

**REPORT OF THE
VIRGINIA DEPARTMENT OF HEALTH PROFESSIONS
THE VIRGINIA BOARD OF HEALTH PROFESSIONS**

**STUDY OF COMPETITION IN THE
FUNERAL INDUSTRY IN
VIRGINIA PURSUANT TO HOUSE
JOINT RESOLUTION 553**

**TO THE GOVERNOR AND
THE GENERAL ASSEMBLY OF VIRGINIA**



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STUDY OF COMPETITION IN THE FUNERAL INDUSTRY IN VIRGINIA BY THE VIRGINIA BOARD OF HEALTH PROFESSIONS

I. INTRODUCTION

The Virginia Board of Health Professions conducted this study pursuant to House Joint Resolution 553 of the 1997 Session of the Virginia General Assembly (see Appendices 1 and 2). In conjunction with the Virginia Department of Agriculture and Consumer Services and in cooperation with the Virginia Funeral Directors Association, the Virginia Cemetery Association, Inc., and the Independent Funeral Homes of Virginia, the following report reflects the information gleaned about the current trends in the funeral industry. Specifically, the study focuses on the current national trend toward companies owning both cemeteries and funeral homes.

The study's report provides the following information:

- A review of relevant federal and states regulation;
- A literature review on the trends in the funeral industry at the national level which includes an examination of death demographics; discussion of the rise in alternative funeral choices; and firm consolidation, the strategies employed, and the marketplace effects;
- A review of the available Virginia and federal information,
- A summary of public comment, and
- Policy options and final recommendations.

II. RELEVANT FEDERAL AND STATE REGULATION

The funeral industry is governed by myriad federal and state regulations. In addition to the rather uniform requirement that funeral firms and operators be licensed by the respective states, for the present study, the most relevant regulations come from the Federal Trade Commission's Funeral Rule and the patchwork of laws and regulations governing cemeteries throughout the United States. A brief description of the latter two follows.

A. Federal Funeral Rule

The Federal Trade Commission's Funeral Rule (the Rule) went into effect on April 30, 1984 and was last revised on July 19, 1994. The Rule requires that all funeral providers give consumers accurate, itemized price information and other information about funeral services and goods. In addition, the Rule prohibits providers from misrepresenting legal, crematory, and cemetery requirements; requiring the purchase of a casket for direct cremation; embalming for a fee without permission; requiring consumers to purchase certain funeral goods in order to obtain other funeral goods or services; and engaging in other deceptive or unfair practices. The Rule applies to at-need and pre-need funeral arrangements except those entered into prior to April 30, 1984 and unmodified since that time.

As the name suggests, *funeral providers* offer both funeral goods and funeral services. Cemeteries, crematories, and other businesses can be considered funeral providers if they market and sell funeral goods and services. "*Funeral goods* are all products sold directly to the public in connection with funeral services." (Federal Trade Commission, 1995, p. 4). "*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." (Federal Trade Commission, 1995, p. 4).

The General Price List (GPL) is the cornerstone of the Rule. By law, it must contain certain information. First it must contain identifying information (name, address, and telephone number of the funeral provider's place of business (including branches); the caption "General Price List;" and the price list's effective date). It must contain itemized prices for 16 goods and services if actually offered, and four of which must be offered (i.e, forwarding of remains, receiving remains, direct cremation, and

immediate burial). The other services include: basic services of funeral director and staff, and overhead; transfer of remains to funeral home; embalming, other preparation of the body; 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; individual or range of casket prices; and individual or range of price for outer burial container. Finally, the GPC must contain six disclosures: that the consumer has the right to select only those items he wishes to buy (except a nondeclinable basic services fee), that embalming is not required by law, that alternative containers (such as fiberboard with or without covering) for direct cremation may be used as well as certain costs--basic services fee (fee for the professional services of the funeral director and his staff and overhead), casket price list, and outer burial container price list (and that burial containers are not required by most state or local laws).

B. States' Regulation

Every state except Colorado regulates funeral directors, embalmers, and/or morticians as providers of funeral services.. However, only fourteen states have provisions in either state law or local ordinances regarding cemeteries and/or cemetery salespersons or brokers.

Professional regulatory boards with titles such as "Board of Funeral Service," "Board of Funeral Directors and Embalmers," or "Morticians Board" establish requirements for the licensure of funeral service providers and funeral facilities to assure adherence to standards of service, practice, and safety. For example, in keeping with the Federal Funeral Rule, most require an itemized statement and general price list of funeral expenses be provided the consumer. Also most make specific provisions on how preneed funeral monies are to be managed.

On the other hand, cemeteries and/or cemetery salespersons or brokers are either completely unregulated or are regulated in a wide variety of ways in the following states: California, Hawaii, Indiana, Maine, Michigan, New Hampshire, New Jersey, New York, South Dakota, Tennessee, Virginia, West Virginia, Wisconsin, and Wyoming. Descriptions of how each state regulates these entities are in Appendix 3, "Regulation of States' Cemeteries." The issues primarily addressed by regulators relate to health, safety, recording of burials, and concern over how funding is managed (e.g., trusts for pre-need funds, perpetual care funds). In some states, the local governments are the primary enforcers (e.g., New Hampshire, Maine,

and Virginia), while other states provide for state level boards, commissioners, or other formal entities to provide discipline (e.g., California and Michigan).

The regulatory focus varies according to state. For example, some states such as Hawaii and South Dakota focus almost exclusively on health and safety issues, while others, such as Michigan, California, and Wisconsin aim their attentions on funding concerns.

Virginia's statutes and registration materials related to cemeteries are provided in Appendix 3A. The Department of Agriculture and Consumer Services, Division of Consumer Protection, Office of Consumer Affairs, Regulatory Program Unit is charged with the regulation of many facets of cemeteries in Virginia. The Office of Consumer Affairs ensures that cemeteries register and file information required by law. It receives and investigates consumer complaints against cemeteries, and it communicates with the local Commissioners of Revenue to ensure that cemetery trust account fiduciary information is being received by them.

The extent of the Division's authority is limited, however. For example, the Division cannot promulgate regulations and has no disciplinary authority other than to investigate complaints and ultimately can rescind registration. Essentially, enforcement of the cemetery laws is left to the respective locality's Commissioners of Revenue and Commonwealth's Attorney.

III. TRENDS IN THE FUNERAL INDUSTRY -- NATIONAL LEVEL

Other than Federal regulatory briefings relating to the Funeral Rule and one study conducted by Maryland to examine the cemetery and funeral industry in that state, no objective policy literature was available relating to the trends in the funeral industry on issues germane to the current study. The literature that does exist consists of articles and chapters in business journals and books, magazines and newspapers of general circulation, and information from the Internet.

The key information gleaned from a review of this body of literature is that there are three primary factors purported to be affecting the funeral industry and which are likely to continue to do so for some time into the next century: (1) death demographics, (2) a rise in alternative funeral choices, and (3) the practice of acquisition and consolidation of funeral firms and cemeteries by large funeral corporations (see Bernstein, 1996; Carlisle, 1996 (a), (b), (c); Byrne, 1993; Emshwiller, 1992; Federal Trade Commission, 1996 (b); Lagnado, 1996;

Lewine, 1996; Larson, 1996; Lubove, 1992; McWilliams & Symonds, 1996; Millman, 1994; Myerson, 1996; National Funeral Directors Association, 1997(b); Smith, 1996; Staff - *American Demographics*, 1995; Staff - *The Economist*, 1996; Staff - *Fortune*, 1995; Tomsho, 1996 & 1997; Webster, 1995; Zipser, 1996 & 1997).

A. Death Demographics

Over the past several years, the United States has experienced a flat death rate. The population aged over 45 has grown in low rates ranging from 1.6 to 4% since July 1, 1990 (U.S. Census Bureau, 1997c). Further, the population segment which has traditionally served as the primary customer base for the funeral industry—those between 65 and 75—is expected to decline over the next decade. The ranks of those aged over 75 are projected to swell but not sufficiently to offset this flat tendency for some time (Lubove, 1992; Smith, 1996; U.S. Census Bureau, 1997a).

Currently, in response to this trend and in the hopes of capitalizing on the tendency of some states to have relatively large elderly populations, some of the corporate funeral firms have taken the strategy of focusing activities in these states (Smith, 1996). On July 1, 1995, the top ten states in the United States with populations ages 65 and above were: California, Florida, New York, Texas, Pennsylvania, Ohio, Illinois, Michigan, New Jersey, and North Carolina. These same states are projected to maintain similar rankings into the year 2015. Over the same time frame, Virginia is projected to rank between twelfth or thirteenth among states (U.S. Census Bureau, 1997a & b).

Into the next century, however, as the “Baby Boomers” age, death rates are expected to increase significantly in the normal customer base age group. This combined with a belief that life expectancies will not change significantly has prompted often quoted funeral financial analyst Steve Saltzman of ABN Amro Chicago Corporation to predict a new “golden era” for death care services. (Davis & Knestrout, 1997; Smith, 1996, p.351). A boom is anticipated for those existing firms which can survive the current lag and those firms which emerge along with the increased demand for death care services.

B. Rise in Alternative Funeral Choices

With the advent of middle age in the Baby Boomer generation and the increasing influence of multiculturalism in the United States, the market in

the funeral industry, just as in other markets, is changing. Concurrent with the trend toward a flat customer base is the increasing popularity of alternative choices for funeral arrangements and a desire for greater consumer options (Lewine, 1996; Smith, 1996; Funeral and Mortuary Society of America, 1997 c).

There is no agreed upon definition of a “traditional” funeral; however, generally reported survey data on funerals describe price lists with fees for: removal of the body from the place of death to the mortuary, preparation and delivery of all needed documents, preparation of the body, a hearse needed for transportation, a casket, an obituary sent to a local newspaper, visitation, a funeral service at a mortuary or church, and a graveside service (Funeral and Mortuary Society of America, 1997 c; National Funeral Directors Association, 1996; Smith, 1996; Webster, 1995).

By the same token “alternative funerals” may be used to describe anything from a direct cremation with no memorial service to elaborate services which address the specific needs of a variety of cultural and religious groups from immigrant groups within the United States (Funeral and Mortuary Society of America, 1997 c; Lewine, 1996; National Funeral Directors Association, 1996; Smith, 1996; and Webster, 1995).

As for other market issues affecting funeral companies, there has been an active consumer movement relating to the funeral industry since the 1960’s. Churches and funeral and mortuary societies provide diverse consumer information on a wide range of topics relating to the funeral industry (e.g., implications of the Funeral Rule, alternate sources of financing, sources for direct purchasing of caskets, discounted rates from strip-mall facilities, as well as information on cremation options) (Black, 1996; Davis & Knestout, 1997; Lewine, 1996; Millman, 1994; Schodolski, 1993).

Consolidation Methods

Traditionally, the \$15 billion a year funeral industry has been considered by analysts to be fragmented – comprised largely of privately owned firms. As of September, 1996, of the 22, 000 funeral homes in the United States, more than 85 percent were still independent. However, a growing number of regional chains and a handful of large investor-owned funeral conglomerates have been consolidating industry resources by acquiring and managing formerly independent funeral homes and cemeteries. The three largest players are the publicly traded: Service Corporation International

(SCI), The Loewen Group, Inc. (Loewen), and Stewart Enterprises (Larson, 1996; McWilliams & Seymonds, 1996; Smith, 1996).

Starting with a family funeral home, SCI's Chairman and CEO, Robert L. Waltrip, pioneered the consolidation approach in the 1960s. With home base in Houston, SCI is the largest funeral firm in the world, with properties not only in North America but in Europe and the Pacific Rim. SCI reported in April of 1997 that it owns over 2,900 funeral service locations, 356 cemeteries, and 148 crematoria (Service Corporation International, 1997; Smith, 1996; Staff-*The Economist*, 1996).

Following the pattern of Robert Waltrip, Loewen's President and CEO, Raymond L. Loewen, developed his Canadian based firm into the second largest death care organization in North America. Although Loewen set about to build a large chain of funeral homes about the same time as Waltrip, he withdrew from his role as consolidator to pursue careers in politics and real estate and did not return to this role until the mid-1980's. However, by 1987 hundreds of Canadian and U.S. properties were owned by Loewen (Smith, 1996).

The third largest firm in North America, Stewart Enterprises, differs from the other two in that its origin was in cemeteries. The firm began as a cemetery business in 1910. During the 1970's, Chairman and founder, Frank B. Stewart, Jr., monitored the success of "heritage" cemeteries like Forest Lawn in Los Angeles and Restland of Dallas and began to cultivate the idea and the establishment of "combined operations" – businesses in which cemeteries, funeral homes and/or crematoria are owned and usually managed jointly. Some of Stewart's cemeteries have even built their own funeral establishments so that they can provide a complete range of death care options. Stewart is the most fully integrated of the large public companies with 73 funeral homes and 54 cemeteries

They heavily emphasize the importance of pre-need sales to promote capital stability and to educate the consumer on their ability to provide a complete range of death care options (Byrne, 1993; Smith, 1996).

In Virginia, as of May 1997, there were 491 funeral facilities licensed by the Board of Funeral Directors and Embalmers and 115 cemeteries registered with the Virginia Department of Agriculture and Consumer Services (this excludes those owned by governmental entities and churches). Twelve percent of the funeral facilities are owned by national companies and 28 percent of the registered cemeteries are owned by

national firms. Of the top three national firms, Loewen owns the most properties in Virginia with 33 funeral establishments and 19 cemeteries. SCI (known in Virginia as Virginia Funeral Services, Inc.) follows with 22 funeral establishments and 9 cemeteries, and Stewart owns 4 funeral establishments and 5 cemeteries.

D. Effects in the Marketplace – on the Industry and on Consumers

1. Industry Perspectives

There is concern that profits will be difficult to maintain, with combined effects of a relatively flat death rate into the next century coupled with the increase in alternative funeral arrangements, specifically cremations.

Of the 2 million deceased in the United States in 1994, 21 percent were cremated compared with only 5 percent in 1974. While the average traditional funeral without cemetery costs has been estimated to cost anywhere from \$2600 to \$9,600, a simple cremation with a cardboard box for the cremains costs anywhere from \$75 to \$250 (Smith; Webster, 1995).

Advisors to the industry counsel that consolidation of funeral establishments and of funeral establishments with cemeteries and columbariums may better allow firms to adapt to the changing market by providing additional services to the bereaved – single source purchase for funeral arrangements and interment and additional service considerations for cremations (Smith, 1996).

Both the advantages and disadvantages of consolidation are described in the available literature. The advantages often touted relate to the economies of scale available through shared resources (hearses, embalming facilities, and staff), the upgrading of some facilities which is routine when some of the larger companies acquire a firm, and the ability to maintain the former owner's name and presence in the community.

The disadvantages described in the same literature relate to some degree of loss of control over the management of the facility to the conglomerate. There have been reported incidences of loss of

control over the pricing of merchandise, the management of personnel, and types of services offered.

(McWilliams and Symonds, 1996; Service Corporation International, 1997; Smith, 1996; Staff - *Forbes* (a) and (b), 1995; Tomsho, 1996; Webster, 1995).

2. Perspectives from Others

Funeral societies (such as the Funeral and Memorial Society of America), investigative reporters, and other consumer-oriented materials provide different perspectives on the three trends. Primarily expressed is the concern that increased costs to the current consumer may result from the effects of a flat death-rate combined with the reduction in competition and improvements in facilities generally accompanying consolidation. The available literature focuses on the consumer's need to comparison shop, to consider less expensive options (such as cremation), and be advised of where to lodge complaints against both funeral homes and cemeteries (Davis and Knestout, 1997; Funeral and Memorial Society of American, 1997 (a) (b) and (c); Lagnado, 1996; Larson, 1996).

The only objective policy literature germane to the current study is a Maryland report entitled, *Task Force to Examine the State's Cemetery and Funeral Industry* (1996). The task force examined Maryland's laws and reviewed extensive public comment on the need to provide better consumer redress.

Among the numerous recommendations, several related to the current study address the need to provide for better oversight of cemeteries; better oversight of practices, trust funding and account auditing of pre-need sales; and the need to include regulation of historic cemeteries along with the for-profits (Ranier, 1996).

IV. TRENDS IN THE FUNERAL INDUSTRY – IN VIRGINIA

A. Discussion of Ownership Trends 1995 Forward

A review of ownership records kept by the Board of Funeral Directors and Embalmers was made in April of 1997 for this report. Of the then 474 licensed facilities, 69 had changed ownership in some fashion from 1992 forward. There were a total of 76 changes; some facilities had changed

hands more than once. The greatest number of changes occurred in 1994 with 26 owner title changes (8 were recorded for 1992, 18 for 1993, 15 for 1995, and 9 for 1996).

It is not possible from these data to unequivocally determine which of the specific facilities may actually be owned by a conglomerate. The totals cited earlier for the “big three” reflect the information reported to the Department by them. While the name of the firm may be listed for some, in other occasions, holding companies or subsidiaries with different names are the owners of record. It is also worthy of note that many of the changes in ownership recorded with the Board of Funeral Directors and Embalmers this time period were between individuals.

Given the low number of changes in comparison to the total number of facilities, and that conglomerate ownership of specific facilities cannot be accurately determined, no further analysis is reasonable – including a comparison of prices .

B. Discussion of Disciplinary Data

1. Funeral Directors and Embalmers

The Board of Funeral Directors and Embalmers adjudicates complaint cases relating to advertising, criminal convictions, fraud, facility violations, standards of care, trade practices, and unprofessional conduct. Allegations of unlicensed practice are also received and investigated by the Department although these cases are prosecuted through the local Commonwealths Attorney’s Office.

Table 1 on the following page provides a breakdown of the total number of cases with findings of “violation” or “undetermined” (256) out of a total of 503 closed cases for the Board for fiscal year 1991 to the present. This provides an overview of those complaints received which the Board deemed to merit or potentially merit discipline. The trend reveals an increase in the overall number of cases from 1991 to 1994 and then a similar decrease to the present.

Table 1
Board of Funeral Directors and Embalmers
Total Disciplinary Cases Closed with a Finding of “Violation” or
“Undetermined”

1991	1992	1993	1994	1995	1996	1997	TOTAL
29 (11.3%)	41 (16.0%)	35 (13.7%)	70 (27.3%)	36 (14.1%)	23 (9.0%)	22 (8.6%)	256 (100%)

Table 2 provides an overview of the specific types of complaints closed during this time frame. Top three problem were Unprofessional Conduct, Unlicensed Activity, and Facility Violations. With the exception of the catch-all category of Unprofessional Conduct, complaints in all disciplinary categories have dropped since 1994, and notably so over the past two years.

Table 2
Board of Funeral Directors and Embalmers
Disciplinary Cases by Type with a Finding of “Violation” or “Undetermined”

Type of Case	1991	1992	1993	1994	1995	1996	1997	TOTAL
Advertising	0	2	1	27	8	0	3	41 (16%)
Criminal Conviction	0	1	2	2	3	0	1	9 (3.5%)
Fraud	0	1	1	0	2	0	0	4 (1.6%)
Facility Violation	15	4	2	3	2	1	2	29(11.3%)
Standards of Care	0	1	2	0	0	0	0	3 (1.2%)
Trade Practice	3	1	2	0	1	0	0	6 (2.7%)
Unlicensed Practice	4	13	7	9	5	7	3	48 (18.8%)
Unprofessional Conduct	7	18	18	29	15	15	13	115(44.9%)
TOTAL	29	41	35	70	36	23	22	256 (100%)

2. Cemeteries

Consumer complaints received by the Department of Agriculture and Consumer Services 's Office of Consumer Affairs are accepted and processed through any number of means. Complaints which do

not fall in the regulatory arena are often referred to the state cemetery association or directed to the affected cemetery. Mediation is a tool for consumer protection and resolution of concerns and is offered through the Division of Consumer Protection's Dispute Resolution Unit.

Consumer complaints are received and recorded by the Counseling, Intake and Referral Unit which serves as a clearinghouse. Within Appendix 4 - Disciplinary Information Concerning Registered Facilities are examples of the forms and information provided to complainants. Unit staff record the complaint and refer as appropriate to the Registrations, Investigations, or Dispute Resolutions Units within the Office, or to organizations external to the Office. Staff also may handle complaints directly where it appears that the case may be resolved expeditiously by a letter to the parties notifying them of their rights regarding a private course of action.

There are instances in which there is sufficient evidence to proceed with presenting the case to the Commonwealth's Attorney or to the State Attorney General where violations of the Consumer Protection Act or other law, such as the Cemetery Act are apparent. Criminal case convictions and/or assurances of voluntary compliance have been obtained over the past several years in many areas of complaints.

The Office of Consumer Affairs receives many complaints, very few of which have to do with the Cemetery Act itself which addresses the financial stability of for-profit cemeteries. Monitoring and, ultimately, enforcement of the provisions of the Cemetery Act are the responsibility of the local Commissioners of Revenue. So, for the consumer the greatest enforcement authority rests with these Commissioners and with local government.

Appendix 4 also provides an overview of the closed cases relating to cemeteries for the Office of Consumer Affairs from 1994 until May 1997. Out of the 152 received complaints 52 are closed. Although a specific breakdown by case is not available at this time on each case, complaints about cemeteries for the Office of Consumer Affairs have fallen into the following large categories:

- Poor maintenance of cemetery/perpetual care
- Paid for monument/never delivered/never erected
- Misunderstanding/prepaid features
- Failure to live up to contract
- Unstated rules
- Misrepresentation
- Wrong plot
- Unstable plot
- Transfer of property without Power of Attorney or Trusteeship of Estate
- Unable to locate cemetery to make payments

C. Public Comment

Two requests for public comment have been provided, the first sought general comment on the subject matter of the study. The comments are summarized in Appendix 5. The second request solicited comment on the exposure draft of the study's report, and this comment is summarized in Appendix 7.

The initial comment in Appendix 5 includes the comments of representatives from the national companies, the Virginia Cemetery Association, the Association of Independent Funeral Homes in Virginia, a consumer group called Eternal Justice, and the general public. Appendix 6 provides the Virginia Department of Agriculture and Consumer Services' initial commentary.

The exposure draft of the report was approved at the July 8, 1997 meeting of the Regulatory Research Committee and distributed for comment to parties expressing interest. A public hearing was held to receive oral comment on August 11, 1997 and written comment was accepted until August 29, 1997. Sources of the comments on the exposure draft ranged from individual consumers, their attorneys and consumer groups, to funeral home and cemetery associations and individual owners of funeral homes and of cemeteries, as well as the Board of Funeral Directors and Embalmers and the Department of Agriculture and Consumer Services.

V. RECOMMENDATIONS

A. Policy Options

Based on a review of the relevant literature, analysis of federal and other states' regulation of the funeral and cemetery industries, analysis of relevant consumer complaints in Virginia, and review of public comments received prior to the July 8, 1997 Regulatory Research Committee meeting, the following constituted plausible policy options for the Committee to consider:

1. To make no change in the current regulatory status. This means that the Department of Agriculture and Consumer Services would continue to have only registration authority of cemeteries with no authority to promulgate regulations while the Board of Funeral Directors and Embalmers would continue to have extensive regulatory authority over their licensees.
2. To increase the authorization of the Department of Agriculture and Consumer Services to the ability to promulgate regulations over the registration of cemeteries and to register cemetery salespersons. Further to transfer the responsibility for auditing the financial records and trust accounts of cemeteries from the local Commissioners of Revenue to the Department of Agriculture and Consumer Services.
3. To consider eliminating the exemptions from oversight that municipality and church owned cemeteries have in order to ensure a standard of upkeep to preserve the identity of the graves.

In response to the policy options presented to the Board of Health Professions at its July 8, 1997 meeting, the Office of Consumer Affairs of the Department of Agriculture and Consumer Services, Division of Consumer Protection provided their comments in Appendix 6. Their recommendation was to adopt Draft Policy Option #1 which provides that no change be made to the current regulatory system.

In the interim between the July 8 Regulatory Research Committee meeting and the public hearing on August 11, the Department of Agriculture and Consumer Services had further opportunity to review past and more recent consumer complaints for trends. The Department specifically requested

that the letter in Appendix 8 be taken into consideration by the Board in its determination of recommendations.

B. Final Recommendations

This initial list of policy options, in no way precluded the Regulatory Research Committee's or the Board's consideration of other options. The Regulatory Research Committee proposed and the full Board adopted the following final recommendations in light of a review of the exposure draft report, public and Department of Agriculture and Consumer Services subsequent comment, as well as consideration of the provisions in state and federal antitrust laws to prevent monopolization of marketshare in the purchase and operation of both cemeteries and funeral establishment (see Appendix 9).

- (1) To provide statutory authority to promulgate regulations over cemeteries and cemetery salespersons. Such regulations would address, at a minimum, the issues relating to sales contracts—disclosure, pricing, pre-need arrangements—similar to those required in the regulations promulgated by the Virginia Board of Funeral Directors and Embalmers. [Note: This is an amendment to Policy Option #2.]*
- (2) Further, the Department of Health Professions should seek an interagency agreement with the Department of Agriculture and Consumer Services regarding the appropriate coordination and referral of consumer complaints and reports of violations of law or regulation within their jurisdictions.*
- (3) To provide for further study to determine the appropriate consolidation of the regulation of cemeteries and funeral services.*

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APPENDICES

Appendix 1

HOUSE JOINT RESOLUTION NO. 553

Requesting the Board of Health Professions, in conjunction with the Department of Agriculture and Consumer Services and, in cooperation with the Virginia Funeral Directors Association, the Virginia Cemetery Association, Inc., and the Independent Funeral Homes of Virginia, to study trends in the funeral industry.

Agreed to by the House of Delegates, February 20, 1997

Agreed to by the Senate, February 19, 1997

WHEREAS, funeral establishments and funeral directors are licensed and regulated by the Board of Funeral Directors and Embalmers; and

WHEREAS, cemeteries are registered with the Department of Agriculture and Consumer Services; and

WHEREAS, Virginia consumers deserve protection in dealing with this industry; now, therefore, be it

RESOLVED by the House of Delegates, the Senate concurring, That the Board of Health Professions, in conjunction with the Department of Agriculture and Consumer Services be requested to study competition in the funeral industry. In addition, the Board and the Department, in cooperation with the Virginia Funeral Directors Association, the Virginia Cemetery Association, Inc., and the Independent Funeral Homes of Virginia, shall study trends in the funeral industry. The study shall examine the national trend toward larger companies owning both cemeteries and funeral homes, and its effects on the consumer.

All agencies of the Commonwealth shall provide assistance to the Board of Health Professions and the Department of Agriculture and Consumer Services for this study, upon request.

The Board of Health Professions and the Department of Agriculture and Consumer Services shall complete their work in time to submit their findings and recommendations to the Governor and the 1998 Session of the General Assembly as provided in the procedures of the Division of Legislative Automated Systems for the processing of legislative documents.



Appendix 2

VIRGINIA DEPARTMENT OF HEALTH PROFESSIONS VIRGINIA BOARD OF HEALTH PROFESSIONS

Study of Competition in the Funeral Industry in Virginia

Workplan

Background. This study is being conducted pursuant to House Joint Resolution 553 of the 1997 Session of the General Assembly (see Appendix). In conjunction with the Department of Agriculture and Consumer Services and in cooperation with the Virginia Funeral Directors Association, the Virginia Cemetery Association, Inc., and the Independent Funeral Homes of Virginia, the Board of Health Professions will examine trends in the funeral industry. Specifically, the study will focus on the current national trend toward larger companies owning both cemeteries and funeral homes and will examine if costs and consumer complaints vary with corporate ownership in Virginia.

Authority. The Board of Health Professions is authorized by statute to advise the Governor, the General Assembly, and the Department Director on matters related to the regulation or deregulation of health care professions and occupations (see §54.1-2510 of the *Code of Virginia*). Funeral establishments and funeral directors are licensed and regulated by the Board of Funeral Directors and Embalmers within the Department of Health Professions, and cemeteries are registered with the Department of Agriculture and Consumer Services (see §54.1-2800 et seq. and §54.1-35-11 et seq. of the *Code of Virginia*).

Study Scope & Methodology. This study will attempt to describe the national trend in the funeral industry toward corporate ownership, its potential results, and the degree to which this trend may exist in Virginia with a focus on potential concomitant changes in measures of consumer costs and satisfaction.

It is impossible to conclude that a definite cause and effect relationship exists between any variables from the results of a single study. The current study is no exception. While this review will attempt to determine if a relationship exists between the variable ownership of funeral homes (corporate vs. private) and other variables related to consumer cost and satisfaction (i.e., complaints), it is understood that it will not be possible to prove that corporate ownership actually **causes** an increase or decrease in cost or satisfaction.

The key focus of the study will be to answer the following questions:

1. What are the national trends in funeral home ownership. When did they begin? Have there been any substantiated effects on consumers reported in the literature?
2. To what extent does corporate ownership of funeral homes exist in Virginia? Has this changed? If so, to what degree? (NOTE: For the purposes of this study, "Corporate ownership" refers to those facilities within a chain with principal proprietorship generally outside of the metropolitan area where a particular facility is located. This is opposed to "independent ownership" with proprietorship within the same general metropolitan area regardless of the number of facilities owned.)
3. If there has been a change in ownership patterns in the Commonwealth, has there been a corresponding change in consumer costs? In complaints?

To begin to answer these questions, the following steps are recommended:

1. Conduct a review of the policy and general literature related to the national trend and to potential effects speculated about or uncovered thus far.
2. Conduct a review of the relevant current federal and states' laws and regulations.
3. Glean information from relevant federal agencies, such as the Federal Trade Commission, on consumer issues germane to funeral establishments and cemeteries.
4. Conduct a hearing on the issue of corporate ownership of funeral establishments and cemeteries with invited guests from the major corporate owners, and representatives from the Virginia Funeral Directors Association, Virginia Morticians Association, the Virginia Cemetery Association, Inc., and the Independent Funeral Homes of Virginia.
5. Review Board of Funeral Directors and Embalmers facility ownership records and determine the current rate of corporate versus private ownership. Determine what this rate has been in the recent past (the last three to five years). If it has changed, describe how so.
6. Review price lists for all funeral facilities. (If comparable price lists are available for cemeteries, review them as well). Determine if there is a distinction between those entities owned by corporations and those owned privately, (bearing in mind that concomitant variables such as geographic region may confound the comparison if not taken into account).

7. Review records of complaints from the Department of Health Professions, Department of Agriculture and Consumer Services, and other pertinent consumer organizations to determine if more complaints have been received overall since the advent of the presumed trend. Compare complaint rates, corporate versus private, again, consider possible concomitant variables).
8. Prepare an initial report for review by the Regulatory Research Committee and full Board.
9. Review the report and recommendations by the full Board, and publish an exposure draft approved for circulation and solicitation of public comment.
10. Respond to the public comment and incorporate all findings in publish and distribute the Board's final report to the Director of the Department of Health Professions.
11. Review the report and recommendations by the Board, and publish a draft report for consideration by the Department Director and the Secretary.

Timetable.

- | | | |
|------------------|---|---|
| April 15, 1997 | - | Approval of Workplan by the Regulatory Research Committee with ratification by the Full Board |
| May 1, 1997 | - | Workplan to the Secretary's office |
| May 13, 1997 | - | Public Hearing on Corporate Ownership |
| July 8, 1997 | - | Draft Report to the Board |
| September TBA | - | Final Draft Report to the Board |
| September TBA | - | Report to the Department Director and Secretary |
| October 15, 1997 | - | Only if required, Revisions to the Secretary's Office. |

Resources Required. The resources required for this review are included in the FY 1997 budget of the Board of Health Professions. It is estimated that the review will require approximately 1/5th of the time of existing staff. The total cost associated with this project to include Board per diem, Board travel, court reporter, telephone charges, photocopying, as well as office materials is estimated at \$3,500.

Appendix 3 Regulation of States' Cemeteries*

Alaska - NO

California - YES - Licensure of Cemetery Brokers or Cemetery Salesmen (who work for Cemetery Brokers) by a Cemetery Board is required for sale of cemetery property or interment services. The Board examines health, safety, and funding issues.

Connecticut - NO

Colorado - No response to survey; no board listed.

Delaware - NO

Florida - No response to survey; no board listed. **

Georgia - NO

Hawaii - YES - cemeteries must be supervised by a Cemetery Authority who is Licensed by the Health Department. There are health and safety provisions in the law as well as a requirement that graves remain identifiable and their appearances kept up. Funding issues are not addressed.

Idaho - NO

Illinois - NO

Indiana - YES - cemetery's funding is subject to review by the respective county's Board of Commissioners, whether it be owned by a cemetery corporation, church, association, or organization.

Iowa - Response to the survey was "unknown"; no board listed.

Kansas - NO

Kentucky - No response to the survey; no board listed

Louisiana - NO

Maine - YES - but through criminal penalties only. No telephone or door-to-door sales are allowed. There are specific provisions for trust funds (e.g., 30% trust required). Construction plans must be approved by the local Bureau of Health and maintenance of properties must insure public health and safety as required by the Bureau of Health.

Maryland - PENDING LEGISLATION

Massachusetts - Response to the survey was "unknown"; no board listed.

Michigan - YES - "Registration" (but akin to licensure) with the Cemetery Commissioner is required for cemeteries and sales thereto. The Commissioner has authority to maintain records regarding the financial aspects of cemeteries, establish requirements for registration application, conduct administrative disciplinary hearings, establish requirements for maintenance of special trust funds for the future performance obligations and special care or decoration obligations of cemeteries. An investigation of

the cemetery plans as well as of the applicant's experience, financial stability, ability, and integrity is conducted prior to registration. Endowment care fund examined yearly by the Commissioner.

Minnesota - NO

Mississippi - NO

Missouri - NO

Montana - NO

Nebraska - NO

Nevada - No response to the survey; no board listed.

New Hampshire - YES - Every municipality must elect a board of cemetery trustees or delegate the oversight duties to a town manager. Annual reports of finances are filed with the attorney general, unless otherwise required to file with a town, city, county, or state agency. Municipalities acquire abandoned burial grounds.

New Jersey - YES - Has a cemetery board to oversee licensure and disciplinary matters.

New Mexico - No response to the survey; no board listed.

New York - YES - However, the provided law only discusses private and family not-for-profit cemetery corporations. Also a discussion of removal of remains from one of these cemeteries to another cemetery may be done at the behest of the supervisor of the respective town.

North Carolina - NO

North Dakota - Response to the survey was "unknown"; no board listed.

Ohio - No response to the survey; no board listed.

Oklahoma - NO

Oregon - No response to the survey; no board listed. **

Pennsylvania - YES - cemeteries are registered with the Real Estate Commission Bureau of Professional & Occupational Affairs and cemetery brokers/salespersons are licensed by the same agency.

Rhode Island - NO

South Carolina - No response to the survey; no board listed.

South Dakota - YES - Department of Health approval required for mausoleum construction plans. There is also oversight by this department on matters relating to the health and safety of the public and on the burial record system within cemeteries. Nothing on sale of plots or services. There are provisions on how human remains may be handled.

Tennessee - YES - Registration of cemeteries required with the Commissioner of Commerce and Insurance. Commissioner has authority to appoint an advisory board of experts in the field of cemetery operation and management services. Requirements for records of burials and quarterly reporting of finances are in place. Records are audited every two years. Violations are punished through the courts. Revocation of a cemetery's charter is one consequence.

Texas - NO

Utah - NO - The Division of Occupational and Professional Licensing had regulated both cemeteries and cemetery salespersons, but now both are deregulated.

Vermont - NO

Virginia - YES - Registration of cemetery owners with the Department of Agriculture and Consumer Services, Division of Consumer Protection, Office of Consumer Affairs required. No regulations promulgated. Local Commissioners of Revenue get listing of registrants. The cemetery company must maintain and report certain financial information relating to sales and preneed burial contract.

Washington - NO

West Virginia - YES - Cemeteries and cemetery broker/salespersons are registered through the Secretary of State's office. For pre-need sales from cemeteries, an annual audit must be sent to the Office of Internal Audits.

Wisconsin - YES - Registration with the Department of Regulation and Licensing is required of cemetery associations, cemetery sellers, and cemetery pre-need sellers. For the cemetery associations and preneed sellers, the application for registration may not require minimum education, experience or passage of an examination. Failure to register may result in fines, imprisonment, or both. Also, an annual report of finances for cemetery associations is required.

Wyoming - YES - Licensure of pre-need salespersons for cemeteries with the Insurance Department is required. This department regulates matters relating to trust funding only.

*INFORMATION OBTAINED FROM THE VIRGINIA BOARD OF FUNERAL DIRECTORS AND EMBALMERS SURVEY OF STATES CONCERNING CEMETERIES IN 1996, FROM CLEAR'S DIRECTORY OF PROFESSIONAL AND OCCUPATIONAL REGULATION IN THE UNITED STATES AND CANADA (1994), AND THROUGH DIRECT INQUIRY OF THE REGULATING ENTITIES.

** ALTHOUGH NEITHER FLORIDA NOR OREGON RESPONDED TO THE SURVEY, THE REPORT FROM THE MARYLAND TASK FORCE TO EXAMINE THE STATE'S CEMETERY AND FUNERAL INDUSTRY INDICATES THAT THERE IS ONE GOVERNING BODY FOR CEMETERIES AND FUNERAL ESTABLISHMENTS IN EACH STATE.

Appendix 3A

Virginia Statutes and Registration Materials Relating to Cemeteries

CHAPTER 3.

CEMETERIES.

Article 3.1.	Sec.
Endowment Trusts for Perpetual Care.	57-35.21. Deposit in preneed trust required upon sale of property or services not to be delivered within 120 days.
Sec. 57-35.1 through 57-35.10. [Repealed].	57-35.21:1. Who may serve as trustee of preneed trust fund.
Article 3.2.	57-35.22. Requirements for preneed burial contracts.
Perpetual Care Funds, Preneed Burial Contracts and Consumer Protections.	57-35.23. Identification of specific funds.
57-35.11. Definitions.	57-35.24. Specific funds and income to remain in preneed trust account; exception.
57-35.11:1. Information filing; fees; compliance agent; Division to notify commissioner of revenue.	57-35.25. Disbursement of trust funds upon performance of contract.
57-35.12. Exemptions.	57-35.26. Seller required to keep records.
57-35.13. Certain representations unlawful; perpetual care trust fund required.	57-35.27. Financial report and written assurance required for preneed trust accounts.
57-35.14. Who may serve as trustee of perpetual care trust fund.	57-35.28. Inclusion of property and services to be delivered within 120 days.
57-35.15. Deposit in perpetual care trust fund required upon sale of graves, etc.	57-35.29. Breach of contract by seller; trust to be single purpose trust.
57-35.16. Additional deposit not required upon subsequent sale of same grave, crypt or niche.	57-35.30. Trustee may rely on certifications and affidavits.
57-35.17. Recovery of original perpetual care trust fund deposit.	57-35.31. Transfer of trust funds to another trustee.
57-35.18. Use of income from perpetual care trust fund.	57-35.32. Use of trustee's name in advertisements.
57-35.19. Financial records required.	57-35.33. Construction and development of mausoleums and garden crypts.
57-35.20. Financial report and written assurance required for perpetual care trust funds.	57-35.34. Waiver of article void.
	57-35.35. Violation a misdemeanor.

ARTICLE 3.1.

Endowment Trusts for Perpetual Care.

§§ 57-35.1 through 57-35.10: Repealed by Acts 1989, c. 631.

ARTICLE 3.2.

Perpetual Care Funds, Preneed Burial Contracts and Consumer Protections.

§ 57-35.11. Definitions. -- As used in this article, unless the context requires a different meaning:

"Cemetery" means any land or structure used or intended to be used for the interment of human remains. The sprinkling of ashes or their burial in a biodegradable container on church grounds or their placement in a columbarium on church property shall not constitute the creation of a cemetery.

"Cemetery company" means any person engaged in the business of (i) selling or offering for sale any grave or entombment right in a cemetery and representing to the public that the entire cemetery, a single grave, or entombment right therein will be perpetually cared for or (ii) selling property or services used in connection with interring or disposing of the remains or commemorating the memory of a deceased human being, where delivery of the property or performance of the service may be delayed later than 120 days after receipt of the initial payment on account of such sale. Such property or services include but are not limited to burial vaults, mausoleum crypts, garden crypts, lawn crypts, memorials, and marker bases, but shall not include graves or incidental additions such as dates, scrolls or other supplementary matter representing not more than ten percent of the total contract price.

"Commissioner of revenue" means the commissioner of revenue of the city or county where the cemetery is located. The term includes the director of finance and any other officer of any county or city who performs any or all of the duties of the commissioner of revenue.

"Compliance agent" means a natural person who owns or is employed by a cemetery company to assure the compliance of the cemetery company with the provisions of this article.

"Cost requirement" means the total cost to the seller of the property or services subject to the deposit requirements of § 57-35.21 required by that seller's total contracts.

"Division" means the Division of Consumer Affairs within the Department of Agriculture and Consumer Services.

"Garden crypt" means a burial receptacle, usually constructed of reinforced concrete, installed in quantity on gravel or tile underlay. Each crypt becomes an integral part of a given garden area and is considered real property.

"General funds" means the sum total of specific funds put together in a single fund.

"Grave" means a below-ground right of interment.

"Interment" means all forms of final disposal of human remains including, but not limited to, earth burial, mausoleum entombment and niche or columbarium inurnment. The sprinkling of ashes on church grounds shall not constitute interment.

"Lawn crypt" means a burial vault with some minor modifications for the improvement of drainage in and around the receptacle and is considered personal property.

"Marker base" means the visible part of the marker or monument upon which the marker or monument rests and is considered personal property.

"Mausoleum crypt" means a burial receptacle usually constructed of reinforced concrete and usually constructed or assembled above the ground and is considered real property.

"Memorials, markers or monuments" means the object used to identify the deceased and is considered personal property.

"Perpetual care trust fund" means a fund created to provide income to a cemetery to provide care, maintenance, administration and embellishment of the cemetery.

"Preneed" means at any time other than either at the time of death or while death is imminent.

"Preneed burial contract" means a contract for the sale of property or services used in connection with interring or disposing of the remains or commemorating the memory of a deceased human being, where delivery of the property or performance of the service may be delayed for more than 120 days after the receipt of initial payment on account of such sale. Such property or services include but are not limited to burial vaults, mausoleum crypts, garden crypts, lawn crypts, memorials, and marker bases, but shall not include graves or incidental additions such as dates, scrolls, or other supplementary matter representing not more than ten percent of the total contract price.

"Seller's trust account" means the total specific trust funds deposited from all of a specific seller's contracts, plus income on such funds allotted to that seller.

"Specific trust funds" means funds identified to a certain contract for personal property or services.

§ 57-35.11:1. Information filing; fees; compliance agent; Division to notify commissioner of revenue. -- No person shall engage in the business of a cemetery company in this Commonwealth without first having registered with the Division. The cemetery company shall renew its registration between October 1 and October 31 of each calendar year. Such registration and such renewal of registration shall (i) be on forms prescribed by the Division and shall include the name and address of each cemetery in Virginia in which the cemetery company has a business interest, the name and address of all officers and directors of the cemetery company, the registered agent for the cemetery company, the compliance agent, and any such other information as the Division may require consistent with the purposes of this chapter; and (ii) include a fee of \$300 for each cemetery in Virginia in which the cemetery company has a business interest. Any cemetery company that commences operation prior to submitting a complete registration, or that fails to renew its registration between October 1 and October 31 of any calendar year, shall also pay a late fee of fifty dollars for each month, or any part thereof, that the registration is incomplete or late. This fee shall be in addition to all other penalties authorized by law. The cemetery company shall notify the Division of any change in the information required to be filed within thirty days after the change. A new registration shall be required if there is a change in the ownership of the cemetery company or if there is a change in the compliance agent designated

by the cemetery company. All fees shall be remitted to the State Treasurer and shall be placed to the credit and special fund of the Department of Agriculture and Consumer Services to be used in the administration of this article.

For each cemetery listed in the registration of the cemetery company, the Division shall notify the commissioner of revenue for the jurisdiction in which the cemetery is located of the registration and inform the commissioner of his duties under this article.

§ 57-35.12. Exemptions. -- A. The provisions of this article shall not apply to cemeteries owned and operated by a county, city or town or by a church or by a nonstock corporation not operated for profit if the corporation (I) does not compensate any officer or director except for reimbursement of reasonable expenses incurred in the performance of official duties, (ii) does not sell or construct or directly or indirectly contract for the sale or construction of vaults or lawn, garden or mausoleum crypts and (iii) uses proceeds from the sale of all graves and entombment rights for the sole purpose of defraying the direct expenses of maintaining the cemetery.

B. The provisions of this article shall not apply to any community cemetery not operated for profit if the cemetery (I) does not compensate any officer or director except for reimbursement of reasonable expenses incurred in the performance of official duties, (ii) uses the proceeds from the sale of the graves and mausoleum spaces for the sole purpose of defraying the direct expenses of maintaining its facilities, and (iii) was chartered by the Commonwealth prior to 1850 A.D.

C. The provisions of this article regarding preneed burial contracts shall not apply to prearranged funeral plans entered into by licensees of the Board of Funeral Directors and Embalmers.

§ 57-35.13. Certain representations unlawful; perpetual care trust fund required. -- It shall be unlawful to sell or offer for sale in the Commonwealth any grave or entombment right in a cemetery, and in connection therewith to represent to the public, in any manner, express or implied, that the entire cemetery or any grave or entombment right therein will be perpetually cared for, unless adequate provision has been made for the perpetual care of the cemetery and all graves and entombment rights therein as to which such representation has been made.

Each cemetery company shall establish in a bank, savings and loan or other federally insured investment banking institution doing business in this Commonwealth an irrevocable trust fund in the amount of at least \$25,000 before the first lot, parcel of land, burial or entombment right is sold. This fund shall be designated the perpetual care fund.

§ 57-35.14. Who may serve as trustee of perpetual care trust fund. -- A. The trustee of the perpetual care trust fund shall be appointed by the person owning, operating, or developing a cemetery

company. If the trustee is other than a bank, savings and loan or other federally insured investment banking institution doing business in the Commonwealth, the trustee shall be approved by the commissioner of revenue.

A trustee that is not a bank, savings and loan or other federally insured investment banking institution doing business in the Commonwealth shall apply to the commissioner of revenue for approval, and the commissioner of revenue shall approve the trustee when he has become satisfied that:

(i) The applicant employs and is directed by persons who are qualified by character, experience, and financial responsibility to care for and invest the funds of others;

(ii) The applicant will perform its duties in a proper and legal manner and the trust funds and interest of the public generally will not be jeopardized; and

(iii) The applicant is authorized to do business in the Commonwealth and has adequate facilities to perform its duties as trustee.

B. If the trustee is other than a bank, savings and loan or other federally insured investment banking institution doing business in the Commonwealth, the trustee shall furnish a fidelity bond with corporate surety thereon, payable to the trust established, which shall be designated Perpetual Care Trust Fund for (name of cemetery company), in a sum equal to not less than 100 percent of the value of the principal of the trust estate at the beginning of each calendar year, which bond shall be deposited with the commissioner of revenue.

C. If the trustee is other than a bank, savings and loan or other federally insured investment banking institution doing business in the Commonwealth and if it appears that an officer, director or employee of the trustee is dishonest, incompetent, or reckless in the management of a perpetual care trust fund, the commissioner of revenue may bring an action in the courts to remove the trustee and to impound the property and business of the trustee as may be reasonably necessary to protect the trust funds.

§ 57.35.14:1. Application of Title 26.- Trustees appointed pursuant to this article shall be governed in their investment of trust funds by §§ 26-40 through 26-45.1 of Chapter 3 of Title 26, except as provided otherwise herein. (1993,c. 532.)

§ 57-35.15. Deposit in perpetual care trust fund required upon sale of graves, etc. -- Each cemetery company shall deposit a minimum of ten percent of the receipts from the sale of graves and above-ground crypts and niches, excluding below-ground burial vaults, in cash in the perpetual care trust fund within thirty days after the close of the month in which such receipts are paid to it. If payment is made on an installment or deferred payment basis, the cemetery company shall have the option of paying ten percent of the amount of principal in each payment received into the perpetual care trust fund.

§ 57-35.16. Additional deposit not required upon subsequent sale of same grave, crypt or niche. -- If ten percent of the sales price of a grave or above-ground crypt or niche has been deposited in a perpetual care trust fund, no deposit shall be required on subsequent sales of the same grave, crypt or niche.

§ 57-35.17. Recovery of original perpetual care trust fund deposit. -- Once the cemetery company has deposited in the perpetual care trust fund a sum equal to twice the amount of the original deposit, exclusive of the original deposit, the trustee shall allow the cemetery company to recover the original deposit by withholding the money that would otherwise be required to be deposited in the perpetual care trust fund until the amount of the original deposit is recovered. Once the cemetery company has recovered an amount equal to the original deposit, deposits to the perpetual care trust fund shall be resumed.

§ 57-35.18. Use of income from perpetual care trust fund. -- The income from the perpetual care trust fund shall be used solely and exclusively for the general care, maintenance, administration and embellishment of the cemetery.

§ 57-35.19. Financial records required. -- The cemetery company shall maintain within this Commonwealth detailed accounts of all transactions, receipts and accounts receivable subject to the ten percent trust requirement and of all expenditures of income from the perpetual care trust fund. Records shall be subject to examination by the commissioner of revenue.

§ 57-35.20. Financial report and written assurance required for perpetual care trust funds. -- A. Within four months after close of its fiscal year, the cemetery company shall report the following information to the commissioner of revenue:

1. The total amount of principal in the perpetual care trust fund.
2. The securities in which the perpetual care trust fund is invested and the amount of cash on hand as of the close of the fiscal year.
3. The income received from the perpetual care trust fund, and the sources of such income, during the preceding fiscal year.
4. An affidavit executed by the compliance agent that all applicable provisions of this article relating to perpetual care trust funds have been complied with.
5. The total receipts subject to the ten percent trust requirement.
6. All expenditures from the perpetual care trust fund.
7. If the trustee is other than a bank, savings and loan, or other federally insured investment banking institution doing business in the Commonwealth, proof that the required fidelity bond has been secured and that it is in effect.
8. A separate total of expenses incurred for general care and maintenance, embellishment and administration of cemeteries.

B. The cemetery company shall employ an independent certified public accountant to audit and provide assurance that, with regard to the total of all receipts subject to § 57-35.15, the report of the owner, operator or developer is true and correct and that the required deposits to the perpetual care trust have been made on a timely basis. Such audit shall provide full disclosure of any transactions between the perpetual care trust fund and any directors, officers, stockholders, employees, or relatives thereof, and shall include a description of the transactions, the parties involved, the dates and amounts of the transaction, and the reasons for the transactions.

C. The information required to be filed hereunder with the commissioner of revenue shall be exempt from the Privacy Protection Act (§ 2.1-377 et seq.). (Code 1950, §57-35.7; 1964, c. 534; 1975, c. 581; 1989, c.631; 1990, cc. 434, 750; 1992, c.359, 1993,c. 532.)

§ 57-35.21. Deposit in preneed trust required upon sale of property or services not to be delivered within 120 days. -- A. Each cemetery company shall deposit into a trust fund forty percent of the receipts from the sale of property or services purchased pursuant to a preneed burial contract, when the delivery thereof will be delayed more than 120 days from the initial payment on said contract. The cemetery company shall establish a special trust fund in a bank, savings and loan or other federally insured investment banking institution doing business in the Commonwealth. The trust shall bear the legend "Preneed Trust Account." Deposits are required to be made by the cemetery company within thirty days after the close of the month in which said receipts are paid to it.

B. If payment is made on an installment or deferred payment basis, the seller shall have the option of paying forty percent of the amount of principal in each payment received into the preneed trust account.

§ 57-35.21:1. Who may serve as trustee of preneed trust fund.

-- A. The trustee of the preneed trust fund shall be appointed by the person owning, operating, or developing a cemetery company. If the trustee is other than a bank, savings and loan or other federally insured investment banking institution doing business in the Commonwealth, the trustee shall be approved by the commissioner of revenue.

A trustee that is not a bank, savings and loan or other federally insured investment banking institution doing business in the Commonwealth shall apply to the commissioner of revenue for approval, and the commissioner of revenue shall approve the trustee when he has become satisfied that:

1. The applicant employs and is directed by persons who are qualified by character, experience, and financial responsibility to care for and invest the funds of others;

2. The applicant will perform its duties in a proper and legal manner and the trust funds and interest of the public generally will not be jeopardized; and

3. The applicant is authorized to do business in the

Commonwealth and has adequate facilities to perform its duties as trustee.

B. If the trustee is other than a bank, savings and loan or other federally insured investment banking institution doing business in the Commonwealth, the trustee shall furnish a fidelity bond with corporate surety thereon, payable to the trust established, which shall be designated Preneed Trust Fund for (name of cemetery company), in a sum equal to but not less than 100 percent of the value of the principal of the trust estate at the beginning of each calendar year, which bond shall be deposited with the commissioner of revenue.

C. If the trustee is other than a bank, savings and loan or other federally insured investment banking institution doing business in the Commonwealth and if it appears that an officer, director or employee of the trustee is dishonest, incompetent, or reckless in the management of a preneed care trust fund, the commissioner of revenue may bring an action in the courts to remove the trustee and to impound the property and business of the trustee as may be reasonably necessary to protect the trust funds.

§ 57-35.22. Requirements for preneed burial contracts. -- A preneed burial contract shall:

1. Be written in clear understandable language and printed in easy-to-read type, size and style;

2. Identify the seller, the contract buyer and the person for whom the contract is bought if other than the contract buyer;

3. Contain a complete description of the property or services bought;

4. Clearly disclose whether the price of the property or services bought is guaranteed;

5. Contain in bold type the name, address and telephone number of the Administrator of Consumer Affairs and state the Division of Consumer Affairs within the Department of Agriculture and Consumer Services is the regulatory agency which handles consumer complaints;

6. Provide that if the particular property and services specified in the contract are unavailable at the time of delivery, the seller shall be required to furnish supplies and services similar in size and style and at least equal in quality of material and workmanship and that the representative of the deceased shall have the right to reasonably choose the property or services to be substituted;

7. Comply with all disclosure requirements imposed by the Division of Consumer Affairs within the Department of Agriculture and Consumer Services; and

8. Be executed in duplicate and a signed copy given to the buyer.

§ 57-35.23. Identification of specific funds. -- Specific funds deposited in the trust account shall be identified in the records of the seller by the contract number and by the name of the buyer. The trustee may commingle the deposits in any preneed trust

account for the purposes of the management thereof and the investment of funds therein.

§ 57-35.24. Specific funds and income to remain in preneed trust account; exception. -- Specific funds shall remain intact until the property is delivered or services performed as specified in the contract. The net income from the preneed trust account, after payment of any appropriate trustee fees, commissions, and costs, shall remain in the account and be reinvested and compounded. Any trustee fees, commissions, and costs in excess of income shall be paid by the cemetery company and not from the trust. However, the trustee shall, as of the close of the cemetery company's fiscal year, upon written assurance to the trustee of a certified public accountant employed by the seller, return to the seller any income in the seller's account which, when added to the specific funds, is in excess of the current cost requirements for all undelivered property or services included in the seller's preneed burial contracts. The seller's cost requirements shall be certified in its records by an affidavit sworn by the compliance agent and shall be determined by the seller as of the close of the cemetery company's fiscal year.

§ 57-35.25. Disbursement of trust funds upon performance of contract. -- A. Upon performance of the preneed burial contract, the seller shall certify to the trustee by affidavit the amount of specific funds in the trust, identified to the contract performed, which the trustee shall pay to the seller. The seller may in its records itemize the property or services and the consideration paid or to be paid therefor, to which the deposit requirements of this article apply. In such case the seller may, upon certification to the trustee of performance or delivery of such property or services and of the amount of specific trust funds identified in its records to such items, request disbursement of that portion of the specific funds deposited pursuant to the contract, which the trustee shall pay to the seller.

B. If the preneed contract provides for two or more persons, the seller may, at its option, designate in its records the consideration paid for each individual in the preneed burial contract. In such case, upon performance of that portion of the contract identified to a particular individual, the seller may request, by certification in the manner described above, the disbursement of trust funds applicable to that portion of the contract, which the trustee shall pay to the seller.

§ 57-35.26. Seller required to keep records. -- Each seller of a preneed burial contract shall record and keep within the Commonwealth detailed accounts of all contracts and transactions regarding preneed burial contracts, and the records shall be subject to examination by the commissioner of revenue.

§ 57-35.27. Financial report and written assurance required for preneed trust accounts. -- A. The cemetery company shall

report the following information to the commissioner of revenue within four months following the cemetery company's fiscal year:

1. The total amount of principal in the preneed trust account;

2. The securities in which the preneed trust account is invested;

3. The income received from the trust and the source of that income during the preceding fiscal year;

4. An affidavit executed by the compliance agent that all provisions of this article applicable to the seller relating to preneed trust accounts have been complied with;

5. The total receipts required to be deposited in the preneed trust account;

6. All expenditures from the preneed trust account; and

7. If the trustee is other than a bank, savings and loan, or other federally insured investment banking institution doing business in the Commonwealth, proof that the required fidelity bond has been secured and that it is in effect.

B. The cemetery company shall employ an independent certified public accountant to audit and provide assurance that forty percent of the cash receipts from the sale of preneed property or services not to be delivered or performed within 120 days after receipt of the initial payment on account has been deposited in the account within 30 days after the close of the month in which the payment was received. Such audit shall provide full disclosure of any transactions between the preneed trust account and any directors, officers, stockholders, employees, or relatives thereof, and shall include a description of the transactions, the parties involved, the dates and amounts of the transactions, and the reasons for the transactions.

C. The information required to be filed hereunder with the commissioner of revenue shall be exempt from the Privacy Protection Act (§ 2.1-377 et seq.).

§ 57-35.28. Inclusion of property and services to be delivered within 120 days. -- Nothing in this article shall be deemed to prohibit the sale within the preneed burial contract of property or services to be delivered within 120 days after the receipt of the initial payment on account of such sale. Contracts may specify separately the total consideration paid or to be paid for preneed property or services not to be delivered or provided within 120 days after receipt of initial payment. If a contract does not so specify, the seller shall deposit forty percent of the total consideration of the entire contract.

§ 57-35.29. Breach of contract by seller; trust to be single purpose trust. -- If, after a written request, the seller fails to perform its contractual duties, the purchaser, executor or administrator of the estate, or heirs, or assigns or duly authorized representative of the purchaser shall be entitled to maintain a proper legal or equitable action in any court of competent jurisdiction. No other purchaser need be made a party to

or receive notice of any proceeding brought pursuant to this section relating to the performance of any other contract.

The trust shall be a single purpose trust, and the trust funds shall not be available to any creditors as assets of the seller.

§ 57-35.30. Trustee may rely on certifications and affidavits. -- The trustee may rely upon all certifications and affidavits made pursuant to or required by the provisions of this article and shall not be liable to any person for such reasonable reliance.

§ 57-35.31. Transfer of trust funds to another trustee. --The seller may, upon notification in writing to the trustee, and upon such other terms and conditions as the agreement between them may specify, transfer its account funds to another trustee qualified under the provisions of this article. The trustee may, upon notification in writing to the seller, and upon such other terms and conditions as the agreement between them may specify, transfer the trust funds to another trustee qualified under the provisions of this article.

§ 57-35.32. Use of trustee's name in advertisements. -- No person subject to the provisions of this article shall use the name of the trustee in any advertisement or other public solicitation without written permission of the trustee.

§ 57-35.33. Construction and development of mausoleums and garden crypts. -- Within four years after the date of the first sale, a cemetery company or other seller of mausoleums and garden crypts shall be required to start construction or development of that undeveloped ground or section of a mausoleum or garden crypt in which sales, contracts for sales, or agreements for sales are being made. The construction or development of such undeveloped mausoleum section or garden crypt shall be completed within five years after the date of the first such sale. Completed construction shall be deemed performance for purposes of this article.

§ 57-35.34. Waiver of article void. -- Any provision of any contract which purports to waive any provision of this article shall be void.

§ 57-35.35. Violation a misdemeanor. -- It shall be unlawful for any person to violate any of the provisions of this article. Any such violation shall be deemed a Class I misdemeanor and any person convicted of such violation shall be punished in accordance with the provisions of § 18.2-11.

VIRGINIA DEPARTMENT OF AGRICULTURE AND CONSUMER SERVICES
DIVISION OF CONSUMER AFFAIRS
POST OFFICE BOX 526
RICHMOND, VIRGINIA 23218-0526

APPLICATION FOR CEMETERY REGISTRATION ***

1. NAME OF CEMETERY COMPANY _____
2. d/b/a OR NAME OF CEMETERY _____
3. ADDRESS _____
CITY _____, VIRGINIA ZIP _____ PHONE _____
NAME OF CONTACT PERSON AT CEMETERY _____
BUSINESS ADDRESS (IF DIFFERENT) STREET _____
CITY _____ STATE _____ ZIP _____
CIRCLE ONE: Corporation Partnership Sole Proprietorship
Other _____
4. ATTACH A LIST OF ALL OFFICERS AND DIRECTORS AND THEIR ADDRESSES.
(Mark Exhibit A)
5. REGISTERED AGENT _____
ADDRESS _____
CITY _____ STATE _____ ZIP _____
6. COMPLIANCE AGENT _____
ADDRESS _____
CITY _____ STATE _____ ZIP _____
7. LOCATION WHERE FINANCIAL RECORDS ARE MAINTAINED
ADDRESS _____
CITY _____ STATE _____ ZIP _____
8. FISCAL YEAR: BEGINNING DATE _____ ENDING DATE _____
9. YOU MUST ATTACH A COPY OF ANY CONTRACT OFFERED FOR SALE BY YOUR COMPANY
IN COMPLIANCE WITH SECTION 57-35.22. (Mark Exhibit B)

10. IS THIS A PERPETUAL CARE CEMETERY? YES _____ NO _____

IF YES, PROVIDE THE FOLLOWING INFORMATION:

NAME OF BANK, SAVINGS & LOAN, OR OTHER FEDERALLY INSURED INVESTMENT BANKING INSTITUTION FOR THE PERPETUAL CARE TRUST FUND

ENTITY _____

ADDRESS _____

CITY _____ STATE _____ ZIP _____

TRUST OFFICER _____

TITLE _____

IF TRUSTEE IS OTHER THAN A BANK, SAVINGS & LOAN OR FEDERALLY INSURED INVESTMENT BANKING INSTITUTION OF THE PERPETUAL CARE TRUST FUND

NAME _____

ADDRESS _____

CITY _____ STATE _____ ZIP _____

HAVE YOU POSTED/PLACED A FIDELITY BOND WITH CORPORATE SURETY WITH THE COMMISSIONER OF REVENUE? YES _____ NO _____

AMOUNT OF FIDELITY BOND _____

INSURER OF FIDELITY BOND

NAME _____

ADDRESS _____

CITY _____ STATE _____ ZIP _____

11. DOES THE CEMETERY SELL PRENEED BURIAL CONTRACTS FOR EITHER MERCHANDISE OR SERVICES? YES _____ NO _____

IF YES, PROVIDE THE FOLLOWING INFORMATION FOR THE BANK, SAVING & LOAN, OR OTHER FEDERALLY INSURED INVESTMENT BANKING INSTITUTION FOR THE PRENEED BURIAL FUND:

NAME _____

ADDRESS _____

CITY _____ STATE _____ ZIP _____

TRUST OFFICER _____

TITLE _____

IF TRUSTEE IS OTHER THAN A BANK, SAVINGS & LOAN OR FEDERALLY INSURED INVESTMENT BANKING INSTITUTION OF THE PRENEED BURIAL FUND

NAME _____

ADDRESS _____

CITY _____ STATE _____ ZIP _____

HAVE YOU POSTED/PLACED A FIDELITY BOND WITH CORPORATE SURETY WITH THE COMMISSIONER OF REVENUE? YES _____ NO _____

AMOUNT OF FIDELITY BOND _____

INSURER OF FIDELITY BOND

NAME _____

ADDRESS _____

CITY _____ STATE _____ ZIP _____

AFFIDAVIT

_____, being duly sworn deposes and says: That the statements herein contained, and the documents herewith submitted are full, true and complete as of the date of execution hereof, and that he/she is the Cemetery Company Operator for which registration is being applied, or that he/she is the officer or agent authorized by the Cemetery Company Operator to affix his/her signature.

(Authorized Signature)

Subscribed and sworn to before me this _____ day of _____, 19 ____ at

(City or County and State)

(Notary Public)

Notary Public in County/City of _____ State of _____
My Commission expires _____

MAILING INSTRUCTIONS

REGISTRATION FEE: \$ 300

** Please send your registration fee of \$300 and application with the completed Remittance Form to: (self-addressed envelope provided)

VIRGINIA DEPARTMENT OF AGRICULTURE & CONSUMER SERVICES
P.O. BOX 526
RICHMOND, VA 23218-0526



J. Carlton Courter III
Commissioner

COMMONWEALTH of VIRGINIA
Department of Agriculture and Consumer Services
Division of Consumer Protection

P.O. BOX 526
RICHMOND, VA 23218-0526

REMITTANCE FORM

FOR CEMETERY COMPANY OPERATORS

FEE: Registration \$ _____ (981-02-02346)
Late Fee \$ _____ (981-02-2799)
Check # _____ \$ _____ Total

Federal Employer Identification Number: _____

The Registration Fee is \$300 for each cemetery (981-02-02346). The fee for amendments to information previously filed is \$100 (981-02-02347). Late fees are \$50 for each month that registration is delinquent. (981-02-2799)

NAME AND ADDRESS OF CEMETERY COMPANY:

The Code of Virginia authorizes state agencies to assess interest, administrative charges and penalty fees for returned checks and past-due accounts in accordance with guidelines promulgated by the Department of Accounts.

MAKE CHECKS PAYABLE TO: TREASURER OF VIRGINIA

SEND CHECK AND THIS
FORM IN ENVELOPE
PROVIDED TO:

VIRGINIA DEPARTMENT OF AGRICULTURE
AND CONSUMER SERVICES
P.O. BOX 526
RICHMOND, VA 23218-0526

REQUIREMENTS AND DISCLOSURES FOR PRE-NEED BURIAL CONTRACTS

1. ANY CONTRACT FOR PRE-NEED BURIAL MUST BE WRITTEN IN CLEAR AND UNDERSTANDABLE LANGUAGE, TYPED IN LARGE ENOUGH SIZE AND IN A STYLE WHICH MAKES IT EASY TO READ.
2. ANY CONTRACT FOR PRE-NEED BURIAL MUST IDENTIFY THE BUYER, SELLER, AND THE PERSON(S) FOR WHOM THE CONTRACT IS BEING PURCHASED.
3. ANY CONTRACT FOR PRE-NEED BURIAL MUST CONTAIN A COMPLETE ITEMIZED DESCRIPTION OF ALL PROPERTY AND SERVICES.
4. ANY CONTRACT FOR PRE-NEED BURIAL SHALL CONTAIN THE FOLLOWING:

IN CASES WHERE PROPERTY OR SERVICES CONTRACTED FOR ARE NOT AVAILABLE AT THE TIME OF NEED, SUBSTITUTES MUST BE OFFERED WHICH ARE SUBSTANTIALLY SIMILAR IN SIZE AND STYLE, AND AT LEAST EQUAL IN QUALITY OF MATERIAL AND WORKMANSHIP, TO THE PROPERTY OR SERVICES ITEMIZED IN THE CONTRACT. THE PURCHASER OF THE CONTRACT, OR THEIR REPRESENTATIVE, SHALL HAVE THE RIGHT TO CHOOSE THE SUBSTITUTE PROPERTY OR SERVICE.

5. EACH CONTRACT FOR PRE-NEED BURIAL MUST CONTAIN ANY AND ALL GUARANTEES WITH RESPECT TO EITHER PRODUCTS OR SERVICES TO BE PROVIDED.
6. EACH CONTRACT FOR PRE-NEED BURIAL MUST BE WRITTEN IN DUPLICATE AND A SIGNED COPY MUST BE GIVEN TO THE CONTRACT PURCHASER.
7. EACH CONTRACT FOR PRE-NEED BURIAL SHALL CONTAIN THE FOLLOWING IN 10 POINT BOLD TYPE AT, OR NEAR, THE SPACE PROVIDED FOR SIGNATURES:

UNDER THE CODE OF VIRGINIA SECTIONS 57-35.11 - 35.34 et. seq., YOU, THE CONSUMER, HAVE SPECIFIC RIGHTS WHEN PURCHASING A PRE-NEED BURIAL CONTRACT. IF YOU HAVE A PROBLEM, AND ARE UNABLE TO RESOLVE IT DIRECTLY WITH THE CEMETERY COMPANY, YOU MAY FILE A COMPLAINT BY CONTACTING:

DIVISION OF CONSUMER AFFAIRS
DEPARTMENT OF AGRICULTURE & CONSUMER SERVICES
P.O. BOX 1163
RICHMOND, VA 23218
1-804-786-2042 OR 1-800-552-9963

Appendix 4

Disciplinary Information Concerning Registered Facilities



J. Carlton Courter, III
Commissioner

Office of Consumer Affairs

OFFICIAL COMPLAINT FORM

Please Type or Print Clearly in Black Ink

RETURN THIS FORM TO:
Office of Consumer Affairs
1100 Bank Street, Suite 100
Richmond, Virginia 23219

Upon request and within a reasonable time frame, accommodations and auxiliary aids will be provided, at no expense, to qualified individuals with disabilities.

<p>Your name and address: (Circle One) Mr. Ms. Mrs.</p> <p>Name _____</p> <p>Address _____</p> <p>City _____ State _____ Zip _____</p> <p>Home Phone () _____</p> <p>Work () _____</p> <p>Time of day you can be reached: Home _____</p> <p>Work _____</p> <p>Resident in City/County of: _____</p>	<p>*Name of firm complaint is against:</p> <p>Name _____</p> <p>Address _____</p> <p>City _____ State _____ Zip _____</p> <p>Phone () _____</p> <p>Person you have contacted _____</p> <p><small>*Please give the name, address and phone number of the firm with which you had business. Do NOT give the corporation address unless it is the same or the only address with which you had dealings.</small></p>
---	---

Date of Transaction _____ What product or service is involved? _____

Model: _____ Series: _____

Manufacturer's Address: _____

Did you sign a contract/lease? () Yes () No. Please include a copy of any contract, documentation, or other information pertinent to the case.

Date of contract/lease _____ Length of contract _____ Expiration Date _____

Please list other agencies or any attorney you have contacted for assistance _____

Amount of Purchase _____ How was payment made? _____

What resolution would you consider mutually fair? _____

DESCRIPTION OF COMPLAINT _____

*****PLEASE READ***
DISCLOSURE STATEMENT REQUIRED BY
THE VIRGINIA PRIVACY PROTECTION ACT**

The information requested on this form, and all subsequent requests by this Office for additional information, are subject to the Virginia Privacy Protection Act of 1976, Section 2.1-377, et seq. of the Code of Virginia (1950), as amended.

You are not required to provide any of the requested information, and you may refuse to supply additional information. The Office of Consumer Affairs (OCA), however, is less likely to be able to help if you do not supply the requested information.

All information which you do provide to this Office is available for inspection by the public under the Virginia Freedom of Information Act, Section 2.1-340, et seq. of the Code of Virginia (1950), except in those cases which OCA refers to appropriate law enforcement agencies. The providing of information about certain businesses may facilitate legal action against said businesses by appropriate law enforcement agencies.

SIGNATURE _____

DATE _____

HOW TO HANDLE YOUR OWN COMPLAINT

Most people, at some point in their lives, will encounter an unscrupulous salesperson, a defective or unsafe product or will simply feel like they have been "taken." And, once taken in, it's embarrassing for some of us to admit because we feel we should have known better. But you owe it to yourself to complain and have the problem resolved.

It is preferable that you try to resolve your own complaint before you contact the Office of Consumer Affairs (OCA), and following are instructions on how to do so. However, if you have exhausted your efforts to resolve the problem without success, contact OCA immediately for assistance.

Identify the problem:

Before you complain to a company, be sure to identify the problem, what (if anything) you have already done to resolve it, and decide what you think is a fair settlement. Do you want your money back? Would you like the product repaired? Do you want the product exchanged?

Gather records:

Start a file about your complaint. Include copies of sales receipts, repair orders, warranties, cancelled checks, and contracts which will back up your complaint and help the company solve your problem.

Go back to where you made the purchase. Contact the person who sold you the item or performed the service. Calmly and accurately explain the problem and what action you would like taken. If that person is not helpful, ask for the supervisor or manager and restate your case. A large percentage of consumer problems are resolved at this level. Chances are, yours will be too.

Allow each person you contact time to resolve your problem before contacting another source of assistance.

Keep a record of your efforts and include notes about whom you spoke with and what was done about the problem. Save copies of any letters you send to the company as well as letters sent to you.

Don't give up:

If you are not satisfied with the response, don't give up. If the company operates nationally or the product is a national brand, call or write a letter to the person responsible for consumer complaints at the company's headquarters, i.e., the company's public relations representative or president. Many companies have toll-free telephone numbers, often printed on the product. Before phoning a company long distance, it might be worthwhile to see if the firm has an "800" number you can dial toll free. To determine this, call AT&T's "800" directory assistance at 1-800-555-1212.

WRITING A COMPLAINT LETTER

- The letter should include your name, address, home and work telephone numbers, and account number, if appropriate.
- Make your letter brief and to the point. Specify all the important facts about your purchase, including the date and place you made the purchase and any information you can give about the product – such as the serial or model number. If you are writing to complain about a service you received, describe the service and who performed it.
- State exactly what you want done about the problem and how long you are willing to wait to resolve it. Be reasonable.
- Include copies of all documents regarding your problem. Be sure to send COPIES, not originals.
- Don't write an angry, sarcastic, or threatening letter. The person reading your letter probably was not responsible for your problem, but may be very helpful in resolving it.
- Type your letter if possible. If it is handwritten, make sure it is neat and easy to read.
- Keep a copy of all correspondence to and from the company.

About Your Complaint . . .

This is your Complaint Form Package. Please keep the "How to Handle Your Own Complaint" for future reference. **DETACH THE COMPLAINT FORM AND RETURN IT** to the Office of Consumer Affairs (OCA), 1100 Bank Street, Suite 100, Richmond, Virginia 23219.

After the Complaint Form arrives in OCA, it will be logged into our computer system and copied. That copy and a letter from OCA will be mailed to the company against which you are making the complaint. At the same time, we will send you a letter telling you that we have received and are processing your complaint.

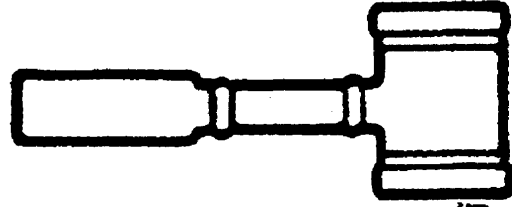
We must give the company thirty (30) days to respond to your complaint before we can contact them again. Please do not call OCA during that time unless the company has contacted you directly and you have information to report. When you call, please have available your complaint number and the name of the investigator assigned to your case. Our office, of course, will notify you immediately if the company responds to OCA during that time.

At the end of each thirty-day period during which the company has failed to respond, OCA will attempt to get its cooperation by writing to them again and requesting that they resolve the problem. This policy is followed for at least ninety (90) days before we consider closing the case because of the company's failure to comply. At that time, we may advise you to consider pursuing the case in General District Court. Your complaint will stay in OCA files for three (3) years from the date it was filed. After the case is closed, the information in it becomes a matter of public record.

**Office of Consumer Affairs
Virginia Department of Agriculture and Consumer Services
1100 Bank Street, Suite 100
Richmond, Virginia 23219**

THERE IS A LAW IN VIRGINIA

OFFICE OF CONSUMER AFFAIRS



PRENEED BURIAL / PERPETUAL CARE

•All cemetery companies operating in Virginia must register annually and pay a registration fee with the Office of Consumer Affairs (OCA). *Cemeteries owned by a county, city or town or by a church or by certain non-profit corporations are exempted.*

•Any cemetery that implies to the consumer that the grave or entombment right they are purchasing will be perpetually cared for, must establish a perpetual care fund in the amount of at least \$25,000.

-This trust fund must be established before the first lot or burial or entombment right is sold.

-Each cemetery must deposit at least 10% of the sales of graves, above-ground crypts, and niches into the perpetual care fund.

-A deposit is not required on subsequent sales of the same grave, crypt or niche.

-The income from the perpetual care fund must be used for the general care, maintenance and administration of the cemetery.

•All preneed burial contracts must be written clearly, in an easy-to-read style, and contain the following information:

-The name of the seller, contract buyer, and person for whom the contract is bought if other than the contract buyer;

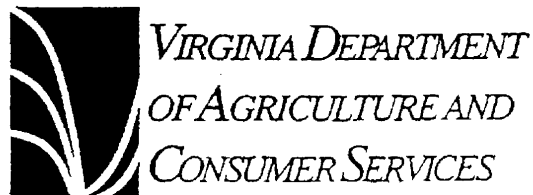
-A complete description of the property or services purchased;

-A disclosure about whether the price of the property or services purchased is guaranteed;

-The name, address and telephone number of OCA and a statement that OCA is the regulatory agency which handles consumer complaints;

-A statement that if the property and services specified in the contract are unavailable at the time of delivery, the seller will furnish supplies and services similar in size and style and at least equal in quality. The representative of the deceased will have the right to choose the property or services to be substituted.

•A copy of the contract, which must comply with any other disclosure requirements imposed by OCA, must be given to the consumer.



J. Carlton Courter, III, Commissioner

PRENEED BURIAL / PERPETUAL CARE

In addition to the consumer rights outlined on the front of this flier, the law also provides that:

- Each cemetery company in operation, except those specifically exempted by law, must register with the Office of Consumer Affairs (OCA).
- No cemetery company shall begin operation on or after July 2, 1990, without first filing the required information with OCA, and paying a registration fee as provided in Section 57-35.11:1.
- Once a cemetery registers with OCA, OCA must notify the Commissioner of Revenue in the cemetery's locality that the cemetery has registered and inform the Commissioner of his duties under this law.
- The provisions of this law regarding preneed burial contracts do not apply to prearranged funeral plans entered into by licensees of the Board of Funeral Directors and Embalmers.
- Any trustee of a perpetual care fund that is not a bank, savings and loan or other federally insured investment banking institution must be approved by the Commissioner of Revenue and if approved, must file a fidelity bond of at least 100% of the principal of the trust estate with the Commissioner.
- Each cemetery must keep detailed financial records of all expenditures and income from its perpetual care fund, and records of all preneed burial transactions, which are both subject to examination by the Commissioner of Revenue.
- Each cemetery must submit a financial report and written assurance to the Commissioner of Revenue within four months following the end of its fiscal year (not subject to Privacy Protection Act as of July 1, 1992).
- When a cemetery sells a preneed burial contract that will not be delivered within 120 days from the time of initial payment, the cemetery must deposit forty percent of the money from the sale into a trust fund.
- If a cemetery is selling and issuing contracts for mausoleums and garden crypts on undeveloped land, the cemetery must start construction within four years after the date of the first sale. The construction must be completed within five years after the date of the first sale.
- The name of the trustee must not be used in any advertisement or other public solicitation unless written permission has been given by the trustee.
- Any contract which attempts to waive any provision of this law shall be void.
- Any violation of this law shall be considered a Class 1 misdemeanor.

**Refer to the code citation listed below for the complete text of this law:*

Virginia Code, Title 57, Chapter 3, Sections 35.11 - 35.35

Prepared by the
Office of Consumer Affairs
Virginia Department of Agriculture and Consumer Services
1100 Bank Street, Suite 100
Richmond, Virginia 23219
(804) 786-2042
1 (800) 552-9963

REQUIREMENTS AND DISCLOSURES FOR PRE-NEED BURIAL CONTRACTS

1. ANY CONTRACT FOR PRE-NEED BURIAL MUST BE WRITTEN IN CLEAR AND UNDERSTANDABLE LANGUAGE, TYPED IN LARGE ENOUGH SIZE AND IN A STYLE WHICH MAKES IT EASY TO READ.
2. ANY CONTRACT FOR PRE-NEED BURIAL MUST IDENTIFY THE BUYER, SELLER, AND THE PERSON(S) FOR WHOM THE CONTRACT IS BEING PURCHASED.
3. ANY CONTRACT FOR PRE-NEED BURIAL MUST CONTAIN A COMPLETE ITEMIZED DESCRIPTION OF ALL PROPERTY AND SERVICES.
4. ANY CONTRACT FOR PRE-NEED BURIAL SHALL CONTAIN THE FOLLOWING:

IN CASES WHERE PROPERTY OR SERVICES CONTRACTED FOR ARE NOT AVAILABLE AT THE TIME OF NEED, SUBSTITUTES MUST BE OFFERED WHICH ARE SUBSTANTIALLY SIMILAR IN SIZE AND STYLE, AND AT LEAST EQUAL IN QUALITY OF MATERIAL AND WORKMANSHIP, TO THE PROPERTY OR SERVICES ITEMIZED IN THE CONTRACT. THE PURCHASER OF THE CONTRACT, OR THEIR REPRESENTATIVE, SHALL HAVE THE RIGHT TO CHOOSE THE SUBSTITUTE PROPERTY OR SERVICE.

5. EACH CONTRACT FOR PRE-NEED BURIAL MUST CONTAIN ANY AND ALL GUARANTEES WITH RESPECT TO EITHER PRODUCTS OR SERVICES TO BE PROVIDED.
6. EACH CONTRACT FOR PRE-NEED BURIAL MUST BE WRITTEN IN DUPLICATE AND A SIGNED COPY MUST BE GIVEN TO THE CONTRACT PURCHASER.
7. EACH CONTRACT FOR PRE-NEED BURIAL SHALL CONTAIN THE FOLLOWING IN 10 POINT BOLD TYPE AT, OR NEAR, THE SPACE PROVIDED FOR SIGNATURES:

UNDER THE CODE OF VIRGINIA SECTIONS 57-35.11 - 35.34 et. seq., YOU, THE CONSUMER, HAVE SPECIFIC RIGHTS WHEN PURCHASING A PRE-NEED BURIAL CONTRACT. IF YOU HAVE A PROBLEM, AND ARE UNABLE TO RESOLVE IT DIRECTLY WITH THE CEMETERY COMPANY, YOU MAY FILE A COMPLAINT BY CONTACTING:

DIVISION OF CONSUMER AFFAIRS
DEPARTMENT OF AGRICULTURE & CONSUMER SERVICES
P.O. BOX 1163
RICHMOND, VA 23218
1-804-786-2042 OR 1-800-552-9963

Appendix 4

Disciplinary Information Concerning Registered Facilities



J. Carlton Courter, III
Commissioner

COMMONWEALTH of VIRGINIA
Department of Agriculture and Consumer Services
Division of Consumer Protection
Office of Consumer Affairs

PO Box 1163, Richmond, Virginia 23218
Phone: 800/552-9963 or 804/786-1381 • Fax: 804/371-7479 • Hearing Impaired: 800/828-1120
<http://www.state.va.us/~vdacs/vdacs.htm>

May 13, 1997

Dr. Elizabeth A. Carter, Ph.D.
Deputy Executive Director
Board of Health Professions
Department of Health Professions
6606 W. Broad Street, 4th Fl.
Richmond, Virginia 23230-7691

Dear Dr. Carter:

In addition to our discussion at the April 22 meeting, I am attaching an up-to-date (and publically-available) listing of the 52 closed complaints (out of 152) that our office has received since we began this count in 1994. The attached table lists 52 closed cases with the name of the company, the registration number, last name of complainant, entry and close date as well as dollar value of the case and if applicable, referral number to internal investigators. Under the current law, only those cases that are closed are available for discussion at public meetings. The remaining cases remain confidential until closed.

For your review, we have attached the Virginia law pertaining to this study as well as the registration requirements for cemeteries. As it is currently written, Virginia law requires cemetery owners to register with our Agency. We then send on a record of that registration on to the local commissioners of revenue. Should a cemetery become a burden to local government, our role is a matter of registration with no prescribed investigative powers or regulation promulgation authority.

Effective recourse for the consumer resides in the powers of local government. Violation of this law is a criminal offense for which the Commonwealth Attorney must act. There is no civil recourse in the law as it is currently written.

We look forward to further discussion on these and related issues.

Sincerely yours,

A handwritten signature in black ink that reads "Evelyn A. Jez".

Evelyn A. Jez
Manager, Strategic Support Unit
Office of Consumer Affairs

Attachments

Tue May 13

page 1

LIST OF ALL COMPLAINTS ON RECORD AGAINST CEMETERY COMPANIES

RNAME	COMPNO	LASTNAME	ENTDATE	CLOSDATE	VALUE	REFA
BERMUDA MEMORIAL PARK	9604311	GARDNER	19-MAR-97	15-APR-97		
CEDAR GROVE MEMORIAL GARDEN	9402208	MCINTYRE	22-NOV-94	07-NOV-95		
CEDAR LAWN MEMORIAL PARK	9604356	TOMLINSON	24-MAR-97	29-APR-97		
CEMETERY INVESTMENT CORP.	9603628	HINES	05-FEB-97	03-FEB-97		
DISCOUNT MONUMENT COMPANY	9401058	RANCORN	14-SEP-94	06-JAN-95		
FOREST LAWN CEMETERY CO.	9403349	BOWLES	24-FEB-95	13-MAR-95		
	9404163	CARTER	08-MAY-95	06-JUN-95		
	9404347	CARTER	19-MAY-95	06-JUN-95	507	
	9302524	FLYNN	07-MAR-94	24-JUN-94		
GORHAM BRONZE	9503402	SANDERS	31-MAY-96	31-MAY-96		
GREENBRIER CHRYSLER PLYMOUTH	9402610	OWEN	22-DEC-94	21-DEC-94		8F00
GREENLAWN CEMETERY	9603823	BELL	19-FEB-97	19-FEB-97		
	9404088	CARTER	03-MAY-95	03-MAY-95	679	
	9303408	CHAPPELL	31-MAY-94	10-FEB-95		
	9303352	PRIDGEN	24-MAY-94	22-JUN-94		
	9302960	TUCKER	12-APR-94	26-SEP-94		
GREENWOOD MEMORIAL GARDENS	9403914	COOK	14-APR-95	09-MAY-95	4454	
	9400599	FARMER	15-AUG-94	20-DEC-94	1933	
	9500090	GOGGIN	11-JUL-95	28-JUL-95		
	9503417	VALDRIGHI	03-JUN-96	03-JAN-97	104	
HILL CREST MEMORIAL GARDENS	9500297	STRICKLAND	28-JUL-95	15-NOV-95		
KING DAVID MEMORIAL GARDENS	9402171	HERMAN	21-NOV-94	18-NOV-94		
MONTA VISTA MEM. GAR. & MAUSOL	9503376	JOHNSON	29-MAY-96	01-AUG-96		
	9104687	VIRGINIA	24-JUN-92	29-JUN-94		
MOUNT COMFORT CEMETERY	9006513	HUTCHINS	03-MAY-91	13-JUN-95		7A00
	9303304	PREVATTE	18-MAY-94	18-MAY-94		7A00
	9604902	THOMAS	02-MAY-97	02-MAY-97		7A00
	9303669	WOODY	23-JUN-94	22-JUN-94		7A00
NATIONAL MEMORIAL PARK	9600911	AMIRKALALI	12-SEP-96	20-FEB-97		
	9600063	AUSTIN	08-JUL-96	20-FEB-97	2000	8B54
	9602882	COHEN	17-DEC-96	20-FEB-97		8B54
	9601724	ESFAHANIAN	08-OCT-96	20-FEB-97		8B54
	9601816	SHASHAANTI	09-OCT-96	03-MAR-97		8B54
OAKLAWK MAUSOLEUMS/MEMORY GRDN	9603114	HUMPHRIES	06-JAN-97	18-FEB-97		8B54

Tue May 13

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LIST OF ALL COMPLAINTS ON RECORD AGAINST CEMETERY COMPANIES

RNAME	COMPNO	LASTNAME	ENTDATE	CLOSDATE	VALUE	REFA
PARKLAWN MEMORIAL PARK, INC.	9500745	SEVIER	08-SEP-95	17-OCT-95		
RICHMOND MEMORIAL PARK	9502001	POWERS	26-JAN-96	06-FEB-96		
RIVERVIEW CEMETERY	9400131	RITT	12-JUL-94	09-AUG-94		
ROCKBRIDGE MEMORIAL GARDENS	9502201	GARRETT	15-FEB-96	26-MAR-96	800	
ROOSEVELT MEMORIAL PARK	9603273	EVANS	14-JAN-97	03-FEB-97		8854
ROSE HILL CEMETERY	9303339	HOGAN	23-MAY-94	22-FEB-95		
ROSELAWN DEVELOPMENT CORP.	9403058	MORRIS	31-JAN-95	06-JUL-95	2222	
ROSELAWN MEMORIAL GARDENS	9403156	AKERS	08-FEB-95	18-OCT-95		
ROSEWOOD MEMORIAL GARDENS	9500805	CLARK	13-SEP-95	13-SEP-95		7H00
	9303227	FRIEND	11-MAY-94	11-MAY-94		7H00
	9502082	TAYLOR	07-FEB-96	07-FEB-96		7H00
SHENANDOAH MEMORIAL PARK	9402997	RICHARDS	25-JAN-95	22-FEB-96		
SUNSET MEMORIAL GARDENS	9303584	BROTHERS	14-JUN-94	15-SEP-94		
SUNSET MEMORIAL PARK	9303068	DUNNAVANT	22-APR-94	18-OCT-95		
THE LOW WEN GROUP, INC	9601960	OSBORNE	18-OCT-98	12-MAR-97		
VIRGINIA MEMORIAL PARK	9501474	JOHNSON	21-NOV-95	15-FEB-96		
WESTHAMPTON MEMORIAL PARK	9401245	CLARKE	27-SEP-94	12-OCT-94		
WOODLAWN MEMORIAL GARDENS, INC	9603319	GRAHAM	15-JAN-97	15-JAN-97		7H00

52 rows selected.

Appendix 5

SUMMARY OF PUBLIC COMMENTS

STUDY OF COMPETITION IN THE FUNERAL INDUSTRY IN VIRGINIA

From the National Companies, represented by SCI Virginia Funeral Services, Inc.; The Loewen Group; and Stewart Enterprises, Inc.:

Factors driving the trend toward ownership by national companies

- Consumer demand for alternatives to traditional funeral services and expanded options in products. Trends in the industry are following the needs of the consumer who are increasingly choosing alternatives such as cremation or memorialization;
- Need for greater use of technology and effective management in order to control costs and provide pricing flexibility; need to respond to greater complexity and demands of marketing, accounting, and compliance with regulatory and statutory requirements.
- Desire of independent owners of funeral establishments or cemeteries to sell their businesses but retain the recognizable or family name and their service to the community. Independent owners who sell to national companies are sometimes brought into the corporate management structure. Establishment managers and their employees are often retained by the corporate owners to run daily operations.

Advantages of ownership by national companies

- Economies of scale, consolidation of functions, use of newer technology, and shared resources and services produce more efficient and cost-effective services to consumers;
- Broader product lines and more flexibility in services meet the needs of consumers seeking alternatives to the traditional funeral and burial;
- Improved, updated facilities which are in full compliance with all local, state and federal laws and regulations, including OSHA, EPA and the Americans with Disabilities Act;
- More career opportunity for advancement and additional training for employees; more benefits (such as retirement plans) and better working conditions for employees.
- Greater security for trust accounts backed by a corporate entity;
- Opportunity for sole proprietors with no one in the family to inherit and assume responsibility for the funeral business to provide continuity for the families they serve and the persons they employ;

- Increased profitability for the business; ability of family owners to convert to liquid assets for greater flexibility in their financial planning.

Cost of Impact of Consumers

- Services and goods provided by nationally-owned funeral businesses are competitively priced with more options available; costs depend on many factors, including the choices made by the family and the local economy.
- According to industry statistics, funeral costs have remained proportionate to income over the past 30 years. In 1965, the median family income was \$6,882; the average cost of a funeral was \$790 or 11.5%. In 1995, the median family income was \$40,611 while the average costs of a funeral was \$4,624 or 11.4%.

Other comments

Trend toward consolidation and corporate ownership will increase due to:

- Consumer demand for more alternatives or options in funeral goods and services and more flexibility in pricing; and
- More sole proprietors reaching retirement who will looking for someone to purchase the business to provide them with income and to continue the business for their employees and the community.

Thrust of the study not well defined in the resolution; focus seems to be on the trend toward purchases by national companies, but comments about the inequities of regulation of the funeral establishments versus regulation of cemeteries often the focus of comment.

From the Virginia Cemetery Association:

Consumers are driving changes in the funeral industry as evidenced by an 18% increase in cremations; demand for alternatives and for more flexible services will increase.

Consolidation of businesses has been advantageous to consumers and to owners in the following ways:

- Networking, long-range planning, sharing of supplies and resources, and the consolidation of administrative operations have improved service to the customer;
- Consumers have benefited from improvements in the appearance and safety of the facilities and from lower prices;
- Consumers are better protected in their trust accounts and have had fewer reasons to register complaints.

Comments on perceived competitive disadvantages which exists between cemeteries and funeral homes should not be considered, since the study is directed at the effects, if any, on consumers.

Assistance provided by the Association to the Division of Consumer Affairs in handling of complaints has taken the form of providing knowledge of industry standards and assistance in the resolution of the complaint on behalf of the consumer.

From the Association of Independent Funeral Homes in Virginia:

- Expressed concern about conflicts of interest and issues involving marketing approaches as a result of out-of-state corporations owning both cemeteries and funeral homes.
- Funeral homes and funeral directors are heavily regulated at the state and federal level; yet cemeteries (which offer many of the same goods and services) have very limited oversight.
- The Division of Consumer Affairs lacks any real investigative or enforcement powers; complaints are referred to the local Commonwealth's Attorney or to the cemetery association.
- Tactics and practices such as the use of "steerers" and charging "at need" customers more than "pre-need" customers are illegal for funeral establishments but permissible for cemeteries. Aggressive, in-person marketing which is permissible for cemeteries is being used by the national corporations to steer persons to their funeral establishments.
- To protect the consumer and provide a level playing field for businesses that provide similar goods and services to the same customers, the study report should recommend licensure and regulation of cemeteries and cemetery sales representatives. Likewise, marketing restrictions on funeral establishments should be eliminated.

Comments about funeral industry in general:

Complaints were noted about the following:

- Deceptive advertising, especially about the actual ownership of a funeral goods or services entity (casket company, crematorium, etc.).
- Lack of accountability for trust accounts held by cemeteries; inability of the Division of Consumer Affairs to monitor those accounts or act on complaints related to trust accounts.
- Lack of accountability for cemeteries not required to be registered by the Division.
- Stringent regulations on pre-need, disclosure, pricing, advertising, etc. which are imposed on funeral establishment not required of cemeteries. Cemeteries should be required to place

disclosure statements, provide itemized statements, offer refunds on preneed contracts within 30 days, and trust 100% of preneed funds.

- Sales staff for cemeteries should pay registration fees as do licensed funeral service providers with those fees being used to pay for investigations of misrepresentation and misuse of funds.
- Complaints about cemeteries should not be referred to their private association - the Virginia Cemetery Association, but should be investigated by the Division of Consumer Affairs which is charged with protecting the public.
- Co-ownership of a cemetery and a funeral establishment or the ownership of an ancillary company such as a casket company should be disclosed to the consumer when recommendations are being made about the purchase of goods and services.
- Many complaints about deceptive pricing and marketing of cemeteries never communicated to the Department of Agriculture because there is no clout in the regulation of that segment of the industry.

A spokesperson from **Eternal Justice**, an organization formed to draw attention to practices of unregulated cemeteries in Maryland, Virginia, and 13 other states presented comments about abuses and fraudulent practices of cemeteries and about the newly enacted law which regulates the cemeteries in Maryland.

Appendix 6

Response from the Office of Consumer Affairs
to the Draft Policy Recommendations



J. Carlton Courter, III
Commissioner

COMMONWEALTH of VIRGINIA
Department of Agriculture and Consumer Services
Division of Consumer Protection
Office of Consumer Affairs
PO Box 1163, Richmond, Virginia 23218
Phone: 800/552-9963 or 804/786-1381 • Fax: 804/371-7479 • Hearing Impaired: 800/828-1120
<http://www.state.va.us/~vdacs/vdacs.htm>

July 8, 1997

Elizabeth A. Carter, Ph. D.
Deputy Executive Director
Department of Health Professions
Board of Health Professions
6606 W. Broad St.
Richmond, Virginia 23230-1717

Dear Dr. Carter:

In response to your request for our opinion on the policy options outlined in pages 18-19 of the July 8 draft for HJR 553:

Option 1. No Change: To make no change in the current regulatory status means that VDACS would continue to have only registration authority of cemeteries with no authority to promulgate regulations while the Board of Funeral Directors and Embalmers would continue to have extensive authority over their licensees.

Comment: Draft Policy Option #1 is our recommendation. The context of three years of complaints as well as the progress of SJR 319 leads us to recommend that no change is the preferred policy option. More regulatory power for VDACS is not the way to level the competitive playing field between the trade industries.



Dr. Elizabeth Carter
Page two
July 9, 1997

Option 2. To Increase Authorization of VDACS to the ability to promulgate regulations over the registration of cemeteries and to register cemetery salespersons. Further to transfer the responsibility for auditing the Financial records and trust accounts of cemeteries from the local commissioners of revenue to VDACS.

Comment: In order to provide the ability to promulgate regulations, interested parties would have to embark on a legislative process to amend the Cemetery Act as it is currently written. We see no compelling reasons at this time to change procedures for registration. Most complaints received and reviewed in the last three years have been adequately addressed by the current regulatory process already in place and those which have not (perpetual care, standards of upkeep) we expect to be addressed by recommendations reached in SJR 319.

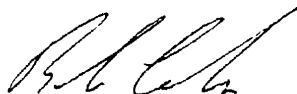
In addition, transferring the audit responsibility to VDACS would add a responsibility to the Office for which we are not adequately staffed and could not accomplish.

Option 3. To consider eliminating the exemptions from oversight that municipality and church owned cemeteries have in order to ensure a standard of upkeep and to preserve the identity of the graves.

Comment: We have no position on this option. Removing municipalities and church owned cemeteries from exemption from oversight would be a conflictive legislative effort.

Please let us know if we can provide any further information for the Study Committee.

Sincerely,



Robert E. Colvin, Ph. D.
Program Manager

REC/eaj
553.pol

Appendix 7

Summary of Public Comments On July Study Report Exposure Draft

ORAL COMMENT RECEIVED AT PUBLIC HEARING ON
AUGUST 11, 1997:

Commenters

Blair H. Nelsen
Independent Funeral Homes of Virginia

Comments

- Notes that the number of funeral homes which are conglomerate owned are not spread out geographically across Virginia.
- Concern expressed over near-monopoly status in certain market areas (e.g., 75% of market share in Northern Virginia; 71% in Martinsville area, and one company owns all of the homes in Fredericksburg and Williamsburg.
- Posits that there is great impact on consumers where a conglomerate has a significant presence in both funeral homes and cemeteries. Cites common practice of cemeteries referring customers to funeral homes (steering). “Discounts” offered on pre-need planning when prices may be higher.
- Would like a recommendation of the study to be to extend the provisions of the *Practitioner Self-Referral Act* to funeral homes and cemeteries.
- Although Virginia funeral law provides for consumer protection regarding trusting of pre-need arrangements through funeral homes, the same degree of protection does not apply to cemeteries. Recommends better trusting for cemetery pre-need arrangements.
- Notes that a survey by the Virginia Municipal League showed that 41 of 104 cities and towns in Virginia have reported problems with for-profit and not-for-profit cemeteries—involving insufficient trust funding for care and maintenance – with the localities having to assume responsibility for funeral operations. For merchandise, who is responsible in pre-need arrangements that become defaulted?

Bernard Henderson
The Loewen Group

Is available to respond to questions.

Evelyn Jez
Virginia Department of Agriculture and Consumer Services (VDACS)

Requests that the Committee consider their remarks in addition to their correspondence of July 8 which outlines VDACS's response to the three proposed policy options.

Notes that they have evaluated consumer complaints for trends since the onset of HJ553. There is increasing consumer concern that they wish to relate to the Committee now:

Future costs are frequently not specified or covered in the original terms of burial site purchase contracts (specifically for the rising cost of grave liners, for openings and closings of gravesites or crypts, and for placement of a monument from another company if not purchased from the cemetery.

- Contends that regulatory power for VDACS is not the way to address these problems at this time. Suggests that the General Assembly may wish to consider legislation which requires cemeteries to disclose estimated future costs in a burial-site purchase contract. Offers VDACS's staff technical assistance to draft such a measure.

WRITTEN COMMENT RECEIVED BY AUGUST 29, 1997:

STATE AGENCIES

Robert E. Colvin, Ph.D.
Program Manager
VDACS
Division of Consumer Protection
Office of Consumer Affairs

Reiteration of oral comments presented at the August 11 Public Hearing by Evelyn Jez.

(LETTER IN APPENDIX 8.)

Elizabeth Young Tisdale
Executive Director
Virginia Board of Funeral Directors and Embalmers (BFDE)

- Expresses concern that there is a lack of some form of uniform regulation which would provide for a needed continuum of public protection through the death care process, given that the public views funeral homes and cemeteries as one entity.
- With the advent of combinations, the consumer's false perception of a unit is exacerbated and there is greater temptation for funeral homes to render services to cemeteries.
- Takes issue with the finding regarding a relatively low number of complaints about cemeteries – because, they contend, consumers are probably not aware that they can file a complaint with the VDACS.
- Recommends that authority for for-profit cemeteries be transferred from the VDACS to the BFDE (possibly as a Cemetery Authority (sub-committee) composed of all cemeterians with representatives on the Board. The Authority would oversee the regulation of cemeteries to better safeguard the public.

ORGANIZATIONS

Blair H. Nelsen
President
Association of Independent Funeral Homes in Virginia

- Notes that no black funeral homes are owned by conglomerates.
- Notes that the percentage of conglomerate ownership in the white community is nearly 20%.
- Contends that conglomerates attempt to cluster facilities and to own high volume facilities to control market share. In addition to the information about clustering described in his oral comment during the August 11 Public Hearing, reports that in Lynchburg, SCI and Loewen own 5 of 6 funeral homes.
- Same recommendations as cited in the Public Hearing oral comment.
- Also submitted for your consideration an article in the July 18 *Wall Street Journal* and pointed out the need to provide two articles from the *Washington Post*, August 29 and 30 (ATTACHED).
- Also related personal experience with a deceptive cemetery sales person. Recommends that the Committee choose option #2.

Jenny Vithoukas
Davis Consultants, Inc.

Provides a copy of the Virginia Municipal League's survey of cities and towns regarding problems they have had with cemeteries within their jurisdictions (ATTACHED).

R. E. Markin
Director
The Funeral Help Program
Division of the Alzheimer Research Foundation

- Relates how they have studied the funeral industry over the past several years. They have interviewed/surveyed 4,000 funeral homes, cemetery associations, casket-, vault-, and monument manufacturers, and tens of thousands of consumers. They found that the industry is the least regulated large business in the nation and that there is abuse of the consumer at every step in the funeral process.

- Contends that *Funeral Rule* legislation was a “step in the right direction, but falls short” in that it does not regulate cemeteries, and enforcement of the Rule to the industry itself—allowing the National Funeral Directors Association to discipline members.

- Points out a specific case in Tidewater of the need to curb abuses by cemeteries. Notes that a “bait and switch” ploy was used. The “bait” was an offer of a FREE burial plot for veterans upon coming in and filling out some simple paperwork. A veteran came in and withstood the high pressure sales pitch. He, indeed received a certificate for a free burial plot somewhere in the cemetery. But what the family discovered upon his death was that the grave site was at the discretion of the cemetery association as was the timing of the opening and closing of the grave (cemetery chose Sunday for a Tuesday funeral and charged \$1100 rather than the weekday rate of \$375). The family had to purchase a burial vault from the association (costing \$1,475 as opposed to \$350-550 in the marketplace) and the monument had to conform to their standards (\$3,816.82 as opposed to \$2,500 the cost from local vendor including cost of installment.

- Expresses that this problem is pervasive in Virginia and that the worst excesses have been perpetrated by corporate-owned cemeteries.

Charles H. Cuthbert, Jr.
Cuthbert Law Offices

- Supports reasonable increases in accountability of cemeteries to consumers.

- Represented more than 50 families in the 1970's and 1980's who bought burial plots from plots and merchandise (crypts and grave markers) on a pre-need basis from a cemetery in Chesterfield. The cemetery went bankrupt. The trust money was insufficient – resulting in a total loss for the clients.

Michael H. Doherty
Virginia Cemetery Association, Inc.

- Expresses concern that some funeral home groups may make a last minute recommendation that cemeteries be regulated by the Board of Funeral Directors

Michael H. Doherty (continued)

and Embalmers. Is opposed to this suggestion, citing that this is an “eleventh hour suggestion, not discussed in the study, that cemeteries are not a health profession, and that there is no showing of any need for this approach.
- The VCA support policy option #1 – no change in the current regulatory status. He posits that any change deemed necessary in the consumer protections afforded by *the Cemetery Act* should be accomplished within the existing regulatory framework.

FUNERAL HOMES

Robert N. Baker, III
R. W. Baker & Co. Funeral Home

- Recommends that cemeteries should be required by law to maintain 100% trusting of funds.
- Recommends that cemeteries should have to provide price lists to anyone inquiring about pre-need or at-need arrangements.
- Cites need for more regulation by the VDACS by the BFDE. or both.

Mal Brown
Owner/Manager
Brown-Seaver Funeral Services

- Reports that no governmental agency is required to review cemetery trust records, which are insufficiently funded in the first place (i.e., less than 100%).
- Reports that some cemetery’s sales force have used deceptive methods, citing clients who have been lied to and confused by cemetery sales persons.
- Expresses concern over potential for abuse by combinations.
- Requests that Committee recommend annual audits of cemetery trust funds, that there be a requirement for an increase in cemetery pre-need fund trusting to 100% as funeral homes have to do, that the VDACS be authorized to promulgate regulations for cemeteries or that the BFDE do so.

Elsie T. Echols
Owner
Echols Funeral Home, Inc.

- Expresses concern about possible effects of conglomerate combination ownership.
- Contends that trusting requirements for cemeteries should be the same as for funeral homes.

Stanley R. Morehead
President
Stover Funeral Home Inc.

- Cites consumer problems after large Canadian firm purchased cemetery in her area. Reports numerous complaints from consumers over deceptive practices used in cemetery sales.
- Requests that the Committee recommend regulation by the BFDE to ensure information choices about services and merchandise are clear to consumers and reporting cite available through toll free number.
- Requests that there be 100% trusting of pre-need arrangements with annual audits for cemeteries.

J. Berkley Green
Owner
Green Funeral Home, Inc.

Richard G. Sturgill
Manager
Sturgill Funeral Homes

Bonnie R. Smith
Graham Funeral Home

Matthew J. Bennett
President
Bennett & Barden Funeral Home

Lee A. Flora
President
FLORA Funeral Service, Inc.

David M. Farris, II
Farris Funeral Service, Inc.

- Cites concern about conglomerates owning combinations.

- Requests committee to ensure adequate consumer protection, to require annual audits of cemetery trust funds, to increase trusting to 100% for cemeteries, to authorize the VDACS to promulgate regulations for cemeteries, and to authorize the BFDE or some other governmental agency to regulate the cemetery *industry*.

- Cites concern about conglomerate ownership of combinations.

- Requests the Committee to recommend annual audits of cemetery trust funds, that cemetery pre-need funding be at 100%, and that cemeteries be overseen by a regulatory agency, either the VDACS or the BFDE.

- Cites concern about negative effects of conglomerate ownership of combinations in aggressive and deceptive sales practices.

- Reports that conglomerates own most of cemeteries in Richmond and cites concern over resulting loss of competition.

- Reports case of deception to obtain sales by "grief counselors" with no background in counseling and cites concern over the consumer being unaware of hidden expenses not discussed at pre-need (e.g., grave opening and closing, placing date of death on marker.).

- Cites concern over increased prices to consumers when conglomerates enter a market.

- Cites concern over conglomerate ownership of cemeteries. Reports a case in which the conglomerate charged a high interment fee and would not allow vault company to install vault, but rather charged the vault company for handling.

- Reports being an independent funeral home owner who owns/manages a cemetery and assists families which own plots in a variety of environment:(i.e., private/rural/church//independent/ conglomerate).

- Recognizes potential problems with monopolies, but cites that even with the acquisition activity by conglomerates, the funeral and cemetery industry is widely and predominantly independently owned.

- Notes two observations about the practices of conglomerates:

Davis M. Farris, II (continued)

- (1) prices for funeral or cemetery merchandise and services is most always higher than that of an independent operator.
- (2) the fee charged for the installation of the marker sold by a funeral home is higher
 - Notes that Tennessee has a cap on installation fees and their prices are lower. Effect is shown by comparing prices in Bristol, TN with those in Bristol, VA.
 - Opposes other funeral home representative's requests for 100% trusting of cemetery pre-need sales. Indicates that the current 40% requirement has worked well, and offers that the 100% trust for funeral homes should be lowered. Cites the requirement for annual audits by the respective Commissioner of Revenue for cemeteries and notes that funeral homes trusts are not reviewed annually (only an unannounced, on-site, inspection of pre-need funeral contracts is made). Notes that 40% is adequate because it operates on the same premise as insurance companies do (i.e., not everyone will die at the same time and invested money generally grows to outpace inflation).
 - Disagrees with other funeral home representative's position that deceptive sales practices are a problem. Door-to-door solicitation is legal for cemeteries. Notes, specifically that cemeteries must:
 - offer to those consumers who purchase pre-need the right, under federal law, to cancel a home solicitation transaction within three business days.
 - those cemeteries using telemarketing, a consumer may request, under federal law, to be placed on a "Do not call" list.
 - cemeteries must provide a Truth-in-Lending disclosure in compliance with federal laws to explain the cost of credit involved.
 - Also notes that most cemeteries belong to industry associations with codes of ethics.
 - Cites that only a funeral service licensee may sell pre-need funeral arrangements. All that their cemetery sells is grave spaces, memorials, mausoleums, and vaults.
 - Notes that if a Board must govern cemeteries, it should be separate from BFDE because of differences in the types of business provided.
 - Cites concern that combinations present a monopoly in the funeral process which could lead to unfair pricing.
 - Requests requiring annual audits of cemetery trust fund, increase the level of cemetery trusting to that required of funeral homes, authorize VDACS to

Donald L. Price
Price Funeral Home

Donald L. Price (continued)

aggressively regulate cemeteries, or authorize BFDE (which would include cemeterian representation) to regulate the cemetery industry.

CONSUMERS

Steven Atkins

- Cites problem with price gouging cemetery (no specific cemetery referenced).
- Cites concern over grave opening/closing fees increasing from \$350 on any day to \$525-1,195, depending upon the day and time the service is rendered.
- Cites lack of adequate trust funding for cemeteries.
- Requests governmental intervention.

Marie Atkins

- Cites deception by a cemetery. After a recent burial, commenter was solicited to “clarify records.” When she arrived, she was solicited to purchase vault and grave opening. She was fraudulently told that funeral homes charge more.
- Requests governmental intervention.

Elaine T. Morris

- Reports that she responded to an ad in a local newspaper requesting that persons who owned plots in a certain cemetery contact the cemetery to assist the cemetery to “update” their records. Her response resulted in a long sales pitch to sell her a vault and grave opening. She was told that prices were higher on vaults purchased from funeral home. She was also told that she HAD to buy the vault from the cemetery.

Elizabeth Ferguson

- Cites a bad experience with cemetery when responded to a “Public Notice” to “update records.” Same general outcome as the previous commenters.

Maude Ross

- Cites high-pressure cemetery sales and being lied to about pricing.

Frances Fuller

- Report she had purchased space and vault from cemetery. When her loved one died, the vault no longer existed – the cemetery from which she purchased the merchandise had gone bankrupt.

John F. Farmer

- Same issue as above. Brother’s pre-need purchase of a vault not honored by the company which bought out previous bankrupt cemetery management.

John Killinger

- Same issues as above. Salesperson showed up at his home a week after his wife's death. He was lied to by the sales person who claimed he wanted to "clarify records" also lied by saying that the funeral homes' prices were higher. Also notes that prices for grave opening/closing had risen 400-500% overnight. Were charged \$.95 per square inch to install grave markers purchased elsewhere.

F. Courtney Hoge, CLU, ChFC

- Mother asked to stop by cemetery and "update their records." This was a ploy to sell pre-need opening and closing of grave. Cites corporate ownership as a problem.

Appendix 8

Comment from the Virginia Department of Agriculture and Consumer Services
on the Exposure Draft

DIRECTORS
OFFICE AUG 20 1997



J. Carlton Courter, III
Commissioner

COMMONWEALTH of VIRGINIA
Department of Agriculture and Consumer Services
Division of Consumer Protection

Office of Consumer Affairs

PO Box 1163, Richmond, Virginia 23218

Phone: 800/552-9963 or 804/786-1381 • Fax: 804/371-7479 • Hearing Impaired: 800/828-1120

<http://www.state.va.us/~vdacs/vdacs.htm>

August 11, 1997

Robert Nebiker, Executive Director
Department of Health Professions
Virginia Board of Health Professions
6606 W. Broad St.
Richmond, Virginia 23230-1717

Dear Mr. Nebiker:

In response to the request for comment at today's public hearing on the draft for HJR 553, please ask the Study Committee to take under consideration the following remarks in addition to our July 8, 1997, correspondence outlining VDACS' response to the three policy options:

Since the onset of the work for HJR 553, we have evaluated past and current consumer complaints for trends. Recent records of consumer complaints show there is increasing consumer concern that may relate to the study. For example:

Future costs are frequently not specified or covered in the original terms of burial site purchase contracts, specifically,

for the rising costs for grave liners;

for openings and closings of grave sites or crypts:

and for placement of a monument from another company.
if not purchased from the cemetery.

We still believe that more regulatory power for VDACS is not the way to address the concerns of the study at this time. Perhaps the appropriate method to address these concerns may be the General Assembly considering legislation to require cemeteries to disclose "estimated future costs" in a burial site purchase contract. VDACS staff would readily assist in providing technical assistance to draft such a measure.

Robert Nebiker
Page 2
August 11, 1997

Please let us know if we can provide any further information for the Study Committee.

Sincerely,

A handwritten signature in cursive script, appearing to read "Bob Colvin".

Robert E. Colvin, Ph. D.
Program Manager

c: The Honorable J. Carlton Courter, III
Donald W. Butts, DVM
J. Michael Wright
Enclosure - July 8 letter

REC/eaj
553.3



J. Carlton Courter, III
Commissioner

COMMONWEALTH of VIRGINIA
Department of Agriculture and Consumer Services
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July 8, 1997

Elizabeth A. Carter, Ph. D.
Deputy Executive Director
Department of Health Professions
Board of Health Professions
6606 W. Broad St.
Richmond, Virginia 23230-1717

Dear Dr. Carter:

In response to your request for our opinion on the policy options outlined in pages 18-19 of the July 8 draft for HJR 553:

Option 1. No Change: To make no change in the current regulatory status means that VDACS would continue to have only registration authority of cemeteries with no authority to promulgate regulations while the Board of Funeral Directors and Embalmers would continue to have extensive authority over their licensees.

Comment: Draft Policy Option #1 is our recommendation. The context of three years of complaints as well as the progress of SJR 319 leads us to recommend that no change is the preferred policy option. More regulatory power for VDACS is not the way to level the competitive playing field between the trade industries.

Dr. Elizabeth Carter
Page two
July 8, 1997

Option 2. To Increase Authorization of VDACS to the ability to promulgate regulations over the registration of cemeteries and to register cemetery salespersons. Further to transfer the responsibility for auditing the Financial records and trust accounts of cemeteries from the local commissioners of revenue to VDACS.

Comment: In order to provide the ability to promulgate regulations, interested parties would have to embark on a legislative process to amend the Cemetery Act as it is currently written. We see no compelling reasons at this time to change procedures for registration. Most complaints received and reviewed in the last three years have been adequately addressed by the current regulatory process already in place and those which have not (perpetual care, standards of upkeep) we expect to be addressed by recommendations reached in SJR 319.

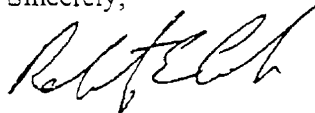
In addition, transferring the audit responsibility to VDACS would add a responsibility to the Office for which we are not adequately staffed and could not accomplish.

Option 3. To consider eliminating the exemptions from oversight that municipality and church owned cemeteries have in order to ensure a standard of upkeep and to preserve the identity of the graves.

Comment: We have no position on this option. Removing municipalities and church owned cemeteries from exemption from oversight would be a conflictive, legislative effort.

Please let us know if we can provide any further information for the Study Committee.

Sincerely,



Robert E. Colvin, Ph. D.
Program Manager

REC/eaj
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Availability of State and Federal Antitrust Laws



COMMONWEALTH of VIRGINIA

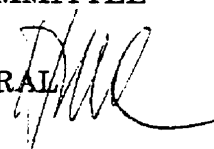
Richard Cullen
Attorney General

Office of the Attorney General
Richmond 23219

900 East Main Street
Richmond, Virginia 23219
804 - 786 - 2071
804 - 371 - 8946 TDD

MEMORANDUM

TO: MEMBERS
BOARD OF HEALTH PROFESSIONS
REGULATORY RESEARCH COMMITTEE

FROM: HOWARD M. CASWAY
ASSISTANT ATTORNEY GENERAL 

DATE: SEPTEMBER 5, 1997

RE: AVAILABILITY OF STATE AND FEDERAL ANTITRUST LAWS

In furtherance of HJR 553, please consider the following discussion of available remedial options under state and federal antitrust laws to prevent and/or alleviate alleged monopolization of marketshare by national companies in the purchase and operation of both cemeteries and funeral homes.

Virginia Law:

The Virginia Antitrust Act, Va. Code., §§ 59.1-9.1 *et seq* (copy enclosed) prohibits restraints of trade and monopolistic practices that act or tend to act to decrease economic competition. Specifically, Va. Code § 59.1-9.5 prohibits contracts or combinations or conspiracies in restraint of trade or commerce. Virginia Code § 59.1-9.6 prohibits every conspiracy, combination or attempt to monopolize, or monopolization of trade or commerce. In pertinent part, Va. Code § 59.1-9.7(a) makes it unlawful for any person including any business entity engaged in commerce to directly or indirectly discriminate in price between different purchasers of commodities or services of like grade or quality where the effect of such discrimination may be substantially to lessen competition or tend to create a monopoly or to injure, destroy or prevent competition with any person who either grants or knowingly receives the benefit of such discrimination.

The Attorney General is authorized to investigate whether a person or business entity has engaged in or is suspected of engaging in any conduct prohibited by the Act. In addition to the Attorney General, any Commonwealth Attorney or city, county or town attorney, may institute actions and proceedings for injunctive relief and civil penalties for violations of the Act. In addition, any person threatened with injury or damage to his business or property may institute an action or proceedings for injunctive relief and/or damages.

Virginia Code §§ 18.2-499 and 500(copy enclosed) prohibits in pertinent part, conspiracies to injure another in his trade, business or profession by willfully and maliciously preventing or hindering another from doing or performing any lawful act resulting in business related damages. It may be criminally prosecuted or may be subject to civil injunctive relief and treble damages.

Federal Law:

Sections 1 and 2 of the Sherman Antitrust Act possesses similar prohibitions to the Virginia Act in that the elements of a cause of action on a state antitrust claim are the same as those required under the Sherman Act.

Examples of the criteria a court would consider when confronted with an alleged agreement in restraint of trade include: (1) a showing that the alleged conspiracy produced anti-competitive effects within the relevant product and geographic market; (2) that the object(s) and conduct pursuant to the conspiracy were illegal; and (3) that the plaintiff was injured as a proximate result of the conspiracy. In order to determine whether a monopolization of trade has incurred, a court would consider evidence of whether there was: (1) a showing of a possession of monopoly power in a relevant market; (2) willful acquisition or maintenance of that power in an exclusionary or predatory manner; and (3) casual antitrust injury. Similarly, claims of attempted monopolization would require a demonstration of (1) a specific intent to monopolize a relevant market, (2) predatory or anti-competitive acts and (3) a dangerous probability of successful monopolization. The desire to increase market share or even drive a competitor out of business through vigorous competition may not be sufficient to prove a violation without substantial proof of specific intent and predatory behavior.

Actions claiming violation of the Sherman Act may be instituted by the U. S. Department of Justice as a criminal violation punishable by a fine and/or imprisonment, although rarely used except in cases of a criminal conspiracy. Actions seeking injunctive relief and/or monetary damages may be brought by the federal government or private litigants.

Section 5 of the Federal Trade Commission Act, makes it illegal to monopolize, to attempt to monopolize or conspire with any other person to monopolize trade. Monopolization includes (1) possession of monopoly power in a relevant market; (2) willful acquisition or maintenance of such power as distinguished from growth or development as a consequence of a superior product, business acumen, or historic accident; and (3) a causal antitrust injury. The FTC Act also prohibits unfair methods of competition. Violations are subject to criminal penalties but actions are generally brought administratively before the Federal Trade Commission and are subject to remedial relief and damages.

If you have any questions, please contact me directly or I will be available at the upcoming Board of Health Professions meeting to answer questions.

Enclosures (3)

**MEMBERS, BOARD OF HEALTH PROFESSIONS
REGULATORY RESEARCH COMMITTEE**
September 5, 1997
Page 3

cc: Elizabeth A. Carter, Ph.D.

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ADDENDUM TO HOUSE DOCUMENT NO. 18 (1998)



J. Carlton Courter, III
Commissioner

COMMONWEALTH of VIRGINIA

Department of Agriculture and Consumer Services

Division of Consumer Protection

Office of Consumer Affairs

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September 15, 1997

Robert Nebiker, Executive Director
Department of Health Professions
Virginia Board of Health Professions
6606 West Broad St.
Richmond, Virginia 23230-1717

Dear Mr. Nebiker:

Thank you for the opportunity to review the additional comments that were provided by interested parties to HJR 553 by the August 29, 1997 deadline for receipt. This letter is in response to the materials forwarded by your staff on Tuesday, September 2, 1997, which includes a letter suggesting that the registration of cemeteries be assigned to the Board of Funeral Directors and Embalmers.

We would like to draw the attention of the study committee back to the previous two letters we submitted on July 8 and August 11 (attached) detailing our position on the three initially proposed policy options. In addition to the information provided by those letters, we offer the following comments:

As evidenced by the numerous articles in popular publications as well as the extensive coverage provided by Internet sources, it is clear that the workings of the death care industry is of growing importance to the nation as well as to citizens of the Commonwealth. Most importantly, I wish to stress that the growing national dialogue does not involve the practices of cemeteries alone, but cemeteries and funeral homes as part of the larger death care industry.

Unfortunately, the larger issues involved do not divide themselves neatly into the categories of pre-need trusting, perpetual care trusting, standards of care and maintenance, and health issues with regard to the handling of human remains, etc. Rather, the issues are much larger and they are concerned with competitive factors associated with a marketplace (death care services and products) where comparison shopping is not typically routine behavior in this country.

Mr. Robert Nebiker
Page two
September 9, 1997

Furthermore, to transfer the function of registering cemeteries from its present location to another state agency may not fully address the problems of the consumer in trying to make the right choices among goods and services in a growing death care industry marketplace. I know that the Board of Funeral Directors and Embalmers would be able to professionally effect and address the registration and potential licensing of salespersons and cemeteries. However, the larger consumer issues of broad protection under the Consumer Protection Act, pre-need contracts, disclosures and attendant issues may not fit best under the oversight of an agency whose expertise, I perceive, is found in matters related to health protection. Public health and the concerns that arise from the handling of human remains are an important, but perhaps smaller aspect of the larger dialogue and developing picture that is taking place.

Some change may need to occur in the current oversight framework. It is, I think, not inaccurate to say that the Virginia General Assembly will have some major future policy issues facing it with regard to the issues presented by developments in the death care industry. Virginia may well need to consider an integrated, legislative framework to moderate potentially harmful market failures associated with developments in the death care industry in the Commonwealth.

We applaud you and your staff for the excellent work you have done on HJR 553. I hope these remarks help with your recommendations to the Regulatory Research Committee and full Board on September 16, 1997.

We look forward to reviewing the decisions of the Board with our Commissioner. Please let us know if we can provide any further information for the Study Committee.

Sincerely,



Robert E. Colvin, Ph. D.
Program Manager

Attachments

c: The Honorable J. Carlton Courter, III
Donald W. Butts, DVM