

# DO THE RIGHT THING

By Bonnie McCullough

*Bonnie McCullough, executive director of the New York State FDA, has the solution to AARP Magazine's recent article, "R.I.P. Off, a funeral-industry scandal that's fleecing thousands of Americans." Will industry leaders muster the strength to do what is right, or trot out yet more CEUs, slogans and supplementary designations?*



**T**he eye-catching yet disappointing headline was only the beginning of a five-page article in the January/February issue of *AARP Magazine* highlighting preneed abuses as well as lax laws throughout the country. The article discusses fraud and theft both small and sweeping — from the multi-million dollar Clayton Smart scandal to the simple but sordid casket switches after a death occurs. The writer discusses the lack of portability, ability to cancel a contract and simple consumer disclosures in many states throughout the country. It strongly damns a lackadaisical effort to regulate preneed at the federal level and in many states.

Cited in the article is a recent study conducted by AARP that shines a bright light on what is happening. The most telling statistic to me is not that 23 percent of those surveyed have made prepayments on funerals, but that 40 percent of those consumers *have no idea where their money was deposited* (the second statistic is found in the study but not the article).

In the section of the article that discusses lack of federal and state regulation, we should take note that a few lines are devoted to discussing the strength of New York laws:

"The resulting lack of federal oversight leaves regulation of preneed policies up to the states. A few take a tough stance. New York, for example, requires funeral directors to deposit 100 percent of prepaid money in interest-bearing trusts that are refundable to customers at any time. The only exception: irrevocable contracts, designed to shield the assets of consumers who are spending down their assets to qualify for Medicaid. Such contracts are not refundable in New York but can be transferred to another funeral home. New York's tough oversight, though, is an exception."

I have not yet seen a reaction to the article from NFDA or other state associations, or even a groundswell of outrage from our members.

That is because while the tone and tenor of the article is disheartening, the facts and figures are true. While the article spends a lot of ink highlighting abuses, it spends very little on the vast majority of prefunded funerals that are done right. (Being that AARP is an organization dedicated to protecting senior citizens, the article is written with that goal.) In fact, AARP has long directed their members not to prefund their funerals.

It is AARP that is warning its members about preneed, however, and we as a profession and business must acknowledge there is something to what they say. And that is the crux of this message.

### Have seen it coming

For over 25 years, many in funeral service have seen this coming, but they have been in part voices in the wilderness because of the enormity of getting everyone throughout the entire country on the same preneed page. There's a lot of blame to go around, be it lack of organizational leadership, third-party insurance and trust companies, or funeral firm owners and managers themselves. But at the end of the day, unacceptable and indefensible preneed practices have become the "accepted standard" in too many states, including:

1. Not refunding money with principal and interest when the consumer asks for it. (Many states do not acknowledge that this is consumers' money rather than funeral homes' money.)
2. Selling preneed insurance policies that name the funeral home as the beneficiary. (That's just the beginning of the problems with preneed insurance.)
3. Not allowing funds to be portable to any funeral home anywhere. New Yorkers understand this one well, since Florida is a particular culprit they deal with often.
4. Not disclosing to consumers where their money has been deposited.


We are acknowledged to have the best laws in the nation. Yet you are forced to operate with articles like AARP's appearing with depressing regularity.

5. Not disclosing to consumers activity in their account, even on a yearly basis. What interest was paid, what fees were charged? How much was taken out at the beginning? One of the most upsetting comments I once heard regarding this type of consumer disclosure was, "Oh, they don't need to know all that." Good grief.
6. Not trusting 100 percent of the dollars paid by the consumer.
7. Charging a cancellation fee.

My basic point is this: These practices, thankfully not part of our culture in this state, are absolutely unacceptable. Yet they have become institutionalized as acceptable in too many areas.

New York funeral directors must be so frustrated. You have certainly taken a strong stand here, working with government to enact meaningful laws that work both for our consumers and us. We are acknowledged to have the best laws in the nation. Yet you are forced to operate with articles like AARP's appearing with depressing regularity.

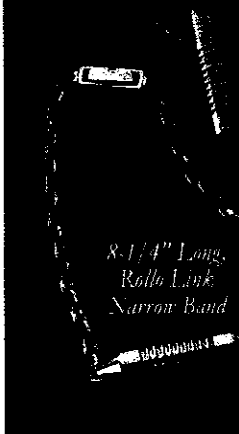
And although our association has accomplished so very much in this critical area, we are hardly in a position to change laws in other states or on the federal level.




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## Federal regulation needed

The time for the thousands of truly fine funeral directors and the associations that represent them to continue to “go along with the program” must end. Preneed has a key place in funeral service, yet the actions of some around the country are chipping away at the credibility of the business. It is time to seriously consider what can be called “basic” regulation at the federal level, regulation that does no more than address the unacceptable practices outlined above.

Why the need for federal action? Unseemly practices have become so entrenched in some states that coming up with the political will to change them is near impossible. Model state laws (sort of a guidance to states on what would be good legislation should they choose to enact it), such as NFDA has crafted on preneed, can be helpful. But absent the political environment necessary to put them in place, usually end up going nowhere. When it comes to preneed, they are simply too little and too late.

I recognize the difficulty for NFDA to move forward with strong federal legislation, as there would be an outcry and threats of pulling membership and other such hyperbole. It would take clear-eyed, focused leadership that could look past the screams, hair-pulling and wringing hands. I believe NFDA has such leadership in both their staff and volunteer ranks.

I believe it is leadership that can see what is best for the consumer is what is best for funeral service. As an entire profession, let's not just give that statement lip service, let's put action behind words and meaning behind actions.

I was once told that it is never easy to do a hard thing.

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It would have been impossible just a few years ago to even seriously consider federal legislation, but I believe it is possible for leadership to muster the imperative for it to happen now. Leaders in funeral service have the ability to take a few steps back from “this is how we've always done it and it's okay,” and really see this through the eyes of consumers, senior organizations and even many of their own colleagues. The thought that somehow the current preneed system in far too many areas of this country is profitable — which is itself very questionable — does not in any way make this kind of adverse publicity worth it. It's like tripping over dollars to pick up pennies.

Plus, forgive my pejorative writing, but it's wrong. It is just plain, old-fashioned wrong.

No matter what laws are enacted, there will always be criminals, no doubt. But wouldn't it be nice if that AARP article had only focused on criminal activity instead of including the distressing laws that legally sanction and protect ways of doing business that are clearly not in the best interests of our elderly consumers?

State and national associations can work tirelessly to provide education and services and “stuff” for our members, but if we are collectively unable to stir up the courage to do the right thing regarding public policy, then we have ceded control of the future of this profession to others, whether we realize it or not.

It is never easy to do a hard thing. But this time, it beats the alternative in ways nearly impossible to imagine. *MM*

*Reprinted from the NYSFDA's January newsletter with permission.*

## EDITOR'S COMMENT...

Kudos to Bonnie McCullough for her straightforward statement regarding prepaid funeral arrangements. While she diplomatically acknowledges the National Funeral Directors' Association (NFDA) and their potential helpfulness with “sort of a guidance to states on what would be good legislation should they chose to enact it” — it falls far short of her important and necessary aggressive measures to clean up the preneed security mess universally. NFDA shows no clout with leadership other than inconsequential matters of self-preservation. The greatest favor NFDA could do on behalf of ethical and professional death care is to “Say goodnight, and go back to sleep.”

— Ron Hast

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