

Deathcare business owners are like any other business owner: They have many tasks to address and not enough hours in the day to complete them, all while staying on course with their business' long-term goals and aspirations.

While you're working hard to accomplish those tasks and goals, you may think you're consistently following the law and staying within ethical boundaries. But the reality is that there are hundreds of rules and regulations, and every now and then you may overlook a few.

sales? The FTC's Cooling-Off Rule applies to sales made virtually anywhere other than your place of business. Therefore, a funeral director making preneed or at-need arrangements at a consumer's residence or somewhere other than the funeral home must inform the consumer of his or her right to cancel within 72 hours of the transaction. The regulation states that a funeral director must provide a contract to a customer containing the following information: 1) the seller's name and address, 2) the date, and 3) an explanation of the right to cancel set forth in bold, 10-point type. The right to cancel must be described in precisely this language:

"You, the buyer, may cancel this transaction at any time pri-



What You Don't Know Can Hurt You

LITTLE-KNOWN REGULATIONS THAT CAN GET YOU IN TROUBLE WITH THE LAW.

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The following little-known laws/rules can be violated easily and inadvertently, so it's critical you know them well and know how to maneuver when a situation requires specific compliance from you.

FTC COOLING-OFF RULE

The Federal Trade Commission's Funeral Rule is widely known to the deathcare profession, especially to funeral providers. But did you know that *another* FTC rule may apply to your

or to midnight of the third business day after the date of this transaction. See the attached Notice of Cancellation form for an explanation of this right."

Even if you knew about the applicability of the Cooling-Off Rule for "outside" sales and even if your contracts contain the required language in the required font size, you probably do not routinely provide the Notice of Cancellation forms to consumers. Most deathcare licensees fail to take this necessary second step in notifying the customer of his or her right to cancel.

Successfully made it this far? You're not quite done yet. Even if you knew about this rule and provided the Notice of Cancellation form to the customer, you may not know what's required if a customer invokes his or her right to cancel under the provision of the rule, as opposed to provisions of your state's deathcare laws.

If a customer cancels his or her purchase, you, as seller, have *just 10 days* to:

- Cancel and return any check signed by the customer
- Refund all funds paid
- Inform the consumer whether any merchandise the customer has will be retrieved
- Return any trade-in, to the extent such was part of the transaction.

Within 20 days, you must retrieve any merchandise as indicated or reimburse the customer for mailing expenses for returning the merchandise to you.

The "gotcha" for your business is that most state deathcare laws give a licensee well over 10 days to issue a refund to a canceling customer. But when the cancellation is pursuant to the FTC Funeral Rule, the shorter 10-day period applies.

Failure to comply with the requirements of the rule, if you are prosecuted, can result in penalties that run into five and six figures for large operators. There is at least one existing case in which penalties resulting from failure to comply with the rule were reported to approach \$1 million.

IRREVOCABLE PRENEED CONTRACTS

Most state regulatory schemes control when a preneed contract may be made irrevocable. Some states permit licensees to encourage every customer to make his or her contract irrevocable, while others restrict when such an election can be made. Let's look at a specific state law with an interesting rule that can sometimes cause an unfortunate result.

Florida law prohibits a licensee from making *any* preneed contract irrevocable unless the beneficiary is an applicant for, or recipient of, certain types of public financial assistance (Section 497.459, Florida Statutes). Despite the clear language of the law, however, many preneed licensees, particularly those affiliated with locations operating in states in which no such prohibition exists, routinely encourage making preneed contracts irrevocable. The offense, however, can carry a disciplinary penalty that includes a fine and even suspension or revocation of the preneed license.

Florida's statutory scheme, however, does not contemplate the transferability of preneed contracts, often leaving families in untenable positions when a death occurs. If the family was unaware of the irrevocable preneed contract's existence or when the relocation of the beneficiary of the preneed contract occurred, fulfilling the irrevocable contract may be impossible.

Often, licensees make handshake agreements between themselves to "honor" a preneed contract sold by another funeral home. That is not what the law requires or even addresses. The law requires that if a family does not desire to have the contract – irrevocable or not – fulfilled after the beneficiary has died, the contract may be *canceled* pursuant to the pre-

need contract cancellation law. But what should you do when a contract cannot be canceled?

Recent amendments to Florida law have helped resolve this problem by directing that any "unexpended monies paid on an irrevocable contract shall be remitted to a state trust fund" and not refunded to the family of the beneficiary after final disposition.

What the law implies but does not say specifically is that the family of the beneficiary may make changes to an irrevocable preneed contract once the beneficiary has died. But if the changes "downgrade" the arrangements, any monies left over are paid to the state and not to the family or the estate of the beneficiary.

Left unresolved is the question of what to do when the family does not desire any of the merchandise or services because the beneficiary has been cared for by another funeral establishment altogether. Unfortunately, Florida law does not provide an answer, and at present, licensees are left with no choice but to leave such a contract on their books, frustrating the family and the funeral establishment.

The overall takeaway is that funeral directors need to know their state law regarding irrevocable preneed contracts and follow it. You must pay careful attention to the nuances of your state's irrevocability law to ensure that you do not violate it or the contractual rights associated with the preneed contract.

RIGHT TO CONTROL DISPOSITION LAWS

Several states have, in recent years, enacted "Right to Control Disposition" laws. The tricky part of these laws is that they establish precisely who has the right to authorize what. The laws generally intend to give effect to the wishes of the decedent so long as those wishes were recorded in accordance with the Right to Control Disposition law.

But for operators in states where no such law previously existed, employees may be reluctant to "accept" authorizations made by the decedent and instead fall back on the habit of seeking authorizations from family or others. In such cases in which a decedent's wishes are not carried out despite their compliance with the Right to Control Disposition law, which requires that wishes be documented, operators can face regulatory and sometimes civil penalties.

As you have probably gathered by now, it is highly encouraged to keep up with changes made to laws in your state that can impact your business *even when those laws are not part of the deathcare practice acts or regulations of the respective state.*

As we mentioned at the beginning of this article, you may not have time to constantly monitor the ever-changing laws and rules that can get you in trouble. In almost all cases, there are professionals who can help. Ask yourself: Does your attorney understand and have experience with deathcare regulations? If not, find one who does. Maintaining an active relationship with counsel can save you a world of hurt and help you keep your focus on what matters most – sustaining and growing your business in a safe and proper manner. ☰

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