



SUMMER/FALL 2009

A Federation of Nonprofit Funeral Information Societies Volume 13 No. 2

Protecting a consumer's right to choose a meaningful, dignified, and affordable funeral since 1963

FCA Testifies to Congress — Bill Introduced to Expand FTC Funeral Rule

- Laurie Powsner, President

This summer, Funeral Consumers Alliance (FCA) accomplished some of our most important and historically significant work in a decade. After the discovery that more than 300 graves may have been dug up, the remains dumped, and the graves re-sold at Chicago's historically black Burr Oak cemetery, national lawmakers took notice. Bobby Rush, Chairman of the House Subcommittee on Consumer Protection, asked our own executive director, Josh Slocum, to testify before the subcommittee. On very short notice, Josh spent long hours researching and compiling consumer complaints from around the country (this is why the national office keeps extensive files), work that culminated in 10 pages of written testimony and documentation.

Josh's goal was to show law-makers that outrageous scandals like the Burr Oak grave desecrations were only the tip of the iceberg, that consumers nationwide have no federal protection from fraud and deception when buying cemetery property. Josh told the FCA Board he was surprised and pleased by the informed questions the lawmakers asked, "They had clearly read our testimony in advance, since several members cited portions of it in their opening

remarks. I'm used to lawmakers giving scant attention and short-shrift to consumer concerns in this field. This subcommittee was informed and engaged."

On behalf of FCA and its 100 affiliate groups, Josh asked the lawmakers to expand the Federal Trade Commission's (FTC) Funeral Rule to cover cemeteries, crematories, casket

and monument retailers, to set national standards for cemetery record-keeping, and to give all Americans the right to transfer their prepaid funeral contracts on request without penalty. And, they listened! In September, Congressman



Rep. Bobby Rush (D-IL) announced the bill Sept. 21

Rush announced the Bereaved Consumers Protection Act. The bill will:

- Give cemetery consumers the right to buy only the goods and services they want; families will be able to buy markers, monuments, or grave vaults from less expensive retail vendors rather than being captive to the cemetery's prices
- Bar cemeteries from forcing families to buy entire packages of goods or services, if the family wants to

choose item by item

- Require cemeteries to disclose rules and regulations, and consumer rights, before the purchase
- Require cemeteries to keep accurate records of all burials sold, and where remains are interred, and to make those records available to regulators
 - Bar cemeteries from lying
 about the law claiming state
 laws "require" vaults to surround an in-ground casket, for
 example

Cremation-only businesses (those that aren't part of a funeral home) that serve the public directly will also be subject to the price disclosures and consumer rights the Rule currently mandates for funeral homes. The bill will also require retail monument dealers

and casket-sellers to offer accurate price information to consumers and refrain from misrepresenting legal requirements.

While the bill won't address prepaid funerals, Congressional staff have told us they will likely ask the Government Accountability Office (GAO) to do an in-depth study of prepaid regulations nationwide as a first step to reform. FCA has already sent a "wish list" of abuses

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Save the Date! FCA's 2010 Biennial Conference Held June 3-6 at Indiana University, Bloomington

Our local affiliate, the FCA of Bloomington, is co-hosting the event. Every two years, FCA members gather from around the country to discuss consumer advocacy, the nuts and bolts of running a funeral information organization, and national issues facing funeral consumers.

Here's a peek at our **tentative** agenda:

Track 1 - Build a Better Affiliate

- · Build a Better Board
- Fundraising
- Legislative Action
- Expanding Your Mission
- Combining Advocacy, Education and Discounts

Track 2 - Build Better Outreach

- Write Great Newsletters Print and Electronic
- How to Get a Website or Improve Your Old One
- The Phone Issue: Cell, Landline or Virtual?
- Funeral Price Surveys: How to Do One and How to Get Publicity
- · Speakers Bureaus

Track 3 - Building Coalitions

- Green Cemeteries
- Death Midwives and Home Funerals
- Hospice and Social Workers

National Issues

- The Pitfalls of Prepaid Funerals
- Reforming the FTC Funeral Rule and Expanding Consumer Protection Laws Nationally

We'll post more details as they firm up at www.funerals.org. Click on the Conference tab at the top of the page.



Notes From the Board

At its first of two in-person meetings for the year, the FCA National Board visited to campus of Indiana University at Bloomington the last weekend in May. The Board:

- Voted to hold the 2010 Biennial Conference of Funeral Consumers Alliance at IU Bloomington
- Adopted a revised definition of FCA's **funeral-related vendor policy** to aid FCA affiliates in deciding which categories of business person are not eligible to serve on an FCA governing board (see article page XX)
- Welcomed Nancy Petersen, 1st Alternate, to the position of full Board member following the resignation of Harriet Bartnick. Petersen serves on the board of the FCA of Greater Kansas City
- Proposed a program and tentative agenda for the upcoming Biennial Conference

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and regulatory deficiencies we hope the GAO will investigate.

For those of you who don't know, it was our federation of funeral societies that pushed for 10 years to convince the FTC to adopt the Funeral Rule. FCA staff and board members have testified before the FTC and various Congressional committees over the past 25 years, urging expansion and reform of the Rule. The bill announced this year provides every single American the protections from funeral and cemetery fraud we have been urging since long before federal regulations existed.

I'm incredibly proud and excited to be FCA's President at such a crucial time. If anyone asks you, "what does the National FCA do?" tell them about this! No other nonprofit has the expertise and the documentation to stand up before Congress and lobby for the rights of the dead and the bereaved. Without our national staff – and without the constant contact and sharing from our local affiliates – this bill would never have been introduced. Like any nonprofit, we can only do our work because of donations from our members, friends, and affiliated societies. Please remember how important - and how unique - FCA is, and support us generously through our Fall Fundraiser. We can't do it without you, and you wouldn't have this national voice without us. Thank you!



Following are short excerpts from Josh Slocum's testimony on behalf of FCA delivered to Congress this summer. For the full 10-page testimony and documentation, visit www.funerals.org and click on News and Consumer Alerts.

— Once again, a wrenching example of consumer abuse has focused Congress's attention on the one business no American wants to interact with, but that everyone must: the funeral and cemetery industry. The allegations of grave desecration at Burr Oak cemetery in

Chicago are shocking to American newspaper readers and television viewers. To consumer advocates, cemetery scandals are par for the course. In 2001, the largest funeral and cemetery chain in the country was accused of digging up bodies and dumping them in the woods at the Menorah Gardens cemetery in Florida. In 2002, investigators found more than 300 uncremated bodies strewn about the property of Tri-State crematory in Georgia. From 2007 through the present, investigators in almost half the states allege that more than \$1 billion in money is missing from funeral and cemetery trust funds, money paid in good faith by Americans who wanted to make sure the most painful day for their survivors would go just a little more smoothly.

It's hard to imagine something more painful for a family than to realize their mother, child or friend, has been pulled from the ground and thrown on the refuse heap. No law can stop outright criminality, but we must enact tougher, consistent regulations across the country to help deter these and other abuses. They are, unfortunately, only the most visible and shocking examples of a long-neglected problem: the lack of any national standards whatsoever for the regulation of cemeteries. There is a patchwork of inconsistent, contradictory laws among the states about what cemeteries may do, must do, and what rights, if any, grieving consumers enjoy. With a handful of exceptions, the states have failed the public.

While the Federal Trade Commission has set minimum standards for truthful dealing for funeral homes, the federal government has turned a blind eye to graveyards. Cemeteries (except in a few states) are free to hide their prices, make up non-existent laws to push merchandise on the grieving, and force families to buy their overpriced tombstones and grave vaults (or suffer a financial penalty if they refuse).

We respectfully urge Congress to make meaningful change, including:

• Bringing all death-related busi-

nesses (cemeteries, crematories, casket and memorial retailers) under the FTC Funeral Rule, and codifying the Rule

- Creating standards for uniform regulation of cemeteries.
- Giving consumers the right to a full refund or transfer of their prepaid death services contracts.

Cemeteries Exempt From Minimum Standards

Except in the minority of states, cemeteries need not give consumers printed price lists. Not only does this frustrate price comparison efforts, it allows unscrupulous cemeteries to charge different prices for the same services depending on how much the salesman believes he can get from each customer. While funeral homes may not refuse to use a third-party casket, consumer complaints to FCA indicate cemeteries routinely tell families they're required to buy the grave vault or memorial from the cemetery. If the customer balks, these cemeteries penalize the customer with bogus "inspection" or "setting" fees for outside merchandise, negating any cost savings and shutting down price competition in the market.

Pre-Paid Funeral Funds

While the nation's attention has been focused on the Wall Street melt-down and the thousands of Americans who lost their retirement, another financial disaster is chasing some Americans beyond retirement and right into the grave. Between 25 percent and one-third of all funerals performed annually are prepaid. The state of Texas alone has more than \$2 billion in prepaid insurance and trusts, money paid by 840,760 citizens for their eventual burials.

Yet there are no federal standards for the safekeeping of prepaid funeral or burial funds. If you live in New York or New Jersey, the law says funeral homes must deposit 100 percent of your money into an account at a financial institution. If you move or change your mind, you're entitled to a full refund, with interest. But if you live in Florida, funeral homes and cemeteries need deposit only 70 percent of the money you paid toward services and a fraction of what you prepaid for *merchandise* such as caskets and vaults. If you move or change your mind, the company can keep about half of everything you invested for your funeral and burial, even though they've given you nothing. It's legalized robbery. Among the other states it's a crazy-quilt of loose regulations that permit insane accounting practices such as considering coffins "delivered" to consumers, and non-refundable, as soon as the company hands you a receipt for a prepaid box.

Even in states with tougher prepaid deposit laws, scofflaws are robbing the bank and skipping town before regulators know what's happening. More than a billion dollars of Americans' hard-earned money has been stolen or misused by prepaid burial companies in the past three years:

- National Prearranged Services, a bankrupt network of funeral homes, cemeteries, and life insurance companies is in receivership after regulators charged the companies with skimming funds from consumers' life insurance policies and running a Ponzi scheme to get more prepaid buyers on the treadmill. Special Receiver Donna Garrett found the company had \$987 million in negative equity, a breakdown affecting more than 200,000 families in at least 19 states.
- Oil speculator Clayton Smart, owner of cemeteries and funeral homes in Tennessee and Michigan, sits in jail charged with stealing at least \$70 million in cemetery trust funds.
- The Illinois Funeral Director's Association stands accused of skimming money from prepaid funeral insurance policies bought by 40,000 Illinois consumers.
- —For the full testimony, visit www.funerals.org, then click on News and Consumer Alerts.

Who Can Serve on Your Board? Preventing Conflict of Interest

As FCA affiliates know, funeral-related vendors may not serve on the boards of directors of local FCA groups, or the national organization. But sometimes the lines aren't so easy to draw. Several affiliates wrote in with good questions: is a professional celebrant who makes her living delivering eulogies allowed to serve on our board? What about the director of a local religious society who arranges funerals for congregants, possibly for pay?

The FCA Board thought long and hard about these, and wrestled with several draft amendments to our definition of funeral-related vendors. The Board took a particular interest in defining "**position of obligation or influence**" in a way that would give sound guidance to affiliates considering a candidate for their board, but that wouldn't overzealously limit productive relationships with people who might be considered members of the funeral industry, even if only marginally. No language or policy can capture every situation or tidy up every ethical gray area. But we hope the revised definition of "position of obligation or influence" in number 4, below, is an improvement. Let us know what you think: **fca@funerals.org.**

- 1. A "funeral-related vendor" is any entity, other than a consumer cooperative or government organization, that engages in the business of providing body disposition services or funeral goods, or a person who works or is affiliated with a funeral-related vendor and receives financial remuneration for that work or affiliation.
- 2. "Body disposition services" include all of those services for hire which deal directly with taking custody of a dead human body; body preparation for disposition; or providing body disposition, such as burial, cremation, resomation, or post-cremation services.
- 3. "Funeral goods" are goods which are sold or offered for sale for use in connection with funeral or cremation or resomation services and are not used generally for any other purpose.

NEW LANGUAGE 4. "Position of obligation or influence" means a voting position on the FCA Board of Directors (or that of any FCA Affiliate). It also includes any position that would allow a funeral-related vendor to exert influence on FCA programs or activities in a way that would compromise the FCA's mission to act solely in the interests of funeral consumers. FCA Boards of Directors must err on the side of caution and end any relationships that create, or tend to create, an actual or apparent conflict of interest.

FCA Boards of Directors may, however, invite discussion and solicit opinions from such persons on issues of concern to FCA. FCA Boards of Directors may also collaborate with such persons on projects that benefit the interests of funeral consumers, so long as such collaboration does not result in funeral-related vendors exerting, or appearing to exert, self-interested or partisan influence on the decisions and actions of the FCA. All such persons must comply with FCA's "Conflicts of Interest" policy.

Affiliate News Your Good Works Around the Country

This is a smaller roundup than usual of the great work done by our local groups. The busy summer put me on a tighter deadline than normal, and there's more material than I could fit in this newsletter. Keep the cards and letters coming, though, folks! - Josh Slocum, ed.

FCA National Board Member Appointed to New York State Funeral Board— Congratulations to Elvira Hoffman, a director on both the FCA National and FCA of Long Island/ New York City boards. She's been appointed to fill a consumers seat on the Funeral Directing Advisory Board of New York State . Board members offer advice to the state health commissioner's funeral directing division, which oversees the regulation of funeral homes in the Empire State. Hoffman is the perfect choice for the job, given her long track record of funeral consumer advocacy, both within our organization and as FCA's Legislative Liaison for New York State. Hoffman has spent years offering written and oral testimony on bills affecting funeral consumers in her state legislature. She's been at the forefront of a five-year-long battle to stop state lawmakers from weakening funeral laws in a way that would allow large funeral chains to take advantage of the bereaved by marketing expensive, confusing funeral packages.

FCA of San Mateo (CA) helps get green cemetery off ground (sent by Marjorie Bridges, FCA of San Mateo, FCA National Board)—FCA of San Mateo and Santa Clara Counties is working with the Coastside Land Trust in seeking a green burial cemetery south of Half Moon Bay, San Mateo County, CA. Deborah Meckler, Marjorie Bridges, and Jane Hillhouse of FCA are part of the steering committee which is gathering information toward establishing the cemetery.

Five acres of the land being considered already contain an abandoned historic cemetery that is in need of care. The remaining seven acres of the property appear suitable for green burials, and the committee has been investigating the permits and regulatory requirements needed to start up, with the hope that the endowment care funds from an operating cemetery would help enable the restoration of the historic cemetery and the replanting of native plants to areas overgrown with invasive trees and vegetation.

There is work yet to be done before the new cemetery can open its gates, such as environmental review and fundraising, but preliminary feedback from stakeholders and pertinent government agencies suggest that the remaining hurdles can be cleared.

The Coastside Land Trust is a 501(c)(3) non-profit corporation dedicated to the preservation, protection and enhancement of the open space environment around Half Moon Bay for present and future generations. The Coastside Land Trust is applying for accreditation with the Land Trust Alliance and also will seek the Green Burial Council's highest level of accreditation for the new cemetery.

FCA of North Texas Wins Boost to Consumer Rights—Jim Bates' work with the Texas Department of Banking is a perfect example of the good FCA volunteers can do by building relationships with regulators. Too often, state agencies rely heavily on members of the regulated industry when they write rules, not realizing what a help consumer experts in our organizations can be. Bates, President of FCA of North Texas and a member of the national FCA board, convinced state staff to rewrite portions of Texas' standard contract and disclosure documents funeral directors use to sell prepaid funerals. The old contracts told consumers they didn't have the right to change their mind about which funeral home they wanted to use if they'd paid in advance with certain types of contracts — even if the consumer moved away and *couldn't* use the original mortuary.

At the same time, the state agreed to stop using the misleading terms protective and non-protective to describe caskets. Instead, they'll use the more accurate terms gasketed and nongasketed. We've long criticized funeral homes for using such emotionally loaded terms to sell more expensive caskets that don't actually "protect" the body—we're glad to see Texas has dropped the terminology. Seems all it took to change their minds was a knowledgeable consumer advocate who demonstrated how the old policies and language didn't help the state protect consumers. It's likely many unfortunate policies state regulators have are not the result of malicious intent, but because they don't understand the funeral industry the way consumer advocates do. Get involved!



Membership Cards: Love 'em or Leave 'em?

-Josh Slocum, executive director

If you've got AAA roadside insurance, you know how valuable that little red and white wallet card is when you blow a tire on the highway. There's that reassuring 800 number, guaranteed to get a tow truck out to you no matter where you are. But why do we—Funeral Consumer Alliances give our members cards? Most of our groups do, and I think it's time to ask ourselves why, and what good we think they do for our members, or for us. From the thousands of calls the FCA national office gets from members of our local affiliates every year, it's clear that members' survivors-the ones who find the card when dad dies—have serious misconceptions about the cards and what they do.

Here's a typical call from the child of a local FCA member:

Caller: My mom's a member of your organization and we need to activate her plan.

FCA: Your mom's membership entitles her to information on smart funeral planning, and possibly to discount prices at a local funeral home, but there's no plan as such — we don't sell funeral insurance or prepaid cremations. Do you know if your mom left written instructions? If not, I can check to see if her local FCA recommends certain funeral homes.

Caller: But my mom said just to call this number and everything would be taken care of — what kind of outfit are you running?

Another common misconception

is that mom's membership in FCA of AnyCity, California, means she's part of a network of *funeral homes* nationwide, guaranteed to offer her a



Funeral Consumers Alliance of AnyCity 555-555-5 www.oursite.org

Name: _____

To my survivors: FCA is a nonprofit organization that helps me plan affordable end-of-life arrangements. This is \underline{not} a prepaid funeral or insurance plan. FCA does \underline{not} perform funerals or cremations. (see reverse)

My funeral instructions are located:

At the time of death, you'll need to call a funeral home or cremation service to make arrangements. For help locating a reasonably priced trustworthy business, see my written instructions. You can also visit the national FCA site at funerals.org, or call 800-765-0107.

(optional) I recommend the following funeral business:

Revised sample membership card

"member price." I don't even want to tell you how many times a nursing home, hospital, or surviving child, has called the national toll-free number (found on most local membership cards) at two in the morning to direct us to come pick up the body.

This tells me we need to rethink why and how we use membership cards. They're not like AAA cards; they don't "activate a service," but most local member cards are worded as if they did. Instead of helping members and survivors, this creates confusion and stress for the family (and for us). Remember, people often want to take the easiest route possible with death, even if that means leaving their survivors in

the dark and promising them that "one call will do it all." We can head off some of these problems by changing how—or whether—we give out membership

Do We Need Membership Cards At All?

Opinions vary among the leadership at our local groups. Affiliate board members made good arguments for and against when I posed the question on our email discussion list.

PRO:

I do believe that membership cards are important as people tend not to discuss funerals with their next of kin. I find that many members are so disengaged that they can't even remember whether or not they are a member unless you send them a card.

At the least there is a card in their wallet that gives family members a starting point if no other work has been done. While ideally we want consumers to take more personal responsibility, the reality is that many of them never will. - John Eric Rolfstad, executive director, Peoples Memorial Association

We have used membership wallet cards for years and find them very effective. Only our local phone number is listed along with our email addess and website. The member's information is on the front along with another name to call in case of an accident. On the back is space for the chosen funeral business, their phone number and whether the member is an organ donor. There is no listing of any FCA information. We

find that this saves a lot of phone calls to us for information about what arrangements the member has made and with whom.

-David Lewis, president, Memorial Society of Northeast New Jersey

CON:

Speaking for myself, not FCAEM as I haven't spoken with other board members, I didn't know there was such a thing as a membership card, nor do I see any need for one. We have not used one during the time I have been involved with FCAEM. Just clutters up the wallet. And the chance for creating confusion outweighs any benefit I can see. - Nancy Accola, board of directors, FCA of Eastern Massachusetts

FCA of the Triangle stopped making and giving these out several years ago; just another thing to manfacture, put in the member kit (as an affiliate), and to keep track of and overfill wallet with (as a member). - Michael Rulison, FCA of the Triangle, North Carolina

There were others in the middle, and some cited the benefit of being able to write down the name of a member's preferred funeral home. This is great *if* the member doesn't die away from home (it happens a lot, folks), and *if* the preferred funeral home stays the same (and it won't stay the same forever in many cases).

On balance, I think I'd opt not to use a membership card if I were a director of a local FCA. But for those groups who do use them, feel free to adapt the sample card on page 6 — I hope it will help members and survivors get the most from your organization without creating false expectations and frustration. Feel free to adapt it to suit your group, and if you come up with a better idea, please email them to **fca@funerals.org** so we can share them in a future newsletter!

It's Called Free Speech: Federal Court Tosses Libel Suit Against FCA



The following is excerpted from a press release we put out this summer when we got word of our legal victory.

The US District Court for the Eastern District of Michigan has thrown out funeral director Thomas Lynch's libel and defamation suit against Funeral Consumers Alliance and two other defendants. On July 31, Judge Robert H. Cleland granted summary judgment for the defendants, ruling that Lynch had no case for libel or defamation.

"We're delighted the court has upheld FCA's right to free speech," said Joshua Slocum, FCA executive director. "The Constitution protects Americans' right to engage in vigorous public debate, and that includes criticizing the words and deeds of public figures like Mr. Lynch. Simply because the target of that criticism does not enjoy it does not make such critique illegal. FCA will continue commenting on matters of importance to funeral consumers, and that commentary may take the form of critiquing the writing or statements of prominent funeral directors. We expect this ruling will discourage any disgruntled funeral industry figures from attempting in the future to intimidate and silence consumer organizations through legal bullying."

Lynch filed suit against Funeral Consumers Alliance, the FCA of Idaho, Funeral Ethics Organization, and FEO Executive Director Lisa Carlson, in September of 2008. He accused the defendants of defaming his reputation and libeling him because of various articles and documents the defendants published. In FCA's case, Lynch claimed a PowerPoint presentation titled "Deconstructing Thomas Lynch"—a piece that critiqued one of Lynch's widely read syndicated articles on funerals—made libelous, false statements against him.

The Court disagreed noting that the statements made by FCA and the other defendants that so exercised Mr. Lynch were, in fact, true:

None of the evidence presented by Plaintiffs exhibits a reckless disregard for the truth or knowledge that statements were false. In fact, many of the statements alleged to support a finding of malice appear, based on the record before the court, to be true, and certainly [Plaintiffs] have not produced evidence that shows them to be patently false.

Note from Josh Slocum, executive director — It was important to clear FCA's name in this ridiculous suit, of course, but one of my overriding concerns was sending a clear message to the industry that we will not put up with legal bullying against our volunteer affiliates either. It was bad enough that Mr. Lynch dragged FCA National into court on these flimsy allegations; it was downright unethical to target the tiny FCA of Idaho (for merely printing commentary from another source). This is a victory for all of us. Do not be intimidated by blowhards. Do not censor yourselves for fear of disgruntled businesses complaining. FCA National—and I personally—will not tolerate it and we will fight back. Never forget that you have a Constitutional right to speak on behalf of consumers, as this judgment affirms.

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Summer/Fall Newsletter

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Visit FCA's New Online Discussion Forum!

There's a brand new way to connect with FCA and people interested in funeral consumer issues. Our new site features an online forum where you can post messages, ask questions, exchange stories, and pass along news items. Stop by and sign up today!

Just go to:

www.funerals.org

Then click **Forum.** See you there!

Funeral Consumers Alliance is the only national, nonprofit, nonsectarian, 501(c)(3) organization solely dedicated to protecting the public's right to choose meaningful, dignified, and affordable funerals.

Since our beginning in 1963, we have served as a source of information and advocacy to grieving families, lawmakers, the media, and the funeral business. We offer accurate, authoritative advice on all matters relating to funerals, cremations, burials, and other after-death arrangements. We support legal reforms to better protect the public against abusive practices, and we serve as a clearinghouse for consumer complaints of illegal or unethical treatment. We also give educational materials and advice to our more than 100 volunteer-run consumer information groups around the country.

With our help, thousands of families are better educated about their rights under federal, state, and local laws. FCA has helped people save hundreds of thousands of dollars in unnecessary funeral costs by showing families how to make informed decisions in a time of crisis.

FCA is not funded by any government agency. We do not have any corporate or funeral industry sponsors. For more information, write:

Funeral Consumers Alliance 33 Patchen Road South Burlington, VT 05403 www.funerals.org

Fall 2009 Fundraiser

It's that time again! As you know, FCA is a nonprofit, 501(c)(3) public charity — we rely on donations to do our work. Without your support, we wouldn't be able to testify to Congress on behalf of our members and all funeral consumers. About half our budget comes from the dues paid to us by our nearly 100 affiliated groups (thank you!). That means we need to ask you to help us make up half our operating costs. Please support our unique work as generously as possible, and remember, your gifts are tax-deductible! Tip: You can also donate at **www.funerals.org**. Click on "Membership/Donate" at the top menu. It's safe and secure.

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