

# **SUMMARY OF PUBLIC CONSULTATION**

January to April 2012

on

Regulations for  
*The Prearranged Funeral Services Act*

*June 2012*

## OVERVIEW

*The Prearranged Funeral Services Act* was strengthened in 2011 when government passed legislation to improve protection for Manitobans who purchase prepaid funeral plans. The legislation will come into effect once accompanying regulations are enacted.

From January to April 2012, Manitobans were invited to share their views on appropriate regulations for the Act. The Funeral Board of Manitoba, which is responsible for administering the Act, heard from funeral professionals and other stakeholders. Their input will help shape the Funeral Board of Manitoba's recommendations to government on the content of the regulations.

## Consultation Methods

The Funeral Board of Manitoba used a variety of mediums to consult with and inform Manitobans:

- A 12-page discussion paper was developed that provided background on *The Grieving Families Protection Act* and explained the rationale for the consultation. The discussion paper provided an overview of changes to *The Funeral Directors and Embalmers Act* and *The Prearranged Funeral Services Act*, and listed the main regulatory issues being considered by the Funeral Board of Manitoba.
- The discussion paper was posted to the Funeral Board of Manitoba web site. Hard copies were available upon request.
- An advertisement was placed in the Winnipeg Free Press, advising Manitobans of their opportunity to read the discussion paper and share their views through written submissions and email.
- From January to March, the Funeral Board sent several written invitations to all funeral homes and funeral directors in the province, inviting them to participate in a series of small group meetings with the Funeral Board, or to otherwise comment on the discussion paper.
- Trust and insurance companies also received a written invitation to comment on the discussion paper.

## Consultation Results

The Public Utilities Board has advised there are 23 companies licensed to sell prearranged trust funeral plans in Manitoba (some with multiple sites), and the Funeral Board was pleased to hear from many of them. It also heard from other interested stakeholders:

- Representatives of the Funeral Board (including two funeral directors) met in person with 19 funeral directors, two other funeral professionals, one representative of the insurance industry, and a provincial MLA. These meetings occurred on four occasions in Winnipeg and two in Brandon.
- Ten funeral directors (or their representatives) provided written comments.
- Written comments were also received from Assurant Life, which specializes in life insurance and annuities used to fund funeral and other final expenses.
- The Funeral Planning and Memorial Society of Manitoba provided written comments, as did two individual members of the public.
- Upon request, six people were mailed a copy of the discussion paper.

## **SUMMARY OF RESPONSES**

The feedback received through meetings and in writing is summarized below. (Consistent with amendments to *The Prearranged Funeral Services Act*, references to prearranged funeral plans mean an agreement whereby a funeral director contracts to provide funeral services for a person alive at the time the agreement is made and receives payment in advance for all or part of the cost of the funeral services, or the purchaser enters into an insurance contract under which the proceeds of the insurance policy pay for the funeral services provided under the agreement.)

### **1. Mandatory information for consumers of prepaid funerals**

Legislation states that sellers of prearranged funeral plans must disclose information about the plan to the purchaser, in accordance with the regulation. There is no existing regulation that spells out what information must be provided.

Stakeholders responded:

- The contract should clearly state if the money paid is going to a trust or insurance.
- If a trust, it should state which company holds the trust, and its contact information.
- It should state what happens to the accumulated interest.
- The list of services should be clearly itemized, and there should be a statement describing what happens if specific merchandise becomes unavailable in the future.

- If applicable, it should be clear that disbursements such as obituaries and flowers are not included.
- If applicable, it should be clear that the contract is for funeral services only-- not cemetery services.
- The contract should include information on how the contract can be cancelled and what fees will be charged. The length of the “cooling off” period should also be clearly stated.
- Financing options and payment terms should also be made clear to the consumer.
- The contract should include a dispute resolution process.
- In the case of an insurance-funded funeral contract, it was suggested the contract make clear whether the insurance is for a guaranteed price funeral or a non-guaranteed price. It should include information on how the insurance funds the funeral guarantee; what happens if the insurance is not kept in force; and what happens if the funeral contract is cancelled.
- It was suggested by some that the current contracts as approved by the Public Utilities Board are sufficient.
- A member of the public suggested the funeral home should send a Statement of Account to the client once a year.

## **2. Cancelling or changing a prearranged funeral plan**

The legislation states that every prearranged funeral plan must contain a statement concerning the customer’s right to cancel the plan. The Funeral Board is contemplating the wording of that statement.

- Some funeral directors felt there should be stronger protection for the purchaser of the plan to ensure that what is desired is eventually carried out. This would prevent family members from later “downgrading” the desired funeral services. Funeral directors did not state any objection to a family member “upgrading” prearranged services.
- There was considerable discussion around who should have the final say on changes to a prearranged plan. Some said only an executor should be able to make changes, while another suggested Power of Attorney. Several said regulations should make no reference to a “personal representative” of the deceased, as it’s not clear who that may be. Generally, funeral homes do not want to be caught in

the middle of family disputes. There was a suggestion that all same-generation family members should agree in writing to any changes to the prearranged plan.

### **3. Penalties for cancellation**

Under the new Act, a purchaser who cancels a prearranged 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, which will be set by regulation (also see #4 below).

Stakeholders responded:

- For greater transparency, there were suggestions the administration fee be called what it is i.e. a cancellation fee or retained fee.
- The Funeral Planning and Memorial Society of Manitoba, and some funeral directors, suggested that the 10-day “cooling off” period be extended to 30 days. They suggested that when a prearranged funeral plan is cancelled after 30 days, the service provider should be allowed to charge a fee of the lesser of 10% of the cost of the funeral or \$250 to cover administrative costs.
- Some funeral directors suggested that Saskatchewan’s existing flat fees (not percentage fees) for cancellation are fair. That province allows for the lesser of 10% of the cost of the plan or \$250 in the first year after a plan is signed, and the lesser of 10% or \$500 after the first year.
- Some suggested administration/cancellation fees should be based on the value of the plan, as commissioned salespeople are typically remunerated on this basis, and these commissions may not be recoverable. The percentage method would also keep pace with changing prices, while a set dollar fee would become outdated and would need to be updated in regulations. A percentage of 7 to 12% was suggested, although a funeral home could choose to charge less if that made sense for their business.
- One suggested there should be a flat \$500 fee charged anytime after the 10 day cooling off period. However, another pointed out it may be difficult for a purchaser to see the rationale of a \$500 cancellation/administration fee on an immediate cremation priced at \$975.
- Another said that whether the client is prearranging a cremation or a full burial funeral, the work involved for the funeral home is the same and this logically leads to having set fees.
- Several suggested the current maximum 12% cancellation fee within the first three years of the contract should be retained. (Currently, after three years the

funeral home has to refund the entire principal amount but can retain the interest.) Others suggested the maximum penalty be increased to 15%.

- It was pointed out that whether a plan is cancelled after one year or 20 years, the amount of administration work is the same. There is work to create the contract and then to cancel it.
- Some said if the interest in the plan is to remain with the funeral home, then no cancellation/administration fee after two or three years is reasonable, as the income earned within the trust fund should be sufficient to cover any extra expenses caused by inflation. However, if trust interest is paid to the consumer, then cancellation/administration fees should be imposed anytime after the 10-day cooling off period.

#### **4. Payment directly to authorized trustee**

Previously, a licenced funeral director could receive and hold payment for a prearranged funeral plan up to 60 days before transferring it to an authorized trust company. The new legislation requires the entire payment be made directly to the authorized trustee or insurance company, except for an administration fee that can be retained by the funeral director provided the plan is not cancelled within 10 days. This administration fee will be set in regulation.

There was no consensus on what amount funeral directors should be allowed to charge as an administrative fee and withhold from trust. (Currently, they are able to retain up to 12% within the first three years of the plan.)

- One funeral director wrote that any time spent with a family in making a file of vital statistics information, personal wishes and goods selected will save the equal amount of time when that individual passes away. Therefore, funeral directors should not expect remuneration at the time of writing a prearrangement contract; a profit would be realized at time of need.
- Another stated that all the funds paid could go into trust for the benefit of the consumer, and all interest and income accrue to the consumer, so long as the funeral company could charge an **annual** administration fee.
- Since the legislation allows purchasers to cancel within 10 days, several funeral directors suggested it would make sense to hold the consumer's funds for 10 days, and then deposit it. This would save considerable administrative work for the funeral home, in the event the purchaser does cancel within 10 days.
- It was pointed out that currently the purchaser does not receive any confirmation that funds have been placed in trust. With insurance, the insurance company sends a letter to the policyholder, so there is third party confirmation. It was suggested

that, in the case of prearranged funeral contracts, third party confirmation should be provided by the trust company.

- There was considerable discussion around whether the purchaser of the prearranged plan should write two separate cheques. For example, on a \$10,000 plan, a cheque to the trust company for \$9000 and another cheque to the funeral home for \$1000. Some funeral directors opposed this suggestion; one suggested it would make fees too transparent. Others wondered how this would work if the purchaser preferred to pay by credit card, debit or cash.
- It was also stated that if the purchaser wrote a cheque to the trust company, the trust would be with the purchaser and the T-5 tax form would be sent to that person.
- One funeral director wrote that 100% of the consumer fees should be deposited to the trust company, with no funds retained.

## **5. Interest from trust accounts**

Current regulations allow funeral directors to retain all of the interest from a trust account and they are only required to keep the principle intact. Regulations are required to describe how interest is distributed.

- Saskatchewan limits the funeral director to a maximum of 30% of the income accumulated in the fund in the previous year. Several stakeholders suggested this is a reasonable approach. One suggested a range of 25-40% of prior year income would be reasonable.
- It was pointed out some funeral homes will find any limit restrictive, as they may need to access these funds more often in one year than in another, particularly if they wish to do upgrades to their facilities.
- It was noted that funeral directors are currently able to invest in various types of investments, including equities. It was suggested this be allowed to continue since current low interest rates make it very difficult to keep pace with funeral inflation if investing only in fixed income investments.
- One worried that if a firm is allowed to withdraw interest funds from trust, this creates a liability when a firm is sold as there may not be enough in the trust to pay for funerals at time of need.
- There were numerous comments that existing prepaid contracts need to be grandfathered, and should not be subject to the new regulations. It was pointed out that if the new regulations place limits on the amount of interest that homes can access, then there would be strong incentive to collect all the accumulated

interest before the new regulations come into effect.

- There were also many comments that if funeral directors lose their current access to trust interest, prepaid funeral trusts will become a thing of the past.

## **6. Payment from trust account**

The Funeral Board is considering a requirement that the funds and related income paid out of a trust cannot exceed the value of same services in the funeral director's current price list. Therefore, funds remaining after a funeral would be returned to either the purchaser or the estate of the deceased, as applicable.

- There were comments that this would be fair only if funeral directors were also allowed to charge the family if the trust funds were not sufficient to cover their current prices. It was pointed out that it is up to the funeral director to ensure the trust fund generates enough income to cover price increases: If they are unsuccessful they must assume the losses, but if they have invested wisely then they should be rewarded for their efforts.
- Trust companies require a statement of death before releasing funds to the funeral home, but do not ask for evidence that services were provided. It was therefore suggested that a member of the family or executor should sign that services have been provided before money comes out of trust.

## **7. Unclaimed trust funds**

The Funeral Board is considering setting conditions under which unused (unclaimed) funds may be paid out. Currently, there is no process for doing this.

- General comments were that it is up to the consumer to make their heirs aware of funds being held in trust, and that it would be difficult and costly to track down people who may have died, are in nursing homes, have moved, etc. There was acknowledgement that there is no incentive for a funeral home to do this tracking because, so long as the funds sit in trust, interest is accruing to the funeral home.
- Some funeral directors said monies left in unclaimed funeral plans should be returned to the client or estate in the following way: monies paid plus interest, minus the cancellation/administration fee. Another said **all** unclaimed funds in trust should be paid out to the estate.
- Another suggestion was that unclaimed moneys could be applied to a pool and allowed to gather interest, then used as an industry assurance fund. Waiting times could be similar to those used for unclaimed bank accounts.



## **8. Transferring plans**

A prepaid funeral plan may be transferred from one funeral home to another, and the funds may be subsequently transferred from one account to another.

- There were many comments that transfer of plans and funds virtually never happens between companies. Rather, the original contract is cancelled (subject to the regulations and fees) and the purchaser then enters into a new contract with a different funeral company, at current prices. It was suggested this is a much cleaner approach rather than assigning a plan to another home.

This would be different than in Saskatchewan where, according to the registrar of the Funeral and Cremation Services Council of Saskatchewan, buyers have the right to transfer funds from prepaid contracts—including interest—to another funeral home. Their legislation stipulates the funds are to be transferred directly between financial institutions. No T-5 is generated as the funds remain in trust and the new funeral home issues a new contract.

- The Funeral Planning and Memorial Society of Manitoba said a funeral director who transfers a plan to another service provider should be required to advise the Board.
- It was pointed out that insurance allows easy transfer of policies between funeral homes, with no fees involved.

## **9. Surety bond**

Current regulations require sellers of prearranged funeral plans to file with the Public Utilities Board a \$1,000 surety bond.

- Some said the existing surety bond should be retained, while other said the existing surety bond of \$1000 is so low that it is of little use.
- It was suggested that if consumer funds are to be paid directly into trust accounts, then risk is minimal, particularly if the cheque is written to the trust company and not the funeral home. Several suggested the surety bond should therefore be eliminated. In its place, one suggested there be tighter reporting requirements, while another suggested tougher penalties for serious offences to the Act.
- There was a suggestion that \$25 be charged for each funeral. This fund would grow over the years and could be used to build an assurance fund for the industry, thereby making surety bonds unnecessary.
- It was also stated that all funeral directors should be required to carry errors and

omissions liability insurance.

## **10. Code of Ethics**

*The Prearranged Funeral Services Act* requires funeral directors who sell prearranged funeral plans to comply with a code of ethics. The Funeral Board of Manitoba is contemplating amending funeral directors' existing Code of Ethics, to include clauses specific to the selling of prearranged funeral plans.

- Several funeral directors said a code of ethics should emphasize positive practices, rather than assume negative practices.
- It was suggested that the code indicate that funeral directors should not charge one price for at-need services and an inflated price for the same services when used for prearrangements.
- Another funeral director countered that it may be reasonable for homes to charge a premium for a guaranteed price, especially when interest rates are very low.
- Some funeral directors made the point that a mandatory code of ethics would create an uneven playing field between funeral directors who sell prearranged plans and others who also sell the plans.
- It was suggested the code of ethics include a plain language explanation of the regulations.
- It was suggested an advisory group of interested stakeholders be struck to re-write the existing code of ethics.

## **11. 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.

- It was suggested that funeral homes selling prepaid plans should be listed with their addresses and licence numbers, followed by the directors who are employed by that funeral home and who sell prearrangements, along with their licence numbers. No personal addresses should be given.
- It was recommended the Prearranged Licence be visible in an accessible area of the funeral home.
- In the interest of transparency, it was recommended the Funeral Board of

Manitoba should publish any previous disciplinary action against a funeral director.

## **12. Prearranged funerals paid through insurance plans**

The amended *Prearranged Funeral Services Act* will require all funeral directors who provide any prearrangements--including those paid through insurance plans--to comply with the Act.

- Discussions around licensing insurance sellers suggest support for some sort of licensing or registration by the Funeral Board of Manitoba.
- One stakeholder suggested that only funeral professionals should be allowed to sell funeral insurance.
- There was a suggestion that if the insurance sales agent is not a funeral director, then that person should be bonded.
- It was stated that insurance and trust products should be held to the same standard and regulation, particularly in regards to cancellation, investment and solicitation.
- One firm said there should be no regulations governing insurance under the Act, as insurance plans are already governed by *The Insurance Act*.
- An insurance representative suggested regulations be clear that a sales agent licenced to sell prearranged funerals can be either an employee of a funeral home or contracted to one or more homes. It was suggested any licence be portable so that a sales person could work for/with any funeral home.
- It was suggested that rather than licensing or registering insurance representatives, that it would be adequate for insurance companies to provide the Funeral Board with a report on how many policies were sold, how many assigned benefits to funeral homes, etc.
- One stakeholder suggested that pre-paid plans held in trust no longer be allowed, since insurance policies can accomplish the same goal (a guaranteed price funeral) and interest would not be retained by funeral homes. As well, at no time is client's money in the hands of anyone at the funeral home, as clients' payments go directly to the insurance company.
- Another stakeholder suggested that funeral directors and homes should not be allowed to have their names in an insurance pamphlet.
- It was also suggested that an insurance salesperson who represents that he/she is working on behalf of the funeral home/director should have the written consent of

the funeral director.

### **13. Licensing and licence fees**

The Act requires funeral directors be licenced to sell prearranged funeral plans.

- Some funeral directors suggested there is no need for separate licences for pre-need and at-need services; the same licence should cover everything.
- It was pointed out that funeral directors without a licence to sell prearranged plans can effectively still sell that product by using insurance policies (and thus avoid the fee paid to the Public Utilities Board for trust contracts). It was suggested that anyone who sells prearranged funeral plans should be registered or licenced, regardless of whether they are an employee of a funeral home, insurance company, bank, etc. Another suggestion was that only licenced funeral directors be allowed to sell prearranged funeral plans.
- Some stakeholders said they supported an exam and continuing education for all sellers of prearranged plans, while others did not.
- Some would like to see a structured training requirement for any industry professionals working with the general public.
- There was a suggestion that criminal record checks should be required of anyone selling a prearranged trust plan.
- It was also stated there needs to be an appropriate appeals mechanism for licensing issues.
- It was suggested funeral homes be required to submit annual reports on their prearranged plans, and that the Funeral Board conduct annual physical inspections of files at each firm's office to ensure compliance.
- It was stated that funeral homes should not be penalized for success, that is, that licensing costs should not be higher for funeral homes that hold more plans. Others thought the current sliding system of fees works well and should be maintained.
- Several stakeholders questioned why fees need to rise, and said the Funeral Board should explain the need for additional funding.

### **14. Sanctions**

It was suggested that the Funeral Board of Manitoba impose sanctions upon breach of any of the relevant legislation, law or regulations and that there be a fair complaint,

hearing and appeal process. It was stated there should also be speedy timelines so as not to unnecessarily disadvantage the business involved.

## **15. Other suggestions**

Several other suggestions arose during conversations between the Funeral Board and stakeholders:

- There should be regulation regarding payment plans. Specifically, funeral directors should be allowed to charge an administrative fee for monthly payments. Some funeral directors said they already do this.
- Advertising by funeral homes and insurance companies needs to be regulated.
- All funeral directors should be required to be members of the Manitoba Funeral Service Association.
- There needs to be a common understanding of language. When money is paid, some call this a “prepaid” plan, while others refer to it as a “prearrangement” or a “trust arrangement.” When no money is paid, some refer to this as a “pre-plan” while others call it a “prearrangement” or “pre-need.” Similarly, “beneficiary” has completely different definitions for trust and insurance plans.