preneed business to notify each customer and provide them with the opportunity to transfer the contract and the funds to another funeral entity; and (2) require a funeral director ceasing preneed business to notify each consumer and provide them with the opportunity to transfer the funds to a funeral director of their choosing.

Currently, if a funeral entity ceases or sells their preneed business, the funeral home taking over the business is required to certify that they will honor the contracts of the predecessor. If the new entity is willing to honor the contracts that they have acquired, and must certify that they will, the public is protected. In requiring the acquiring owner to notify each consumer, the proposed regulations serves to devalue the business of those individuals who have been proactive in preneed. By doing so, the regulations will undoubtedly reduce the number of funeral directors offering preneed, thereby reducing competition, the greatest form of protection the public can enjoy.

Again, I would like to thank the Board for allowing me to comment on the proposed rulemaking. I welcome the opportunity to discuss these matters in an open forum and encourage the Board to review the preceding comments with the eye on proposing rules that are consistent with existing practice within the industry, are necessary to protect the rights of consumers, promote competition within, and provide clarity to, the funeral industry.

Very truly yours,

A handwritten signature in black ink, appearing to read "John F. Givnish", is written over a horizontal line. The signature is stylized and cursive.

John F. Givnish