

## **2011 POLICY**

### **REGULATION OF PRENEED FUNERAL CONTRACTS**

#### **NFDA Position**

That NFDA work with the Congress, federal and state regulatory agencies, state funeral director associations, consumer groups and other interested parties to enact appropriate additional consumer protection provisions to state preneed laws and regulations as contained in our Preneed Guidelines. In addition, NFDA stands ready and willing to participate in the formulation of such policies and to work with Congress, the Federal Trade Commission or any other federal agency and consumer groups to achieve an equitable solution for everyone at either the federal and/or state levels.

#### **Background**

Over the years, funeral directors and others have expanded their services to include offering preplanning and prepaying options to the public. These offerings can be financed either through a trust or an insurance policy. These trusts and insurance policies are regulated at the state level by laws and rules that set-out certain requirements that must be met both in terms of sales and trusting/investing requirements. Since there is no uniform state law, these laws and regulations vary with each state. There is little or no federal regulation of preneed contracts, trusts or insurance policies.

#### **Discussion**

With the increased emphasis on preneed sales and marketing, the growth of capital invested in these trusts and insurance policies has increased substantially. Master Trusts have been created by state funeral director associations, corporations, banks and other investment entities to manage and invest the funds. Even after several recent massive preneed scandals involving millions of dollars, this issue has largely gone unnoticed by the Federal Trade Commission, Congress or even the national media. However, they have not gone unnoticed by national consumer groups which are keenly interested to protecting consumers who use the vehicles to prepay funeral/burial expenses. The primary issues they are concerned with include but are not limited to trusting requirements, portability, refundability and accountability of and for these trust funds and insurance policies as well as those who sell them.

In response to these concerns, NFDA has developed, approved and distributed to consumer groups, key federal and state regulators and other interested groups and organizations our State Preneed Guidelines. These guidelines are for state funeral director associations to use with their various state legislatures to improve the consumer protections in existing state preneed laws and regulations and their confidence in preneed funeral trusts and insurance. Over the years, the NFDA Policy Board has revised the Guidelines to include provisions on trusting, state guarantee funds and constructive delivery. The Guidelines have been used by several states in recent years

to improve existing preneed laws or enact new preneed laws that contain the consumer protection provisions recommended by the Guidelines.

In addition and in response to the Clayton Smart and other preneed scandals, NFDA appointed a Preneed with Integrity Work Group in 2008 to develop policies, programs and management tools that our members and consumers can use to insure that the integrity of preneed funds are preserved and that proper disclosures and accountability standards and practices are implemented. Their recommendations have been made to the NFDA Executive Board and many have been approved for implementation.

In 2009, two congressional bills were introduced that would impact preneed funeral trusts and those who sell them. The first is H.R. 3655, the Bereaved Funeral Consumers Bill of Rights Act of 2009 and the second is H.R. 3126, the Financial Products Safety Commission Act of 2009. Both bills would potentially regulate preneed funeral trusts, master trusts and those who sell them in one form or another. NFDA has submitted language for the Committee Report that accompanies H.R. 3126 stating that it is not the intent of the bill or the Committee to cover preneed trusts since they are regulated in all 50 states. While our suggested language was not included in the final report, at least we flagged the issue for the Committee. H.R. 3655 would require some federal consumer disclosures for preneed contracts but the burden does not seem to be great. In fact, a number of states already require these disclosures. NFDA will continue to track these bills through their legislative journey and make our views known when and where the process allows or requires it.

Since H.R. 3655 did not pass last year and its prospects for introduction and passage this year are much more problematic, NFDA's attention will be focused on the new Consumer Financial Protection Bureau housed in the Federal Reserve. Its creation and scope of authority will be of vital concern. Since a preneed contract is a consumer financial transaction, it could easily come under the jurisdiction of this new agency as well as those who offer them. NFDA will monitor this situation closely and take appropriate action as necessary and consistent with this policy.

**NFDA Governance History:**

1999: Committee Action 1/26/99; Policy Board Action 3/15/99  
2000: Committee Action 2/1/00; Policy Board Action 3/27/00  
2001: Committee Action 1/30/01; Policy Board Action 3/19/01  
2002: Committee Action 1/29/02; Policy Board Action 3/18/02  
2003: Committee Action 1/23/03; Policy Board Action 3/24/03  
2004: Committee Action 1/26/04; Policy Board Action 3/15/04  
2005: Committee Action 1/18/05; Policy Board Action 3/7/05  
2006: Committee Action 1/17/06; Policy Board Action 3/8/06  
2007: Committee Action 1/16/07; Policy Board Action 3/26/07  
2008: Committee Action 1/14/08; Policy Board Action 3/10/08  
2009: Committee Action 1/29/09; Policy Board Action 3/30/09  
2010: Committee Action 1/20/10; Policy Board Action 3/08/10  
2011: Committee Action 1/27/11; Policy Board Action 3/09/11

Attest: NFDA Policy Board (original resolution) Date: March 15, 1999 File Code: RES051/Policybd