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115th Annual Meeting – San Diego, CA

FTC Funeral Rule: What's New at the FTC?

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Overview

- Introduction
- Review of the FTC's Rule
- Civil Penalties & FROP
- Regulatory Review
- FTC Resources

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Introduction

- FTC is the nation's consumer protection agency
- Headquarters in Washington, D.C.
 - 7 regional offices
- Independent agency with five Commissioners
- Bureau of Consumer Protection

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FTC Enforcement Authority

- Section 5 of the FTC Act prohibits unfair or deceptive acts or practices
- Other laws and rules, such as the Telemarketing Sales Rule, Fair Credit Reporting Act. And, the Funeral Rule!

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The Funeral Rule

- Essential Purposes: to ensure that consumers receive information necessary to make informed purchasing decisions, and to lower existing barriers to price competition in the market for funeral goods and services
- Original Rule took effect in 1984 and was amended once in 1994

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The Funeral Rule – Who is Covered?

- The funeral rule applies to all funeral providers
- A funeral provider is one who sells or offers to sell both funeral goods and funeral services to the public
- Funeral goods are all products sold directly to the public in connection with funeral services

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The Funeral Rule

- Funeral services are:
 - Services used to care for and prepare bodies for burial, cremation, or other final disposition; and
 - Services used to arrange, supervise, or conduct the funeral ceremony or final disposition of human remains

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The FTC Act Still Applies

- Entities and individuals in the death care industry who may not be covered by the Funeral Rule are still covered by the broad language of Section 5, which prohibits things like deceptive and unfair advertising

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Requirements of the Rule A Key Provision


It is an unfair or deceptive practice to fail to furnish accurate price information disclosing the costs of each funeral good or service, including the price of:

embalming, transportation of the remains, use of facilities, caskets, outer burial containers, immediate burials, or direct cremations

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Complying with the Funeral Rule at www.ftc.gov

Order copies at www.ftc.gov/bulk




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General Price List

At any "in person" meeting at a funeral home (or at removal), pre-need or at need, a provider must "give" out a GPL for consumers to keep upon beginning discussion of:

- Prices of funeral goods or services
- Overall type of disposition or service
- Specific funeral goods or services offered

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General Price List

- Six Disclosures
 - right to select only the goods and services desired
 - embalming
 - alternative containers for direct cremation
 - basic services fee
 - casket price list
 - outer burial container price list

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General Price List

16 Required Itemized Prices

- Forward of remains to another funeral home
- Receiving remains from another funeral home
- Direct cremation
- Immediate burial
- Basic services of funeral director and staff, and overhead
- Transfer of remains to funeral home
- Embalming
- Other preparation of the body

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General Price List

Required Itemized Prices

- Use of facilities and staff for viewing
- Use of facilities and staff for funeral ceremony
- Use of facilities and staff for memorial service
- Use of equipment and staff for graveside service
- Hearse
- Limousine
- Either individual casket prices or the range
- Either individual outer burial container prices or the range

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GPL Disclosure Clarifications in the 2015 Compliance Guide - Example:

- Embalming disclosure:
 - ~~“Except in certain special cases, e~~Embalming is not required by law.”
- Forwarding of remains description of services:
 - “Our charge includes: basic services of funeral director and staff; a proportionate share of overhead costs; removal of remains; preparation of remains ~~including embalming~~; and local transportation.”

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Rule Interpretations

Staff Opinion 16-2

- Allows providers to charge for locating a MD in DC
- Must disclose the charge on GPL, and orally inform the relatives prior to removal so they can arrange for an MD to pronounce death
- The GPL must make it clear that the charge is in addition to the MD's fee
- The charge must also be separately listed on the Statement of Funeral Goods and Services Selected. Physician's fee on the SFGSS will be a cash advance item


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Casket and Outer Burial Container Price List

CPL and OBCPL: At any “in person” meeting at the funeral home (or elsewhere), pre-need or at-need, a provider must show a client the CPL or OBCPL

- Upon beginning discussion of caskets, alternative containers or vaults
- In any event before showing caskets, containers, or vaults, or pictures of them


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OBCPL Disclosure Clarification in the 2015 Compliance Guide:

- “[~~In most areas of the country~~]-s State or local law does not require that you buy a container to surround the casket in the grave.”

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Rule Interpretations

Staff Opinions 15-1 and 16-1:

- 15-1: Escorting a client who hasn't yet seen a CPL and OBCPL to a provider's casket display room to wait for a funeral director violates the Rule
- 16-1 reinforces 15-1, noting that the Rule mandates CPL and OBCPL disclosures prior to viewing to keep providers from hiding lower-cost options


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Other Requirements of the Rule

It is an unfair or deceptive practice to:


- Require consumers to purchase a casket for direct cremations
- Condition the provision of any funeral good or service upon the purchase of any other funeral good or service, or
- Embalm the deceased for a fee without authorizations

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Requirements of the Rule

It is an unfair or deceptive practice to:

- Misrepresent the legal or local cemetery requirements for:
 - embalming
 - caskets in direct cremations
 - outer burial containers
 - any other funeral good or service
- Misrepresent that cash advance purchases are the same as the cost to the funeral provider when such is not the case


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Important Topics

Telephone Price Disclosures

- A funeral provider must provide prices by phone to any “person”
- This includes competitors, consumer groups, reporters
- Also includes Everest.com and Parting.com

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Important Topics

Third Party Caskets


The Rule prohibits “condition[ing] the furnishing of any funeral good or funeral service . . . upon the purchase of any other funeral good or funeral service”

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Important Topics Third Party Caskets

- The Rule does not require a funeral home to sell an isolated good or service that will not be used in conjunction with a funeral arranged by the home
- Restrictions that discriminate against third party casket delivery unreasonably burden a family's right under the Rule to use a third party casket


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Third Party Caskets

Rule does not allow:

- Requiring the presence of the family at time of the casket delivery
- Charging a fee for storage of a third party casket delivered in advance of an at-need disposition

A funeral provider can decline to help the delivery driver unload a third-party casket, remove its packaging, and move it into the home. But the provider must make its church truck available.


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Important Topics Basic Services Fee

Basic Services Fee for Minimal Services (Direct Cremation, Immediate Burial, and Forwarding or Receiving Remains):

- A funeral provider may reduce its basic services fee to reflect its reduced services and overhead for these 4 items
- But the regular basic fee applies to other cremations


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Important Topic Discounted Packages

- A funeral provider may offer packages at a discount (e.g., if the purchaser buys the casket from the home)
- A provider may not discount or reduce its basic services fee

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Funeral Rule Enforcement Undercover Shops

Key items:

- Do consumers get the GPL on time and do they get to keep a copy?
- Do they get to see the CPL and OBCPL on time?

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Undercover Shops

GPL Common Mistakes:

- "Hiding" the GPL in a folder
- Simplifying choices by showing packages before the GPL

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Undercover Shops

CPL and OBCPL Mistakes:

- Showing packages with casket pictures before the CPL
- Conducting the arrangements conference in the casket and vault display room
- Forgetting to show the CPL and OBCPL before a tour of the display room


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Tips for Providers

- Hand out the separate GPL, CPL and OBCPL all at the same time when you first greet a new client
- Even better, include your CPL and OBCPL in your GPL, and hand it out to new clients when you greet them


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Violations

- Compliance Letters
- Federal Enforcement Actions
- Funeral Rule Offender Program


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Violations & Compliance

- Typically, staff conducts a second shop to make sure the violation wasn't isolated
- If a violation was not severe, staff may send a letter indicating we found some concerns and provide an opportunity to correct the violations

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Compliance Letters

If the violation is repeated, we send a first offender a letter notifying it about the violations and giving it a choice:

- Litigate the violation in a federal court lawsuit or
- Enter the Funeral Rule Offenders Program (FROP) for compliance training

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Federal Enforcement Action Civil Penalties

- If the FTC brings an enforcement case in federal court, Rule violators are subject to penalties of up to \$42,530 per violation

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Federal Enforcement Action

- Prior to filing a lawsuit:
 - Chance to agree to an order called a consent decree
 - With a payment amount based on ability to pay
 - to be filed with the complaint in federal court
- Contempt of court sanctions for violations of the court order
- Press release identifying the home

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Funeral Rule Offender Program FROP

- An multi-year compliance training and monitoring program as an alternative to an enforcement lawsuit
- National Funeral Directors Association (NFDA) collects a fee from FROP participants for administering the program, maintains records on enrolled funeral homes and makes those available for review by FTC staff

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Funeral Rule Offender Program

- A voluntary payment to the US Treasury of 0.8% of the home's average annual revenue for the past 3 years
- A payment to NFDA to cover its program costs (currently \$1900 for 3 years training)

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Funeral Rule Offender Program

- A legal review of compliance documents and training and monitoring by NFDA
- FTC monitoring of NFDA's compliance training, and participation in an annual webinar

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FROP Payment to U.S. Treasury Example:

.8% (0.008) of average gross annual sales for the preceding three fiscal years

Example:

Year 1: Gross sales \$100,000
 Year 2: Gross sales \$150,000
 Year 3: Gross sales \$200,000
 $\$450,000 / 3 = \$150,000$

$\$150,000 \times .008 = \$1,200$


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Federal Court Cases

- FTC has brought federal court cases against homes that were not eligible for or declined FROP training
- The FTC has brought cases against homes that said they would participate in FROP, but failed to provide the tax returns needed to compute the required payment to the U.S. Treasury


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FROP Advantages (vs. court case)

- No litigation risk that the court will issue an order requiring payment of large civil penalties
- Required FROP payments to the U.S. Treasury and NFDA are usually much less than the potential civil penalties
- No expensive attorney's fees for litigation


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FTC Regulatory Review

- The FTC places each of its rules and guides on a 10-year review calendar
- The Commission's next regulatory review of the Funeral Rule will occur in 2019
- The public will have a chance to comment on the regulatory review and any amendments


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Regulatory Review

- What is the economic impact of the rule?
- Is there a continuing need for the rule?
- Are there possible conflicts between the rule and state, local, or other federal laws or regulations?
- Has the rule been affected by any technological, economic, or other industry changes?


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Funeral Rule Review History

- Original Rule took effect in 1984 and was amended once in 1994
- Commission began a Rule Review in 1999, publishing questions and requests for comments
- Conducted a public workshop in 1999
- Ultimately, in 2008 did not make any changes to the rule


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Hot Issue

- A survey has shown that most funeral home websites do not include price lists
 - Except in California, where state law encourages providers to include them
 - The study was conducted by Funeral Consumers Alliance and the Consumer Federation of America
- These two groups petitioned the FTC to amend the Rule to require price lists on all funeral provider websites

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FTC Resources on the Funeral Rule Available at www.ftc.gov

- Rule
- Compliance Guide
- Advisory Opinions
- Consumer Education

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Report to the FTC

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Questions?
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