

The Honorable Senator Charles Grassley, Chairman of the U.S. Senate Special Committee on Aging
Chairman Grassley, Senator Breaux, Members of the Committee

Thank you for the opportunity to address your committee. I have been involved with the death care industry for the majority of my life and take a great deal of interest in the current hearings and other events which impact seniors and other consumers of death care goods and services.

Unfortunately, members of the industry have seen fit to misinform almost everyone about the facts, choosing instead a path of deception to maximize their profitability at the expense of the consumers. How do I know? Because I was directly involved with many of these same deceptions during my thirty-five year career in the industry. I make this admission so that the members of your committee understand that the only way to be believed is to confess past mistakes. I am sorry for these mistakes and I am now trying to correct them by helping consumers to understand the pitfalls that await them when dealing with members of the industry.

First, a few quick facts about my background. My father began selling cemetery lots in 1948, and I was therefore literally raised in the industry. At the age of fourteen, I worked in a cemetery doing maintenance jobs, mowing grass, trimming memorials, digging graves, etc.. At eighteen, I was already learning how to sell cemetery goods and services. After graduating from the University of Tennessee, I was managed a cemetery and funeral home in Richlands Virginia. Three years later, I became the business manager of our family company which eventually owned and operated, at one time, twenty-one cemeteries and four funeral homes. After my father's death in 1980, I became the CEO of our company until our sale to one of the conglomerates in 1994. I wrote my book Profits of Death that was published in 1997, and won the 1997 National Association of Independent Publishers award for the best content for a soft cover title. Since the book was published I have been fortunate to participate in about forty television shows (including 60 Minutes) and over two hundred radio programs, all directly concerning the death care industry. I have also been a frequent contributor to many national publications doing articles about the industry. For the most part, death care providers do not directly lie to consumers. Instead, they excel in the art of deception and misinformation. The majority of these deceptions center around not disclosing pertinent facts to consumers that might have a direct impact on the dollar amount of sales to consumers. They play on the consumer's emotions of guilt, fear, and love to maximize the dollar amount of the sale. They are able to accomplish this because the death care purchase is one made on the most emotional day of a person's life, a person they can count on to have little or no knowledge about the products and services. Emotion and lack of knowledge are the reasons that the industry is able to fool the public while at the same time being held in high esteem by the very same public they are deceiving. There are few complaints about the industry because consumers are either not aware they have been deceived or are too embarrassed after the fact to complain.

Let me review several examples of deceptions and other problems:

Embalming: The benefit of embalming is frequently misrepresented. The industry leaves the impression with the consumer that embalming has some sort of long term preservative effect on the remains (absolutely not true). In fact, embalming preserves the remains for a very short period of time so that the body can be viewed by family and friends.

Sealer Caskets: Consumers are frequently led to believe that there are special preservative benefits to purchasing a casket with a seal. Using words like "protecting" and "memorializing" they leave the buyers feeling guilty if they are not willing to "protect" their loved one. In truth, sealer caskets have a detrimental effect on natural deterioration and may in fact speed up the process.

Sealed Vaults: Similarly, the public is led to believe that the purchase of a sealed vault will in some manner preserve the casket and remains of the deceased. Sealed vaults do absolutely nothing to preserve either of these. Human remains will still decompose and the caskets will still deteriorate whether the vault is sealed or not.

Legal requirements: Death care providers also tend to leave the impression that there are certain legal requirements that must be met. For instance, it is common to lead the consumer to believe that bodies must be embalmed before cremation or that a body must be placed in a container before cremation. Often it is suggested that all bodies must be embalmed regardless of disposition.

Cremation: Cremation is a threat to the income stream of most funeral facilities. In 1999, about twenty-five percent of all death cases were cremated. The industry is attempting to maximize their sales by again using guilt and fear to lead the consumers down the most expensive path possible. They will attempt to get the family to embalm the body, buy a casket, and have a viewing so that the family "will not make a mistake that they will later regret" or so the kids and grandkids will "have a chance to say goodbye."

Non-declinable service fee: This fee is the worst mistake the FTC made in their "funeral rule." It has allowed the industry to charge consumers a fee for services whether the services are used or not. It is defended by the industry as a cost of keeping the facility staffed and controlling the cost of operations. I know of no other industry that charges its consumers for their overhead in a separate non-declinable fee.

Product availability: Since the industry is required to give the consumer a price list before viewing caskets, it is not uncommon for the list to include items that are not currently on the showroom floor. This is often a ploy to eliminate the sale of less expensive products. The consumer is rarely, if ever, told that all of the products, and even other products, are available within twenty-four hours.

Wood caskets: Wood caskets are possibly the most beautiful of all offered by the industry. What the industry does not tell the consumer is that wood caskets will deteriorate very quickly in the ground. If they do tell the consumer, they will then attempt to sell a better "sealer" vault to protect the casket and remains from deterioration. Sealer vault or not, wood will rot quickly once in the ground and will crack apart when put in a mausoleum.

Advertising: Laws in many states prohibit certain types of advertising. Most of these prevent the industry from advertising prices and special promotions. This lack of open competitiveness prevents consumers from knowing the options that exist without actually visiting facilities.

Limiting who sells funeral products: The industry has passed laws in twelve states that make it illegal for anyone other than funeral personnel to sell funeral merchandise. These types of restrictions mean consumers will pay more for items than in areas where free enterprise is allowed to flourish. The industry is very proud of its anti-competitive legislative effort

Ownership: The conglomerates now own approximately twenty percent of all funeral establishments in the United States. Instead of using name recognition, as is the common practice among most other industries, they appear to do everything they can to prevent the consumer from knowing the real owner. They apparently believe that it is important that the consumer believe they are dealing with the same family name that may have existed for years. This deceptive practice openly misleads consumers into using what are usually the highest priced facilities in the area.

Pre-need portability: Currently, there is no portability in the industry for pre-need purchases.

Consumers should not be forced to use a facility just because they were smart enough to make advanced arrangements. The industry has never seriously addressed this important consumer issue because they want to insure that the consumers are locked into their establishment. Most consumers are either not told that they have no portability or they are told that they can get their money back if they move. Neither of these is what the consumer wants. Even if the consumer uses insurance as the financing vehicle, the recipient facility will generally find a way to charge more than the original facility.

Pre-need inflation: Consumers believe when making pre-arrangements that once they have paid their money their funeral is locked in at the agreed price. Reality is that the majority of facilities do not guarantee that the price paid will pay for the funeral at death. Often they will come back to the family and ask for more money because inflation has raised the cost and the family must pay the difference.

Pre-need trusts: Many state laws have placed restrictions on trusting for pre-need sales. Most of these have been enacted to restrict competition. The restrictions usually refer to the amount that must be trusted and to how much the consumer gets as a refund if he decides to cancel or move. The laws usually allow the selling facility to claim any excess funding as income. The laws as currently written give all the advantages to the seller and none to the consumer. A properly funded trust would allow consumers the inflation protection they deserve.

Pre-need insurance: One of the biggest consumer shams is the use of insurance to fund pre-need purchases. The vast majority of these policies are overpriced as compared to a similar policy sold for a purpose other than to cover funeral costs. With few exceptions, the policies currently marketed offer no inflation protection. The result? The industry receives a commission of twenty to forty percent for selling an overpriced policy and, when a death occurs charges additional fees to the family because the death proceeds are not enough to cover the price increase of the funeral.

So far, all of the things that I have discussed have dealt directly with funeral establishments. Now I would like to discuss a few of the problems with cemeteries:

Vaults: Almost all cemeteries require vaults for the sole purpose of grounds maintenance. The rationale is that all caskets will deteriorate, leaving a depression that will require additional maintenance to repair. Unfortunately, most will not tell the consumer that all that is needed is a concrete shell. Most will not even offer this as an alternative thus not giving the consumer a less expensive alternative.

Memorials: Most cemeteries that sell memorials place restrictions on the installation of memorials purchased elsewhere. This limits the consumer's choice and drives up the price. These restrictions are usually in the rules and regulations of the cemetery and unseen by the consumer until the need arises

Portability: Much like the funeral industry, cemeteries have no consumer-friendly plan to deal with consumers who relocate. Most of the time, the consumer does not receive anything. A plan sponsored by the International Cemetery and Funeral Association allows the consumer to relocate to a participating cemetery by paying the difference in the price. This plan is often misunderstood by the consumer and misrepresented by the cemetery.

Sales tactics: Direct marketers of cemetery products often use a series of gimmicks to sell the consumer. Often consumers are required to purchase on the very first sales call or lose certain price benefits. (In truth, there really are no price benefits.) Consumers are offered a variety of free items based on some affiliation, usually veterans or civic organizations. (These same benefits are usually available to anyone and not just the organization.) Free space programs usually come with some form of deferred costs. Many of these sales tactics could be described as consumer fraud but are routinely used by the industry.

Not for profit: Some churches and individuals have organized cemeteries as not-for-profit organizations to mislead consumers or comply with outdated state laws. The salespeople will sell the attributes of working with a not-for-profit entity and how that saves them money. The reality is that many of these locations are then contracted to for-profit companies to manage and market the products without the consumer knowing. This is also a way for church groups to maintain their not for profit status while enjoying the benefits of a for-profit company.

Opening and closing graves: Unfortunately, cemetery operators have learned from their funeral director friends some very neat tricks. Some states are now passing legislation prohibiting anyone other than the cemetery from digging graves. Those states that have passed this type of legislation have seen a tripling of opening and closing prices in just a few years, proving once again that when competition is limited prices will increase.

Now that I have identified several different problems, it is time to propose some fixes. Some of these would be relatively easy to implement and others would be very difficult. The recurrent theme will be what is best for the consumer.

1. The industry needs to disclose to consumers exactly what embalming does and needs to disclaim that there is any long-term preservative effect.
2. The industry needs to put a disclaimer on sealer caskets which tells the consumer that the casket will not prevent the natural decomposition of human remains and may in fact accelerate that decomposition.
3. The industry needs to put a disclaimer on all vaults - and especially sealer vaults - that they will not prevent the natural decomposition of human remains and may in fact accelerate that decomposition. They should also state that a purpose of a vault is solely to keep the ground from caving when the casket deteriorates.
4. The industry should be required to inflation protect all pre-need sales. Consumers should never have to pay more money for something already paid for in full. This is easy with trust funds and would require insurance policies to have an inflation factor.
5. Require complete portability with all pre-need purchases. Consumers should not be penalized because they move.
6. The industry needs to put a disclaimer on all sales of wood caskets informing the consumer of the strengths and weaknesses of wood caskets.
7. Your committee needs to find a way to allow more competition in casket sales. The laws that allow only funeral directors to sell funeral goods and services need to be overturned or legislation passed that would make such anti-competitive laws illegal.
8. Legislation needs to be passed eliminating the non-declinable service fee. All services should be itemized and the consumer should have the right to pick which ones are right for their situation.
9. Funeral homes should be required to have a representative line of caskets. All price ranges should be available and consumers need to be made aware that any casket is available within 24 hours.
10. All cremation customers should receive a notification stating the facts about what is required for cremation. This should specifically state that neither embalming nor an outside container is required for

cremation.

11. Facilities owned by corporations should be required to disclose ownership in all advertising and printed material.

12. All restrictions on advertising should be repealed.

13. Legislation should be passed eliminating all cemetery restrictions on the sales of memorials and opening and closing of graves.

14. State funeral boards should consist of a majority of consumers and a minority of industry members.

15. Federal legislation should be passed to repeal all self-protecting and anti-competitive state laws.

It will be a very difficult job to accomplish any of the things I have discussed in this letter. The death care industry has deep pockets and continues to raise money to protect itself and to maintain the status quo. Industry publications are already touting their meetings with you as a hedge against negative consequences. Every member of this committee can be expected to be lobbied heavily by industry constituents. At the same time, do not expect a knock on your door from consumers. Consumers are not organized and are not likely to lobby the committee. So, other than the few of us who are pleased to assist the committee, there will be no outcry. Your challenge will be to sort out the facts and from those facts make logical decisions about what is right for all consumers, not just the industry lobbyists.