



funeral service **insider**

independent news & guidance for funeral home owners and operators

A Detailed Analysis of How Funeral Homes Are Complying with the FTC Funeral Rule

By Emily Albrecht, Attorney at Betts Patterson Mines

The Federal Trade Commission Funeral Rule that went into effect in April 1984 and was revised in July 1994 requires that funeral providers give consumers accurate, itemized price information and various other disclosures about funeral goods and services.

The Funeral Rule requires disclosure of itemized price information both over the telephone and in writing concerning funeral services and ancillary arrangements offered, as well as price lists for caskets and outer burial containers. The Funeral Rule also requires persons arranging a funeral be given a statement of the funeral goods and services selected by that person and the price to be paid for each item.

The Funeral Rule was designed to (1) ensure that consumers receive the information necessary to make informed purchasing decisions and (2) lower existing barriers to price competition in the market for funeral goods and services. The Funeral Rule applies to anyone who sells or

offers to sell both funeral goods and services. Funeral goods include all products sold directly to the public in connection with funeral services, which are used to care for and prepare bodies for burial, cremation or other final disposition and to arrange, supervise or conduct the funeral ceremony or final disposition of human remains.

Pursuant to the Funeral Rule, it is an unfair or deceptive act or practice for funeral providers to:

- Fail to furnish consumers with accurate price information disclosing the costs of each funeral good or service used in connection with the disposition of dead bodies.
- Require consumers to purchase a casket for direct cremations.
- Condition the provision of any funeral good or service upon the purchase of any other funeral good or service.
- Embalm the deceased for a fee without permission.

Live Oak Bank Forms Alliance with Argent

Live Oak Bank, a leader in funeral home and cemetery lending, announced that it has entered a purchase and sale agreement with Argent Financial Group, a leader in trust services, to divest its preneed funeral trust business, according to a news release.

Live Oak Bank remains dedicated to funeral home and cemetery lending, and this agreement allows the bank to streamline operations to better serve customers.

This relationship allows Live Oak Bank and Argent to create a strategic alliance to cross-refer lending and trust business to more efficiently provide services to those in the funeral home and cemetery industry, with each entity focusing on its expertise.

While the financial terms of the agreement were not disclosed, the sale is not material to Live Oak Bank's results. The transition is expected to be completed by Dec. 31.

Live Oak continues to offer trust and estate planning services for individuals and families through Live Oak Private Wealth.

In other Live Oak news, the company reported in September that Huntley Garriott, formerly a partner at Goldman Sachs, has joined the company as bank president.



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The Funeral Rule also prohibits funeral providers from making misrepresentations about the legal or local cemetery requirements for (1) embalming; (2) caskets in direct cremations; (3) outer burial containers; or (4) purchase of any other funeral good or services, that cash advance items are provided to the consumer at the same price as that paid by the funeral provider when that is not the case, or that any funeral good or service will delay the decomposition of human remains for a long-term or indefinite amount of time by setting forth price and information disclosures to ensure funeral providers do not engage in unfair or deceptive acts or practices.

The Funeral Rule gives important rights to consumers when making funeral arrangements. Funeral homes must provide consumers with an itemized general price list at the initiation of an in-person discussion about funeral arrangements, a casket price list before showing consumers any caskets and an outer burial container price list before consumers view grave liners or vaults. The Funeral Rule also prohibits funeral providers from requiring customers to buy any item as a condition of obtaining any other funeral good or service. By requiring the use of itemized prices, the Funeral Rule enables consumers to compare prices and buy only the goods and services they want.

Initially, Funeral Rule compliance was enforced on a complaint-based system. Because of the perceived low compliance rate based on early studies, the FTC adopted a new approach in 1994, which included a test-shopping element – called “sweeps” – periodically targeting funeral homes in a particular region, state or city. Under this approach, the FTC sent staff, state investigators (such as those from offices of state attorneys general) or other volunteers (including members of AARP) posing as consumers to test-shop a funeral home by simulating a funeral transaction and determine whether the funeral home was in compliance with the Funeral Rule. The sweeps methodology was designed to quickly raise the overall rate of compliance with the Funeral Rule’s core requirement of giving consumers an itemized General Price List early on in meetings with funeral home staff.

Failure to comply with the Funeral Rule may result in civil penalties, which have recently increased at the direction of Congress to \$40,654 per violation.

Most Recent Sweep

In April 2018, the FTC released the results from its most recent sweep of undercover inspections across 11 states in 2017. Of the 134 funeral homes they visited, 29 of them failed to disclose pricing information in accordance with the Funeral Rule requirements:

Region	Total Number of Funeral Homes Inspected	Number in Violation of Pricing Disclosure Requirements	Percentage
Fort Wayne, Indiana	19	0	0%
Southern Fairfield County, Connecticut	12	0	0%
Manhattan, New York			
Brooklyn, New York			
Southern New Jersey			
Tucson, Arizona	11	1	9.1%
Boise, Idaho	14	2	14.3%
Hagerstown, Maryland	15	3	20%
Winchester, West Virginia			
Tulsa, Oklahoma	20	4	20%
Augusta, Georgia	13	5	38.5%
Lansing, Michigan	15	7	46.7%
Odessa, Texas	15	7	46.7%
Midland, Texas			
GRAND TOTAL	134	29	21.6%

A number of other funeral homes within the tested areas were found to have only minor compliance deficiencies, in which case the FTC requires providers to timely submit evidence that the problem has been corrected.

The Past Decade

In 2008, during inspections across seven states, FTC undercover investigators found a mixed compliance record:

Region	Number of Funeral Homes Inspected	Significant Violations	Percentage
San Antonio, Texas	11	7	63.6%
Nassau County, New York	18	2	11.1%
Northeastern Arkansas	15	11	73.3%
Minneapolis/St. Paul, Minnesota	16	1	6.3%
Fairbanks, Alaska	11	2	18.2%
Anchorage, Alaska			
Orange County, California	18	2	11.1%
Toledo, Ohio	15	1	6.7%
GRAND TOTAL	104	26	25%

In 2009, during inspections across nine states, FTC undercover investigators found a mixed compliance record:

Region	Number of Funeral Homes Inspected	Significant Violations	Percentage
Chicago, Illinois	12	1	8.3%
Cincinnati, Ohio	19	3	15.8%
New Orleans, Louisiana	22	5	22.7%
New Iberia, Louisiana			
Chattanooga, Nashville	25	6	24%
Memphis, Tennessee			
Bozeman, Montana	12	3	25%
Helena, Montana			
Missoula, Montana			
Townsend, Montana			
Metro Washington, D.C. (Including Parts of Maryland and Virginia)	59	19	32.2%
El Paso, Texas	12	6	50%
Nassau County, New York	14	7	50%
TOTAL	175	50	28.6%

In 2011, during inspections across nine states, FTC undercover investigators found a mixed compliance record:

Region	Number of Funeral Homes Inspected	Significant Violations	Percentage
Maui, Hawaii	4	0	0%
New York City	22	1	4.5%
Parts of Connecticut			
Parts of New Jersey			
Northwest Indiana	12	1	8.3%
Austin, Texas	19	4	21.1%
Cleveland, Ohio	16	4	25%
Fredericksburg, Virginia	19	8	42.1%
Richmond, Virginia			
Columbia, South Carolina	10	5	50%
GRAND TOTAL	102	23	22.5%

In 2013, during inspections across nine states, FTC undercover investigators found:

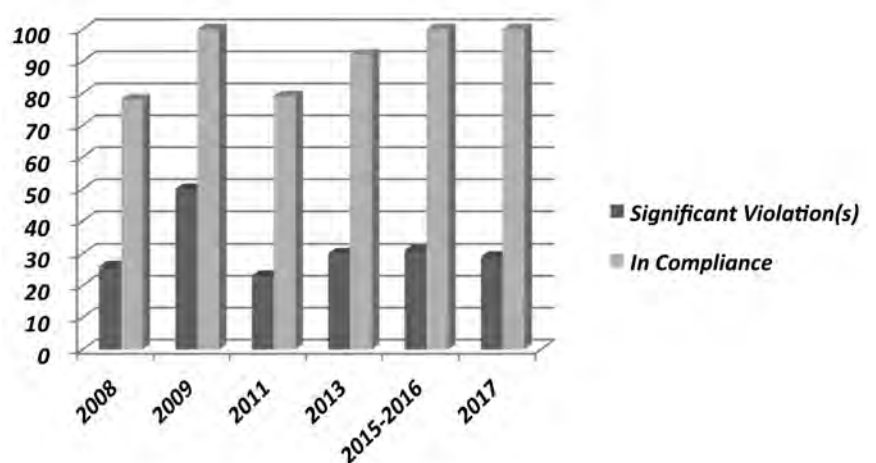
Region	Number of Funeral Homes Inspected	Significant Violations	Percentage
Palm Springs, California	8	1	12.5%
Southern Connecticut	12	2	16.7%
Northern New Jersey			
Monroe, Louisiana	17	8	47.1%
Baltimore, Maryland	19	2	10.5%
Dayton, Ohio	15	5	33.3%
Portland, Oregon	14	2	14.3%
Amarillo, Texas	19	6	31.6%
Milwaukee, Wisconsin	18	4	22.2%
GRAND TOTAL	122	30	24.6%

Between 2015 and 2016, during inspections across nine states, FTC undercover investigators found:

Region	Number of Funeral Homes Inspected	Number in Violation of Pricing Disclosure Requirements	Percentage
Bakersfield, California	10	0	0%
Bismarck, North Dakota	6	0	0%
Atlanta, Georgia	10	1	10%
Smyrna, Georgia			
Marietta, Georgia			
Oklahoma City, Oklahoma	34	4	11.8%
Fairfax County, Virginia	17	2	11.8%
Loudoun County, Virginia			
Prince William County, Virginia			
Tacoma, Washington	11	2	18.2%
St. Louis, Missouri	16	3	18.8%
Detroit, Michigan	15	10	66.7%
Warren, Michigan			
Ann Arbor, Michigan			
Alamogordo, New Mexico	14	9	71.4%
Roswell, New Mexico			
TOTAL	133	31	23.3%

The Funeral Rule Offenders Program

The Funeral Rule Offenders Program is a training program run by the National Funeral Directors Association designed to increase Funeral Rule Compliance. Funeral homes that violate the price list disclosure requirements for the first time can enter FROP rather than subject themselves to the possibility of an FTC enforcement action seeking hefty civil penalties, upward of \$40,654 per violation. FROP provides participants with a legal review of Funeral Rule required price disclosures, along with ongoing training, monitoring and testing for



compliance. FROP participants also make a voluntary payment to the U.S. Treasury in lieu of a civil penalty, along with annual NFDA administrative fees. Since FROP began in 1996, the FTC has inspected nearly 3,200 funeral homes and found 559 (17.5 percent) with violations that required referral to FROP.

Of note, all of the funeral homes found in violation during the 2017 inspections have elected to enter FROP in lieu of facing civil penalties.

Moving Forward

The FTC has published a guide titled “Complying with the Funeral Rule” that is designed to aid compliance with the rule for anyone selling or offering to sell funeral goods and services. The guide provides detailed information about the rule’s specific requirements of General Price Lists, Casket Price Lists, and Outer Burial Container Price Lists. A copy of the guide and the Funeral Industry Practices Revised Rule can be found at: www.ftc.gov/tips-advice/business-center/guidance/complying-funeral-rule. You can also visit the link to order free copies of the guide for each member of your staff. Some of the guide’s highlights include:

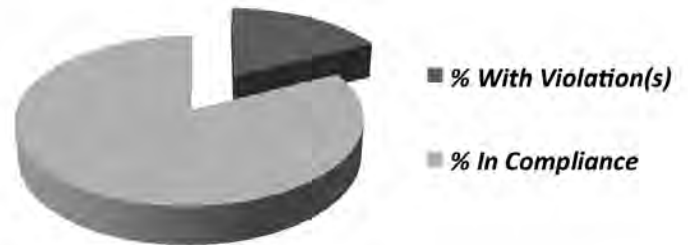
- The General Price List should be printed or typewritten and must include the following basic information: the name, address, and telephone number of the business; the caption: “General Price List;” and the effective date for the GPL. Additionally, the GPL must include six disclosures concerning: the consumer’s right to select only the goods and services desired; embalming; alternative containers for direct cremation; the basic services fee; the Casket Price List; and the Outer Burial Container Price List. These disclosures must contain the identical wording outlined in the rule.

- You must give the GPL to anyone who asks, in person, about funeral goods, funeral services, or the prices of such goods or services. This means all persons who inquire about funeral arrangements including, but not limited to, consumers, competitors, journalists, and representatives of businesses, religious societies, government agencies, or consumer groups. Further, you must physically offer such individuals a GPL that they can keep and take from the business premises.

- If your GPL does not list the retail price of each casket you sell, you must prepare a separate printed or typewritten CPL that must include the following basic information: the name of your business; the caption: “Casket Price List;” the effective date for the CPL; and the retail price of each casket and alternative container that you usually offer for sale (i.e., that does not require special ordering) with enough descriptive information to identify each.

- You must show the CPL to anyone who asks in person about the caskets or alternative containers that you offer or who inquires about their prices. You must offer the CPL when you begin discussing caskets or alternative containers – but before showing these items. Consumers must be able to look at the price list before discussing their options or seeing the actual caskets or pictures or models of them. Consumers should not first learn of casket prices by entering the casket showroom and reading price cards placed on individual caskets or

Funeral Home Inspections Since 1996



by having the funeral director recite such information orally. You can use individual price cards, but only in addition to a CPL.

- If you sell outer burial containers and do not list the retail price of each such container on your GPL, you must prepare a separate printed or typewritten Outer Burial Container Price List that must contain: the name of your business; the caption: “Outer Burial Container Price List;” the effective date of the price list; the retail price of each outer burial container that you usually offer for sale (i.e., that does not require special ordering) with enough descriptive information to identify it. Your OBCPL must also contain a disclosure – with the identical wording outlined in the rule – regarding state or local law concerning the purchase of a container to surround the casket.

- You must show this price list to all persons asking about outer burial containers or their prices. You must offer this price list when you begin to discuss outer burial containers but before showing the containers or pictures or models of them. Consumers must be able to look at the price list before discussing their options or seeing containers. You are allowed to use price cards on top of individual containers or models of containers but only in addition to an OBCPL.

The FTC is likely to give serious consideration to the question of whether posting funeral prices online will help consumers when they begin to overhaul the Funeral Rule. No concrete plans have been announced, but many people who have insights about government regulations predict a review will begin sometime in 2019. Until a review of the Funeral Rule is completed, the debate over requiring funeral homes to post prices online will continue. In the meantime, requirements in the Funeral Rule spell things out pretty well. •



Emily Albrecht is an attorney in the defense litigation practice group at Betts Patterson Mines in Seattle, where she focuses her practice on mortuary litigation and insurance defense, including professional liability, product liability and asbestos litigation. She is a frequent contributor to American Funeral Director and American Cemetery & Cremation magazines as well as an industry speaker. She can be contacted at ealbrecht@bpmlaw.com.

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