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DEBORAH SEYLLER
CIRCUIT COURT CLERK
KANE COUNTY, IL

IN THE CIRCUIT COURT FOR THE SIXTEENTH JUDICIAL CIRCUIT
KANE COUNTY, ILLINOIS

VIRGINIA H. DUNKLE, and MARIA DUSEMBERY for the benefit of DR. LUDIMILLA PETRAUSKAS individually and on behalf of all others similarly situated	**Civil Action No.:** '08 L 682
Plaintiffs,	**Judge:** JUDITH M. BRAWKA
v.	
IFDA SERVICES INC, an Illinois corporation, ILLINOIS FUNERAL DIRECTOR'S ASSOCIATION, an Illinois corporation,	**Jury Trial Demanded**
Defendants.	

NOTICE
BY ORDER OF COURT THIS CASE IS HEREBY SET FOR CASE MANAGEMENT CONFERENCE BEFORE THE ABOVE NAMED JUDGE ON FEB 19 2009, AT 9:00 A.M. P.M.
FAILURE TO APPEAR MAY RESULT IN THE CASE BEING DISMISSED OR AN ORDER OF DEFAULT BEING ENTERED.

CLASS ACTION COMPLAINT

Plaintiffs, Virginia H. Dunkel and Maria Dusembery for the benefit of Dr. Ludimilla Petrausksas, individually and on behalf of all others similarly situated, bring this action against the Defendants, I.F.D.A. Services Inc., and the Illinois Funeral Directors Association, and allege the following:

NATURE OF THE CASE

1. There is a large market for the purchase of preneed goods and services which include funeral and burial services. The sale of funeral and burial services on a preneed basis is governed by the Illinois Funeral or Burial Funds Act, 225 ILCS 45/1 *et seq.* Under this statute, when a consumer pays for the preneed contract and chooses to have the contract funded by a trust arrangement the consumer's funds are to be held in trust, by a duly authorized trustee, until the consumer withdraws the funds or the funds are used for the funeral and burial services.

2. Close to 50,000 consumers have purchased preneed funeral and burial services through the Illinois Funeral Directors Association and its members only to have their funds managed by a "trustee", Defendant I.F.D.A. Services, Inc., who was without authority to act as a trustee under state law. In addition while serving as "trustee" I.F.D.A. Services, Inc, has severely impaired the liquidity of the trust by mismanaging the funds held in trust for the benefit of Illinois consumers.

3. In early 2006 the Illinois Office of the Comptroller began an investigation I.F.D.A. Services Inc. and the IFDA Pre-Need Trust to protect Illinois consumers who purchased pre-need goods and services and to prevent the potential collapse of the funeral services industry. This investigation was joined by the Department of Financial and Professional Regulation, Banking Division, and recently resulted in I.F.D.A Services Inc. voluntarily relinquishing control as Trustee over the IFDA Pre-Need Trust which held the funds in trust for the benefit of the Illinois consumers who purchased the preneed funeral or burial services.

4. This Class Action asserts claims for violations of the Illinois Consumer Fraud and Deceptive Business Practices Act, the Illinois Funeral or Burial Funds Act, Breach of Contract and Breach of Fiduciary duties.

5. Plaintiffs brings this action on behalf of themselves and a Class or similarly situated consumers who contracted with the Illinois Funeral Directors Association and/or I.F.D.A. Services Inc. for preneed funeral and burial services and their funds were held in trust with I.F.D.A. Services Inc. acting as trustee of the IFDA Pre-Need Trust.

6. Plaintiffs, for themselves and for the Class, seeks compensatory damages for the injuries caused by Defendants unlawful conduct, and such additional monetary relief as is allowed under the common law of Illinois and the Illinois Consumer Fraud and Deceptive

Business Practices Act including, punitive damages, reasonable attorney fees, court costs, and any other relief which the court deems proper.

JURISDICTION AND VENUE

7. This Court has personal jurisdiction over Defendants Illinois Funeral Directors Association, and its wholly owned subsidiary I.F.D.A. Services Inc. as these Defendants are Illinois corporations with their principal place of business in Illinois.

8. Venue is proper in Kane County because a substantial part of the events giving rise to Plaintiffs's claims occurred in this County. Defendants, individually or through their agents have transacted business and their affairs in this County and have committed the acts complained of in this County.

9. All members of the Class are residents of Illinois.

10. All claims, on behalf of the Class Plaintiffs and the Class, are brought exclusively under Illinois law.

PARTIES

11. Plaintiff, Virginia H. Dunkle is a resident of Aurora, Illinois. On or about, November

12. On November 12, 1995 Plaintiff Dunkle purchased preneed funeral or burial services at Healy Und. Co.. Plaintiff Dunkle paid $ 6812.69 under the agreement and these funds were placed into trust in the IFDA Pre-Need Trust with I.F.D.A. Services Inc. acting as "trustee".

10. Plaintiff, Maria Dusembery is a resident of Geneva Illinois and purchased a preneed funeral or burial services on or about April 21, 2008 at Yurs Funeral Homes Inc. for the

benefit of her mother Dr. Ludimilla Petrauskas who resides in Kane County, South Elgin. Plaintiff paid $12,706.19 under the agreement and these funds were placed into trust in IFDA Pre-Need Trust with I.F.D.A. Services Inc. acting as "trustee".

11. Defendant, Illinois Funeral Director's Association is an Illinois not for Profit Corporation with an address of 215 South Grand Avenue West, Springfield, Illinois 62704. Illinois Funeral Director's Association is a licensed seller of preneed funeral and burial services and a sponsor of the IFDA Pre-Needs Trust.

12. Defendant I.F.D.A Services, Inc. is an Illinois corporation with an address of 215 South Grand Avenue West, Springfield, Illinois 62704. I.F.D.A. Services, Inc. is a wholly owned subsidiary of Defendant Illinois Funeral Director's Association and served as "trustee" of the I.F.D.A. Pre Needs Trust.

GENERAL ALLEGATIONS

13. The Illinois Funeral Directors Association was founded in 1881 and incorporated in 1934. It established I.F.D.A. Services, Inc. in the 1970's which instituted a program known as the IFDA Pre-Needs Trust. The stated purpose of the program is to provide funeral homes and their clients with a safe, secure program for the administration of preneed burial trust funds which are placed with a qualified fiduciary.

14. It is estimated there are 650 funeral homes that are members of the Illinois Funeral Directors Association.

15. I.F.D.A. Services Inc. has held itself out to the public through its own actions and those of its agents as an entity available to act as a fiduciary in Illinois.

16. I.F.D.A. Services Inc. has accepted or undertaken to perform the duties of a fiduciary as a significant part of its regular business by serving as trustee pursuant to preneed funeral trust agreements with Illinois consumers as beneficiaries.

17. All preneed funeral and burial services agreements sold in the State of Illinois are governed by the Illinois Funeral or Burial Funds Act, 225 ILCS 45/1 *et seq.*

18. 225 ILCS 45/1 provides:

Sec. 1. Payment under pre-need contract. Except as otherwise provided in this Section, *all sales proceeds paid to any person, partnership, association or corporation with respect to merchandise or services covered by this Act*, upon any agreement or contract, or any series or combination of agreements or contracts, which has for a purpose the furnishing or performance of funeral services, or the furnishing or delivery of any personal property, merchandise, or services of any nature in connection with the final disposition of a dead human body, including, but not limited to, outer burial containers, urns, combination casket-vault units, caskets and clothing, for future use at a time determinable by the death of the person or persons whose body or bodies are to be so disposed of, *shall be held to be trust funds, and shall be placed in trust in accordance with Sections 1b and 2,* or shall be used to purchase life insurance or annuities in accordance with Section 2a. The person, partnership, association or corporation receiving said payments under a pre-need contract is hereby declared to be a trustee thereof until deposits of funds are made in accordance with Section 1b or 2a of this Act. Persons holding less than $500,000 in trust funds may continue to act as the trustee after the funds are deposited in accordance with subsection (d) of Section 1b.(emphasis added)

23. Pursuant to 225 ILCS 45/1a-1(6) at the time the consumer enters into the pre-need contract for the funeral or burial services the method of funding the agreement must be disclosed. This disclosure includes whether the pre-need contract is to be funded by a trust, life insurance, or an annuity and the nature of the relationship among the person funding the pre-need contract, the provider, and the seller.

24. Pursuant to 225 ILCS 45/2:

(a) If a purchaser selects a trust arrangement to fund the pre-need contract, all trust deposits as determined by Section 1b shall be made within 30 days of receipt.

(b) A trust established under this Act must be maintained:

(1) in a trust account established in a bank, savings and loan association, savings bank, or credit union authorized to do business in Illinois in which accounts are insured by an agency of the federal government; or

(2) In a trust company authorized to do business in Illinois.

25. The funds deposited by the consumer and held in trust may be withdrawn and the preneeds contract may be revoked by the consumer prior to the death of person whose funeral or burial was prepaid. 225 ILCS 45/4 provides in pertinent part:

Sec. 4. Withdrawal of funds; revocability of contract.

(a) The amount or amounts so deposited into trust, with interest thereon, if any, shall not be withdrawn until the death of the person or persons for whose funeral or burial such funds were paid, unless sooner withdrawn and repaid to the person who originally paid the money under or in connection with the pre-need contract or to his or her legal representative.....

(b) If for any reason a seller or provider who has engaged in pre-need sales has refused, cannot, or does not comply with the terms of the pre-need contract within a reasonable time after he or she is required to do so, the purchaser or his or her heirs or assigns or duly authorized representative shall have the right to a refund of an amount equal to the sales price paid for undelivered merchandise or services plus otherwise earned undistributed interest amounts held in trust attributable to the contract, within 30 days of the filing of a sworn affidavit with the trustee setting forth the existence of the contract and the fact of breach.....

(c) After final payment on a pre-need contract, any purchaser may, upon written demand to a seller, demand that the pre-need contract with the seller be terminated. The seller shall, within 30 days, initiate a refund to the purchaser of the entire amount held in trust attributable to undelivered merchandise and unperformed services, including otherwise earned undistributed interest earned thereon or the cash surrender value of a life insurance policy or tax-deferred annuity.

Accordingly, upon withdrawal or revocation the consumer is entitled to a return of all funds deposited into trust and any undistributed interest earned thereon minus any deductions authorized by 225 ILCS 45/4(a)(c-5), not to exceed $300.

26. Under the Corporate Fiduciary Act, 205 ILCS 620/1-1, *et seq.* a corporation must obtain a certificate of authority to conduct a trust business and it is unlawful to conduct a trust business in Illinois without first having obtained a certificate of authority. 205 ILCS 620/2-4.

27. In addition to the fiduciary duties imposed on a Trustee under the common law, under the Illinois Funeral or Burial Funds Act:

(a) A trustee shall, with respect to the investment of trust funds, exercise the judgment and care under the circumstances then prevailing that persons of prudence, discretion, and intelligence exercise in the management of their own affairs, not in regard to speculation, but in regard to the permanent disposition of their funds, considering the probable income as well as the probable safety of their capital. (225 ILCS 45/4a)

28. 225 ILCS 45/4a(d) further imposes restrictions on use of the investment of Trust Funds and provides:

Trust funds shall not be invested by the trustee in life insurance policies or tax-deferred annuities unless the following requirements are met:

(1) The company issuing the life insurance policies or tax-deferred annuities is licensed by the Illinois Department of Insurance and the insurance producer or annuity seller is licensed to do business in the State of Illinois;

(2) Prior to the investment, the purchaser approves, in writing, the investment in life insurance policies or tax-deferred annuities;

(3) Prior to the investment, the purchaser is notified by the seller in writing about the disclosures required for all pre-need contracts under Section 1a-1 of this Act, and the purchase of life insurance or a tax-deferred annuity is subject to the requirements of Section 2a of this Act;

(4) Prior to the investment, the trustee informs the Comptroller that trust funds shall be removed from the trust account to purchase life insurance or a tax-deferred annuity upon the written consent of the purchaser;

(5) The purchaser retains the right to refund provided for in this Act, unless the pre-need contract is sold on an irrevocable basis as provided in Section 4 of this Act; and

(6) (6) Notice must be given in writing that the cash surrender value of a life insurance policy may be less than the amount provided for by the refund provisions of the trust account

29. Pursuant to 760 ILCS 5/11:

(a) Every trustee at least annually shall furnish to the beneficiaries then entitled to receive or receiving the income from the trust estate, or if none, then those beneficiaries eligible

to have the benefit of the income from the trust estate a current account showing the receipts, disbursements and inventory of the trust estate.

30. I.F.D.A. Service Inc., at all times material hereto, has failed to annually account to beneficiaries of the IFDA Pre-Needs Trust and this failure to account allowed the inappropriate activity alleged herein to go undetected.

29. I.F.D.A. Services Inc., at all times material hereto, has never obtained a certificate of authority to act as trust business.

30. I.F.D.A. Services Inc. submitted an application to form an Illinois Trust Company to the Department of Financial and Professional Regulation, Division of Banking, and said application was denied on May 13, 2008. I.F.D.A. Services Inc. was denied because pursuant to 205 ILCS 620/2-6 the Director of the Department of Financial and Professional Regulation could not find based on the application:

(a) that the proposed capital at least meets the minimum amounts as determined pursuant to this Act including amounts deemed necessary to support the scope of the proposed operations;
(b) that the general character and experience of the proposed management is such as to assure reasonable promise of successful, safe and sound operation; and
(c) that the prior business affairs of the persons who will control the corporate fiduciary or the proposed management personnel, whether as a stockholder, director, officer, or customer, were conducted in a safe, sound manner, and lawful manner.

See Order to Cease and Desist, attached hereto and incorporate herein as Exhibit A.

31. On July 7, 2008 Department of Financial and Professional Regulation, Division of Banking, issued an Order to Cease and Desist to I.F.D.A. Services Inc. finding: 1) I.F.D.A Services Inc. did not have a certificate of authority to conduct a trust business; 2) a deficit may exist in the balance of the trust assets in their custody; 3) there existed a likelihood of substantial harm to the citizens of Illinois in relation to the disposition of the trust assets/funds. See Exhibit B which is attached hereto and incorporated herein.

32. Upon information and belief, a significant deficit does exists in the I.F.D.A. PreNeed Trust as a result of I.F.D.A. Services Inc., paying an inflated rate of return to members of the Illinois Funeral Director's Association on the funds held in trust which was not based on actual market performance. In addition, I.F.D.A. Services Inc. inappropriately invested the funds held in trust in Corporate Owned Life Insurance Polices and otherwise mismanaged the funds held in trust for the benefit of the Plaintiffs and Class Members.

33. At all times material hereto, I.F.D.A. Services Inc. failed to exercise the judgment and care under the circumstances then prevailing that persons of prudence, discretion, and intelligence exercise in the management of their own affairs, not in regard to speculation, but in regard to the permanent disposition of their funds, considering the probable income as well as the probable safety of their capital when it paid members of the Illinois Funeral Directors Association an inflated rate of return on the consumers' funds placed in trust which was not based on market performance and by further investing a portion of the trust assets in corporate owned life insurance policies.

CLASS ACTION ALLEGATIONS

34. Pursuant to 735 ILCS 5/12-801, Plaintiffs bring this action on behalf of themselves and the members of the following proposed Class:

> All Illinois Purchasers who contracted with Illinois Funeral Directors Association and/or IFDA Services, Inc. for trust funded preneed funeral or burial services whose Purchaser's account was open on or after October 1, 2008.

Excluded from the Class are: (i) Defendants, any entity in which Defendant has a controlling interest, and Defendant's legal representatives, predecessors, successors and assigns; (ii) governmental entities; (iii) Defendant's employees, officers, directors, agents and

representatives and their family members; and (iv) the Judge and staff to whom this case is assigned, and any member of the Judge's immediate family.

35. Members of the proposed Class are so numerous that the individual joinder of all absent Class members is impracticable. While the exact number of Class Members is unknown to Plaintiff at this time, it is believed to be close to 50,000 and is easily ascertainable by appropriate discovery because Defendants are in possession of detailed records identifying each and every person that entered into a contract with Illinois Funeral Directors Association and/or IFDA Services, Inc. for trust funded preneed funeral or burial services whose Purchaser's account was open on or after October 1, 2008.

35. There are questions of law or fact common to the members of the Class and such common questions predominate over questions affecting individual members. Among the questions of law or fact common to the applicable proposed Class are:

a) Whether I.F.D.A Services, Inc. was authorized to act as a trustee.

b) Whether the trust funds were properly invested under 225 ILCS 45/4a

c) Whether the trust funds were invested in insurance policies in violation of 225 ILCS 45/4a(d)

d) Whether the Defendants owed fiduciary duties to the consumers

e) Whether the Defendants breached its fiduciary duties to the consumers

f) Whether the Defendants violated the Illinois Consumer Fraud and Deceptive Business Practices Act

g) The duration and scope of the Defendants illegal and wrongful acts.

h) Whether Defendants concealed from Plaintiffs any of its violations as a fiduciary thereby delaying the accrual of any cause of action and tolling of any otherwise applicable statutes of limitations.

37. Plaintiffs claims are typical of the claims of the Class. Plaintiffs and members of the proposed Class all contracted with Defendant Illinois Funeral and Director's Association and/or I.F.D.A. Services Inc. and have had their funds held in trust and mismanaged by Defendant I.F.D.A. Services Inc. Plaintiffs and the members of the proposed Class have all suffered damages as a result of Defendant's common conduct with respect to each Class Member as set forth in this Complaint.

38. Plaintiffs will fairly and adequately protect the interests of the proposed Class. Plaintiffs have no interest adverse to the interests of the members of the proposed Class. Plaintiffs have retained competent counsel who has extensive experience in prosecuting complex Class action litigation and consumer fraud.

40. The questions of law or fact common to members of the proposed Class predominate over any individual questions affecting only individual Class members. Each of the members of the proposed Class purchased a preneed funeral service contract and had its funds placed into trust wherein violations of the Illinois Funeral or Burial Funds Act, the Illinois Consumer Fraud Act, and breach of contract and fiduciary duties have occurred. The issues of fact and law applicable to the Class are identical to the issues of fact and law applicable to each individual member of the proposed Class.

41. A Class action is an appropriate method for the fair and efficient adjudication of this controversy, and Class action treatment is superior to the alternatives. There is no special interest in the members of the Class individually controlling the prosecution of separate actions. The damages sustained by individual Class members will not be large enough to justify individual actions, especially in proportion to the tremendous costs and expense necessary to prosecute this action. The expense and the burden of individual litigation make it impossible for

members of the Class individually to address the wrongs done to them. Class treatment will permit the adjudication of claims of Class members who could not afford individually to litigate their claims against Defendants. Class treatment will permit a large number of similarly situated persons to prosecute their common claims in a single forum simultaneously, efficiently and without the duplication of effort and expense that numerous individual actions would entail.

42. No difficulties are likely to be encountered in the management of this Class action that would preclude its maintenance as Class action, and no superior alternative exists for the fair and efficient adjudication of this controversy. Furthermore, Defendants transacts substantial business in Illinois and are located in Illinois. Defendant will not be prejudiced or inconvenienced by the maintenance of this Class action in this forum.

COUNT I
Consumer Fraud

43. Lead Plaintiffs hereby incorporate by reference all preceding paragraphs as if fully set forth herein.

44. This Count is brought by Lead Plaintiffs individually, and in their representative capacity on behalf of the Class, against all Defendants as a result of violations of the Illinois Funeral and Burial Funds Act.

46. At all relevant times herein, there were in full force and effect in the State of Illinois a statute commonly known as the *Illinois Consumer Fraud and Deceptive Business Practices Act,* 815 ILCS 505/1 *et seq.*

47. 815 ILCS 505/2Z provides:

Sec. 2Z. Violations of other Acts. **Any person who knowingly violates** the Automotive Repair Act, the Automotive Collision Repair Act, the Home Repair and Remodeling Act, the Dance Studio Act, the Physical Fitness Services Act, the Hearing Instrument Consumer Protection Act, the Illinois Union Label Act, the Job Referral and Job Listing Services Consumer Protection Act, the Travel Promotion Consumer Protection Act, the Credit Services

Organizations Act, the Automatic Telephone Dialers Act, the Pay-Per-Call Services Consumer Protection Act, the Telephone Solicitations Act, **the Illinois Funeral or Burial Funds Act**, the Cemetery Care Act, the Safe and Hygienic Bed Act, the Pre-Need Cemetery Sales Act, the High Risk Home Loan Act, the Payday Loan Reform Act, the Mortgage Rescue Fraud Act, subsection (a) or (b) of Section 3-10 of the Cigarette Tax Act, the Payday Loan Reform Act, subsection (a) or (b) of Section 3-10 of the Cigarette Use Tax Act, the Electronic Mail Act, the Internet Caller Identification Act, paragraph (6) of subsection (k) of Section 6-305 of the Illinois Vehicle Code, Section 18d-115, 18d-120, 18d-125, 18d-135, or 18d-150 of the Illinois Vehicle Code, Article 3 of the Residential Real Property Disclosure Act, the Automatic Contract Renewal Act, or the Personal Information Protection Act **commits an unlawful practice within the meaning of this Act.** (emphasis added)

48. The Illinois Consumer Fraud and Deceptive Business Practices Act further provides, in 815 ILCS 505/10(a), as follows:

Any person who suffers actual damages as a result of a violation of this Act committed by any other person may bring an action against such person. The court, in its discretion may award actual economic damages or any other relief which the court deems proper...

49. Plaintiffs and each member of the Class is a consumer within the meaning of the Consumer Fraud and Deceptive Business Practices Act, 815 ILCS 505/1(e).

50. Defendants knowingly violated the Illinois Funeral or Burial Funds Act by: 1) entrusting Plaintiffs' and Class Members funds to a company not authorized to transact a business as Trustee in violation of 225 ILCS 45/2(b); 2) improperly investing the funds placed into trust in violation of 225 ILCS 45/4a by paying members of the Illinois Funeral Directors Association an inflated rate of return on said funds which was unrelated to market performance resulting in and causing a deficit in the IFDA Pre-Needs Trust, 3) improperly investing a portion of the trust assets in corporate owned life insurance policies in violation of 225 ILCS 45/4a(d) and 225 ILCS 45/4a.; 4) failing to provide an accounting to the beneficiaries of the IFDA PreNeed trust on an annual basis 5) otherwise improperly investing the funds held in trust.

51. Defendants conduct described herein constitutes an unlawful practice under the Illinois Consumer Fraud and Deceptive Business Practices Act, 815 ILCS 501/1, *et seq.*:

52. As a result of Defendants conduct as alleged herein, Plaintiffs and the Class Members have suffered economic damages including but not limited to the diminution of the value of the funds held in trust for their benefit.

COUNT II
BREACH OF CONTRACT

53. Lead Plaintiffs hereby incorporates by reference all preceding paragraphs as if fully set forth herein

54. This Count is brought by Lead Plaintiffs individually, and in their representative capacity on behalf of the Class, against Defendants Illinois Funeral Director's Association and I.F.D.A. Services Inc.

55. Illinois Funeral Director's Association sponsors, markets, and promotes the I.F.D.A. Preneed Trust and is a licensed seller of preneed funeral or burial services. Under this arrangement, the Illinois Funeral Director's Association and/or its members enter into contracts for preneed funeral or burial services with Plaintiffs and Members of the Class. These contracts are "form contracts" provided by the Illinois Funeral Directors Association. In the form contracts I.F.D.A. Services Inc. is designated as the Trustee and members of the Illinois Funeral Director's Association are expressly authorized to accept the agreement on behalf of I.F.D.A. Services Inc.. The contract of Plaintiff Dunkel is attached hereto as Exhibit C and incorporated herein. The contract of Plaintiff Dusembery is attached hereto as Exhibit D and incorporated herein. The contracts of the other class members are form contracts substantially similar to the agreements attached hereto and in possession of the Defendants.

56. Plaintiffs and the Class Members have fully performed all of the obligations required of them under the contract.

57. I.F.D.A. Services Inc. held itself out in said contracts to be a "Trustee". Implicit in such a representation is I.F.D.A. Services Inc. was qualified and/or authorized to act as a Trustee.

58. In breach of the agreement, at no time was I.F.D.A. Services Inc. qualified or authorized to act as a Trustee under the laws of this state and in particular, under the Corporate Fiduciary Act, 205 ILCS 620/1-1, *et seq.*

59. Pursuant to paragraphs 2, 9, and 11 of Plaintiff Dusembery form contract and Paragraphs 2, 4, and 9 of the Plaintiff Dunkle form contract, I.F.D.A. Services Inc. agreed to hold said funds in trust and accumulate earnings.

60. In breach of the agreement, Defendants paid members of the Illinois Funeral Directors Association an inflated rate of return on the consumers' funds placed in trust which was not based on market performance resulting in a diminution in value of the funds held in trust for benefit Plaintiffs and the Class Members.

61. Pursuant to the contracts and the Illinois Funeral or Burial Funds Act, 225 ILCS 45/1 et seq,, the trust funds are not to be invested in life insurance policies or tax deferred annuities unless certain conditions are met under 225 ILCS 45/4a(d). Trust funds shall not be invested by the trustee in life insurance policies unless prior to the investment, the purchaser such as Plaintiffs and the Class Members, approve of the investment in writing. 225 ILCS 45/4a(d)(2). Prior to any investment of trust funds in a life insurance policy the trustee must inform the Comptroller that the trust funds shall be removed from the trust account to purchase life insurance upon the written consent of the purchaser. 225 ILCS 45/4a(d)(4).

62. In breach of the contract, Defendants invested Plaintiffs' and the Class Members funds held in trust in life insurance policies without their written consent.

63. As a direct and proximate result of the Defendants breaches of the agreement as set forth herein, Plaintiffs and the Class Members have been damaged and suffered a diminution in value of the funds held in trust for their benefit.

COUNT III

BREACH OF FIDUCIARY DUTIES

64. Lead Plaintiffs hereby incorporates by reference all preceding paragraphs as if fully set forth herein

65. This Count is brought by Lead Plaintiffs individually, and in her representative capacity on behalf of the Class, against Defendants I.F.D.A. Services Inc.

66. In the course of acting as a Trustee under the contracts entered into by the Plaintiffs and the Class Members, I.F.D.A. Services Inc. accepted and held the funds paid by Plaintiffs and the Class Members and acted as a fiduciary.

67. It is the fundamental duty of a trustee to hold the trust assets and to administer them solely in the interests of the trust beneficiaries.

68. A trustee is under a duty to deal impartially with all beneficiaries of the trust,

69. Under the Illinois Funeral or Burial Funds Act, I.F.D.A. Services Inc. had a fiduciary duty with respect to the investment of trust funds, to exercise the judgment and care under the circumstances then prevailing that persons of prudence, discretion, and intelligence exercise in the management of their own affairs, not in regard to speculation, but in regard to the permanent disposition of their funds, considering the probable income as well as the probable safety of their capital. (225 ILCS 45/4a)

70. I.F.D.A Services Inc. breached its fiduciary duties to Plaintiffs and members of the Class when it: 1) accepted funds as a Trustee despite not being a company not authorized to

transact a business as Trustee in violation of 225 ILCS 45/2(b); 2) failed to administer the trust assets solely in the interest of the trust beneficiaries by improperly paying members of the Illinois Funeral Directors Association an inflated rate of return on said funds which was unrelated to market performance resulting in and causing a deficit in the IFDA Pre-Needs Trust, 3) improperly investing a portion of the trust assets in corporate owned life insurance policies in violation of 225 ILCS 45/4a(d) and 225 ILCS 45/4a.; 4) failed to deal impartially with all the beneficiaries of the IFDA Pre-Needs Trust by paying certain members of the Illinois Funeral Directors Association an inflated rate of return on the trust funds to the detriment of other beneficiaries of the IFDA Pre-Needs Trust 5) failing to provide an accounting to the beneficiaries of the IFDA Pre-Need Trust on an annual basis 6) otherwise improperly investing the funds held in trust.

71. As a direct and proximate result of the breach of the fiduciary duties set forth herein, Plaintiffs and the Class Members have been damaged and suffered a diminution in value in the funds held in trust for their benefit

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs, Virginia H. Dunkel and Maria Dusembery for the benefit of Dr. Ludimilla Petrausksas, individually and on behalf of each member of the putative class pray for relief and judgment against the Defendants, I.F.D.A. Services Inc., and the Illinois Funeral Directors Association as follows:

A. An order declaring that this action is properly maintainable as a class action certifying the proposed class and appointing Plaintiffs and their undersigned counsel to represent the class;

B. For damages to the class due to the breach, including compensatory and punitive damages, reasonable attorney fees and costs; and

C. For such other and further relief as this Honorable Court deems just, equitable and proper.

JURY DEMAND

Plaintiffs demands a trial by jury.

RESPECTFULLY SUBMITTED,

FOOTE, MEYERS, MIELKE & FLOWERS, LLC

By: _____

Robert M. Foote, Esq. (03124325)
Matthew J. Herman, Esq. (#06237297)
Foote, Meyers, Mielke & Flowers, LLC
28 North First Street, Suite 2
Geneva, IL 60134

John P. Duggan, Esq.
181 S. Lincolnway
North Aurora, Il 60542
Tel. No.: (630) 264-7893

STATE OF ILLINOIS)
)
COUNTY OF KANE)

AFFIDAVIT PURSUANT TO RULE 222(b)

The undersigned, as Plaintiffs, being first duly sworn upon oath, states that to the best of his knowledge, information and belief, formed after a reasonable inquiry, to the extent such inquiry is possible based upon current facts and circumstances, that the total money damages sought herein exceeds $50,000.00.

Plaintiffs

Subscribed and Sworn to before
me this 20 day of November 26, 2008.

Notary Public

"OFFICIAL SEAL"
LIZETH ESQUIVEL
Notary Public, State of Illinois
My Commission Expires 02/01/2011

EXHIBIT A

STATE OF ILLINOIS

DEPARTMENT OF FINANCIAL AND PROFESSIONAL REGULATION

DIVISION OF BANKING

SPRINGFIELD, ILLINOIS

In the Matter of: I.F.D.A. Services, Inc. 215 South Grand Avenue West Springfield, IL 62704	ORDER TO CEASE AND DESIST 2008-DB-30

ORDER TO CEASE AND DESIST

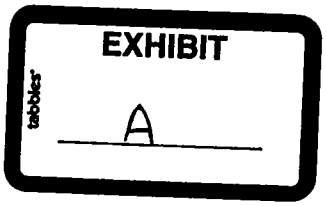
The Director of the Department of Financial and Professional Regulation, Division of Banking (the "Director") hereby issues to I.F.D.A. Services, Inc. ("IFDA"), 215 South Grand Avenue West, Springfield, Illinois this ORDER TO CEASE AND DESIST ("Order"). This Order is authorized and issued pursuant to the provisions of Section 5-1(b) of the Corporate Fiduciary Act [205 ILCS 620/5-1(b)] (the "Act").

FINDINGS OF FACT

The Director makes the following Findings of Fact:

1. IFDA is an Illinois corporation with a place of business at 215 South Grand Avenue West, Springfield, Illinois;

2. IFDA holds itself out to the public through its own actions and those of its agents as an entity available to act as a fiduciary in Illinois;



3. IDFA accepts or undertakes to perform the duties of a fiduciary as a significant part of its regular business by serving as trustee pursuant to preneed funeral trust agreements with Illinois consumers as beneficiaries;

4. Section 2-4 of the Act [205 ILCS 620/2-4] provides that it is not lawful to conduct a trust business in Illinois without first having obtained a certificate of authority from the Director;

5. The Director is unable to make the findings required to issue IFDA a certificate of authority to conduct a trust business under the Act;

6. Section 5-1(b) of the Act [205 ILCS 620/5-1(b)] authorizes the Director to issue Orders for the purpose of Administrating the Act; and

7. Merrill Lynch Bank and Trust Company, FSB and its trust division, DBA Merrill Lynch Trust Company has agreed to assume all responsibilities for the administration of the existing preneed trust accounts for which IFDA is currently acting as trustee.

CONCLUSIONS OF LAW

Based on the above Findings of Fact, the Director makes the following CONCLUSION:

IFDA has violated Section 2-4 of the Act.

NOW THEREFORE IT IS HEREBY ORDERED:

1. The Application to Form an Illinois Trust Company submitted by IFDA is denied due to the inability of the Director to make the findings required under Section 2-6 of the Act;

2. Upon the assumption by Merrill Lynch Trust Company of all responsibilities for the administration of the existing preneed trust accounts, IFDA shall cease and desist from conducting a trust business, including holding itself out to the public that it is available to act as a fiduciary in Illinois and accepting or undertaking to perform the duties of a fiduciary as a significant part of its regular business, and in particular, IFDA shall immediately cease accepting preneed trust accounts as trustee;

3. IFDA shall fully cooperate with the Division of Banking and the Director, the Department of Financial and Professional Regulation, Division of Insurance and its Director, Merrill Lynch Bank and Trust Company, FSB,

and Merrill Lynch Trust Company. In order to fulfill the requirements of this provision, IFDA will fully cooperate with Merrill Lynch Trust Company by providing access to all relevant records, documents, and personnel and responding to all requests in a timely and efficient manner;

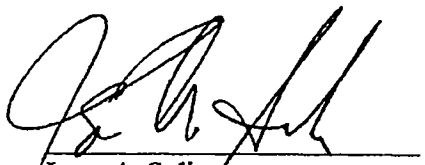
4. IFDA shall fully cooperate with Merrill Lynch Trust Company in finding a permanent trustee for the preneed trust accounts for which IFDA currently serves as trustee;

5. IFDA shall submit to the Director for approval all copies of communications regarding the preneed trust accounts to IFDA members, trust customers, or the public at least 10 days prior to their dissemination; and

6. The provisions of this ORDER shall remain effective and enforceable except to the extent that, and until such time as, any provision has been modified, terminated, suspended, or set aside by the Director.

ORDERED THIS THIRTIETH DAY OF MAY, 2008.

DEPARTMENT OF FINANCIAL AND PROFESSIONAL REGULATION of the State of Illinois;
DEAN MARTINEZ, SECRETARY

By: 
Jorge A. Solis
Director

You are hereby notified that this Order is an administrative decision. Pursuant to 38 Ill. Adm. Code, Section 392, any party may file a request for a hearing on an administrative decision. The request for a hearing shall be filed within 10 days after the receipt of an administrative decision. A hearing shall be held within 30 days after the receipt by the Secretary of a request for a hearing. Absent a request for a hearing, this Order shall constitute a final administrative Order subject to the Administrative Review Law [735 ILCS 5/3-10 1 *et seq.]*.

EXHIBIT B

STATE OF ILLINOIS

DEPARTMENT OF FINANCIAL AND PROFESSIONAL REGULATION

DIVISION OF BANKING

SPRINGFIELD, ILLINOIS

In the Matter of: I.F.D.A. Services, Inc. 215 South Grand Avenue West Springfield, IL 62704	ORDER TO CEASE AND DESIST 2008-DB-37

ORDER TO CEASE AND DESIST

The Director of the Department of Financial and Professional Regulation, Division of Banking (the "Director") hereby issues to I.F.D.A. Services, Inc. ("IFDA"), 215 South Grand Avenue West, Springfield, Illinois this ORDER TO CEASE AND DESIST ("Order"). This Order is authorized and issued pursuant to the provisions of Section 5-1(b) of the Corporate Fiduciary Act [205 ILCS 620/5-1(b)] (the "Act").

FINDINGS OF FACT

The Director makes the following Findings of Fact:

1. IFDA is an Illinois corporation with a place of business at 215 South Grand Avenue West, Springfield, Illinois.

2. IFDA holds itself out to the public through its own actions and those of its agents as an entity available to act as a fiduciary in Illinois.

3. IFDA accepts or undertakes to perform the duties of a fiduciary as a significant part of its regular business by serving as trustee pursuant to pre-need funeral trust agreements with Illinois consumers as beneficiaries.

EXHIBIT

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B

4. IFDA does not have a certificate of authority to conduct a trust business under the Act.

5. Section 2-4 of the Act [205 ILCS 620/2-4] provides that it is unlawful to conduct a trust business in Illinois without first having obtained a certificate of authority.

6. Currently, a deficit may exist in the balance of the trust assets in the custody of the IFDA.

7. On May 13, 2008 the Director ordered the IFDA to cease and desist from conducting a "trust business."

8. The IFDA is currently transitioning its trust business to an authorized trustee.

9. As the IFDA, including all trust assets and income, transitions its trust business to an authorized trustee, and as IFDA financial matters are evaluated, any disbursal, expenditure, payout, dividend, liquidation, loan, refund or other disposition of IFDA assets or income, other than those for administrative expenses or claims, may imperil obligations owed by the IFDA to approximately 49,000 people in the State of Illinois.

10. The current financial condition of IFDA cannot be determined until such time as an actuarial study of IFDA can be preformed.

11. Except as necessary for administrative and operational expenses and for the payment of individual burial claims, dispositions, payouts or withdrawals from IFDA cannot occur.

12. There is a likelihood that substantial harm to the citizens of Illinois will result if assets or funds are paid out prior to the determination of whether IFDA's financial condition is adequate to permit it to fulfill its fiduciary obligations.

CONCLUSIONS OF LAW

Based on the above Findings of Fact, the Director makes the following CONCLUSION:

IFDA has violated Section 2-4 of the Act.

NOW THEREFORE IT IS HEREBY ORDERED:

1. Except as necessary for the IFDA's administrative operations and for the payment of individual burial claims, the IFDA shall cease and desist from any action to disburse, expend, payout, dividend, liquidate, loan, refund or in any other way alienate funds currently in its possession until further order of the Director.

ORDERED THIS 7th DAY OF July 2008.

DEPARTMENT OF FINANCIAL AND PROFESSIONAL REGULATION of the State of Illinois;
DEAN MARTINEZ, SECRETARY

DIVISION OF BANKING

By: _____
Jorge A. Solis
Director

You are hereby notified that this Order is an administrative decision. Pursuant to 38 Ill. Adm. Code, Section 392, any party may file a request for a hearing on an administrative decision. The request for a hearing shall be filed within 10 days after the receipt of an administrative decision. A hearing shall be held within 30 days after the receipt by the Secretary of a request for a hearing. Absent a request for a hearing, this Order shall constitute a final administrative Order subject to the Administrative Review Law [735 ILCS 5/3-10 1 *et seq.*].

EXHIBIT C

Funeral Trust - Guaranteed Form

This contract guarantees the beneficiary the specific goods and services contracted for. No additional charges may be required for designated goods and services. Additional charges may be incurred for unexpected expenses including, but not limited to, cash advances, shipping of remains from a distant place, or designated honoraria ordered or directed by survivors.

Illinois Funeral Directors Association Services, Inc., 215 South Grand Avenue West, Springfield, Illinois, 62704 ("Trustee") and Healy Und Co. Illinois, ("Funeral Home") and Virginia H. Dunkle ("Purchaser"), agree for the trust funded pre-arrangement of a funeral for the benefit of Virginia H. Dunkle ("Beneficiary"), whose social security number is 356-24-7434, address as follows:

1500 Kenilworth,
Aurora, Il 60506

1. At time of Beneficiary's death, Funeral Home shall provide a funeral with the following merchandise and services: 18 ga. Diamond Blue Casket, Continental Cement Vault, 2 nites Obit, 6 copies Death Cert. Interment and Vault Delivery cgs at St Pauls Luth. Cemetary. $100 Minister stipend, Organist, Hairdresser, Sales Taxes, all Prof Serv. with 1 hr Visitation B4 Service at Healy. Proc. to Cem. including the usual professional and staff services and funeral home facilities.
2. To pre-arrange this funeral, Purchaser agrees to pay to Trustee or Funeral Home $ 6,812.69 plus accumulated earnings, as follows: by check, this date
2a. $ 6,812.69 paid by Purchaser upon execution of this agreement.
3. Within 10 days after receipt, funds are initially deposited with FFG Trust, Inc., a division of Firstbank Financial Group, ("Depositary").
4. Within 3 business days of receiving notice of Beneficiary's death, Trustee shall pay to Funeral Home the amount in Purchaser's account, provided the payments in Paragraph 2 have been made and neither the payments nor earnings have been withdrawn.
5. If any merchandise or services are unavailable when needed, Funeral Home shall furnish merchandise and services similar in style and at least equal in quality and workmanship, provided Funeral Home gives prior verbal notice of substitution to Beneficiary's next of kin, personal or legal representative.
6. Trustee shall keep records of Purchaser's account and upon request provide Purchaser with a statement of the balance and transactions.
7. If "Tax Exempt Option" line is signed, Trustee is instructed to invest Purchaser's account in a tax exempt fund. Funds invested in a tax-exempt fund may not be withdrawn within five years of the contract date, except as indicated in Paragraph 4 above.
8. This agreement may be cancelled by giving written notice (1) at any time by Purchaser or (2) by Trustee if Purchaser's payment is 30 days delinquent. Within 10 days of receiving notice or 40 days of delinquency, Trustee will pay to Purchaser the account balance less 25% of Purchaser's payments made or $300, whichever sum is less. To change the Provider, Purchaser may cancel this agreement by writing the Trustee, which will then pay Purchaser the account balance less 10% of payments made or $300, whichever sum is less.
8a. If "Irrevocable Option" line is signed, Purchaser's consent to this Agreement is irrevocable to the extent required under Public Act 88-477 for federal, state or local public assistance benefits eligibility.*
9. For their administrative services and expenses, Trustee, Funeral Home and Depositary may be paid from the Purchaser's account an initial total amount equal to 5% of the purchase price of the services or merchandise, or 15% of the purchase price of outer burial containers. A total amount up to 25% of earnings on the trust may be retained on an annual basis. Funeral Home shall receive no payment if no administrative services are provided.
10. This Agreement is binding on the heirs, administrators, executors, successors and assigns of the parties and is subject to the Illinois Funeral or Burial Funds Act under which Funeral Home is and will remain licensed and bonded.
11. Should death occur elsewhere, additional transportation charges will be incurred
12. In the highly unlikely event the funeral home is unable to perform, such as an Act of God, trust funds will be turned over to the beneficiary's estate to pay funeral expenses.
13. If this contract is in connection with an IN HOME SALE, **"You the Buyer May Cancel This Transaction At Any Time Prior To Midnight Of The Third Business Day After The Date Of This Transaction. See the attached Notice of Cancellation form for an explanation of this right."**
14. The Trustee shall obtain written approval from the Purchaser before investing funds in a life insurance policy or tax deferred annuity on the beneficiary. Should such policy or annuity later be cancelled, the cash value may be much less than the refund provision of the trust account.
15. Funds withdrawn for reasons other than death may create a taxable event.
16. Purchaser acknowledges receipt of the Pre-need Booklet prior to purchase of this preneed contract. VHD Initials

Taxable Option

+ Virginia H. Dunkle
Tax Exempt Option *

Irrevocable Option

+ Virginia H. Dunkle 11/12/'97
Purchaser Date

Funeral Home Representative

For Healy Und Co.
Funeral Home

on behalf of Funeral Home and as authorized agent to accept agreement on behalf of ILLINOIS FUNERAL DIRECTORS ASSOCIATION SERVICES, INC., as Trustee. Trustee is a wholly owned subsidiary of the Illinois Funeral Directors Association, of which Funeral Home is a member.

* Public Act 88-477 allows irrevocable preneed funeral contracts for the purposes of buyer's eligibility for federal, state or local public assistance benefits

Rev 7/95 Form 1-B

EXHIBIT
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11/24/2008 11:04 FAX 002/004

EXHIBIT D

Number _____

FUNERAL TRUST - GUARANTEED FORM

This contract guarantees the beneficiary the specific goods or services contracted for. No additional charges may be required for designated goods and services. Additional charges may be incurred for unexpected expenses including, but not limited to, cash advances, shipping of remains from a distant place, or designated honoraria ordered or directed by survivors.

IFDA Services, Inc., 215 South Grand Avenue West, Springfield, Illinois, 62704 ("Trustee") and Yurs Funeral Homes, Inc ("Provider") of Geneva, Illinois and Maria Duisenberg ("Purchaser") agree for the trust funded pre-arrangement of a funeral for the benefit of Dr. Ludmilla Petrauskas ("Beneficiary"), whose date of birth is 9/13/1920 and whose social security number is 347-26-8646 and whose address is: 1079 East Wilson Street, Batavia Illinois 60510.

1. At time of Beneficiary's death, Provider shall provide a funeral with the following merchandise and services: see addendum to pre arranged funeral trust contract

including the usual professional and staff services and funeral home facilities.

2. To pre-arrange this funeral, the Purchaser agrees to pay to the Provider or Trustee $_____ plus accumulated earnings, in the following manner: _____

3. Purchaser has paid $12,706.19 upon execution of this agreement.

4. Purchaser authorizes Trustee to invest funds in a tax-exempt fund.

Initials of Purchaser: X MD

5. Purchaser agrees this contract is irrevocable and waives the right to cancel this contract. By doing so, the provisions of Paragraph 14 do not apply. This is necessary for certain federal, state or local benefits eligibility.

Initials of Purchaser: X MD

6. Purchaser acknowledges the Seller has explained the terms of the contract.

Initials of Purchaser: X MD

7. Purchaser acknowledges receipt of the Pre-need Booklet prior to purchase of this preneed contract.

Initials of Purchaser: X MD

8. Purchaser acknowledges receipt of Statement of Funeral Goods and Services Selected, if the selection of merchandise and services has been made.

Initials of Purchaser: X MD

CERTIFICATION: Under penalties of perjury, I certify (1) that the number shown on this form is my correct taxpayer identification number and (2) that I am not subject to backup withholding either because I have not been notified that I am subject to backup withholding as a result of a failure to report all interest or dividends or the Internal Revenue Service has notified me that I am no longer subject to backup withholding.

X Signature X Maria Duisenberg

Instruction: If you have been notified that you are subject to backup withholding due to failure to report all interest and dividends and you have not been advised by the Internal Revenue Service that backup withholding has terminated, you must strike out the language in number (2) above.

X Maria Duisenberg 7/21/2005 _____

Purchaser Date Provider Representative

Provider is authorized to accept this agreement on behalf of IFDA Services, Inc., as Trustee. Trustee is a wholly owned subsidiary of the Illinois Funeral Directors Association, of which Provider is a member.

Yurs Funeral Homes Inc

Provider

1771 W State St, Batavia IL 60510

Address

(See the back of this page for additional agreement provisions)

Form 1-B. Rev. 04/04

EXHIBIT

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D

9. Funds paid under this contract, plus accumulated earnings, are guaranteed to cover the final price of the merchandise and services contracted for. Additional charges may be incurred only for unexpected expenses, such as cash advance items, shipping of remains or designated honoraria.

10. Within ten (10) days after receipt by Provider, funds will be deposited with U.S. Bank Corp. ("Depositary"), or its successor.

11. Within three (3) business days of Trustee receiving certificate of Beneficiary's death, Trustee shall pay to Provider the amount in Purchaser's account, provided the payments in Paragraph 2 have been made and neither the payments nor earnings have been withdrawn.

12. If the particular supplies and services specified in the pre-need contract are unavailable at the time of delivery, the provider shall be required to furnish supplies and services similar in style and at least equal in quality of material and workmanship, provided Provider gives prior verbal notice of substitution to Purchaser or his or her assignee or duly authorized representative.

13. Trustee shall keep records of Purchaser's account until closed and upon request provide Purchaser with a statement of the balance and transactions.

14. Purchaser may cancel this agreement for any reason or change provider by giving written notice to Provider or Trustee. Within ten (10) days of receipt of notice, if no funeral goods or services are provided, Trustee will pay Purchaser the account balance after retaining a total amount equal to the lesser of 10% of payments made or $300. Trustee may cancel by giving Purchaser written notice if Purchaser's payment is 30 days delinquent. Within ten (10) days of Purchaser receiving notice or 40 days after a Purchaser's payment is delinquent, Trustee shall pay Purchaser the account balance after retaining a total amount equal to the lesser of 25% of payments made or $300. The retained amounts specified above may be changed only in accordance with the maximum amount allowed by the Illinois Funeral or Burial Funds Act.

15. For their administrative services and expenses, Trustee, Provider and Depositary may be paid from the Purchaser's account an initial total amount equal to 5% of the purchase price of the services or merchandise, or 15% of the purchase price of outer burial containers or such other amount as is authorized by the Illinois Funeral or Burial Funds Act. A total amount up to 25% of earnings on the trust fund deposited may be retained on an annual basis by the Trustee, Provider and Depositary as compensation for custody and administration of the trust funds.

16. This Agreement is binding on the heirs, administrators, executors, successors and assigns of the parties and is subject to the Illinois Funeral or Burial Funds Act under which Provider is and will remain licensed and bonded.

17. Should Beneficiary's death occur other than Beneficiary's place of residence, additional charges for transportation of remains may be incurred.

18. In the event the Provider is unable to perform, such as may be due to an Act of God or any other reason, trust funds will be paid to the Beneficiary's estate for funeral expenses.

19. If this contract is in connection with an IN HOME SALE, **"YOU THE BUYER MAY CANCEL THIS TRANSACTION AT ANY TIME PRIOR TO MIDNIGHT OF THE THIRD BUSINESS DAY AFTER THE DATE OF THIS TRANSACTION. SEE THE ATTACHED NOTICE OF CANCELLATION FORM FOR AN EXPLANATION OF THIS RIGHT."**

20. Funds withdrawn for reasons other than death may create a taxable event, and may cause adverse tax consequences to the Purchaser.

21. The Trustee and Provider shall obtain written approval from the Purchaser before investing funds in a life insurance policy or annuity on the beneficiary. Should such policy or annuity later be cancelled, the cash value may be much less than the refund provision of the trust account.

22. The Provider may not withdraw funds or initiate withdrawal of funds if this contract is irrevocable (see paragraph 8) of if all the funds are invested in a tax-exempt fund within five years of the contract date.

23. Provider does not warrant the merchandise or goods covered by this contract. The only warranty, if any, is the warranty issued by the manufacturer of the purchased merchandise or goods.