

Wisconsin Department of Safety and Professional Services

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WISCONSIN FUNERAL DIRECTORS EXAMINING BOARD CONSUMER'S GUIDE TO PRE-PLANNING A FUNERAL

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Introduction

For many people, pre-planning a funeral for a relative, friend, or one's self makes good sense. People often have different reasons for making these plans. Some, for instance, have financial reasons for doing so. Others choose to make advance arrangements in order to ease the burden on their families. While there are certainly a wide variety of reasons for pre-planning, all consumers should have as much information about the different options that exist before making any final decisions. This booklet is designed to provide information to consumers so that they can make well-informed decisions about the appropriateness of pre-planning a funeral.

What Options Do I Have?

There are two primary ways people make "prearrangements." Until recently, the most common way was to meet with a local funeral director, choose the goods and services that you wanted, and make a monetary deposit into an interest bearing-trust account. This method is known as **bank trusting**. Consumers may put as much money into the trust as they wish, unless they are under certain medical assistance restrictions (Please consult Wis. Stat. § 49.47(4)(k) for further information if you are receiving medical assistance). All payments made under this type of agreement, along with any interest or dividends, must remain in trust until death or until the consumer makes a written demand for the release of the funds. Under current law, the first \$3000.00 paid under the agreement by **each depositor** may be made irrevocable. This means that multiple individuals may contribute to a burial agreement for one beneficiary. After death, any excess funds that remain are typically returned to the decedent's estate, but individual burial agreements may provide otherwise. Be sure to read each agreement carefully in order to understand exactly what it provides.

The second method of pre-planning involves insurance. Under this type of arrangement, a consumer may meet with *either* a licensed funeral director or an agent of the funeral home for the purpose of choosing funeral goods and services. These plans are then funded by the proceeds of a **life insurance** policy. Many different disclosures must be made at the time of purchasing insurance-funded burial agreements and those are outlined below.

How Do I Terminate a Burial Trust?

Occasionally, consumers choose to terminate burial trusts they have established. In order to terminate an existing trust, you must provide written notice to the beneficiary and the funeral director. The funeral director, in turn, should then release those funds to you, less any penalty the bank may impose. Funds that have been made irrevocable may not be subject to release.

Consumers should contact their local medical assistance office **and** their social security office to determine whether their medical assistance benefits or their supplemental security income will be affected if they terminate a burial trust.

If you choose to terminate your burial trust and use the funds to finance an insurance-funded burial agreement, the funeral director, owner of the funeral establishment, or agent who sells it to you must provide written notice of the change to the Funeral Directors Examining Board. The written notice must disclose **all** of the following:

- Name of the person for whom the trust is intended
- Date the original trust agreement was made
- Name of the funeral home originally designated on the trust
- Name of the financial institution where the trust funds have been held
- Current value of the trust
- Name of the life insurance company issuing the policy
- Name of the agent who sold the life insurance policy
- Name of the funeral home that will be designated as the beneficiary

A consumer may also have an **unfunded** burial plan. In that circumstance, a consumer meets with a funeral director and chooses the desired funeral goods and services, but does not put any money down. Instead, the funeral director keeps the arrangements on file so that they can be implemented upon death.

Wisconsin Department of Safety & Professional Services

What Disclosures Must Be Made?

A burial agreement that is funded with the proceeds of a life insurance policy must be in writing and must contain *all* of the following disclosures:

- **Name of the funeral home and the insurer**
The agreement must identify which funeral home will be used to provide the funeral services and merchandise. It must also identify who the insurer is and what type of insurance policy is being used to fund the agreement.
- **Nature and extent of any price guarantees for goods or services**
Each burial agreement must also explain what, if any, price guarantees exist with respect to the funeral merchandise or services. If any other guarantees exist, those too must be disclosed in the agreement.
- **Effect of changing the assignment of the policy proceeds**
Burial agreements must contain a provision which identifies what will occur in the event a consumer changes the assignment of the policy's proceeds, changes the beneficiary designation, or changes the use of the proceeds.
- **Failure to make premium payments**
Each agreement must include a provision which outlines the penalties a consumer will incur if he or she fails to make the necessary insurance premium payments.
- **Effect of canceling or surrendering the insurance policy**
All burial agreements must also explain what will occur if a consumer cancels or surrenders the insurance policy.
- **Statement of funeral goods and services**
Every burial agreement must contain a statement which itemizes the specific goods and services a consumer has selected. The price of each item or service must also be disclosed on the statement. In addition, the statement must note whether those prices are guaranteed at the time the burial agreement is made or whether the prices will be determined at the time of need. A funeral home **may** guarantee the price of certain services and merchandise, such as caskets and outer burial containers. However, cash advance items which typically include opening and closing costs of a grave, honorariums for clergy or music, obituary notices, flowers, monuments, luncheons, death certificates, and certain transportation costs, **may or may not** be guaranteed by a funeral home. **If the price of an item is guaranteed, then no additional payments will be necessary at the time of death.**

Of course, not all burial agreements guarantee the price of funeral goods and services, although the growth potential of individual insurance policies may cover the increase in costs over time. For example, assume you choose the "Model A" casket which currently costs \$3,000.00. At the time of death, however, that same casket now costs \$3,500.00. If your insurance policy has appreciated in value over time, then the proceeds may be sufficient to cover the cost of the casket. On the other hand, if the proceeds are insufficient, then a different casket may have to be selected or the difference in price will have to be paid. **Remember, additional payments may be necessary at the time of need, depending on the nature of your individual burial agreement.** Furthermore, if different merchandise or services are selected at the time of need, then additional payments may also be required.

- **Excess funds/underfunding**
If there are excess funds left following a funeral, the burial agreement must indicate what will happen to them. The funds must either revert to the decedent's estate or to a named beneficiary. Likewise, a provision must also be included about what will occur in the event the policy proceeds do not cover the full amount of the desired goods or services.
- **Geographic and other restrictions**
If the funeral home you choose has certain geographical restrictions that relate to the delivery of merchandise or the performance of services, those must be disclosed. The burial agreement must also disclose what will occur if the operator of the funeral home is unable to perform if, for example, the funeral home goes out of business. Any other restrictions which relate to delivery or performance under the agreement also have to be disclosed.
- **Commissions and other compensation**
Burial agreements must also disclose whether the sales agent is receiving a commission or other form of compensation for selling or soliciting an insurance-funded burial agreement. The agreement also must disclose whether any other people are receiving a commission or another form of compensation.

Who Can Contact Me?

A funeral director, an owner of a funeral home, or an authorized agent of a funeral home may contact you by telephone to sell or solicit an insurance-funded burial agreement. However, before the telephone call can be placed, a written notice must first be sent to your home at least ten days in advance of the call. The notice must identify *who* will be calling, the *name of the person or entity* on whose behalf the call is being made, and either a *telephone number or address* at which that person or entity may be contacted. In addition, the notice must also identify the specific reason for the call and provide a telephone number that the consumer may call to request that no call be made.

If you are contacted by telephone, be aware that the solicitor must immediately tell you his or her name, the name of the entity for whom they are calling, and a telephone number or address at which the person or entity may be contacted. They must also place your name and number on a *do-not-call list* if you request it.

Wisconsin Department of Safety & Professional Services

What Requirements Exist for Funeral Policies?

Every life insurance policy that is sold in conjunction with a pre-need funeral plan must meet certain requirements. Those requirements include the following:

- The policy must be an individual whole life, a group whole life, or an annuity policy.
- If a consumer fails to make a required installment payment within 30 days, the insurer must provide written notice to the insured and to the insured's designee.
- Death benefits which exceed the actual costs of burial expenses must be paid to the insured's beneficiary or to the insured's estate.
- A consumer may return a funeral policy within 30 days of purchase and all premium payments must be refunded to the policyholder.

What Happens If There's a Problem?

If you believe the required disclosures have not been made, that there is some irregularity involving either a burial agreement or an insurance policy, or if you have other questions or concerns, contact the Wisconsin Funeral Directors Examining Board or the Office of the Commissioner of Insurance to file a complaint or to request further information.

A funeral director, an owner of a funeral home, or an agent **cannot** contact anyone in a hospital, health care facility, elderly home, or similar establishment **unless** the prospective purchaser or the purchaser's authorized representative expressly requests the contact. Likewise, someone whose death is imminent or appears to be imminent may not be contacted unless specifically requested by that individual or an authorized representative.

In no case may anyone use an automatic telephone dialing system, an artificial voice, or a prerecorded voice to sell or solicit burial agreements funded by life insurance by telephone.

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Section entitled "Statement of funeral goods and services" was revised in August 1998.

Section entitled "What options do I have?" was revised in December, 2000.

Section entitled "What requirements exist for funeral policies?" was revised in August, 2005.