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## New York pre-need funeral trust system sets example

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**THE STATE JOURNAL-REGISTER**

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SPRINGFIELD — In New York state, funeral directors believe in boring.

Unlike Illinois, where pre-need funeral trust funds have been spent on complex life insurance policies and some money ended up in the stock market, New York funeral directors there say they have no fancy investments.

There are no astronomical returns, no dizzying losses, no salesmen pitching funeral directors on can't-miss investment schemes in hopes of collecting commissions.

In New York, pre-need funeral trusts are funded by FDIC-backed certificates of deposit. It is the only state that doesn't allow pre-need funeral trusts to be funded with life insurance. And every penny consumers give to funeral directors must be put into trust.

Not so in Illinois, where a pre-need trust that is supposed to pay for funerals for more than 40,000 residents is tens of millions of dollars out of whack. The fund's value was written down by \$59 million last fall, and the Illinois Funeral Directors Association is facing lawsuits from funeral homes and consumers who allege fiscal mismanagement and flat-out greed. The fund is heavily invested in life insurance policies on funeral directors. Rather than being fixed, payouts depend on the performance of investments made with premium money.

"What we have is very simple here," says Bonnie McCullough, executive director of the New York Funeral Directors Association. "It all comes down to the same old trite cliché: 'If it's too good to be true, it's too good to be true.'"

While pre-need trust funds in Illinois and elsewhere have tanked, putting funeral directors on the hook for millions of dollars in losses, funeral directors in New York have never lost money on a trust fund of more than a half-billion dollars that is pledged for about 70,000 funerals. The rates of return don't sizzle but have been steady between 3 percent and 4.5 percent a year.

In Illinois, funeral trust administrators are allowed to take 25 percent of a trust's earnings in fees. In New York, management fees are capped at .0075 percent of the principal, so there's no incentive to maximize returns by making risky investments.

While Illinois allows funeral directors to keep 5 percent of the money upfront — and up to 15 percent of the cost of a burial vault — New York requires that all money from consumers be invested in trust. Any interest earned also belongs to contract purchasers. If no services are provided, funeral directors in Illinois can still keep \$300 or 10 percent of payments from consumers, whichever is less.

"You're stealing from a dead person — even though they're alive, you're stealing from them," says D.J. Davis, who owns a funeral home near Carbondale. "It's just like grave robbing. ... The business practices are just not right with this profession."

Davis says every penny from contract purchasers should be invested in trust, and funeral directors should not be allowed to take anything upfront or keep money if services aren't provided. He said he's lost money to a competitor who keeps \$300 when pre-need contract purchasers switch to his funeral home.

But Davis is up against some powerful interests in a state where funeral homes and funeral trade groups have made more than \$1 million in campaign contributions since the mid-1990s.

Consumers will suffer if funeral directors and cemeteries are barred from taking a percentage of deposits, warns Harvey Lapin, general counsel for the Illinois Cemetery and Funeral Home Association.

Lapin cites a 1979 letter from Federal Trade Commission attorneys who told Illinois lawmakers that barring contract sellers from keeping percentages of sale proceeds would inhibit competition.

Roughly half the states require contract sellers to deposit all money from consumers in trusts or other investment mechanisms, but consumers in states such as Nevada, which allows sellers to keep 30 percent of money from contract purchasers, have more competition, Lapin said.

Contract sellers need a percentage of money upfront to pay for advertising and other expenses, he said. Otherwise, pre-need funerals are sold almost by accident, when consumers seek out funeral homes instead of the other way around.

"It absolutely stops pre-need selling," Lapin said.

But McCullough says simple is best.

"We don't believe commission-based selling has any place in the funeral business," McCullough said. "You wind up in a super-heated environment. There's not enough money to split it so everyone gets what they need."

"The only lobbying we've had against our laws is from the insurance industry, which would like to bring their products into New York."

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