

## **Support and enact legislation to update the FTC funeral rule to include all for-profit sellers of funeral and/or final disposition goods and/or services not now covered by the Funeral Rule**

### **Background**

In 1977, the staff of the Federal Trade Commission (FTC) presented its final report to the Commissioners supporting the need for a Trade Regulation Rule regulating the funeral industry as it was defined back then. The staff stated that the justification for the rule was centered on three primary reasons. They were: (1) to prohibit certain practices which deceive or unfairly exploit the purchasers' bereaved condition; (2) provide consumers with the information and choices necessary for an informed purchase decision; and (3) permit the operation of the competitive market.

In 1984, the funeral rule became effective. However, due to restrictive language found in the definition section of the rule, it was interpreted as only applying to a business that sold both funeral goods and services not those that just sold one or the other.

NFDA has argued over the years to both the FTC and Congress that since 1984 the marketplace for funeral goods and services has changed drastically but the funeral rule has not been revised or updated to address these significant changes. When the funeral rule was first promulgated, the funeral home was the primary source of funeral goods and services for the funeral consumer. However, since 1984, funeral consumers now have a much greater variety of funeral service or funeral merchandise sellers to choose from including cemeteries, crematories, internet sellers and retail stores.

When a consumer purchases funeral goods or services from a funeral home, they receive the full protections of the Rule. For example: funeral homes must provide a family with a written General Price List, a Casket Price List and an Outer Burial Container price list. They are required to accept merchandise such as caskets that a family purchases from a third-party seller and are prohibited from charging them a handling fee. Tying arrangements are also prohibited by the funeral rule. When consumers purchase funeral goods or services from cemeteries, internet sellers or retail stores, they receive none of these protections. This puts funeral consumers in a vulnerable position in the same way the FTC Staff back in 1977 justified the need for a funeral rule. In short, the same conditions exist today for for-profit cemeteries, crematories and other third-party sellers as existed in 1977 when the FTC Staff recommended the need for a rule to regulate funeral homes. It is a loophole that must be closed!

Moreover, given this changed marketplace coupled with the current economy, funeral homes are at a competitive disadvantage since they are required to comply with a federal rule and their non-traditional competitors are unencumbered by any such rule.

### **Congressional Action**

To address this situation, Congress should pass legislation to require the FTC to update the current FTC Funeral Rule to reflect the current for-profit marketplace options for consumers and afford them the same protections they have under the Funeral rule when dealing with funeral home.