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ICCFA Magazine author spotlight

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More from this author

➤Educational information, including copies of this article, can be found at

www.thefuneralcoach.com

➤His semi-monthly video blog can be seen at ***www.f4sight.com***

➤You can follow Isard on Twitter at *@f4sight* and "like" his page on Facebook.

PRENEED SALES

If you sell preneed, at some point you've heard these words from a grieving survivor: "What do you mean we have to pay for that? Dad told me everything was taken care of!" There's a way to stop that from happening in the future.

The easy fix to one of our biggest problems with preneed contracts

Preneed has been around for longer than your career. In my book "The Complete Preneed Perspective," I chronicled the advent of preneed, showing its origin via the Greek burial societies of thousands of years ago to our sophisticated modern arrangement.

The problem is we have gotten so modern we have finally screwed up prearrangements. While there are many problems with our modern preneed, one is immediately fixable. That easy fix is the preneed contract.

The ICCFA has been extremely proactive on all things dealing with advance sales. Since its early DNA was cemetery-oriented, it was obvious that advance selling of cemetery and funeral contracts was going to be a keystone to its identity.

To this day, the annual Wide World of Sales Conference in Las Vegas is a gathering of those in our profession who are advance-sales oriented (and a few who like Vegas). So, if I am going to try and influence the profession to make this change, I want to start with ICCFA readers.

The problem(s)

Today, preneed is at least a $60 billion financial industry, by my estimation. Federal tax laws have been written specifically to capture the tax on the earnings of these monies. The GAO studies the growth of preneed deposits. I know this because we consult with them on our findings. There is no "flying under the radar" for preneed any longer.

I have long ranted about the problems with preneed:

• The guarantee offered as an inducement within most preneeds is a problem. It was a problem when interest rates were 10 percent, and it is a problem with our current world of 1 percent interest rates.

• The trusting percentage is a problem. Anything less than 100 percent trusting can be a problem when the service is rendered if we are in a world where the average profit (according to Federated Funeral Directors of America) is 6 percent of revenue.

• The use of insurance can be a problem. We have more than 50 preneed insurance companies, and many of them have poor investment portfolios, low capital and surplus funds and other financial inadequacies unseen by most funeral directors.

• Trust investments are not any less of a problem than insurance. We have seen numerous problems with state association trusts, private trust companies and others that have mismanaged the safety of the principal of preneed deposits.

• The taxation of preneed investments, whether insurance, trust or annuities, is a problem. Most sponsors won't discuss this clearly. There are multiple options on the taxation of the trust deposits, and we tend to pick the option that impairs funeral profits. In the case of annuities, we tend to deny the taxation of annuity growth rather than confront it. Money is money, and the taxes due on earnings must be paid by someone.

However, the biggest problem, the one that is so easy to correct, is the preneed contract itself. Imagine a consumer comes into your funeral home and wants to prearrange. You enter into a Funeral Goods & Services contract (FG&S) with the consumer.

If the consumer wants to fund the agreement, you then employ a trusting deposit contract or an insurance application for them to sign. If or when the insurance contract is approved, it is replaced with an insurance contract. So in a funded preneed, we have two contracts, neither of which is directly related to the other.

As the consumer leaves your funeral

All "the kids" understand is that their sainted parent called them on that fateful day of the FG&S signing and said, "We took care of everything." Now you, a total stranger, are besmirching the words and intent of their heaven-bound parent and, on top of everything else, are asking them for money!

home, he or she does something extremely predictable. In fact, I bet each reader could write this paragraph with me.

Try it: The consumer gets on the phone and calls _____. He or she says to _____, "I just left the funeral home and I _____. You don't have to worry because about anything _____!"

Now, I ask you, as a colleague writing this article with me, is everything taken care of as the consumer told his or her child in that phone call? (You did fill in those first two blanks with "his child" or "his children," didn't you?)

Are there any expenses not covered by this preneed contract? Is there any chance that, 10 years from now, when you are sitting across the table from the recipient of that phone call, there may be a problem in fulfilling that preneed arrangement? Is there any chance that Action News will not be filming outside of your funeral home before 5 p.m. that night?

The problem is, there is a chance the consumer did not fully understand what was covered by the contracts, and therefore did not give his child completely accurate information.

First of all, the FG&S contract is fraught with problems. In most such contracts, there are services and merchandise which the funeral home is providing and then there are "cash advances." Even if the contract is guaranteed, there are usually cash advance items which are not guaranteed.

So if the family decides, in the interest of time, they want to have the burial on a weekend, was that anticipated in the cash advances? If the minister who usually wanted a $75 honoraria needs to fund an IRA and raises the fee to $150, was that anticipated? The arrangement called for three dozen daisies as the only flowers, but due to a worldwide shortage of bees daisies have gone from $2 a dozen to $40 a dozen. Was that anticipated?

Cash advances are not the only concern in the FG&S contract. Suppose you change casket suppliers. Many contracts for preneeds actually spell out a specific casket. I know you have the right to supply a comparable unit, but how well did the consumer understand this?

When the consumer made the arrangement, he was of average size, but maybe in the 10 years between the signing of the contract and his death, he gained enough weight that an oversized casket will be necessary. Did the contract provide for this added cost? You are in a no-win situation.

About 75 to 80 percent of all preneeds are single pay. This means the total amount of the funding is provided at the time of the signing of the FG&S. These contracts tend to be serviced, on average, between 5 and 10 years after the date of the contract signing.

About 20 to 25 percent of all preneed contracts are not fully funded at the time of signing. These contracts are paid for over time. In my studies, I have found that these installment contracts are generally for consumers who are 6 to 10 years younger than those who pay a lump sum. Therefore, the period of time between the signing of the installment contract and when it is serviced may be 10 to 15 years, on average. Because the installment paid contract is being serviced sometime further into the future than the lump sum contract, we have even more problems with them.

All "the kids" understand is that their sainted parent called them on that fateful day of the FG&S signing and said, "We took care of everything." Now you, a total stranger, are besmirching the words and intent of their heaven-bound parent and, on top of everything else, are asking them for money! You are reprehensible for intruding on their grief and asking for money when this was all taken care of.

A contract that makes things clear

If we had a clear contract, outlining and explaining the FG&S and then outlining and explaining the depository/insurance funding relationship, we would be able to make sure that the consumer understood everything. If we got the consumer to initial their understanding on the issues that could come back to haunt an arrangement conference, it would help us make these matters clearer to the survivors in that arrangement conference.

I have been an expert witness in many cases over my 30 years in the business. Some were consumer-oriented litigation. Every attorney I have ever spoken to about contract matters tells me the same thing. The goal of a contract is to do three things:

1. Make sure it is clearly written in a good font so that the party signing can be shown to have read the contract.

2. Make sure it is clear that issues that could lead to disagreement in the future were clearly pointed out to the consumer and that the consumer knew these issues.

3. Make certain you can demonstrate that any parts to this contract can be clearly understood.

Therefore, it is incumbent upon us today to stop writing preneed until we can write a new preneed contract.

In my perfect world, that contract is clearly written:

- It refers to the actions of the funeral home and the source of the funds.
- It clearly conforms to state law.
- It highlights the areas that are guaranteed and not guaranteed.
- If there are going to be third-party providers who are not bound by the agreement, we explain that we cannot control their ability to provide services or their prices.
- If there is merchandise of any kind, we must be clear, and the consumer must know that there can be substitution under certain circumstances.

The way you make these matters clear is by having a contract which has places for the consumer to sign that they understand these issues. Consumers should sign the contract in full, but they should also initial each of these simple explainable points which could lead to problems in the future.

Here are two examples that could be added to a contract to clarify these particular issues:

> (initial) I understand any expense within the category entitled Cash Advances may require additional payment at the time of service if the provider raises prices at a rate greater than my deposit earns interest.

(initial) I understand I am paying $_____ now and am obligated to pay $_____ on this contract by making monthly payments of $____ for ___ months. If I fail to pay the amount due each month, my contract will not be guaranteed for the items listed as being guaranteed and my family will receive a credit against the funeral bill at the time of my death equal to my deposit, plus any additional payments, plus any interest credited to my account.

I am not an attorney, and the examples above are just that, examples. Readers who agree with me that this matter must be better addressed in the contracts they use should work with their attorney to develop new contract wording. I recommend you use an attorney that specializes in funeral law rather than a generalist.

Two more steps you should take

I would go one step further in the selling process. Don't stop selling when the sale is made. You should offer to send a copy of the paperwork to your client's child(ren), if they are the ones who may be sitting across from you making the client's arrangements in the future. Explain to these children why their parent made the choices they did. Explain the areas that may be flexible. Explain the solutions.

Lastly, since we are dealing with a contract, make sure you copy it, protect it and have the contract available for when it's needed in the future.

I remember one case where a client bought out their competitor after the competitor had a fire. The client went to the scene of the fire and found hundreds of charred and water-damaged preneed contracts. The client gathered them up and worked to create order out of the mayhem, but in the end had only about a third of the contracts that were now his responsibility.

We live in a world where scanning is no longer a high-tech issue; anyone can buy a scanner-copier-printer for less than $100. Offsite protection of data is cheap and easy. If we are going to write these contracts, they should be copied and protected off site.

Clear communication now and clear documentation to record that communication can prevent a mountain of problems in the future. ❐