



CREATIVE CHOICES

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The Newsletter of the Funeral Consumers Alliance of Central Texas

PREPAID FUNERAL CONTRACTS News, Info' and Views

Prepaid funeral contracts are the primary focus of this issue of **Creative Choices** because these documents have been in our local news since early August.

As we advised you in your last **Creative Choices** newsletter, Austin-Peel & Son was found to be selling trust-funded prepaid funeral benefit contracts without the permit required by the Texas Department of Banking. As a result, on August 2, the Department of Banking served Austin-Peel & Son with an Emergency Cease and Desist Order, ordering the funeral home to stop selling trust-funded prepaid funeral benefit contracts and to cease collecting associated funds. Also on August 2, the Department of Banking took custody of the records and funds relating to illegal prepaid funeral benefit contracts.

An investigation ensued over the next few months. Then, on November 6, Billy Peel, owner of the funeral home, and the Department of Banking signed a Consent Order, the terms of which are highlighted on page 7. As you'll see, over 240 families purchased prepaid funeral contracts from Peel. When you consider that the five counties that FCA of Central Texas serves include 50 funeral homes, the potential is great for thousands of families to be adversely affected by prepaid funeral purchases.

If you are considering a prepaid funeral contract, the Department of Banking provides answers to **Frequently Asked Questions** on their website at www.prepaidfunerals.texas.gov/content/faqs. Here are some of those FAQs:

How are prepaid funeral contracts regulated in Texas?

Prepaid funeral contract permit holders are regulated by the **Texas Department of Banking** (Department) in accordance with Section 154 of the Texas Finance Code and Title 7, Sections 25.10 and 25.11 of the Texas Administrative Code. In addition to the Department, two other state agencies are involved in some facet of the regulation of the funeral industry. **The Texas Department of Insurance** supervises and regulates insurance companies that offer insurance products that may be used to fund prepaid funeral contracts. Additionally, the **Texas Funeral Service Commission** licenses and/or regulates funeral homes, funeral directors, and crematories and registers cemeteries. Concerns or complaints concerning prepaid funeral contracts should be directed to the Department while those concerning the underlying insurance funding policy should be addressed to Texas Department of Insurance. Further, complaints pertaining to a funeral director or a funeral establishment should be directed to the Texas Funeral Service Commission. However, the three regulatory agencies share information and forward misdirected complaints to the regulatory agency charged with the statutory authority to obtain resolution.

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FCA of Central Texas is an all-volunteer 501(c)(3) nonprofit organization.

Our mission is to help people make educated, practical choices that will meet their needs at the end of life.

How do I know if I am dealing with a seller who holds a valid prepaid funeral contract permit?

All prepaid funeral contract sellers in Texas are required to hold a permit issued by the Department which must be renewed annually. Therefore, any funeral establishment that sells prepaid funeral contracts must either have a permit or sell through a licensed third-party permit. The seller's preprinted name and permit number should always be included at the top of page 1 of the prepaid funeral contract. . . . To inquire about a permitted seller, you can visit the Permit Holder Listing link [<https://tinyurl.com/ydajsjff>] or contact the Department at 1-877-276-5554.

Do **not** enter into a prepaid funeral contract that has spaces to insert the deceased name or date of service as you could be dealing with an unlicensed seller. Further, please report any suspicious activity such as this in writing to the Department together with copies of any contracts or other information provided by the seller.

Prepaid Funeral Benefits Contract

Contract No. _____

Purchaser: _____

Provider: _____

Contract Beneficiary: _____

Seller: (preprinted name / permit number)

What are the options available to fund a prepaid funeral contract in Texas?

The two options available to fund a prepaid funeral contract are **trust-funded** and **insurance-funded**. A seller may offer one or both funding types. There are differences between these types including funding mechanisms, federal tax treatment, cancellation benefits, and added costs for finance charges or whole life benefits.

If a person dies in a different geographical location other than where the prepaid funeral contract was purchased, does the selling funeral provider still have to perform the contracted goods and services? Does the actual servicing funeral provider have to honor the contract prices?

If the contract beneficiary dies a significant distance from where the contracted funeral provider is located, then the family will need to pay the cost of transportation of the deceased back to the funeral home. The family can choose a local funeral home in the area where the deceased is located; however, that funeral home is under no legal or binding obligation to honor the original prepaid funeral contract prices. In these situations, it is recommended that the family immediately contact the original contract funeral provider for guidance. If the family decides to pay the additional cost of transportation of the deceased back to the selling funeral provider, then the selling funeral home is bound to honor the prepaid contract for the specified prices set forth in the contract, plus any unfunded cash advance items selected by the family.

Do the prices vary for the goods and services included on prepaid funeral contracts among permit holders?

Yes, each funeral home in Texas can set its own pricing for funeral goods and services. There is no regulation on the pricing of funeral goods and services. The funeral home's General Price List, Casket Price List, and Outer-Burial Container Price List are all available to consumers upon either verbal [in person or by phone] or written request to a funeral home.

Can a purchaser subsequently make changes to the prepaid funeral contract, with the permit holder's approval?

No, contract purchasers cannot modify selected goods and services once a prepaid funeral contract has been executed. The prepaid statutes are clear that there can be no downgrades or partial cancellations of prepaid funeral contracts. If the purchaser wishes to change some previously selected goods or services, the original contract must be canceled and a new contract entered into. Consumers should contact their funeral director to determine the cancellation benefit available under the original contract and what prices will be charged on the new contract.

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Can I cancel the prepaid funeral benefit contract?

Yes, the contract can be canceled by giving written notice to the seller. The seller will then send you the required cancellation forms which must be completed and returned to the seller. The seller has 30 days from receipt of the completed forms to refund the cancellation benefit. If the contract canceled is an **insurance-funded** contract, the cancellation benefit will be the cash surrender value of the policy. If the contract canceled is a **trust-funded** contract, the cancellation benefit in most cases will be the amount paid in, less 10% of the total face value. Additionally, purchasers of contracts sold after September 1, 2001 are entitled to receive 50% of the net accrued earnings upon cancellation provided the purchaser has complied with the terms of the contract and the contract was outstanding in excess of one year. A purchaser cancelling a prepaid funeral contract sold before September 1, 2001 is not entitled to any accrued earnings. Lastly, if the **seller** requests you to cancel the trust funded contract, you are entitled to all funds paid in, plus 100% of the accrued earnings in accordance with Section 154.155 of the Texas Finance Code.

What happens to the money I paid on a trust-funded prepaid funeral contract?

If you purchase a trust-funded prepaid funeral contract, you make payments to the permit holder who must deposit your money in a Department-approved financial institution within 30 days of receipt. However the permit holder is allowed to keep 50% of each payment you make up to 10% of the total contract price for its selling and administrative expenses. Your prepaid funeral contract payments are deposited into an interest bearing restricted bank account or formal trust account to pay for the future costs of the selected goods and services.

What happens upon the death of the beneficiary listed on a trust-funded prepaid funeral contract?

Upon the death of the beneficiary, **if the trust-funded prepaid funeral contract is fully paid**, the provider must deliver the guaranteed funeral goods and services at no additional cost.

If payments are current, **and you pay any remaining balance due on the contract before the funeral service**, the provider must deliver the guaranteed funeral goods and services.

What happens to the money I paid on an insurance-funded prepaid funeral contract?

If you purchase an insurance-funded prepaid funeral contract, the prepaid funeral contract beneficiary must apply for insurance coverage. The insurance company will either issue your insurance policy or deny insurance coverage within 30 days after you sign the prepaid funeral contract. If coverage is denied, you will receive a 100% refund from the insurance company.

What happens upon the death of the beneficiary listed on an insurance-funded prepaid funeral contract?

Upon the death of the beneficiary, the amount paid to the provider depends on what type of policy was issued to fund the prepaid funeral contract and whether premium payments are current. Insurance companies generally have several different types of insurance products that are used in the prepaid funeral contract market; therefore, it is important to read the policy carefully. In annuity contracts and full benefit insurance policies, policy beneficiaries are generally entitled to the full death benefit upon the death of the insured, while death benefits are reduced if death occurs during the first few years of the policy for limited benefit insurance as stipulated by the policy terms.

Annuity contract and Full Benefit insurance policies

- The provider must deliver the guaranteed services and merchandise selected at no additional cost if:
 - the premiums are current; **and**
 - the remaining balance due on the annuity contract is paid prior to the funeral service

Limited Benefit insurance policy

- The provider must deliver the guaranteed services and merchandise selected at no additional cost if the premiums are current, and:
 - the limited death benefit period has expired; **or**
 - the limited death benefit period has NOT expired but the remaining balance due on the insurance policy is paid prior to the funeral service

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For both Insurance-Funded and Trust-Funded prepaid funeral contracts

- The provider is not required to deliver the guaranteed services and merchandise selected if:
 - the insurance policy funding the prepaid funeral contract is in default; or
 - the purchaser did not follow the payment terms in a trust-funded prepaid funeral contract

Am I obligated to pay taxes on the prepaid funeral contract?

- **Trust-Funded:** You or your estate may incur a tax liability for interest earned on deposits made under the prepaid funeral contract; however, these earnings are never paid to you. See Internal Revenue Ruling (“IRS”) 87-127 and IRS Code Section 685.
- **Insurance-Funded:** You or your estate may incur a tax liability for the insurance policy benefits if they are paid directly to you.

How to File a Complaint:

www.dob.texas.gov/cemetery-prepaid-funeral-services/how-file-complaint

From our national Funeral Consumers Alliance: Additional Considerations about Prepaid Funeral Contracts

The Medicaid factor

The only reason to consider prepaying your funeral, burial, or cremation is to shelter your assets from Medicaid. Money you set aside in an **irrevocable trust** will be excluded from your net assets when your eligibility to receive Supplementary Security Income (SSI) or Medicaid benefits is determined. On the other hand, money placed in a **revocable trust** can be taken by Medicaid if your other assets have been depleted. Maximum allowable assets vary by state, but may be as low as \$2,000.

You should make sure that the plan you buy is a legitimate Medicaid-exempt trust. Also, be aware that any money left over after funeral expenses are paid is subject to recovery by Medicaid. Don't buy an irrevocable funeral trust “just in case” you might need Medicaid. Wait until you know for sure.

In Austin, Cook-Walden, Weed-Corley-Fish, and The Neptune Society (all owned by SCI, Service Corporation International) aggressively market prepaid funeral contracts. If you decide to purchase a contract to spend down your assets, compare costs at a variety of funeral homes, just as you would if you were buying funeral goods and services when a death has occurred. Remember, too, that prepaid contracts typically do not fund cash advance items, such as obituaries, flowers, and police escorts.

Risks of prepaying

– For you

- If you cancel, move or change your plan, you may not receive a full refund.
- In many states, part or all of the interest earned on your account may be withdrawn each year by the seller.
- If the prepaid policy is funded with an insurance policy, the cash-out value of the policy is almost always much less than you originally paid.
- The money you pay for funeral arrangements now won't be available for emergencies later.

– For your survivors

- Many insurance companies will not pay the full benefit—or anything at all—during the first few years the premiums are being paid.
- Money spent today may not cover future funeral costs, which could result in the use of cheaper merchandise or requests for additional money.
- Survivors may not be aware that funeral costs have been paid, and may pay at a different funeral home.

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Risks of prepaying (continued)

- If you die out of town and your family employs another funeral home there, it may be difficult to get a refund.
- By the time of your death, the funeral home may have a poor reputation, or be out of business entirely.

Protecting yourself

Laws in many states don't offer much protection for your prepaid funeral money. Only New York and New Jersey get close to truly consumer-friendly pre-need laws. New York requires 100% of your money to be deposited in trust. The consumer has the right to a full refund, with interest, on a revocable plan, and irrevocable plans are transferable. We don't recommend prepaying unless you must do so to qualify for Medicaid. But if you are committed to prepaying, be sure:

- Your money is secure, such as in a federally-insured bank. Funeral insurance plans are not as tightly regulated, so take extra caution.
- Your plan allows for a full refund with little or no penalty if you decide to cancel.
- Your money (trust or insurance) is transferable to another funeral establishment if you move, change your mind, or the firm closes. Remember that if you transfer your funds, the new funeral home is not obligated to honor the prices of the original funeral home.
- You know who holds the pre-need money, and how to contact them.

Safer alternatives

- **Prearrange without prepaying**

By comparison shopping, you can make reasonably priced funeral arrangements, without setting aside large sums of money or prepaying anything. Get detailed price lists from several funeral homes—over the phone or in person—and compare prices. You'll see big price differences for essentially the same goods and services. Visit several of the most affordable funeral homes, and choose the one you like best. You might even fill out a pre-arrangement form and leave it on file there. Most importantly, be sure to tell your family about your choice. Walk them through every detail. Give them copies of any contracts or written wishes right away. Do not put them in a lockbox. Do not simply tell your children, "Everything is taken care of." Your survivors **will** have to make choices after you die; you cannot prepay the future away. You and your family will enjoy peace of mind, knowing that the important decisions have been made and thoroughly discussed.

- **Set up a Payable on Death account**

If you want to set money aside for your funeral expenses without handing it over to a funeral firm, consider establishing an individual "payable on death" (POD) account. You deposit in a bank enough money to cover the current price of a funeral, then let the accumulated interest cover any cost increase due to inflation. You can always top it up over time if interest rates are low. This account can be made payable upon death to a trusted family member or friend who will use the money properly for your funeral. (We **do not** recommend making a funeral director your beneficiary.) The funds will be released immediately after your death without the delay of probate. POD bank accounts are FDIC-insured, they remain in your name, and money can be withdrawn at any time. However, such accounts are treated as countable assets by Medicaid, and the interest is subject to income tax.

What's Up with Funeral-Related Laws & Regulations in Texas?

If you would like to be notified when the Texas Funeral Service Commission (TFSC) schedules stakeholder meetings (where funeral homes are typically more strongly represented than consumers), please **send your name, email address, and phone number to Nancy Walker at execdir@fcactx.org**. Nancy is collaborating with Jim Bates, an FCA volunteer who has been conscientiously educating the TFSC and the Texas legislature about funeral consumer rights for years. Sending your name and contact information to us will also allow Jim to update you when the Texas legislature is addressing funeral-related issues.

Considering burial insurance again by Lamar Hankins

The Colonial Penn Life Insurance promoted by Alex Trebek on television is basically what is often called burial insurance. When I asked for a quote about 2 months before my 74th birthday, I discovered several things that should interest any consumer.

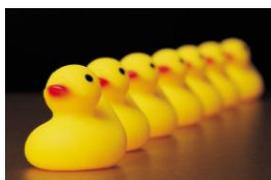
As you might anticipate, the quotes are based on average life expectancy; that is, the value of the maximum policy available to me was just under \$5,000. The payments were calculated by dividing that amount (actually \$4,960) by the number of months left on the average life expectancy charts for a male of my age. My monthly payment would be \$79.60. That is based on a life expectancy of just under 5.2 years.

If I live longer than 5.2 years, I must continue to make the payments to keep the life insurance in force. After 5.2 years of payments, I will have paid the full value of the policy—\$4,960.

As Trebek says in the commercials, "there are no health questions to answer and no physicals to take to purchase this plan." As Colonial Penn's website explains, "We can guarantee your acceptance because of a two-year limited benefit period for death from non-accidental causes. If death from non-accidental causes occurs during the first two years of coverage, the beneficiary will receive the premiums paid plus 7% interest compounded annually. After the first two years, the full face amount will be paid for death from any cause."

If I had such a policy and died from an accidental cause during the first two years, the full face amount would be paid. Just to be clear, the website explains, "Accidental death does not include death resulting from bodily or mental illness or disease, infection, suicide, medical or surgical treatment, voluntary gas inhalation or taking poison, or any act of war." In summary, if I die from a medical condition or a listed circumstance during the first two years, my survivors receive only the money I paid plus interest. If I die in an accident, my survivors receive the full face amount of the policy.

Insurance is a safe bet for the company because its risk is spread out over enough people to assure that it will make money. Whether it is a good deal for the consumer depends on factors mostly outside the consumer's control. The worst scenario, however, is for you to live beyond the time when you have paid the face value of the policy. If you don't continue making the payments, the policy will lapse and you will get nothing for living beyond your average life expectancy. If I were to take out the policy at age 74 and live to age 94, as my father did, I would have paid \$19,104 for a policy worth only \$4,960 at my death. As always, "Buyer Beware!"



Getting Your Ducks in a Row: What to Know Before You Go

Lifetime Learning Institute (LLI) has again invited our FCA to present an 8-session "Ducks" class exploring end-of-life options.

This class will help you think and talk about final matters with more comfort and ease. The information you'll receive will help you make informed choices. Along the way, we'll discuss prices at local funeral homes and cemeteries; prepaid funeral contracts; hospice care; organ, tissue, and whole body donation; and a whole lot more. You'll be invited to participate in relaxed, small group discussions that will help you incorporate your end-of-life values and priorities into an advance directive. You'll learn from subject matter experts who welcome questions and won't try to sell you a product, a preneed policy, or a point of view. From time to time, you'll be asked to read a few handouts between sessions.

When: Tuesdays, 10 a.m. to Noon, February 12 to April 2
Where: Genesis Presbyterian Church, 1507 Wilshire Blvd.
Cost: \$20 to register; \$10 for handouts at 1st class meeting
Class limit: 20 participants
Registration (begins Jan. 16): By mail or on the LLI website (www.lliaustin.org/)
Credit cards now accepted online for immediate registration

TEXAS DEPARTMENT OF BANKING
ORDER NO. 2018 re: Austin-Peel & Son Funeral Home
Order in Docket # BF-1806-18-194

Consent Order Highlights

The Department of Banking calculated the total amount of principal funds that were required to be on deposit, subtracted the appropriate seized funds, and determined that **\$524,780.38** of restitution must be paid ("Final Restitution").

From the seized files and the documentation received from consumers, the Department identified **at least 240 PFCs** that violated *Texas Finance Code* Chapter 154. Additional violations also occurred after the entry of Emergency Order No. 2018-019, as Respondents both sold a new PFC and collected money for prepaid funeral benefits, in direct violation of that Order.

Respondents agree to pay the Final Restitution by **February 15, 2019**. Respondent shall pay the amount due by wire transfer, money order, or cashier check, payable to the Texas Department of Banking.

Respondents agree that until the Final Restitution is paid in full, **they shall continue to honor the PFCs written by them** as they become due and owing and will provide written documentation to the Department to substantiate that each PFC was honored. Such documentation must be signed by an immediate member of the deceased's family and must contain the following information: 1) the deceased's full legal name; 2) the full name of the immediate family member attesting to the performance of the contract; and 3) the telephone number, address and email address of such immediate family member. If these conditions are met and the Department can verify that such contract was fully performed, the Department will agree to offset the Final Restitution amount due and owing by Respondents by the contract amount honored by Respondents on or before February 15, 2019.

Respondents agree to pay a penalty of **\$520,000.00** ("Default Penalty") that may be discounted based on how quickly Respondents complete payment of the Final Restitution and the administrative penalty. If Respondents complete payment in full of the Final Restitution by February 15, 2019, the Default Penalty shall be discounted to \$250,000 ("Reduced Penalty"). Respondents shall pay the entire Reduced Penalty amount by wire transfer, money order, or cashier check on or before April 15, 2019.

FACT: Your body has 206 bones (over half of which are in your hands and feet).

These are for your Funny Bone:



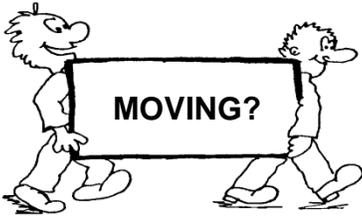
Do you live in Bastrop, Caldwell, or Hays County?

If so, we'd appreciate your picking up price lists from one or more funeral homes in **January**. (All you have to do is walk into a local funeral home, request their price lists, walk out, and mail the price lists to us . . . or, if you'd prefer, spend some time playing the mystery shopper. ☺)

Interested?

Please contact Nancy Walker (execdir@fcontext.org; 512-480-0251) by **December 31** for details.

2018, Issue 3



Email us at office@fcactx.org, call us at 512-480-0555, or complete and mail this form to our office.

Please update my contact info:

Name

Street or P. O. Box

City, State, Zip

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Help me transfer my membership to an FCA affiliate outside the Central Texas area.

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CREATIVE CHOICES

***The Newsletter of the Funeral Consumers Alliance
of Central Texas (formerly AMBIS)***



**MAY THE HOLIDAYS
GLADDEN YOUR HEART**

**MAY THE COMING YEAR
BE ALL YOU COULD WISH FOR**