



SUSANA A. MENDOZA
ILLINOIS STATE COMPTROLLER

ILLINOIS CONSUMER GUIDE TO PRE-NEED FUNERAL AND BURIAL PURCHASES



TO ASSIST YOU WITH IMPORTANT DECISIONS

Legal Rights and Protections Under Illinois Law
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DEAR CONSUMER:

This Consumer Guide was produced by the Illinois Comptroller's Office in conjunction with industry leaders from throughout the state to assist you in making important decisions when purchasing pre-need cemetery services and merchandise. It is designed to serve as a resource so that you know your legal rights and protections under Illinois law, and reflects state statute as of January 2017.

The Illinois Comptroller is accountable for administration and enforcement of laws relating to pre-need purchases and service delivery. With that role comes the responsibility of public education, which is what this publication is all about. Beyond serving as a legal resource, this guide answers Frequently Asked Questions, and provides additional contacts and information to help you determine whether your rights may have been violated.

I hope you find this publication helpful. As always, please do not hesitate to contact me with any additional questions or requests for information. Please call the Pre-need Licensing and Certification Enforcement (PLACE) Division directly at (877) 203-3401, or email PLACE@IllinoisComptroller.gov. We are standing by for your call, and look forward to providing whatever assistance you may need.

Sincerely,

A handwritten signature in black ink that reads "Susana A. Mendoza".

Susana A. Mendoza
Illinois State Comptroller

ILLINOIS CONSUMER GUIDE TO PRE-NEED FUNERAL AND BURIAL PURCHASES

What Is the Funeral or Burial Funds Act?

The Illinois Funeral or Burial Funds Act [225 ILCS 45] (the law), gives consumers certain rights and protections when they purchase funeral or burial services and merchandise in advance of need (pre-need). The State Comptroller has the duty to administer and enforce this law.

What is “Pre-Need” Funeral or Burial Purchasing?

The purchase of pre-need funeral or burial merchandise and services occurs when you enter into an agreement to acquire and pay for funeral or burial merchandise and services before you need them.

What is a Pre-Need Sales Contract?

A pre-need funeral or burial sales contract is a legal agreement between a consumer and a funeral home, or a cemetery (seller) for funeral or burial merchandise and services. The merchandise and services will be supplied at a future date by a funeral home or a cemetery (provider).



Sellers of Pre-Need Services and Merchandise Must Be Licensed.

Sellers of pre-need services and/or merchandise must be licensed by the State of Illinois through the Office of Comptroller. You should verify that the person with whom you are doing business is licensed to sell pre-need services and merchandise before you make your purchase. You may contact the Comptroller's Office to verify whether a seller is licensed.

What Services and Merchandise are Covered by the Funeral or Burial Funds Act?

The law covers the purchase of funeral services, clothing, caskets, grave boxes, grave liners, burial vaults and urns. Sales of cemetery services, such as the preparation of a plot or the placement of a headstone, or cemetery merchandise, such as grave markers and mausoleums, are not covered by the law. The purchase of cemetery services and merchandise may be covered by the Illinois Pre-Need Cemetery Sales Act [815 ILCS 390] and Cemetery Care Act [760 ILCS 100]. If you have any questions about which law applies to your purchase, you may contact the Comptroller's Office for assistance.

What Must the Seller Tell You in a Pre-Need Contract?

All pre-need contracts sold in Illinois must contain certain disclosures to help you the consumer understand your rights. Always check your contract for the following information:

- The seller's name and address;
- The provider's name and address;
- When a provider has branch locations, a place in the contract where the consumer may select the branch where the funeral or burial will be performed;
- The buyer and the beneficiary;
- A complete description of the merchandise and/or services purchased;
- Whether the contract is for a guaranteed or non-guaranteed price;
- How the merchandise and/or services will be funded (i.e., through a trust account, life insurance policy or annuity);
- The name of the trustee or the insurance provider;
- The governmental body that regulates the trustee or the insurance provider; and
- The seller's policy and penalties if the buyer cancels the contract or defaults on payment.



What are Guaranteed and Non-Guaranteed Contracts?

A “guaranteed contract” means that you are guaranteed the services and/or merchandise you selected for the amount of money stated in the contract. You or your estate will not be required to pay any additional costs for the items guaranteed unless unexpected charges are incurred.

A “non-guaranteed” contract means that the price of the services or merchandise you select will be determined at the time they are needed. Any payments you make under the contract act like a deposit to reduce the out-of-pocket expense at the time of need. If the “deposit” does not cover the entire cost of the merchandise or services, you or your estate pay the difference at the time of need. If your contract does not guarantee a price, it must clearly state “non-guaranteed contract”. Be sure to read your contract carefully.

Some non-guaranteed price contracts are set up to later become guaranteed price contracts. In these cases, the contract must clearly state the time or event when the price becomes guaranteed and the nature of the guarantee.

Pre-Need Contracts Funded by Life Insurance Policies and Annuities vs. Pre-Need Contracts Funded by Trusts

Under Illinois law, all pre-need contracts must be funded through an insurance policy, a tax deferred annuity, or a trust. Your contract must clearly state which of these three funding mechanisms applies to it.

a. Life Insurance Policies and Annuities

Pre-need contracts funded by life insurance policies or tax-deferred annuities are planning tools offered by insurance companies. The contracts may be purchased directly from an insurance company or through a licensed insurance agent working on behalf of the funeral home or cemetery. If you buy through a licensed insurance agent working on behalf of the funeral home or cemetery, any payments you make to the funeral home or cemetery must be mailed to the insurance company within 30 days after receipt of the contract.



Your insurance policy will provide the details of the coverage, including the cost, payout provisions and cancellation fees. Be sure to read both the contract and the insurance policy carefully.

b. Trust Accounts

When funeral homes or cemeteries sell pre-need contracts funded by a trust, the seller must send a certain percentage of your payments to a trustee for deposit in a trust account.

The trustee is an independent company that must hold this money until the merchandise or services are actually needed (or until you cancel your contract and seek a refund). Review your contract for the name of the trustee and the trustee's contact information.



Sellers must send 85% of the purchase price of outer burial containers (burial vaults) and 95% of the purchase price of all other merchandise and services to the trustee within 30 days after receipt of the contract. Each year you will receive a trust account statement (much like a bank account statement) from the trustee. This is an important consumer protection, so be sure to watch for your annual statement. If you do not receive an annual statement, contact the trustee named on your contract. If the trustee cannot be located or cannot assist you, contact the Comptroller.

Can I Get My Money Back If I Change My Mind?

Yes, unless a pre-need contract is made irrevocable, you may cancel at any time. The penalties for cancelling a pre-need contract will be different depending upon when the contract is cancelled and the funding method used.

a. Contracts Sold Outside the Seller's Place of Business

If you did not purchase your contract at the seller's place of business, including but not limited to door-to-door sales, then the contract is subject to the Federal Trade Commission's "Cooling-Off Period for Door-to-Door Sales" rule. Under this rule, you have the right to cancel the contract within three business days after signing it without any penalty.

b. Paid in Full Contracts Cancelled Before the Time of Need

If you cancel a contract for services or merchandise funded by a trust after it is paid in full but before the time of need, the seller must refund 95% of the purchase price plus net earnings. For contracts for outer burial containers funded by a trust, the seller must refund 85% of the purchase price plus net earnings.

If you cancel a contract funded by an insurance policy or annuity, you are entitled to the cash surrender value of the insurance policy or annuity. (Cancellation of a pre-need contract does not necessarily cancel the insurance policy.)

c. Paid in Full Contracts Cancelled After the Time of Need

If a contract is paid in full but it is decided at the time of need that the funeral or burial will be held elsewhere or that the merchandise or services will not be used, the seller may keep 10% of the payments made under the contract or \$300, whichever is less. The remainder of the trust funds or insurance or annuity proceeds will be provided to the legal heirs or according to a probate action.

d. Partially Paid Contracts

If you cancel before your contract is paid in full or if you default on payments, the seller may keep 25% of the payments made under the contract or \$300, whichever is less. (If contract provides for liquidated damages.)



The Illinois Pre-Need Funeral Consumer Protection Fund

If you are not provided the funeral or burial merchandise promised in the contract and are not provided a refund, you or your estate may be able to recover your losses from the State's Pre-need Funeral Consumer Protection Fund. Contact the Comptroller's Office to apply for consumer protection funds.

What Can You Do If You Believe You Were Treated Unfairly?

If you think that you have been a victim of unfair or illegal practices in the handling of pre-need funds, you may file a written complaint with the Office of Comptroller, Pre-Need Licensing and Certification Enforcement (P.L.A.C.E.) Division, 555 West Monroe Street, Suite 1400S-A, Chicago, Illinois 60601. In addition, the State Attorney General can seek a court order for restitution and issuance of fines. If you believe that improprieties exist in connection with the sale of insurance or annuities used to fund a pre-need contract, you can file a complaint with the Illinois Department of Insurance.



Questions or Concerns?

If you have questions or concerns about your pre-need contract

Please call the Comptroller's toll-free consumer hotline:
(877) 203-3401

or mail your inquiry to:

**Illinois Office of Comptroller
P.L.A.C.E. Division
555 West Monroe Street, Suite 1400S-A
Chicago, Illinois 60661**

or visit our P.L.A.C.E. webpage:
illinoiscomptroller.gov



