

Chairman Grassley, Senator Breaux, and Members of the Committee:

The International Cemetery and Funeral Association (ICFA) appreciates this opportunity to appear before the Committee to discuss allegations involving improper funeral, burial, and preneed sales practices, and to answer any questions you may have. Your March 15<sup>th</sup> letter of invitation specifically listed four areas of interest and our written testimony has been organized to address each of these subjects as follows.

- **The Structure, Role and Mission of the ICFA**

The ICFA is a nonprofit trade association founded in 1887 and currently has over 5,000 members located primarily in the United States, and in 28 foreign countries. The Association represents for profit, nonprofit, religious and municipal cemeteries, funeral homes, crematories, and retail monument dealers who promote consumer choices, prearrangement, and open competition. The ICFA sponsors a variety of educational conferences, an annual convention and trade show, and the ICFA University at the Memphis State for advanced management studies. The Association operates the Cemetery Consumer Service Council, an industry-sponsored consumer assistance organization established in 1979, to assist consumers with questions and to informally mediate complaints against cemeteries. We also cooperate with the Funeral Service Consumer Assistance Program, an industry-sponsored organization offering mediation services without charge to funeral home consumers.

The ICFA believes that consumer education is the key to consumer protection. There exists a wide variety of options and price ranges for consumers to consider in making final arrangements, either for themselves or for others. This information is widely disseminated by industry members, consumer groups, memorial societies and, increasingly, through the internet. The types arrangements selected will vary according to each individual based on his or her personal preferences, ethnic background, and religious beliefs. Obviously, these decisions should not be made under the stress and bereavement of a death, or even of an imminent death, in the absence of adequate thought and planning. The greatest challenge confronting the goal of consumer protection is the necessity for consumers to explore their options before the need arises.

- **The Issues ICFA's Members Face in Complying with the Myriad of State Laws that Apply to Each of Them**

The ICFA believes that state level regulation of the industries is considerably more effective and more efficient than similar federal regulation because cemetery and funeral home consumer transactions are local in nature. While the specific regulation of cemeteries and funeral homes has historically occurred at the state level, an increasing number of businesses must comply with federal and state laws covering the same issue. For example, cemeteries and funeral homes in Florida are subject to the FTC's three-day "Cooling Off" Rule in addition to the state's 30-day "Cooling Off" period for prearrangements. Common sense may dictate that sellers should simply observe the longer time frame but, in fact, they must comply with the requirements of both state and federal laws. Since we believe that few state laws would be preempted by similar federal regulation, the ICFA is concerned with confusing and duplicative oversight.

In 1997, after a two-year effort, the ICFA published a Survey of State Cemetery and Mortuary Laws and Regulations with the cooperation of many state funeral and cemetery boards. Due to the volume of continuous amendments to strengthen these laws by state legislatures, the survey became outdated almost as soon as it was published. Efforts to keep the survey updated proved difficult and an entirely new survey is now in development following the mid-year adjournment of many state legislatures.

The ICFA Survey<sup>(1)</sup> nevertheless demonstrates the extent of state regulation affecting the allied industries. No doubt selected states should consider additional regulation or enforcement on given issues but, overall, 48 states have laws regulating cemeteries and 49 states have laws regulating funeral homes. In an effort to determine the extent of industry regulation at the state level, last year the ICFA collected copies of all relevant states laws, numbering approximately 10,000 pages, and a summary of citations to those laws, numbering approximately 30 pages. In terms of sheer volume, this data highlights the fallacy of claims by industry critics that there are "no state laws" regulating the cemetery and funeral home industries.

Perhaps due to this misinformation, often repeated by the media, members of the public may be unaware that most reported acts of misconduct are already against the law. For example, based on poor reporting consumers may not realize that it is already illegal to sell a cemetery lot to more than one customer; it is already illegal to disinter human remains in order to resell the grave, or to rebury the remains without authorization from the next of kin. It is already illegal to unethically dispose of cremated remains. It is already illegal to invest or withdraw and spend trust funds in violation of the trust agreement, or the contract with the consumer, or state law. These violations, few and far between, seem to comprise the majority of the incidents reported in the media.

These acts of misconduct and deception also violate the ICFA Code of Ethics which is subscribed to by the 5,000 members of this Association.<sup>(2)</sup> Violation of the Code not only results in expulsion from the ICFA but the Code itself provides that the wrongdoing will be reported to the appropriate law enforcement authorities.

- **How ICFA Acts on Behalf of Its Members to Resolve Consumer Complaints**

The ICFA, through its cooperative efforts with state associations, the Better Business Bureaus, and state/county consumer protection agencies, has been successful in resolving most consumer complaints. In fact, the only consumer complaints we cannot attempt to resolve are the ones we don't know about. In this regard, we have proposed a joint venture between AARP and the ICFA to mutually share and resolve consumer complaints but, to date, without success.

In order to track consumer cemetery complaints, and to have the opportunity of informally resolving many of them where possible, the ICFA has served as administrator for the Cemetery Consumer Service Council (CCSC) since 1979. The CCSC is an industry sponsored consumer assistance organization where industry members volunteer their time and experience to answer inquiries and to mediate complaints involving cemeteries at no charge to the consumer. Each year the CCSC publishes an activity survey of inquiries and complaints received, a breakdown of the types of complaints and inquiries, and the number resolved. The CCSC also works with state cemetery boards, consumer protection agencies, and the Better Business Bureaus, all of which provide referrals to the CCSC. The Consumer's Resource Handbook, a U.S. Government publication that is circulated to public libraries and consumer assistance agencies throughout the nation, also lists the CCSC.

Through CCSC, the ICFA is able to investigate complaints against all cemeteries, not merely those entities belonging to the Association. While participation is voluntary for both the consumer and the cemetery, it is extremely rare for a cemetery to refuse to cooperate. Complaints are often resolved through an exchange of telephone calls.

Activity survey data for 1998, the latest year for which statistics are available, indicate that a total of 77 complaints and inquiries were processed by the CCSC - admittedly a low number compared with previous years that average between 100 and 150 complaints and inquiries. Of the 77 complaints

received, 70 were resolved. Seven complaints and inquiries were pending at the beginning of the year while 10 remained at year's end. These figures were based on responses provided by 22 of the 38 state CCSC committees. Of the various types of complaints and inquiries received, 42 dealt with improper cemetery maintenance, 7 dealt with deceptive or questionable sales practices, 2 with Truth-in-Lending matters and other contractual issues, 15 with cemetery rules and regulations, and another 9 with a variety of other issues including simple inquiries into cemetery practices. (3)

In an effort to place the volume and types of complaints received by the ICFA into perspective, last year the ICFA filed a Freedom of Information Act request with the Federal Trade Commission seeking access to any complaints involving cemeteries that were filed with the Commission during the last four years. It should be noted that the ICFA's request was not limited to "consumer" complaints alone. In response, the FTC staff stated, "A search of the Commission's records and discussions with knowledgeable staff failed to locate any records that are responsive to your request." (4) (Emphasis added). By comparison, a recent FTC news release stated that the agency had received a total of 60,000 consumer complaints in 1998. (5)

Subsequently, the FTC contacted ICFA in January of this year stating that it had found approximately 30 complaints relating to cemeteries during the period from September 1997 to the present. Analysis of the complaint summaries provided to the ICFA revealed that only 26 incidents appeared to be involved - a rate of less than one complaint per month on a national level - and a few of those evidently did not involve cemeteries in the first place. Our analysis of these complaints is attached and indicate that where potential harm may have occurred, existing regulatory enforcement at the state level already address these concerns.

### **The GAO Investigation**

Last October, this Committee published an investigative report into funeral-related industries by the U.S. General Accounting Office (GAO). The ICFA publicly welcomed this investigation as an objective effort to separate fact from fiction, and real data from innuendo.

Media reports in the last few years have highlighted incidents of misconduct by funeral homes, cemeteries, crematories and other sellers that are indefensible and, not surprisingly, already illegal under state and federal laws. However, these anecdotal reports fail to convey any pattern of conduct or overall experience level of consumers in general towards the allied industries.

To the best of our knowledge, the GAO investigation was the first systematic effort by an objective fact-finder to establish whether acts of misconduct by industry members were isolated events or common practice. The report focused on four states with the highest annual number of deaths (California, Florida, New York, and Texas) and Maryland because it had recently established a new regulatory agency. Available data from a variety of sources contacted by the GAO indicated a range of concerns but few complaints. Since consumers can complain to a number of different organizations, the GAO speculated that any total volume could be overstated.

Of particular interest, the GAO report speculated that the lack of any significant volume of recorded complaints may be due to the fact that consumers are satisfied. However, the report also surmised that consumers may be inhibited to complain due to embarrassment or ignorance. While this theory may account for a small percentage of consumers, we believe that plain mathematics fails to support this idea. For example, with the U.S. Census Bureau reporting 2.3 million deaths in the United States during 1998, the number of consumers who have had first-hand experience dealing with funeral homes, cemeteries, and other sellers for the 5,500 burials or other forms of dispositions made each day is huge.

If only ten percent of the 5,500 individuals or families who arrange funerals and burials each day felt exploited by industry members, this would equal in excess of 2 million people within a ten year time period. Without the need to file formal complaints, the simple word-of-mouth experiences would produce a scandal of epic proportions making a GAO investigation - or a hearing such as this - superfluous.

- **A Detailed Description of Any Programs ICFA has Established in an Effort to Protect Funeral, Cemetery, and Preneed Sales Consumers**

In addition to the work of the Cemetery Consumer Service Council described above, the ICFA has also published a voluminous series of detailed questions and answers concerning industry practices, policies, and related consumer issues and choices. This data is available on the ICFA website at [www.icfa.org](http://www.icfa.org) under the heading of "Consumer Resources."

The ICFA has also spearheaded efforts to encourage states to enact pro-active legislation mandating sound business practices and consumer protection. **The ICFA Model Guidelines for State Laws and Regulations**<sup>(6)</sup> were initially published in October 1998 as a series of 14 detailed issue papers summarizing various topics and providing principles for drafting legislation. The ICFA also commissioned an economic study of minimum prepaid trust deposit requirements to assure seller performance and a consumer satisfaction survey to accompany the Guidelines. Individual guidelines include topics on Prepaid Contracts, Endowment Care Trust Funds, Insurance-Funded Prearrangements, Cemetery and Funeral Home Combinations, Prepaid Contract Trust Funds, Alternatives to Trusting - Financial Instruments, Authorization to Control Final Disposition, and Cure Period for Violations, among others. A Glossary of Terms was also developed.

Subsequently, a number of additional model guidelines were published in June and November 1999 that include the following topics: Solicitation, Consumer Guarantee Fund, Conversion of Prepaid Contract Trust Funds to Insurance, Criteria for Establishing a New Cemetery, Memorial Sales and Installation, Record Keeping Requirements, and Handling Human Remains in Conjunction with Final Disposition.

The model guidelines are intended to help raise the level of debate concerning proposed state legislation from a largely anecdotal basis to one in which statistical and actuarial data will add substance to the discussions. The guidelines are advisory in nature and set out concepts rather than precise statutory language. The ICFA does not recommend codifying the various guidelines into law as a whole. Instead, the guidelines are intended as a series of options to be selectively chosen by interested parties to address particular concerns.

The ICFA has made copies of the Model Guidelines available at no charge to all state regulatory boards, the North American Cemetery Regulators Association, the Federal Trade Commission, state cemetery and funeral directors associations, all the national trade associations belonging to the Funeral and Memorial Information Council, selected consumer advocacy organizations, and others. We urge the Committee to review the Model Guidelines and promote their use at the state level.

### **Tracking Consumer Issues**

In addition, the ICFA tracks survey data from a variety of consumer and industry groups to determine whether there exists emerging patterns of abuse. Survey data collected in recent years suggest that consumers, under the somber circumstances involved, have a positive perception of the industry. For example, a 1995 study was conducted by the University of Kansas Medical Center on Aging (funded through an AARP grant) among families that experienced the death of a loved one, age 50 or older,

within the previous five months. Of the 163 families surveyed, one-third had no previous experience with funeral homes while 46 percent had no previous experience with cemeteries. Asked whether they were treated with respect, dignity, and concern at the funeral home, 94 percent said that they were "treated very well."<sup>(7)</sup>

Other aspects of the University of Kansas study corroborate findings made by the respected Wirthlin polling organization in three industry-sponsored telephone surveys. A benchmark national survey conducted in 1990 polled 1,000 consumers on their experience with and attitudes toward the industry. Sixty-five percent had positive remarks about industry members while only 11 percent mentioned anything negative.<sup>(8)</sup> Three out of four believed that prearranging their own funeral or burial made good sense and over half, 53 percent, already owned cemetery property. More than one in four had already preplanned their own funeral and over half of that number had prepaid them.

The Wirthlin Group conducted a follow-up national telephone survey in 1995 among 1,000 consumers and found, among other things, that 68 percent of those surveyed at that time had positive remarks about industry members while only 15 percent had negative remarks.<sup>(9)</sup>

Among other things, 80 percent believed that prearrangement was a good idea. However, the survey indicated that only 24 percent had actually prearranged their funeral or burial plans. As in the 1990 survey, just over half of that number, 58 percent, had prepaid them.

Wirthlin has published a new survey this year finding that consumers' positive ratings of the industry has increased to 69%, up from 68% and 65% in 1995 and 1990, respectively. According to the Wirthlin Year 2000 Report, "This exceeds what is normally considered to be a healthy ratio of 3:1 for a typical industry. Overall, there is a 5:1 ratio of positive to negative comments."<sup>(10)</sup>

In 1997, the ICFA commissioned a telephone survey by Walker Information of consumers who had preplanned and prepaid either their funeral or burial arrangements. A total of 400 interviews were conducted of purchasers in the Indianapolis, Indiana area, equally divided between cemetery and funeral home consumers.<sup>(11)</sup> Seventy-five percent of cemetery preplanners rated the experience as excellent or very good. Only three percent rated the experience poor. Among funeral preplanners, the rating of excellent and very good climbed to 81 percent, with only 1 percent finding the experience poor.

Asked whether they would recommend making cemetery/funeral prearrangements to others, 89 percent of cemetery preplanners and 84 percent of funeral preplanners said that they definitely or probably would. With respect to the reasons for preplanning cemetery or funeral arrangements, 81 percent and 80 percent, respectively, felt that prearrangement "eases the loss of a loved one" while 67 percent and 68 percent, respectively, agreed that "it saves money." In response to the question, "How satisfied were you with the prearrangements that were made?", 94 percent of cemetery and 97 percent of funeral preplanners were either satisfied or very satisfied with the plans.

Recently, AARP published a number of surveys concerning consumers' experiences with cemeteries. A 1999 "Funeral and Burial Planners Survey" contacted 2,600 consumers by phone but found only 358 individuals who bought cemetery lots, merchandise or services. While this survey has been publicized for finding that "one-third of the consumers were not given written price lists by the cemetery," in fact that statistic refers to only one-third of the 8 percent who said they bought cemetery property. More importantly, the AARP survey contains no allegation that the information provided by cemeteries to consumers, whether written or oral, was not accurate and truthful.

Another recent AARP publication, "The Cemetery Mystery Shop Report," readily admits it is "anecdotal evidence" and "not quantitative research that allows us to generalize to other for-profit cemeteries." However, these disclaimers have not inhibited AARP from circulating the Report as if it were quantitative research. AARP volunteer "shoppers" visited 106 cemeteries but shopped 64 cemeteries twice, thus resulting in double counting of the results. As with the Burial Planners survey, AARP complains that "two-thirds of all shoppers were not shown written prices" yet acknowledges that 98 percent of the cemeteries volunteered price information on lots. Again there is no allegation that the information provided was not truthful and accurate. Of particular interest, the Report noted that 96 percent of the shoppers left the cemeteries with all their questions answered and 87 percent felt no pressure to buy anything.

Clearly, the survey data from a variety of sources indicate that most consumers react positively to their experiences in making funeral and burial arrangements when made in advance of need. The polling data confirms ICFA's position that incidences of consumer dissatisfaction decrease in direct proportion to the amount of preplanning and, where appropriate, pre-financing made by consumers.

## **Conclusion**

The ICFA has found that the cemetery and funeral home industries are most effectively regulated at the state level because consumer transactions are local in nature, regardless of the ownership status of the seller. ICFA encourages states to develop uniform laws through its Model Guidelines and works actively with federal, state and consumer organizations, such as the Better Business Bureau, to quickly resolve consumer complaints and to prevent problems from occurring. Indications from all reliable sources, including the GAO investigative report, show persuasively that consumer problems are low in volume and are efficiently resolved.

1. ICFA Survey of State Cemetery and Mortuary Laws and Regulations (attached).
2. ICFA Code of Ethics (Attached).
3. Cemetery Consumer Service Council Activity Survey Results and Press Release for the years 1994 through 1998 (Attached).
4. FTC Staff letter to ICFA General Counsel, dated May 3, 1999. (Attached).
5. FTC News Release, "Now Consumers Can Tell It To The FTC - Toll-Free," dated July 7, 1999. (Attached).
6. A copy of the ICFA Model Guidelines for State Laws and Regulations with attached economic study, consumer survey and 27 guidelines have been furnished to Committee staff.
7. Funeral Related Options and Costs, A Guide for Families. The Funeral Information Project, Center on Aging, University of Kansas Medical Center. Kansas City, 1996, at page 11. (Attached).
8. American Attitudes and Values Affected by Death and Death Care Services, prepared by The Wirthlin Group, McLean, VA, 1990. (Executive Summary Attached).
9. 1995 Study of American Attitudes Toward Ritualization and Memorialization, prepared by The

Wirthlin Group, McLean, VA, 1995. (Executive Summary Attached).

<sup>10</sup>. 2000 Study of American Attitudes Toward Ritualization and Memorialization, prepared by Wirthlin Worldwide, McLean, VA, 2000. (Executive Summary attached).

<sup>11</sup>. Preplanning for Funeral and Cemetery Needs, prepared by Walker Information, Indianapolis, 1997. (Attached).