



UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION
WASHINGTON, D.C. 20580

Division of Marketing Practices

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Ms. Kathleen K. Ryan, General Counsel
Pennsylvania Funeral Directors Association
7441 Allentown Blvd.
Harrisburg, PA 17112-9982

Mr. O. C. Robbins, Executive Director
Texas Funeral Service Commission
P. O. Box 12217
Capitol Station
Austin, TX 78711

Dear Ms. Ryan and Mr. Robbins:

This staff opinion responds to your requests for guidance on whether the Funeral Rule permits funeral providers to charge consumers for the cost of collecting insurance or trust proceeds for the funeral goods and services a consumer purchases. You ask, in particular, about fees charged: (1) by providers for processing the paperwork needed to collect insurance assignments or pre-paid arrangements funded by insurance or trust vehicles; and (2) by third-party funding companies that advance payments from insurance policies or trusts to funeral providers before the funding company collects the proceeds, deducts its fees, and remits any remaining balance to the consumer.

As you know, the Rule specifies that a funeral provider may charge only one non-declinable fee, the basic services fee,¹ unless another fee is necessitated by any legal, cemetery or crematory requirement that is disclosed in writing on the Statement of Funeral Goods and Services Selected (“SFGSS”).² Accordingly, the Rule expressly prohibits funeral providers from charging:

any fee as a condition to furnishing any funeral goods or funeral services to a person arranging a funeral, other than the fees for: (1) Services of funeral director and staff, permitted by § 453.2(b)(4)(iii)(C) [basic services fee]; (2) other funeral services and funeral goods selected by the purchaser; and (3) other funeral goods or services required to be purchased [*i.e.*, by legal, cemetery or crematory

¹ 16 C.F.R. § 453.2(b)(4)(iv).

² 16 C.F.R. § 453.3(d)(2). Staff is not aware of any such external requirement mandating that funeral providers charge consumers for collecting insurance or trust proceeds.

mandates], as explained on the itemized statement [SFGSS] in accordance with § 453.3(d)(2).³

While the Rule does not permit a second non-declinable fee, it expressly permits fees for funeral goods and services voluntarily “selected by the purchaser.” It is therefore staff’s opinion that funeral providers may offer to collect insurance or trust proceeds for a fee that is optional. No Rule violation occurs if a purchaser voluntarily chooses such a service and is free to avoid the cost by declining it.⁴

As a corollary, a purchaser would not be able to make a voluntary choice, as a practical matter, unless the service and fee are disclosed in advance on the funeral provider’s GPL at the time of a pre-need or at-need purchase. Toward this end, a funeral provider may list as an optional charge on its GPL its own collection fees, or the fees for a third party used by the provider to collect trust or insurance proceeds. If a purchaser voluntarily selects the collection service, its cost must appear on the SFGSS. This is required by the Rule, and in the case of a pre-need purchase, assures that the purchaser’s personal representative will know that collection costs have been prepaid.

As you know, the views expressed in this letter are those of the FTC staff. They have not been reviewed, approved, or adopted by the Commission, and they are not binding on the Commission or any individual Commissioner. However, they do reflect the views of FTC staff charged with enforcement of the Funeral Rule. Staff Funeral Rule opinions are now routinely posted on the FTC website at <http://business.ftc.gov/content/funeral-rule-opinions>.

Sincerely,

/s/

Craig Tregillus
Funeral Rule Coordinator

³ 16 C.F.R. § 453.4(b)(1)(ii). Although the Rule provides an additional exception to the prohibition “for a combination of goods or services which would be impossible, impractical, or excessively burdensome to provide,” 16 C.F.R. § 453.4(b)(2)(ii), it can hardly be applicable to the costs of collecting payment that many funeral providers have undertaken routinely for years without charge. Collection costs may be recovered in the basic services fee only if this service is “common to virtually all forms of dispositions.” FTC, *Complying with the Funeral Rule* (June 2004), p. 10.

⁴ Some consumers may choose to avoid any such fee by paying the provider up-front and later undertaking the work of collecting the insurance or trust proceeds themselves. Others may decide that they need or prefer to have this service performed on their behalf and agree that the cost is worthwhile.