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ILLINOIS STATE COMPTROLLER

ILLINOIS CONSUMER GUIDE TO PRE-NEED CEMETERY SALES

TO ASSIST YOU WITH IMPORTANT DECISIONS

Legal Rights and Protections Under Illinois Law

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DEAR CONSUMER:

This Consumer Guide was produced by the Illinois Comptroller's Office in conjunction with industry leaders from throughout the state to assist you in making important decisions when purchasing pre-need cemetery services and merchandise. It is designed to serve as a resource so that you know your legal rights and protections under Illinois law, and reflects state statute as of January 2017.

The Illinois Comptroller is accountable for administration and enforcement of laws relating to pre-need purchases and service delivery. With that role comes the responsibility of public education, which is what this publication is all about. Beyond serving as a legal resource, this guide answers frequently asked questions, and provides additional contacts and information to help you determine whether your rights may have been violated.

I hope you find this publication helpful. As always, please do not hesitate to contact me with any additional questions or requests for information. Please call the Pre-need Licensing and Certification Enforcement (PLACE) Division directly at (877) 203-3401, or email PLACE@IllinoisComptroller.gov. We are standing by for your call, and look forward to providing whatever assistance you may need.

Sincerely,

Susana A. Mendoza

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Illinois State Comptroller

ILLINOIS CONSUMERS' GUIDE TO PRE-NEED CEMETERY SALES

What Is the Pre-Need Cemetery Sales Act?

The Illinois Pre-Need Cemetery Sales Act (815 ILCS 390) gives consumers certain rights and protections when buying cemetery services and merchandise in advance of need (pre-need). The Illinois Office of Comptroller has the duty to administer and enforce this law.

What Merchandise and Services Are Covered by the Pre-Need Cemetery Sales Act?

The Act covers the purchase of merchandise and services typically sold by cemeteries including, but not limited to, the following:

- Memorials
- Markers
- Monuments
- Foundations
- Lawn crypts
- Undeveloped Cemetery Spaces, Crypts and Niches
- Interment, Entombment or Inurnment Services
- Outer Burial Containers

What Is a "Pre-Need" Cemetery Purchase?

The purchase of pre-need cemetery merchandise and services occurs when you agree to acquire and pay for cemetery merchandise and services before they are needed. For markers, memorials, or monuments, the purchase must take place at least 180 days before the delivery date to be considered "pre-need." For all other cemetery merchandise and services, the purchase must take place at least 120 days before the delivery date to be considered "pre-need."

What Is a Pre-Need Cemetery Contract?

A pre-need cemetery contract is a legal agreement between a consumer and a seller for cemetery merchandise and services to be supplied at a future date by a cemetery (provider).

Sellers of Pre-Need Services and Merchandise Must Be Licensed.

Sellers of pre-need services and merchandise must be licensed by the Comptroller's Office. You should verify the seller is licensed before you make your purchase. You may contact the Comptroller's Office to verify that the seller is licensed.

What Must the Seller Tell You in a Pre-Need Cemetery Contract?

All pre-need cemetery contracts sold in Illinois must contain certain disclosures to help you understand your rights as a consumer. Always check your contract for the following information:

- ☑ The seller's name and address;
- ☑ The provider's name and address (if different than the seller's);
- ☑ The parent company of the seller or provider (if applicable);
- ☑ The purchaser of the services and merchandise;
- ☑ The recipient or "beneficiary" of the services and merchandise (if known at the time of purchase);
- ☑ A complete description and the specific price of the merchandise, space(s) and/or service(s) purchased;
- ☑ The name of the trustee and the governmental body that regulates the trustee, if your contract is funded by a trust; and,
- ☑ The contract's cancellation terms and the seller's penalties if the buyer cancels or defaults on payment.

All Pre-Need Cemetery Contracts Must Be Guaranteed Price Contracts.

A "Guaranteed" contract means that you are guaranteed the merchandise and services you selected in the contract for the amount of money stated in the contract. You or your estate will not be required to pay any additional costs for the items unless unexpected charges are incurred.

Pre-Need Cemetery Contracts Must Be Funded by a Trust or Secured by a Bond.

A. Trust Accounts

Pre-need cemetery contracts must be funded by a trust. (There is a limited exception for undeveloped internment, entombment, or inurnment spaces discussed below). This means the seller must send a certain percentage of your payments to a trustee for safekeeping in a trust account. The trustee is an independent company which must hold this money until the time when the merchandise or services are actually needed (or until you cancel your contract and seek a refund). Review your contract for the name of the trustee and the trustee's contact information.

Sellers must send 85% of the purchase price of outer burial containers and 50% of the purchase price of all other merchandise and services to the trustee within 30 days. Each year you will receive a trust account statement (much like a bank account statement) from the trustee. This is an important consumer protection, so be sure to watch for your annual statement. If you do not receive an annual statement, contact the trustee named on your contract. If the trustee cannot be located or cannot assist you, contact the Comptroller's Office.

B. Pre-Construction Performance Bonds

If your contract is for an undeveloped (pre-construction) internment, entombment or inurnment space, it must either be funded by a trust as discussed above or secured by a pre-construction performance bond. Performance bonds must be filed with the Comptroller's Office and they must remain in place to secure your investment until the space you purchased is complete. Please contact our offices to confirm the status of a pre-construction performance bond.

Can I Get My Money Back If I Change My Mind or Cannot Make My Payments?

The consequences for terminating a contract are different depending upon the type of contract and when the contract is terminated. Special rules apply to pre-construction contracts.

A. Cancelling a Contract Sold Outside of the Seller's Place of Business

If you did not purchase your contract at the seller's place of business, including but not limited to door-to-door sales, then the contract is subject to the Federal Trade Commission's "Cooling-Off Period for Door-to-Door Sales" rule. Under this rule, you have the right to cancel the contract within three business days of signing it without any penalty.

B. Cancelling a Paid-in-Full Contract

After a contract for pre-need cemetery services and merchandise has been fully paid, the beneficiary of the contract may cancel and the seller must refund 50% of the purchase price plus interest. For contracts fully paid for outer burial containers, the seller must refund 85% of the purchase price plus interest.

C. Cancelling a Partially Paid Contract or Defaulting on Payments

If you cancel before your contract is paid in full or if, per the terms of the contract, you default on payments, the seller may keep 100% of the payments made under the contract and you forfeit your right to any merchandise or services covered by the contract.

D. Pre-Construction Contracts

If you purchased an undeveloped interment space, entombment space, inurnment space, lawn crypt, mausoleum, garden crypt, columbarium or cemetery space, the seller has three years to begin and six years to complete the construction of

the project. If the seller does not begin and complete construction within these time frames you are entitled to a refund.

For undeveloped interment, entombment or inurnment spaces only, you may cancel within 12 months of purchasing and receive a full refund, plus interest, if the seller has not begun construction. If the seller has begun construction, you are not entitled to a refund.

What If the Seller Fails to Deliver the Services or Merchandise?

If the seller fails to honor a contract, you or the estate are entitled to seek a refund from the seller. If you are entitled to a refund but the seller is not able to provide a refund, you or your estate may be able to recover your losses from the State's consumer protection fund. Contact the Comptroller's Office to apply for consumer protection funds.

What Can You Do If You Believe You Were Treated Unfairly?

If you think that you have been the victim of unfair or illegal practices in the handling of pre-need funds, you may file a written complaint with the Illinois Office of Comptroller, P.L.A.C.E. Division, 555 West Monroe Street, Suite 1400 S-A, Chicago, Illinois 60661. In addition, the Comptroller's Office may request that the Illinois Attorney General seek a court order for restitution on your behalf.

Questions or Concerns?

If you have questions or concerns about your pre-need contract

Please call the Comptroller's toll-free consumer hotline:
(877) 203-3401

or mail your inquiry to:
Illinois Office of Comptroller
P.L.A.C.E. Division
555 West Monroe Street, Suite 1400S-A
Chicago, Illinois 60661

or visit our P.L.A.C.E. webpage:
illinoiscomptroller.gov

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