

## **AFSRB GUIDELINES FOR FUNERAL SERVICE CONTRACTS**

**BACKGROUND:** The funeral services industry in Alberta is governed by the provisions of the *Funeral Services Act* of Alberta ("FSA") and its regulations, particularly Alberta Regulation 226/1998 ("General Regulation"). A funeral services contract ( s. (1)(a) FSA), as more specifically described in s. 8 of the General Regulation, is required for all at-need funeral services, all trust-funded pre-need funeral services, and all insurance funded pre-need funeral services where the funeral service business is listed as the beneficiary. The form of the funeral service contract required differs depending on the timing of the contract (at-need or pre-need) and the nature of the payment ( monies trust-funded or insurance-funded).

The purpose of these guidelines is (1) to identify those provisions which must be in a funeral services contract (ie. required by the legislation); (2) to identify those provisions which should not be included in a pre-need funeral services contract, since all goods and services listed on a funeral services contract must be guaranteed; and (3) to recommend additional provisions which may be included in a funeral services contract.

### **(1) PROVISIONS REQUIRED BY THE LEGISLATION (FSA, General Regulation)**

- The corporate name must appear on letterhead, advertising, **contracts** and price lists ( *s. 7 General Regulation*);
  
- A funeral services contract must be in writing (*s. 8(1) (a) General Regulation*), and must be signed by the purchaser and by the funeral director or by a pre-need funeral salesperson, if applicable, of the funeral services business (*s. 8(1)(b) General Regulation*);
  
- A copy of the signed funeral services contract must be provided by the funeral services business to the purchaser immediately after the contract is signed ( *s.8.1 General Regulation*);
  
- A funeral services contract must contain a detailed listing of the goods and services to be provided by the funeral services business and the cost to be charged to the purchaser for each of those goods and services (*s. 8(1)(c) General Regulation*), including, without limitation, where applicable:
  - (i) the professional service charge;
  - (ii) the facility charges;
  - (iii) the transportation costs;
  - (iv) the cost of the casket;
  - (v) the cost of the outer receptacle;
  - (vi) the cost of cremation;

- (vii) the cost of the cremation container;
- (viii) the cost of the urn;
- (ix) the amount or amounts, if any, set aside for taxes;
- (x) the itemized cost of other (*guaranteed*) disbursements not included in subclauses (i) to (ix);
- (xi) the total cost of all items referred to in subclauses (i) to (x).

**NOTE:** All goods and services listed in a funeral services contract must be guaranteed by the funeral services business. The word "guaranteed" has been added to (x) above to clarify that only those disbursements IF ANY which are guaranteed by the funeral services business should be included in the contract. This guarantee is of particular concern in relation to pre-need funeral services contracts.

- A list of the current locations where embalming and cremation services are to be performed must be included in the funeral services contract ( *s.8(1)(c.1) General Regulation*) as well as a statement that the final location of these services may be subject to change and, if changed, a list of the then current locations will be provided at the time these services are required;
- A statement, to be initialled by the purchaser, that cremated remains not claimed within 5 years after the date of cremation will be disposed of in accordance with *s. 36.3 of the General Regulation* must be included in the funeral services contract (*s.8(1)(e) General Regulation*);
- A disclosure in writing must be made to the purchaser at the time the funeral services contract is entered into as to whether or not refrigeration is available at the location where the funeral services will be provided ( *s.8(2) General Regulation*) and this disclosure can be included in the funeral services contract;
- A funeral services business shall not embalm a dead human body without express authorization, or cremate a dead human body without express authorization in writing ( *s. 13.1 General Regulation*). These authorizations can be included in a funeral services contract entered into with a person who has authority to control the disposition of the dead human body;
- A **trust-funded pre-need funeral services contract** may be cancelled as stated in *s.5 FSA*. A trust-funded pre-need funeral services contract must contain a statement of cancellation rights ( *s. 9 General Regulation*) in the form set out in *Schedule 1 of the General Regulation*, using the size and boldness of type specified in *s. 9*. If the statement of the cancellation rights is not printed on the front of the trust-funded pre-need funeral services contract, there shall be a notice printed on the front of the contract, in not less than 12-point bold type, indicating where in the contract the statement of cancellation rights is printed. (*s.9 (a) General Regulation*)

For ease of reference, *Schedule 1 of the General Regulation* is set forth below

## SCHEDULE 1

The following shall appear in the statement of cancellation rights in each pre-need funeral services contract:

### Purchaser's Right to Cancel

1. You may cancel this contract at any time for any reason. You may cancel without charge or penalty at any time during the period from the day you enter into the contract until 30 days after you receive a copy of the contract. You have additional rights, including the right to cancel, if the funeral services business wants to assign this contract to another funeral services business and you do not agree.

*(Note to funeral services business: insert the version of paragraph 2 that corresponds to your election of when to charge the administration fee.)*

2. After the penalty-free 30-day cancellation period is over, the seller will charge an administration fee of \_\_\_\_% of the cost of the contract before your payment is placed in trust. This administration fee is non-refundable if you cancel; or

After the penalty-free 30-day cancellation period is over, the seller will place all of your payment in trust but if you cancel, the seller will charge a non-refundable administration fee of \_\_\_\_% of the total amount in your pre-need funeral plan.

3. If you cancel this contract, the seller has 15 days to refund any money you are owed. To cancel, you shall give a notice of cancellation to the seller at the address in this contract. You should give notice of cancellation by a method that will allow you to prove that you gave notice, such as registered mail, fax, courier or by personal delivery.
4. Money for your pre-need funeral plan will be placed in a trust account with (name of trustee, branch and address). You may request a statement regarding your plan from this trustee at any time.

## **(2) PROVISIONS NOT TO BE INCLUDED**

The costs of all goods and services listed in a funeral services contract must be guaranteed by the funeral services business. In an 'at-need' funeral services contract, such costs are known or available and the risk to the funeral services business is minimal. However, in a 'pre-need' funeral services contract, the future price of many costs is unknown and the risk to the funeral services business is increased. Disbursements referred to in s. 8(1)(c)(x) of the General Regulation should not be included in the contract unless they can be guaranteed by the funeral services business.

Funeral services contracts should not include any goods and services which are not being purchased. If a standard form of contract is used which includes all possible goods and services, then those goods and services which are not being purchased should be clearly identified, i.e. with the words " Not Applicable".

For the purpose of clarity, a funeral services contract may include a statement such as the following, with the list adjusted, if necessary, by each funeral services business.

"Any items or disbursements not specifically set forth in this funeral services contract are not provided by the funeral services business and have not been purchased by the purchaser. Examples of some of the items or disbursements which are not purchased in this contract are set forth below, including, without limitation:

- Cemetery charges
- Flowers
- Memorial Dinner
- Newspaper notices/Obituaries
- Clergy, Church honorarium
- Monuments and Inscriptions."

## **(3) ADDITIONAL PROVISIONS WHICH MAY BE INCLUDED**

References in the funeral services contract to the professional service charge, the facility charges and the transportation costs ( *s.8(1)(c)(i-iii) General Regulation*) can be vague and confusing to the purchaser. The legislation contains a definition of 'professional service charge' as "the costs associated with the provision of services by a funeral services business" (*s.1(i) General Regulation*). Since the meaning of these three charges and costs may vary and since greater clarity is required for the purchaser, the Alberta Funeral Services Regulatory Board recommends that each funeral services business include in its funeral services contract its own definition of each of these terms.

By way of example only:

- Professional service charge

Everything included in the professional service charge must be itemized in the wording of a funeral services contract or in a list attached to the contract. A professional service charge might include: a general fee for co-ordination of all details, a proportionate share of general business expenses required to maintain a 24 hour readiness, staff response to the initial request for service, consultation with a licensed funeral professional, administration and secretarial assistance for necessary forms and consents, record keeping and book keeping, service of preparing and embalming a body, the provision of staff at a service or graveside, and time spent placing obituaries or creating website postings.

- Facility charge

Facility charges include costs for using the facilities and equipment of a funeral service business. These might include costs or rental fees for the use of the Chapel area, a viewing room, or a reception room.

- Transportation costs

The transportation costs includes the charge for the transportation of the deceased from place of death to final disposition within the Service Area. (see below). Additional costs may be charged for a funeral coach, pallbearer vehicle, lead vehicle and other vehicles.

**Other Provisions:** The requirements of the legislation do not cover all of the provisions which a funeral services business should or could include in its funeral services contract. Legal advice may be required in order to ensure that a form of funeral services contract meets all contractual, legislative and business-specific requirements.

The following subject matters deal with some common situations and raise some considerations. Each funeral service business can decide whether a provision relating to this subject matter should be included in its own funeral services contract.

- **Effective Date of Guarantee** - may vary eg. if monies are paid by regular payments or if full benefits are not payable under the applicable insurance policy.
- **Administrative Fee** - specify the amount and the time at which the fee is paid (See Schedule 1)

- **Trust-funded contracts** - details of trust arrangements (See Schedule 1), application of funds, eg– If the full amount under a contract has not been paid at the time of the purchaser's death, the funeral services business may apply the funds in trust toward the cost of the funeral goods and services, and the purchaser's legal representative will be responsible for the balance. [ Is the 'cost' in this situation the guaranteed cost ( as of the date of the original contract) or the current cost?]
- **Insurance-funded contracts** - the funeral services business is not responsible for the terms, payments or obligations under the insurance contract ( which is a contract between the purchaser and the insurer). Does termination of the insurance contract also automatically terminate the funeral services contract? Does termination of the insurance contract mean that any cash surrender value payable by the insurance company can be applied to the funeral services contract by the purchaser, with the balance immediately payable? [ Is the cost in this situation the guaranteed cost ( as of the date of the original contract) or the current cost?]
- **Declaration** - that the purchaser has the legal right to enter into the contract and to control the disposition of the deceased
- **Substitution** – if certain funeral goods described in the contract are not available, goods of greater or equal quality and value may be substituted. It may be beneficial to attach a photograph of the chosen casket for future reference.
- **Service Area** – the contract may specify that the funeral services business will provide transportation of the deceased within a \_\_\_\_\_ km radius of its business address / the boundaries of \_\_\_(*insert municipal location*)\_\_\_\_\_. Additional transportation costs may be payable.
- **Default by Purchaser/Termination by Funeral Services Business** - eg. if purchaser fails to make a regular payment, funeral service business may provide notice of default and, if the default is not rectified within the specified period of time, the funeral services business may terminate the contract. What happens to the monies already paid?
- **Beyond control (force majeure clause)** - specifies that a funeral services business has no liability for failing to perform its obligations under a funeral services contract due to circumstances beyond its control ( eg. flooding).
- **Warranties** - the funeral services business transfers to the purchaser the benefit of any manufacturers' warranties relating to funeral goods purchased in the contract. Are any other warranties provided by the funeral services business with respect to the funeral goods and services specified in the contract?
- **Collection, Use and Disclosure of Personal Information** - in addition to the purchaser's usual consent, the funeral services business requires the specific consent of the purchaser to use this personal information to advise the purchaser of other funeral goods and services which may be of interest.