

Consumer Rights and Regulations For Prepaid Funeral Contracts

According to the
“Prepaid Funeral Contract
Funding Act of 1986”

State of Michigan
Department of Labor & Economic Growth
Bureau of Commercial Services

Rapidly increasing burial and cremation costs, along with an increasing desire by many to plan for these services in advance, have generated a national recognizable trend - **the prepaid or preneed funeral contract**. In response to escalated marketing of these contracts, the Michigan Legislature enacted the “Prepaid Funeral Contract Funding Act of 1986 (Act No. 255, P.A. 1986, *as amended by Act No. 21, P.A.2004).”

This law, which applies to all prepaid funeral contracts signed on or after July 1, 1987, is administered by the State of Michigan Department of Labor and Economic Growth, Bureau of Commercial Services. In keeping with its consumer protection and public information functions, the State of Michigan Department of Labor and Economic Growth provides this series of questions and answers to assist consumers in the purchase of prepaid funerals under the new law.

If you have questions or need additional information, you may contact the department at the following telephone number and address:

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WHAT IS A PREPAID FUNERAL CONTRACT?

A prepaid or preneed funeral contract is a legal agreement between a buyer and a seller that “funeral goods and services” bought and paid for before death will be delivered at the time of death. The person for whom the funeral services are to be provided is the beneficiary.

WHAT “GOODS AND SERVICES” MAY BE INCLUDED IN PREPAID CONTRACTS?

Funeral goods are merchandise items such as urns, caskets and burial clothing. Funeral services are the functions associated with burial or cremation, which may include such activities as collection, preparation and viewing of the body and the use of a hearse. Goods and services may be included in prepaid contracts in any mix the buyer wants and should be itemized and described in detail in the written prepaid contract. Cemetery plots may not, however, be included and must be purchased in separate transactions.

WHO CAN SELL THESE CONTRACTS?

Anyone registered with the State of Michigan Department of Labor and Economic Growth, Office of Commercial services may sell prepaid contracts. To make sure that the seller is registered, consumers should ask for the seller’s registration number. In addition to the money paid for the goods and services, sellers may charge a commission of up to 10% of the contract price. Although the commission is not refundable, it is a factor in determining how much will be refunded if the contract is canceled.

WHO CAN PROVIDE THE GOODS AND SERVICES?

Persons selling prepaid contracts do not have to be the same persons who are responsible for actually delivering the goods and services ordered in the contracts. In these instances, the persons who are to actually supply what has been ordered, the providers, must be identified by name in the written contract. If a license is required to provide a particular service, the provider named in the contract must be licensed to perform it.

WHAT IS DONE WITH THE PURCHASE MONEY?

All money received as payment for prepaid funeral contracts, except for the commission, must be deposited in a bank, credit union or other insured financial institution or, if the buyer agrees and signs a separate paragraph in the contract, with a cemetery or mortician’s association of 250 or more members. This process is called escrowing. The institutions with which the escrowed funds are deposited, the escrow agents, are the only parties who may invest or disburse the escrowed money. Buyers must be provided the name and address of the escrow agent handling their account and notified of any change in their escrow agent.

ARE THERE DIFFERENT KINDS OF PREPAID CONTRACTS?

Prepaid contracts must be one of two types: a *guaranteed price contract* or a *non-guaranteed price contract*. The type of contract being sold must be indicated, in writing, on the contract itself.

A guaranteed price contract allows the buyer to choose the exact goods and services desired and pay for them at purchase. The goods and services contracted for must be delivered as ordered at the time of death, regardless of whether prices have increased in the meantime.

If the goods and services are no longer available, goods of comparable quality must be substituted. Because of the risk providers take in contracting for good and services which may cost more at delivery than when the contract is signed, any money left in the escrow account, after the goods and services have been paid for and delivered, goes to the provider.

Example: \$4,000 guaranteed price plan is purchased in 1987. Beneficiary dies in 2007. Escrow account has balance of \$4,700 at the time of death. If goods and services cost \$5,000 in 2007, provider must deliver them as ordered. If, however, the goods and services cost \$4,500, the provider may keep the \$200 remaining in the account after the goods and services have been delivered.

A non-guaranteed price contract allows the buyer to choose the goods and services desired and pay an amount towards their purchase. If, at death, the escrowed purchase money, plus any income it has earned, is equal to or more than the cost of the goods and services, they may be supplied as ordered. If the escrowed amount is, however, less than what the goods and services cost, the quantity and/or quality of goods and services will be reduced until the available amount is sufficient, or, the additional money is provided by the family or other sources.

Example: \$4,000 non guaranteed price plan is purchased in 1987. Beneficiary dies in 2007. \$4,700 escrowed at the time of death. If goods and services cost \$5,000, \$300 must be provided from other sources or the cost reduced to \$4,700. If the cost of good and services is, however, \$4,500 at death, the remaining \$200 is divided between the provider and the person designated in the contract to receive it (usually an heir or next-of-kin) in the same ratios used to compute refunds for cancellations

CAN PREPAID CONTRACTS BE CANCELED?

Prepaid contracts may be canceled as follows:

Before the death of the Beneficiary: To cancel, the buyer must submit a written 30 day notice to the seller of a non-guaranteed price contract or the provider of a guaranteed price contract.

After the death of the Beneficiary: **If the Buyer (or if the Buyer is also the Beneficiary) and has died, the Beneficiary's Estate may also cancel the contract after the death of the Beneficiary but only in the following circumstances: a. where there are no remains of the Beneficiary, b. the remains of the Beneficiary cannot be recovered, or c. where the contract was not utilized due to the lack of knowledge by the person or persons entitled to make funeral arrangements of the existence of the contract. The notice of cancellation must be in writing and becomes effective upon its receipt by the Funeral Director. Within 30 days after the receipt of the notice of cancellation, the Funeral Director shall cause the escrow agent to pay the amount to be refunded, as provided on the signature page of the contract in the "Cancellation of the Agreement" paragraph to the Buyer, if the Buyer was also the Beneficiary and has died, to the Beneficiary's estate. Any remaining amounts in the escrow account after the refund is made shall be paid by the escrow agent to the Funeral Director. Before causing the escrow agent to disburse funds in the escrow account, the Funeral Director may require the person or persons who have provided notice of cancellation to furnish satisfactory proof of the death of the Beneficiary.*

Contract sellers or providers may cancel prepaid funeral contracts only if a contract being paid for in installments is ninety days or more in default or the contract buyer has violated the terms of the prepaid agreement.

HOW ARE REFUNDS COMPUTED?

If the contract is canceled within ten (10) business days after it is purchased, 100% of the amount paid, not including the commission, is refunded. Refunds for cancellations made more than ten (10) days after purchase are computed as follows:

- If a commission of more than 5% of the contract price was paid, all money in the escrow account is refunded.
- If 5% or less of the contract price was paid in commission, at least 95% of the escrowed amount is refunded.
- If no commission was charged, at least 90% of the amount in the escrow account is refunded.

Example: \$4,000 prepaid contract cancelled where a 5% commission was paid: \$4700 in escrow when cancellation requested. At least 95% of the escrowed amount, or \$4,465 is refunded to the person who bought the contract.

WHAT HAPPENS IF A PROVIDER GOES OUT OF BUSINESS?

If the provider named in a prepaid contract goes out-of-business before the contract is performed, another provider may be substituted if the buyer agrees or the contract may be canceled with refunds computed as previously shown.

CAN THE BENEFICIARY BE CHANGED?

**At any time before the death of the Beneficiary, the Buyer may designate a new Beneficiary for whom the merchandise and services described in this Agreement shall be provided. The new Beneficiary may be a person who is living at the time he or she is designated or may be the estate of a person who has died.*

WHAT HAPPENS IF THE BENEFICIARY MOVES?

If the beneficiary of a prepaid funeral contract moves a distance too far to be served by the provider(s) listed in a prepaid funeral contract, the contract may be canceled.

HOW DOES THE ACT REGULATE THE SALE OF PREPAID CONTRACTS?

In addition to registration, the Prepaid Funeral Contract Funding Act also requires that persons selling the contracts or providing the goods and services keep extensive records of all their transactions. These records are required to be available for examination by the State of Michigan Department of Labor and Economic Development, Office of Commercial Services at any time. Providers and sellers must also have their prepaid records reviewed every three years by a certified public accountant who must submit a written report to the department. Sellers and providers must also notify the department of any change in escrow agents. Buyers may also monitor their own prepaid funeral account by checking the annual statement they receive. The statement must indicate the balance of the account, the amount of interest earned during the year, any fees which were deducted, and the name and address of the person to contact for additional information. Violation of these and any other of the Act's requirements may result in criminal penalties, including imprisonment, and administrative penalties, which may include loss of registration.

WHAT SHOULD CONSUMERS DO IF THERE ARE PROBLEMS WITH PREPAID CONTRACTS?

Consumers with disputes with a seller or provider should make every effort to resolve the difficulty by working directly with the provider or seller involved. If these efforts are not successful, consumers may file a complaint with the State of Michigan Department of Labor and Economic Growth, Office of Commercial Services at the address given in this publication or by telephone (517) 241-9252. If the dispute is based on whether or not a party has met its obligations as set forth in the contract, the escrow agent may be asked to submit the dispute to arbitration or to file legal action.

**Limitation of Action: An action for breach of a contract and/or breach of any duties imposed by the Prepaid Funeral Contract Funding Act of 1986 (Act No. 255, P.A. 1986, as amended by Act No. 21, P.A. 2004) including but not limited to an action by or against the escrow agent, shall be commenced within one year after the cause of action has accrued.*

PREPAID FUNERALS AND STATE ASSISTANCE AND ELIGIBILITY

If you receive state or federal assistance in any of the following programs – Medicaid, State Disability Assistance (SDA), Family Independence Program (FIP) or Supplemental Security Income (SSI) – a prepaid funeral contract will not be considered an asset and will not jeopardize your eligibility for assistance IF:

- It is with a state licensed funeral provider
- You did not pay more than \$11,072.00,* excluding any life insurance irrevocably assigned to a funeral home for funeral goods and services (The combined total of life insurance irrevocably assigned to a funeral home and an irrevocable trust cannot exceed \$11,970.00)
- You paid for the contract with your own money (Note: Guardians of mental health patients may buy contracts for them)
- It is a *guaranteed price* contract
- It is certified as “**Irrevocable**” by the Michigan Department of Human Services or Michigan Department of Mental Health

**The amount allowed for an irrevocable contract will change annually in June of each year.*

Department of Human Services offices and Mental Health centers and hospitals have certification forms available. Please call your local caseworker or mental health worker for additional information.

CHECKLIST

___ Do I have a copy of my prepaid funeral contract?

___ Are all the goods and services I ordered listed and described in my prepaid contract?

___ Do I have my sellers registration number?

Are the following clearly identified in writing in my prepaid contract?

___ All the providers who are to furnish goods and services under my contract?

___ Whether my contract is guaranteed or non-guaranteed?

___ The contract beneficiary?

___ Whether or not a commission was charged at the time of purchase and, if so, the percentage of the contract price charged as commission?

___ The percentage of the escrowed amount I would be refunded if I canceled my contract?

___ Do I have the name and address of my escrow agent?

___ Am I receiving statements regarding my escrow account, including those needed for tax purpose?

This material presented to you by

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