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National Funeral Directors Association

August 5, 2009

Chairman Jon Leibowitz Federal Trade Commission 6 and Pennsylvania Avenues Washington, D.C. 20001

RE: Protecting Consumers of Death Care Services

Dear Chairman Leibowitz:

This letter is being written on behalf of the National Funeral Directors Association ("NFDA"), its 20,000 funeral director members, and the hundreds of thousands of families that they serve. In light of the horrendous practices revealed at the Burr Oak Cemetery, NFDA is renewing its request that the Federal Trade Commission ("FTC") carry out its mission to protect consumers by extending the Funeral Rule over all sellers of death care goods or services, including the nation's cemeteries and crematories.

Since the first review of the Funeral Rule back in 1989, NFDA has petitioned the FTC to expand the Funeral Rule to cover all death care providers such as cemeteries and crematories. Joined by AARP and other consumer interest groups, NFDA renewed this request in 1999 when the FTC reviewed the Funeral Rule for the second time. In addition, during annual meetings with FTC compliance staff, NFDA has emphasized the need to protect consumers of death care services by placing all sellers of death care goods or services under the consumer protection requirements of the Funeral Rule. To date, this 20 year effort by NFDA on behalf of the nation's consumers has been to no avail.

During this 20 year period in which cemeteries and crematories have been able to operate without any federal oversight, the following major scandals have occurred:

- Burr Oak Cemetery, Alsip, Illinois. In July, 2009, Illinois authorities and the FBI investigate the illegal exhumation of hundreds of bodies that are allegedly dumped in a mass grave so that cemetery plots could be resold. Authorities report that thousands of dead remain unaccounted for by their families.
- Robert Nelms-Indiana, Michigan, New Jersey and Tennessee. In 2008, authorities in Indiana, Michigan, New Jersey and Tennessee investigated Robert Nelms and his wife, Deborah Johnson-Nelms for stealing up to \$200 million from cemetery trust funds. Nelms and his wife are currently charged with 9 felony counts of theft, fraud and conspiracy by Indiana authorities who alleged that they embezzled more than \$20 million from trust funds in Indiana cemeteries.
- <u>Clayton Smart, Michigan Cemetery Embezzlement</u>. In April, 2007, Michigan authorities charge Clayton Smart with 39 felony counts in connection with the alleged embezzlement of up to \$70 million in cemetery trust funds affecting 28 cemeteries throughout Michigan.
- <u>Bayview Crematory, Seabrook, New Hampshire</u>. In 2005, authorities closed down a New Hampshire crematory where numerous bodies were misidentified, cremated with other bodies, and improperly disposed of.

- <u>Tri-State Crematory, Noble, Georgia</u>. In 2002, over 300 bodies were discovered at the Tri-State Crematory in Noble, Georgia. The bodies had not been cremated, but instead were dumped throughout the wooded property of the crematory.
- Menorah Gardens, West Palm Beach, Florida. The Menorah Gardens Cemetery chain is
 accused of desecrating vaults, removing bodies from cemeteries in Florida, and dumping
 their remains in wooded areas. The scandal results in a \$60 million settlement against the
 owners of Menorah Gardens.

The partial listing above covers only those notorious cemetery and crematory scandals that have grabbed nationwide headlines in the past ten years. Numerous other scandals on a smaller scale have occurred without nationwide publicity. Yet, the FTC continues to ignore the need to protect consumers who purchase death care goods and services from these largely unregulated sellers.

The standard response that NFDA, AARP, and other consumer interest groups receive when citing these scandals is that the FTC Funeral Rule would not have prevented any of these atrocities from happening. While it is true that the Funeral Rule does not outlaw grave desecration, mishandling of bodies, or wholesale looting of cemetery trust funds, the argument overlooks the umbrella impact of government regulation, accountability and enforcement.

When the FTC decided to regulate the nation's funeral homes, but not cemeteries, NFDA properly pointed out to the FTC that most states already license, inspect and regulate funeral homes on a regular basis. The same was not true and is not true with cemeteries. With the Funeral Rule, the FTC was applying a level of federal oversight over a profession already heavily regulated by state authorities. NFDA argued that it was illogical to apply another level of regulation on the only segment of the death care industry that was already regulated, while allowing cemeteries and crematories to avoid government accountability.

Any time the government extends regulation over sellers in an industry or profession, it has the effect of curtailing the opportunity for abuse. If a seller is not licensed, not inspected, and not regulated by federal, state or local governments, it operates in a free-for-all world where there is no accountability for any transgression. Operators who may toe the line when subject to some level of government oversight will be tempted to commit unscrupulous acts if they see little or no risk of detection. The mere fact that a government agency has oversight over certain practices, such as unfair and deceptive pricing schemes, serves as a deterrent to other abusive practices.

NFDA, AARP and other organizations have documented the harm that consumers have experienced from unlawful tying arrangements imposed by cemeteries and unwanted purchases of cemetery goods and services. The FTC has refused to even investigate these complaints by arguing (without any support or evidence) that the practices are not pervasive throughout the industry. As a result, cemetery and crematory consumers continue to suffer from these reoccurring scandals.

On behalf of NFDA and the families served by our members, NFDA once again petitions the FTC to expand the Funeral Rule to cover all sellers of death care merchandise and services.

Sincerely Yours,

Christine Pepper

NFDA Chief Executive Officer