

5. Estate Planning

Pre-Need Burial and Funeral Contracts

Jamal told his daughter that he had pre-paid for his funeral and his burial and the contracts would take care of everything. When he died, however, his daughter found out that neither contract paid for interment, which cost an additional \$795 for the grave site alone.

Many people today choose to plan ahead for funerals and other final arrangements, making informed decisions in advance about burial and cremation and memorials. Many also put aside the funds to pay for these arrangements in a variety of fiscal instruments - trusts, insurance, and other accounts.

But more and more Michigan consumers, especially the elderly, are receiving direct mail and telemarketing calls from sellers of pre-need funeral goods - cemetery lots, urns, and caskets - and are pressed to pay in advance for goods and services they may not need or use in the future.

[Michigan's Prepaid Funeral Contract Funding Act](#) permits anyone to sell funeral goods and services on a pre-arranged basis, as long as they register as a seller with the State of Michigan. The providers of these goods and services are not all the same. For instance, funeral directors in Michigan are tested, regulated, and inspected by the state. Pre-need sellers do not have to be similarly licensed. If you decide you would like to pay in advance for funeral goods and services, make sure your money is safe and will be there when the need arises. Laws safeguarding your money may vary based upon the funeral goods or services being sold.

Consumers are encouraged by the Attorney General's office to obtain a written explanation of exactly how their money is protected in each transaction, and importantly, whether the pre-need contract is guaranteed, revocable, refundable, transferable, and portable.

The Attorney General's Office, the Federal Trade Commission, AARP, ABC News, and Consumer Reports have each done recent investigations into the sale of funeral goods and services. Consumers are entitled to good information upon which to base sensible decisions about funerals before or when the need arises. But they should not be pressured to pay in advance for merchandise or services they may not need. Nor should they be targeted for high-pressure marketing and sales schemes. The Federal Trade Commission's publication "*Funerals: A Consumer Guide*" details the requirements of federal law and provides a more comprehensive overview. The publication is available from the FTC by calling 1-877-382-4357; TDD: 1-202-326-2502 or online at: www.ftc.gov.

Before signing any pre-need contract or paying for anything in advance, consumers should consider the following questions:

- What are you are paying for? Are you buying only merchandise, like a casket and vault, or are you purchasing funeral services as well? Who will eventually provide the services and merchandise you are purchasing?
- Who are you dealing with? A licensed funeral director? A cemetery salesperson? A commissioned pre-need seller? Who owns the firm? How long have they been in business?
- What happens to the money you've prepaid?
- What happens to the interest income on money that is prepaid and put into a trust account?
- Are you protected if the firm you dealt with goes out of business?
- Can you cancel the contract and get a full refund if you change your mind?
- What happens if you move to a different area or die while away from home? Some prepaid funeral plans can be transferred, but often at an added cost.
- Are these arrangements portable, transferable, and refundable without penalty?
- Have you consulted your family, your religious, spiritual, and financial advisors?
- Are you feeling “pressured” or hurried to make these arrangements or buy something before you really need it? If so, by whom?

Another resource you may wish to contact includes:

AARP Fulfillment
601 E Street, NW
Washington, DC 20049
1-800-424-3410
www.aarp.org

AARP is a nonprofit, nonpartisan organization dedicated to helping older Americans achieve lives of independence, dignity and purpose. Its publication, "Preplanning Your Funeral Arrangements," is available free online or by contacting **AARP**.

Living Trusts

Victoria went to a seminar on living trusts. The speaker said a living trust was a way to avoid the high cost of probate, which he said would eat up a third of her estate. She paid \$1,500 for a living trust package. However, she did not understand that she had to personally transfer all of her property to the trust. She missed doing the paperwork on some items, so when she died her estate had to go through probate anyway. As it turned out, the probate fee was only \$500.

In recent years, for-profit companies have aggressively promoted the sale of living trusts to seniors. They play on people's fears and misconceptions about probate and estate taxes, and promote living trusts as a suitable estate-planning tool for everyone. Probate is a legal process that oversees the transfer of property from a deceased person's estate to the beneficiaries. However, a living trust is NOT suitable for everyone's situation and living trust packages marketed at seminars, by postcard, and on the Internet are usually a waste of money. A living trust lets you direct how property you place in the trust will be distributed after your death. It allows your trust property to pass to your beneficiaries without going through the probate process. Living trusts can be useful if a person owns real estate in more than one state, anticipates that his or her will might be contested, or wants to have someone else manage his or her current assets. However, living trusts are not the best estate planning choice for most people in most circumstances.

Also, living trusts marketed by salespeople may use pre-packaged forms that are not tailored to the consumer's individual circumstances, and may not comply with Michigan laws and regulations. These salespeople often:

- Greatly exaggerate the cost and delay of probating a will. In fact, Michigan's probate process is relatively uncomplicated. Michigan has a streamlined procedure for small estates, and permits a less burdensome probate administration when the beneficiaries consist only of the decedent's spouse, children, or a personal representative.
- Falsely claim that a living trust will cost less than probate. In Michigan, probate fees are modest.
- Sell trust documents that are not drafted by attorneys or are written by attorneys who are not licensed in the consumer's state.
- Do not tell consumers that they must transfer all of their assets to the trust, or the estate will have to go through probate anyway.

The bottom line? A subject as important as estate planning should be discussed with professional counsel, not with a salesperson. Don't buy a living trust package that may not be valid and may be just a waste of money. To determine if a living trust is right for you, consult an attorney who is admitted to practice law in Michigan and who specializes in estates and trusts.

For more information:

The American Association of Retired Persons (AARP) offers the publication, "*A Consumer's Guide to Living Trusts and Wills.*" See the AARP website at www.aarp.org.

The Legal Hotline for Michigan Seniors provides free legal advice to any Michigan resident age 60 or older. To reach the Legal Hotline for Michigan Seniors, call 1-800-347-5297.