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Doing the FTC's Homework on Minimum Refunds

Unlike the investment business where past performance is no guarantee of future results with history as a guide, I can guarantee you at this very moment some cash-strapped FD is in the process of diverting preneed funds for his personal use, devising what he thinks will be a failsafe cover up, or swearing to himself the loan is only temporary and will be paid back ASAP — all while our friends at the **Federal Trade Commission** worry their pretty little heads over whether he distributes his GPLs in a timely fashion.

Clayton Smart and Mikocem.

Direct Casket of California.

ACA Assurance.

What's wrong with this picture? Nothing a serious dose of meaningful federal oversight couldn't fix; if only the so-called regulators could stop congratulating themselves over the decade-plus of meaningless FROP enforcement and admit the elephant they invited into the parlor is now leaving big piles of poo stinking to high heaven.

Eight years ago, 4,300-plus funeral contracts originating from one funeral home family with two locations in Oregon were discovered to be un- or under-funded to the tune of \$3.5 million. In Wyoming, a high profile FD admitted he regularly skims all the interest off consumers' trust accounts and if too many go at-need in one year, he'd be bankrupt.

Reputations are a terrible thing to waste yet it's even worse when the misdeeds of the minority (let's hope) are projected onto the industry as a whole. When was the last time you heard honorable and trustworthiness used to describe military contractors, subprime mortgage brokers, or commission-driven salespeople? And how long are you willing to bear the brunt of consumer and media backlash because the funeral-friendly state laws you and your colleagues wrote to protect yourselves are increasingly identified as anti-consumer?

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There is no central intelligence agency tracking, updating, and comparing one state's regulations against all others when it comes to preneed trust regulations. To the best of my knowledge and after countless hours of research, only nine states require 100 percent deposit and return of all principal plus interest when a purchaser wants to cancel or move a contract. At least 10 other states, six of which require 100 trusting, are silent about the return of monies or leave it up to individual sellers to address by contract.

The remainder of the states are a mixed bag; some require 100 percent trusting but charge a cancellation fee, others base their cancellation policies on whether a contract is guaranteed or not, and still others permit FDs to withhold forever a portion of a consumer's deposit as well as some or all of the interest it earned.

The relative ease with which unscrupulous operators can steal funeral trusts makes it imperative stronger regulations be written and enforced. And because the majority of states have found themselves unwilling and/or unable to enforce the regulations they themselves have written, it can't be too soon before the federal government steps in — for the good of the industry as well as consumers.

The following table does the FTC's homework for them. It classifies states as Good, OK, Bad, and Ugly when it comes to the minimum

refund a consumer may receive by law upon canceling a long-standing revocable funeral trust (column 3). Every effort has been made to substantiate and verify the following information but, as with many preneed regulations, interpretations often vary.

As you will see, some states are far better than others in terms of consumer protection when a funeral trust is cancelled. Residents moving from the GOOD states will be motivated and eager to create another prearrangement. Individuals from the OK, will generally think preplanning and prefunding is a pretty good idea and may even come to you before you get to them.

New citizens from the BAD states are likely to be wary, hesitant, and markedly resistant. The UGLY? Forget it! Once burned, twice shy. These folks are the least likely of all to prearrange a funeral service let alone fund it. If you live among the BAD and you've returned only what is required by law on cancellation, I'll bet your ears are ringing right now. Someone, somewhere, is saying something terrible about you, your funeral home, and the entire funeral profession.

Next week, a closer look at how and why states arrive at their regulatory conclusions and what impact they have on many poor unfortunates who need or want to cancel their contracts.

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Who Is Protected?

	Deposit required	Minimum refund		Deposit required	Minimum refund
THE GOOD			West Virginia	90%	P+I less 10 %
Kansas	100%	Principal + Interest	THE BAD		
Kentucky	100%	P+I	Alabama	75/60/100%	By contract
Louisiana	100%	P+I	Alaska	100%	Not addressed
Minnesota	100%	P+I	Arizona	85%	Not addressed
New Jersey	100%	P+I	Arkansas	100%	Principal only
New York	100%	P+I	California	100%	90% of principal plus I
North Dakota	100%	P+I	Colorado	75%	By contract
Tennessee	100%	P+I	Delaware	100%	By contract
Wisconsin	100%	P+I	Georgia	100%	Principal only
THE OK			Idaho	85%	By contract
Connecticut	100%	P+I less 5%	Iowa	80%	By contract
Florida	70/100/110%	P+I/P less 10% for delivery	Maine	100%	By contract
Illinois	95% funeral/85% vault	P+I less 10-25% (\$300 max)	Missouri	80%	By contract
Maryland	100/80%	P+I less 20% of casket	Montana	100%	Not addressed
Massachusetts	90%	P+I less 10%	New Hampshire	100%	Not addressed
Michigan	100%	P+I less 10%	Pennsylvania	100%	By contract
Nebraska	85%	P+I less 15%	South Dakota	85%	By contract
North Carolina	90%	P less 10% + I	Texas	90%	Principal only
Ohio	100%	P+I nonguaranteed; or P less 10% + I less 20% guaranteed	THE UGLY		
Oklahoma	90% guar/100% non	P+I	District of Columbia	-0-	-0-
Oregon	90% guar; 100% non	P less 10% + I guaranteed/ P+I non	Hawaii	70%	P less 30%
Rhode Island	100%	P+I less 2.5% (\$200 max)	Mississippi	50%	P+I
South Carolina	100%	P+I less 10% interest in final year	Nevada	75%	P less 25%
Vermont	100%	P+I less 5%	Utah	100%	P less 25%
Virginia	100%	P+I guar/P+I less 10% non	Wyoming	100%	P less 20%
Washington	90%	P+I less 10%	THE INDIVIDUALS		
			Indiana	100%	Contracts are irrevocable
			New Mexico		Funeral trusts are illegal