

Discussion paper on
a new regulation governing
The Prearranged Funeral Services Act



December 2011

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Introduction

In June 2011, *The Grieving Families Protection Act* (GFPA) was passed by the Manitoba Legislature. The GFPA made changes to three existing acts:

- *The Cemeteries Act*
- *The Funeral Directors and Embalmers Act*
- *The Prearranged Funeral Services Act*.

Drafting regulations for *The Prearranged Funeral Services Act* is the next step. This discussion paper will help the funeral industry and the public consider what the regulations (rules) should be, and share their views with regulators.

Background

Each year in Manitoba, approximately 10,000 deaths occur. Grieving families may find themselves making complex funeral arrangements when they are emotional and vulnerable.

Recognizing this, the provincial government enacted regulatory changes to strengthen *The Funeral Directors and Embalmers Act*. These regulations require funeral directors to provide consumers with clear, complete and consistent information about their services and products. They must also provide an itemized statement describing each product and service selected showing the cost of each.

In addition, a mandatory and enforceable code of ethics came into effect. It requires that:

- itemized price lists be provided in plain language
- remains cannot be withheld if payment is late
- family confidentiality is maintained

- family directions are followed
- advertising is truthful and not misleading
- a mandatory, 24-hour contract cancellation period is in place
- a family or independent adviser is present when a purchaser is a vulnerable person.

Backing the code of ethics and the regulations are a complaint process, a stronger range of remedies that includes fines and suspensions, and a requirement for funeral directors to inform purchasers of their rights.

Following these tougher regulations governing *The Funeral Directors and Embalmers Act*, the Manitoba government consulted with stakeholders and the public on *The Prearranged Funeral Services Act*. After those consultations, the government passed legislation in June 2011 to improve protection for Manitobans who purchase prepaid funerals. The legislation will protect consumers of prepaid funeral plans by:

- allowing contract cancellation for up to 10 days without penalty
- requiring payment directly to a trust or insurance company trust fund to ensure the money will be available when needed
- making it an offence to:
 - exert undue pressure
 - take advantage of a person's inability to understand a plan
 - make a sale knowing the person is unable to pay
 - misrepresent a service as a legal requirement or a cemetery rule
- requiring establishment of a code of ethics that will include a requirement for a plain language itemized price list to be provided
- allowing the Funeral Board to appoint an Inspector
- giving the Funeral Board inspection and disciplinary powers

- increasing the fines for conviction of offences under the act to \$10,000 from \$200 for an individual, plus up to one year in jail, and to \$50,000 from \$500 for a corporation

The legislation will come into effect once the accompanying regulation is enacted.

Among other things, the legislation shifts responsibility for the administration of *The Prearranged Funeral Services Act* from the Public Utilities Board to the Funeral Board of Manitoba. This change consolidates the administration of funeral services within one government agency. *The Cemeteries Act* remains under the administration of the Public Utilities Board.

The Funeral Board of Manitoba is now developing new regulations for *The Prearranged Funeral Services Act* and is asking industry members and the public for their input.

Protection for grieving families is part of Manitoba's broader consumer protection strategy.

The public consultation process

This discussion paper provides an overview of key regulatory changes required to make effective *The Prearranged Funeral Services Act*.

This discussion paper is also available online at www.funeraldirectorsboard.ca.

All Manitobans may share their views on appropriate content of the regulations by responding to this discussion paper **no later than February 29, 2012.**

Please send your comments in writing to the Funeral Board of Manitoba.

Email: funeralconsultation@gov.mb.ca

or

Postal mail: Funeral Services Consultation
Attention: Denise Carrière
254 Portage Avenue
Winnipeg MB R3C 0B6

Main issues

Selling a prearranged funeral plan

Legislation states that any person selling a prearranged funeral plan must disclose information about the plan to the purchaser in accordance with the regulation.

Examples of the information this might include are details about:

- services and products
- how and when the client is required to pay
- payment schedules, if they are offered
- distribution of any accumulated interest

There is currently no regulation that spells out what information **must** be provided, so the Funeral Board of Manitoba will be developing this regulation. It is contemplating specific statements that would have to be included, in writing, to purchasers and prospective purchasers.

Question to consider: What information should sellers of prearranged funerals be required to disclose?

Cancellation of a prearranged funeral plan

The legislation states that every prearranged funeral plan must contain a statement concerning the client's right to cancel the plan. The Funeral Board is contemplating plain language wording such as:

“The following people may cancel a prearranged funeral plan without reason at any time:

- the purchaser of the plan
- the person for whom the funeral services were purchased
- the personal representative of the deceased person covered by the plan”

Question to consider: What wording should be included in this statement?

Cancellation fees

A purchaser who cancels a plan within 10 days after receiving a copy of it may do so without any penalty or fee. After 10 days, the funeral director will be permitted to collect an administration fee.

The regulation will set out how much funeral directors can charge for administration fees. Saskatchewan allows for the lesser of 10 per cent of the cost of the plan or \$250 in the first year after a plan is signed; and the lesser of 10 per cent or \$500 after the first year.

Questions to consider: Should the fee be a set amount, a percentage of the cost of the plan or a combination of both? What fee or percentage is appropriate? Should the fee rise according to the time elapsed between purchasing the plan and cancelling it?

Payment directly to authorized trustee

Previously, a licensed funeral director could receive and hold payment for a prearranged funeral plan up to 60 days before transferring it to an authorized trustee (trust company). The new legislation requires payment be made **directly** to the authorized trustee or insurance company, except for an administration fee that may be kept by the funeral director. The Funeral Board of Manitoba will have the job of recommending the fee funeral directors will be allowed to charge.

Questions to consider: Should fees be standardized or set at a percentage of the cost of the plan? What fee or percentage is appropriate?

Administrative fees

Funeral directors have costs associated with the oversight of trust funds. Current regulations allow funeral directors to absorb all of the fund's interest. The amended act requires regulations to describe how interest is distributed. For example, Saskatchewan limits the funeral director to a maximum of 30 per cent of the income accumulated in the fund in the previous year.

Question to consider: How should trust fund income be distributed?

Surety bond

Currently consumer funds can be held in trust by funeral homes for up to 60 days before transferring to a trust company. As noted above, in the future, payment for prearranged funeral plans will go directly to an authorized trustee or insurance company. Existing regulations require sellers of prearranged funerals to submit a surety bond of \$1,000.

Question to consider: Is a surety bond still needed? If so, what is an appropriate amount for a surety bond?

Payment from trust account

The new legislation says money and income held in trust for a prearranged funeral plan must not be paid out of the fund by the authorized trustee except according to regulation. The Board is considering a requirement that trust funds and related income are only paid out upon presentation of a death certificate and an itemized invoice of services and products, the value of which cannot exceed prices in the funeral director's current price list.

The Funeral Board of Manitoba is also considering setting conditions under which unused funds may be paid out.

Questions to consider: What amount, if any, should a funeral director be able to withdraw from a trust plan? When and under what circumstances? What should happen to money left in a fund after a funeral? What should happen to any unclaimed funeral plans?

Transferring plans

A prearranged funeral plan may be transferred from one funeral home to another, and the funds may subsequently be transferred from one account to another. Current regulations say the authorized trustee (trust company) may charge five dollars or 2.5 per cent of the amount transferred, whichever amount is greater, but they do not state who should pay the authorized trustee. As well, the current fee may not provide adequate compensation to the authorized trustee for the time and cost of preparing necessary paperwork for the transfer.

The Funeral Board of Manitoba is also contemplating whether funeral directors should be required to advise the Board of each transfer, and whether the new holder of the plan should pay a fee to the Board.

Questions to consider: What amount should a funeral director be allowed to charge to withdraw or assign a funeral plan? Should the funeral director who originally sold the plan be required to advise the Board of any transfer? Should the new holder of the plan pay a fee to the Funeral Board of Manitoba? What amount should an authorized trustee be allowed to charge for transferring funds from one account to another?

Code of Ethics

Under *The Funeral Directors and Embalmers Act*, funeral directors must comply with an existing Code of Ethics. (A copy can be found at www.funeraldirectorsboard.ca). *The Prearranged Funeral Services Act* will require funeral directors who sell prearranged funeral plans to comply with a code of ethics. The Funeral Board of Manitoba is contemplating amending the existing code of ethics to include clauses specific to the selling of prearranged funeral plans.

Question to consider: What specific changes should be made to the Code of Ethics?

Transparency

Legislation requires that the Funeral Board of Manitoba make available to the public the names of persons licensed to sell prearranged funeral plans, as well as any other information specified in the regulations. The current regulation does not specify any information, so the Board is contemplating including addresses, funeral director licence numbers, prearranged funeral services licence numbers and other information.

Question to consider: What additional information should the Funeral Board of Manitoba publish about funeral directors who sell prearranged funeral plans?

Prearranged funerals paid through insurance plans

Currently, *The Prearranged Funeral Services Act* does not apply to funeral services paid through insurance plans. The amended act will require all funeral directors who provide **any** arrangements, including those paid through insurance plans, to comply with the act. This means that funeral directors and their sales agents will have to hold a licence to provide all prearranged plans and the Funeral Board of Manitoba will have information about all prearranged plans.

Question to consider: What specific information should the regulation include about prearrangements paid through insurance plans?

Other issues

Other issues, which may be of interest primarily to the funeral profession, include the following:

Conditions of Licensing

Current regulations do not spell out any specific conditions for receiving a licence to sell prearranged funeral plans. The new legislation allows the Funeral Board of Manitoba to set any terms and conditions it considers appropriate. The Board is contemplating conditions such as requiring more frequent reporting for new licensees.

Question to consider: What other conditions should be met before a licence is granted or renewed?

In addition, legislation empowers the Funeral Board of Manitoba to suspend, cancel or refuse to renew a licence for any reason specified in the regulations. The Board is contemplating including violations of the following laws as grounds for licence sanctions:

- *The Funeral Directors and Embalmers Act*
- *The Prearranged Funeral Services Act*
- *The Insurance Act*
- *The Cemeteries Act*
- *The Criminal Code* as related to funeral business or municipal cemetery bylaws

Question to consider: Under what circumstances should the Board impose sanctions?

Licence Fees for Provision of Prearranged Funerals

The current initial fee for a licence to provide prearranged funeral services is \$500. The annual renewal fee is based on the number of active prearranged funeral plans reported in the previous calendar year (ex: \$100 for up to 100 plans). The fees have not changed since 1999. New fees will be set out in the revised regulation. The Funeral Board of Manitoba will need additional funding to oversee compliance of prearranged funeral plans.

Question to consider: What should the new fee structure look like?

Share your views

The Funeral Board of Manitoba looks forward to your help with writing effective regulations that will enhance consumer protection.

Please send us your comments **no later than February 29, 2012:**

Email: funeralconsultation@gov.mb.ca

or

Postal mail: Funeral Services Consultation
Attention: Denise Carrière
254 Portage Avenue
Winnipeg MB R3C 0B6