



Protecting a consumer's right to choose meaningful, dignified, and affordable funerals since 1963

**Testimony on Behalf of Funeral Consumers Alliance, Inc.
before the House Committee on Energy and Commerce,
Subcommittee on Consumer Protection
July 27, 2009**

Prepared by Joshua Slocum, Executive Director, FCA, Inc.

To the Honorable Representatives:

Once again, a wrenching example of consumer abuse has focused Congress's attention on the one business no American wants to interact with, but that everyone must: the funeral and cemetery industry. The allegations of grave desecration at Burr Oak cemetery in Chicago are shocking to American newspaper readers and television viewers. To consumer advocates, cemetery scandals are par for the course. In 2001, the largest funeral and cemetery chain in the country was accused of digging up bodies and dumping them in the woods at the Menorah Gardens cemetery in Florida. In 2002, investigators found more than 300 uncremated bodies strewn about the property of Tri-State crematory in Georgia. From 2007 through the present, investigators in almost half the states allege that more than \$1 billion in money is missing from funeral and cemetery trust funds¹, money paid in good faith by Americans who wanted to make sure the most painful day for their survivors would go just a little more smoothly.

Funeral Consumers Alliance is a nonprofit federation of nearly 100 educational organizations coast to coast. Since our founding in 1963, we've functioned as the only national nonprofit exclusively dedicated to protecting the grieving public from fraud and abuse in the funeral transaction. During the 1970s and 1980s, our federation helped push for the successful passage of the Federal Trade Commission's Funeral Rule, a funeral consumer's bill of rights. Since then, we've advocated for expansion of the Rule to cover cemeteries, for better enforcement of existing regulations, and for tough nationwide standards to protect all grieving families. We've watched in frustration as death industry scandals rivet the nation, grab the attention of

¹ The financial failure or outright theft of prepaid funeral and cemetery money has been well documented by the press. One of the largest companies, National Prearranged Services, has been put into receivership by a Texas court after investigators alleged NPS was running a Ponzi scheme, and racked up \$987 million in negative equity. Several other cemetery or funeral businesses around the country have been accused of stealing more than several hundred million more dollars from consumers -- all within the past several years -- who placed their money and their trust with these outfits. FCA will provide Congress with necessary documentation on request.

lawmakers, then fade away. Yet 2.4 million Americans die every year, and their survivors deserve a minimum of protection, even after outstanding abuses leave the front page. Congress may not hear about them, newspapers may not write about them, but Funeral Consumers Alliance does. We call on our lawmakers not to let this opportunity for reform slip away.

It's hard to imagine something more painful for a family than to realize their mother, child or friend, has been pulled from the ground and thrown on the refuse heap. No law can stop outright criminality, but we must enact tougher, consistent regulations across the country to help deter these and other abuses. They are, unfortunately, only the most visible and shocking examples of a long-neglected problem: the lack of any national standards whatsoever for the regulation of cemeteries. There is a patchwork of inconsistent, contradictory laws among the states about what cemeteries may do, must do, and what rights, if any, grieving consumers enjoy. With a handful of exceptions, the states have failed the public.

While the Federal Trade Commission has set minimum standards for truthful dealing for funeral homes, the federal government has turned a blind eye to graveyards. Funeral homes must give consumers truthful disclosures, the right to select what they want, and they may not lie to boost the sale. Cemeteries (except in a few states) are free to hide their prices, make up non-existent laws to push merchandise on the grieving, and force families to buy their overpriced tombstones and grave vaults (or suffer a financial penalty if they refuse).

Senator Christopher Dodd introduced legislation in 2002 and 2004 that would have expanded the Federal Trade Commission's Funeral Rule to cover cemeteries. The bills would have set tough national standards for the safekeeping of consumers' prepaid funeral and cemetery money. Both bills went to an unmarked grave. The meltdown of the financial sector has shown that our laissez faire attitude to regulation has catastrophic consequences for everyday Americans. The hands-off attitude regulators have taken to Wall Street has been just as disastrous for funeral and cemetery consumers. Death arrangements are one of the most costly and emotionally fraught transactions we'll ever encounter, but the death industry flies under the radar until yet another horrible scandal hits the front page.

We respectfully urge Congress to make meaningful change, including:

- **Bringing all death-related businesses under the FTC Funeral Rule, and codifying the Rule.** Consumers see the funeral, cemetery, monument, and casket purchases as one. They have the right expect free choice and truthful sales representations from all funeral-related vendors. Establishing minimum standards and a *culture of accountability* for the cemetery industry will help deter abuse. Making an agency rule into a law with a Congressional mandate will focus needed FTC attention on enforcement.
- **Creating standards for uniform regulation of cemeteries.** There is no consistency among the states². Responsibility for cemetery regulation nationwide is spread among dedicated state

² We have attached a list of the cemetery regulatory bodies in each state we were able to locate in the short amount of time available for research before this hearing. While at least one agency is noted for each state, the level of actual regulation performed by the agency varies widely. Some agencies, such as some state real estate

boards, state real estate commissions, state insurance commissions, and in some cases, doesn't exist at all. Even within some states, different agencies are responsible for licensing cemeteries, monitoring perpetual care funds, or regulating a cemetery's preneed sales. Comprehensive, regular auditing and inspections are spotty or non-existent. The FTC Funeral Rule has been adopted by reference in many states. A similar approach to cemeteries would give states a legal template, and spur state action for rulemaking and enforcement. Including minimum standards for cemetery record-keeping and retention would provide state regulators a place to begin when inspecting cemeteries.

- **Giving consumers the right to a full refund or transfer of their prepaid death services contracts.** Senator Dodd's bill, the Federal Death Care Inspection and Disclosure Act, would have brought all states up to the responsible level of consumer protection found in states such as New York and New Jersey. Families who pre-purchased death services would have had the right to a full refund or transfer if they moved or changed their minds before death. Currently, consumers stand to lose between 5 percent to more than half of their prepaid contract if they change their mind, depending on the state. Requiring this right of refund would force death care businesses to establish sound, responsible accounting practices.

The Death Care Transaction and Federal Remedies for Funeral Home Abuses

In 2002, the last period for which national data is available, Americans spent more than \$14 billion annually³ on funeral and cemetery expenses. The amount is surely higher seven years later. When the Federal Trade Commission promulgated the Funeral Rule in 1982, it recognized the unique potential for abuse in the death transaction:

While the arrangement of a funeral is clearly an important financial transaction for consumers, it is a unique transaction, one whose characteristics reduce the ability of consumers to make careful, informed purchase decisions. Decisions must often be made while under the emotional strain of bereavement. In addition, consumers lack familiarity with the funeral transaction; close to fifty percent of all consumers have never arranged a funeral before, while another twenty-five percent have done so only once . . . This difficulty is exacerbated, however, by several practices used by funeral providers which limit the consumer's ability to make informed, independent choices.⁴

commissions, appear to do little more than register the existence of a commercial cemetery. Others, such as some insurance departments, purportedly oversee preneed transactions, but have nothing to do with auditing or inspecting cemetery records or conditions on-site. Our initial research made one thing perfectly clear: it's next to impossible for consumers in most states to even figure out whether there's even an agency with which they can file a complaint.

³ This data comes from the US Census Bureau's economic survey for 2002. The 2007 survey does not seem to account for death purchases.

⁴ Federal Register, Vol 47, no. 188, September 24, 1982.

**Funeral Consumers Alliance Testimony Before the House Commerce and Energy Committee,
Consumer Protection Subcommittee, July 27, 2009, Chicago, Illinois**

The FTC identified the most common “deceptive acts and practices” used by funeral providers:

- **Misrepresenting the law**—claiming, for example, embalming was required by law when it wasn’t in order to pad the bill
- **Bundling goods and services**—forcing consumers to buy a full funeral package, and refusing to reduce the price for families who wanted to forego optional purchases
- **Hiding prices**—refusing to disclose prices by phone, and refusing to give families clear, printed price lists necessary to make an informed, affordable choice
- **Refusing to allow outside merchandise**—refusing to use caskets purchased outside the funeral home, or tacking on a handling fee that would swallow any savings realized by buying a casket from a third party

Cemeteries Exempt from Minimum FTC Standards

Under the Funeral Rule, these practices are barred. But what funeral homes may not do, cemeteries may do with impunity. Except in the minority of states, cemeteries need not give consumers printed price lists. Not only does this frustrate price comparison efforts, it allows unscrupulous cemeteries to charge different prices for the same services depending on how much the salesman believes he can get from each customer. While funeral homes may not refuse to use a third-party casket, consumer complaints to FCA indicate cemeteries routinely tell families they’re required to buy the grave vault or memorial from the cemetery. If the customer balks, these cemeteries penalize the customer with bogus “inspection” or “setting” fees for outside merchandise, negating any cost savings and shutting down price competition in the market.

The daughter of a veteran wrote to FCA telling of how one cemetery exploited her family by refusing to place a temporary marker on her father’s grave pending the arrival of his government headstone:

... My father was a veteran of the Air Force and Navy. He was career military. Unfortunately, we did as many people do and did not make burial plans until my father died.

Upon arriving at Pine Ridge, the Manager —Tom— took us into his office to help us make decisions. We asked about the Veteran's Marker. We were told that they take a very long time to arrive at the cemetery (7 months at the minimum) [the VA reports 90 days] and that we would have to pay extra to have it installed at the cemetery and that the cemetery would not maintain a veteran's marker. Tom told us that if we bought a marker from them that my father's grave would not go unmarked and that they would place a temporary marker on his grave until the one we selected arrived.⁵

⁵ All consumer complaints cited in this testimony will be provided to Congress on request.

We selected and ordered a Pine Ridge Marker. The cost was over \$4,000 for the interment and Marker. Several days after my father died I visited the grave and it was not yet marked.

Another survivor of a veteran told FCA:

My grandfather died in 1983 and still has no headstone, the 3rd wife never paid for it. So I know he is a veteran (navy) and is eligible for a VA headstone/marker. This cemetery only does flat markers, that's fine. They will not accept the 24x12x4 stone marker but do accept the 24x12x3/4 bronze marker plate. The kicker is that the bronze marker plate requires a stone base of course which would cost additional monies. Keep in mind the plate is the same size as the plain stone without a bronze plate. They insist upon the base being 28x18x4. **My guess is to boost sales of stone through their company.** Sure they accept other bases from outside companies that are 28x18x4 but who would do that? They clearly came up with a way to charge outrageous amounts extra. **Oh and they charge a 83 cent [per square inch] installation fee which is 3x most cemeteries.** Then they charge a lower than normal amount for the stone, so it worked out the same in the end but functions to make it appear cheaper though them.

A Michigan woman called FCA to report that when she went to bury her mother's ashes, the cemetery manager refused to accept the polystyrene "urn vault" she bought direct from the manufacturer for \$50. (Urn vaults are outer boxes into which the urn is placed. They're completely unnecessary, but cemeteries often require them as a way to boost profits, since burying ashes is cheaper than burying a whole casket). The woman reported the manager balked because he wasn't sure the vault was strong enough. But she pointed out it was **the exact same make and model the cemetery was trying to sell her for \$225 more.** I called the cemetery manager on the customer's behalf. He claimed he'd never told her he wouldn't accept the vault, but dismissed the woman contemptuously: "Here's the problem - she's just tryin' to save a little money." The customer was astonished: "He's such a liar. I told him right upfront that I bought a Triple-H polystyrene vault. This is the same one he was going to sell me for \$275? Incredible."

Shockingly, some states actually sanction these practices by law. In 2006, Georgia passed a law allowing cemetery owners to charge customers \$125 if the customer buys a monument from someone other than the cemetery. According to public records, the bill's sponsor accepted thousands of dollars from large cemetery companies. The law characterizes this as "reimbursing" the cemetery for "reasonable costs in assisting in the siting of a monument," and "supervision and inspection of the installation," but this is really just a penalty for smart shoppers who find a cheaper tombstone elsewhere. If a funeral home were to pull this stunt with a customer's third-party casket, the business would be in violation of federal regulations.

The Funeral Rule also prohibits mortuaries from lying to consumers; making up non-existent laws in order to sell unwanted goods and services. Once again, cemeteries are exempt from this minimum standard of honesty. This becomes especially perverse when companies that own both funeral homes and cemeteries—sometimes siting their mortuaries on cemetery grounds—can get

away with deception when selling cemetery services that would be illegal in the funeral parlor. Mrs. B, a 70-year-old widow from Virginia, called FCA in 2004 to relate that a saleswoman for a cemetery owned by the largest funeral home chain in America actually told her the federal government prohibited the kind of burial she wanted:

"I didn't want a lot of folderol," she said. "So I asked if I could be buried in the pine boxes they used next door at King David Memorial Gardens [instead of the polypropylene graveliners offered at the cemetery she was considering]. They told me the federal government wouldn't let me be buried in a pine box— 'that was only for the Jews.'"

These abuses could be deterred and curtailed by bringing cemeteries under the Funeral Rule. FCA testified before the FTC in 1999 during its regular review of the Funeral Rule. We supplied five boxes of documentation detailing funeral home and cemetery abuses nationwide, yet we heard nothing from the Commission. Astonishingly, the FTC voted in 2008 to close the Funeral Rule Review with **no amendments and no expansion of the Rule**. Unless Congress acts, the FTC does not have to reexamine this issue until 2018. America's grieving families should not have to wait that long.

Desecrated Graves, Double-Sold Plots, Disastrous Record-Keeping

The Burr Oak situation is, sadly, just the latest in a long line of abuses of this kind:

- **Menorah Gardens** — Families with relatives buried at a Jewish cemetery in Palm Beach, Florida, filed a class action lawsuit against Service Corporation International, the largest publicly traded funeral and cemetery chain in the world. The families sued the company for digging up graves, dumping the remains behind the cemetery, and reselling the lots (a claim the company denies). The state of Florida found the remains in woods near the gravesites in 2002, and subsequently pressed company officials with felony misconduct charges. SCI agreed to pay a settlement of \$100 million, which the *Palm Beach Post* reports the company was still paying on as recently as April, 2009.
- **Tri-State Crematory** — Also in 2002, 334 bodies were discovered strewn about the property of Tri-State Crematory in Noble, Georgia. Crematory owner Brent Marsh, whom funeral directors contracted with to perform cremations, offered no explanation for his actions, and state officials were left to explain to an outraged public why current laws didn't require site inspections.
- **Florida Memorial Gardens** — In 2004, the widow of the late Florida state Senator, Howard Futch, discovered someone else had been buried in the plot she'd purchased next to her husband for her future use. Mrs. Futch sued the cemetery (also owned by SCI of Menorah Gardens notoriety) and had her husband exhumed and moved to a new site. This incident prompted some long overdue regulatory reform in Florida, but most states lag far behind.

Funeral Consumers Alliance has received a disturbing number of complaints from families who claim the graves they bought in advance turn out to have been sold to someone else. While these are not restricted to customers from large national chains, a suspiciously high number of these allegations are tied to cemeteries owned by an out-of-state company. In past generations, cemeteries were largely run by churches, towns, and local owners or nonprofit associations. Citizens expected burial grounds to be run as nonprofits offering a necessary public good.

The rise of corporate deathcare—large chains buying up funeral homes and cemeteries from out of state—is fairly recent. During the 1980s and 1990s, companies such as SCI, The Loewen Group (now part of SCI), and Stewart Enterprises, bought mortuaries and cemeteries at a breathtaking pace. We suspect that in their haste for profit, these companies failed to complete due diligence in too many cases. Failing to adequately audit the burial records of the properties they were buying likely led to many of the complaints we see today.

Following are excerpts from complaints sent to or obtained by FCA between 2002 and 2005 from customers of cemeteries in Texas, Oklahoma, and California:

- In 2001, the Fulgham family bought 5 contiguous plots at Forest Park-The Woodlands in Conroe, Texas, in anticipation of the death of Mrs. Fulgham's mother from terminal cancer. They hoped to bury other family members in that space as the need arose. When Mrs. Fulgham's mother died in 2005:

"Immediately we encountered the shock of our life. Michelle [the cemetery staffer] asked us why we had purchased 5 plots with 3 in one location and 2 in another. We immediately advised her that we had not and that all plots were in the same location . . . the lots we had identified as the final resting space for my wife and me were solid and one was now occupied . . . Michelle Koonce then added salt to the wound by 'justifying' the mistake and proposed plot swap advising that the chances of our daughters being buried with us would be slim anyway and they would probably be buried with their husbands someday."

- In 2004, an Oklahoma woman wrote to FCA:

"My parents purchased companion graves, and being a veteran, they have a granite marker with bronze plaques. My father died 3/12/04, and just the day before yesterday, the manager of the cemetery, which is now a SCI property, informed me my father was buried in the wrong plot; the plots my parents purchased are just west of where my father and his monument are. It should be noted that my parents purchased everything about 10 years ago. They had their marker put there . . . and visited it many times together over the last decade or so."

- A woman from San Diego, California, wrote about her experience at an SCI-owned cemetery:

"My mother and father were given a certificate of ownership to a cemetery plot by my step-grandfather in 1984. At the time, they were told that it was grave #3 (also on the certificate) and that the grave was 'double deep' for both of them. Upon returning to the mortuary years later, my parents and my grandfather were informed their plot was now single deep. When we arrived back at home we realized that the woman that had literally snatched the certificate out of my mother's hands to 'check on it' had actually WHITED out the '#3' and had typed a #2 over it. When we called back, we were told it was always grave #2, as someone else is in grave #3????

FCA has several more complaints of this nature in our files. These outrages aren't restricted to one cemetery company either. A woman from Louisiana wrote to us in 2005:

"The cemetery where my parents purchased two crematory niches in 1990 has sold one of the niches and interred another person in my mother's niche . . . We were notified of this situation recently and advised that they [the cemetery] would give her a good deal on another situation."

A widower from Virginia wrote to us in 2003 to discover the cemetery had moved his wife's body at the behest of the woman's father, but with no notification to the widower:

"My deceased wife was buried in April of 1984. I was two years out of high school; she was one year out. The sudden death shocked us all . . . The cemetery she was buried in donated the burial plot to me, which was a great help to my financial being. I would visit the gravesite often. I was remarried in 2000, and I still visited the gravesite with my new wife, once a year. Well, we went to the gravesite last year and I could not find it anywhere. Jokingly, I said, 'Someone has moved her.' After further investigation with the cemetery, her father who lives hours away paid the cemetery to move her. He also purchased additional plots beside her. NO authorization by me was given to anyone to move her, nor was I contacted at any time."

Prepaid Burials — More Than \$1 Billion Missing and No Federal Oversight

While the nation's attention has been focused on the Wall Street meltdown and the thousands of Americans who lost their retirement, another financial disaster is chasing some Americans beyond retirement and right into the grave. Between 25 percent and one-third of all funerals performed annually are prepaid. The state of Texas alone has more than \$2 billion in prepaid insurance and trusts, money paid by 840,760 citizens for their eventual burials.⁶

⁶ This information was provided to FCA in 2003 by the Texas Department of Banking. Since the amount of money in prepaid insurance and trust funds has grown almost every year in Texas since the state began tracking this data in 1985, it's likely the current total is even higher.

**Funeral Consumers Alliance Testimony Before the House Commerce and Energy Committee,
Consumer Protection Subcommittee, July 27, 2009, Chicago, Illinois**

Yet there are no federal standards for the safekeeping of prepaid funeral or burial funds. If you live in New York State, the law says funeral homes must deposit 100 percent of your money into an account at a financial institution. If you move or change your mind, you're entitled to a full refund, with interest. New Jersey's laws are very similar. But if you live in Florida, funeral homes and cemeteries need deposit only 70 percent of the money you paid toward *services* and a fraction of what you prepaid for *merchandise* such as caskets and vaults. If you move or change your mind, the company can keep about half of everything you invested for your funeral and burial, even though they've given you nothing. It's legalized robbery. Among the other states it's a crazy-quilt of loose regulations that permit insane accounting practices such as considering coffins "delivered" to consumers, and non-refundable, as soon as the company hands you a receipt for a prepaid box.

Even in states with tougher prepaid deposit laws, scofflaws are robbing the bank and skipping town before regulators know what's happening. More than a billion dollars of Americans' hard-earned money has been stolen or misused by prepaid burial companies in the past three years:

- **National Prearranged Services** — This now bankrupt network of funeral homes, cemeteries, and life insurance companies is in receivership in Texas after regulators charged the companies with skimming funds from consumers' life insurance policies and running a Ponzi scheme to get more prepaid buyers on the treadmill. Special Receiver Donna Garrett found the company had **\$987 million in negative equity**. The NPS breakdown affects more than **200,000 families** in at least **19 states**, and hundreds of funeral homes.
- **Oil speculator Clayton Smart, owner of cemeteries and funeral homes in Tennessee and Michigan, sits in jail charged with stealing at least \$70 million in cemetery trust funds** — Smart shocked 13,500 Tennessee families by announcing his Forest Hill cemeteries and mortuaries wouldn't honor their original prepaid contracts. "I wouldn't have bought the business if I thought I'd have to honor those contracts," he told the press. Tennessee officials accuse him of failing to report \$21 million in prepaid money to the state. Michigan alleges he stole \$70 million from the trust funds at his 28 cemeteries in that state.
- **The Illinois Funeral Director's Association stands accused of misusing prepaid funeral insurance policies bought by 40,000 Illinois consumers**. Incredibly, the IFDA is alleged to have bought life insurance policies on member funeral directors intended to pay out the cost of prepaid funerals as consumers needed them — provided the funeral directors die fast enough for IFDA to collect the money. The *Springfield State Journal-Register* reports:

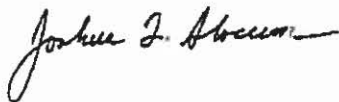
"In short, insured funeral home directors and IFDA insiders had to die before any gains were realized, and plaintiffs in the lawsuit against IFDA say insured parties didn't die fast enough to cover funeral expenses for more than 40,000 state residents who bought pre-need contracts. The fund's value was written down by \$59 million last fall, and funeral home directors who are suing IFDA say Merrill Lynch, which has replaced IFDA as the fund's trustee, is surrendering the policies for cash value, with losses approaching \$100 million."

These are the biggest scandals, but they are hardly the only ones. A week doesn't go by without news of \$100,000 here, \$800,000 there, going missing from prepaid cemetery and funeral funds across the country. For decades, cemetery special interests have called preneed regulation—or any cemetery regulation at all—a “state’s rights” issue. Consumer protection and financial accountability cannot be left to the whim of the states, especially when they’ve demonstrated abject failure in protecting the money our parents and grandparents have put aside for their final arrangements. It’s decades past time for federal standards for cemeteries and prepaid funeral and burial money.

FCA urges Congress to pass meaningful legislation which would, at a minimum:

- **Bring all death-related businesses under the FTC Funeral Rule, and codify the Rule**
- **Create national minimum standards for state regulation of cemeteries**
- **Require 100 percent deposit of all prepaid death service money, and give consumers the right to a full refund or transfer**

Respectfully submitted,



Joshua Slocum
Executive Director
Funeral Consumers Alliance, Inc.