

Plain Talk

From the Funeral Consumers Alliance of Maryland & Environs (FCAME)

Disposing of unneeded cemetery plots can be quite a frustrating experience

by Barbara Blaylock

My family recently found itself in the position of needing to sell some burial plots and I learned so much going through the exercise of trying to sell them that I thought I should share my experience. The following is my first person account, and experiences may vary depending on local circumstances. It is not an exhaustive treatise and I do not pretend to be an expert on this topic.

I grew up in North Carolina. My parents, like many families at the time, bought a plot of six grave sites at a local cemetery there in the early 1960s. My father is buried there and after she dies, my mother will be buried there too. But no one else in the family lives in that town any more or wants to be buried there.

In an attempt to simplify what will be my mother's estate when she dies, I recently embarked on a mission to either sell or donate the four plots the family doesn't need. It turns out that, with the current trend toward cremation, and the tendency for family members to relocate, there are many people looking to do the same thing now. This makes it challenging to sell or even donate them.

I found that the cemetery where the lots are located is not willing to buy them back or offer them to potential buyers at any price. There are some cemeteries that do, so it's worth asking, but most apparently do not. If the cemetery is willing to buy them back, it may be for only what was paid for them. In any case, expect a transfer fee to be imposed by the

cemetery when the plots are sold. In our case, the current fee is \$295. This is because the cemetery has to formalize the transfer and issue a new deed. This cemetery informed me, however, that it would probably waive that fee if the purchaser of our plots also bought goods or services from them at the same time, such as a vault or monument, or opening or closing a grave; or prepaid for any of these goods or services at the time of transfer.

I'd looked at a few online listings for grave sites in the cemetery where our plots are located over the years to educate myself, and found that there are some burial plots that have been listed for years without being sold. While there are a large number of national online sites for reselling cemetery plots, they charge fees. It seemed preferable to deal more directly with potential buyers who would probably want to be able to handle things quickly at a time of need than to involve an online middleman.

I have no information about how useful the online sites are for selling cemetery plots, but it seems to me that if I were in the market for grave sites, particularly at a time of need, I would prefer not to have to burden myself with trying to vet online marketers. And fewer families are purchasing groups of plots ahead of any need than was done in the past, for the same reasons many families are trying to sell their extra plots now.

My next thought was to donate the plots. But I was surprised to find that was not easy to do. I called my mother's church, which belongs to a prominent Protestant denomination. No one there had any experience with accepting such a donation but it was clear that if I donated to this church, the plots would be sold as quickly as possible for whatever cash they could generate.

Since I knew it is not easy to resell them, I reasoned this would likely mean they would be sold very cheaply and therefore the allowable tax deduction would be quite small. I'm not a tax expert but it is my understanding that if property, including a cemetery plot

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You're invited to FCAME's Annual Meeting Nov. 17th

*Topic - Planning now to keep
your funeral costs down*

Join us for the FCAME 2015 Annual Meeting on Tuesday, November 17, from 2 to 3:30 P.M. at Leisure World in Silver Spring, MD. Our meeting will be hosted by Compassion & Choices of Leisure World. Please RSVP to FCAME at 301-564-0006 by November 10 as we have to provide your name to Leisure World security in advance.

Driving directions: From the Capital Beltway I-495, take Exit 31 for MD-97 Georgia Ave. toward Silver Spring/Wheaton. Stay on MD-97 N / Georgia Ave. until you see the large Leisure World globe on your right. Turn right onto Rossmoor Blvd. Give your name to the security guard at the gate, and he/she will direct you to the clubhouse.

The meeting will also include a brief report on our activities during the past year and our plans for the future.

Disposing of unneeded cemetery plots can be frustrating

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(although a cemetery plot is not actually real property – more about that later) is donated to a charity and the charity sells it, the donor can only take a tax deduction for the actual selling price. But if the charity uses it for part of its mission, the fair market resale value, which is not the current retail value but is a reasonable estimate of what it might be resold for under ordinary circumstances, can be taken.

So I undertook looking into another charity that might be able to use the plots as part of its mission. I called the local nonprofit hospice, thinking it might use them to give to families who needed a burial plot but could not afford to buy one. But I was surprised to find that the hospice was already awash in more than 250 cemetery lots that had been donated to it, and had found that it could not give them away.

This is because families who could not afford a burial plot could also not afford the opening and closing fees and the other costs associated with in-ground burial. So the hospice was actively trying to find a way to dispose of the plots it already had, and felt burdened by the need to keep track of them in the meantime.

I called the largest nonprofit hospice in Montgomery County, MD, in researching this article and found that it was not willing to accept cemetery plots in donation either.

It occurred to me that the best way to connect with families at a time of need was to ask funeral establishments if they would be willing to let families who don't already have plots know about the ones we wanted to sell.

I spoke to three establishments, including one owned by SCI, a national chain of funeral establishments and cemeteries which also happens to own the cemetery our plots are in. The funeral establishment owned by SCI was not willing to do this for us, but the other two were. They told me that they routinely keep a folder of such offerings

to show to families who might be interested, and if they are, they simply tell the potential seller and buyer how to get in touch with each other without becoming involved in the transaction directly. This situation does not happen often, they told me, but it occasionally does. So I got a statement from the cemetery listing the exact plots and their location, along with a copy of the deed, and left that information with the two funeral establishments.

I also decided to list the plots on Craigslist since it is a free listing. But I will be very cautious in that venue. We are offering to sell the grave sites for about one third of what the cemetery would charge for plots of the same kind and location.

Even though we cannot hope to sell them for their full “retail” value, the discounted price is significantly more than what they were purchased for in 1960. And since cemetery plots are not considered actual real estate – when you purchase a cemetery plot, you are not actually buying the land, only the right to be buried there – there is no taxable capital gain incurred on the sale. So selling them at a heavily discounted price is still worthwhile if they have been held for many years.

I also found that the local Greek Orthodox church, many of whose members have bought gravesites together very close to our plots, was willing to post a notice to its members about our plots and to accept them in donation in case we are not able to sell them.

I was told that this church does at times make available a plot to a needy family and when necessary, help to defray the other costs involved in a simple burial for one of its own flock. So this is our back-up option if we are not able to sell them, but at this time we plan to be patient and see what happens in our attempt to sell them.

One piece of advice I would give to anyone thinking of buying cemetery plots on the resale market is to make sure you are dealing with an honest person with clear title to the plots. There should be a formal transfer with issuance of a new deed, which will involve the cemetery itself even though the cemetery is not the buyer or seller and even if it does not act as an agent or broker itself. No money should change hands until this is all arranged through the cemetery. That is what the transfer fee is for.

“Pre-need” contracts to pay funeral expenses sometimes bring problems

by Barbara Blaylock

I had to become educated about pre-need contracts when I took over the affairs of my 90-year old mother after she developed dementia. She had taken out a policy years ago in North Carolina, where she lives, in an effort to make things as easy as possible for her family. But over the years, the funeral establishment had changed hands and we no longer wished to do business with it.

I realized that over the long run, I might end up needing to move her closer to where I live in another state in order to manage her care. In addition, funeral prices had gone down since she established the life insurance policy that funded her pre-need contract, and the amount was more than was really needed.

We discovered, for example, that because of online competition in casket sales, what she had set aside for that was far more than similar caskets cost now. And with so many of her friends and family gone before her, we knew we'd want something simpler than what would have been appropriate years ago. The contract stated that any funds in excess of what was actually needed

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Pre-need contracts for funeral expenses can be a problem

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would all belong to the funeral home, which was named as the beneficiary of the life insurance policy that had been taken out to fund it. There were some things the contract did not cover, such as opening and closing the grave, which would be costly but have to be paid out of pocket even though the pre-need funds were in excess of what was required for the actual funeral.

I found out that the company that issued the life insurance policy actually recommends that the funeral home not be named as the beneficiary of the account. I found out I could transfer the pre-need contract to another funeral home or revoke it entirely according to North Carolina law.

I chose to keep things simple and revoke the actual pre-need contract so we could choose the funeral establishment that would best meet our needs when the time comes. And by making my mother's trust the beneficiary of the insurance policy, we took back control of how the proceeds will be spent, enabling us to use part of it to pay for the opening and closing costs at the cemetery.

We did not terminate and cash out the insurance policy because to do so would have generated tax consequences that were avoided by retaining it and merely changing the beneficiary. This experience prompted me to write this article to share what I'd learned and review some of the laws relating to pre-need contracts in our area – Maryland, the District of Columbia, and Delaware.

The FCAME does not recommend pre-need contracts for funeral services in general, unless it is necessary to preserve funds for such services in the course of spending down for public assistance, or unless the death is imminent. In addition to the reasons cited above, the money invested in pre-need contracts has in some cases been embezzled.

Unfortunately, in Maryland alone, such losses in recent years have totaled several hundreds of thousands of dollars, prompting more regulatory control. Finally, the funeral establishment may

close and the assets in pre-need instruments, particularly those taken out prior to more recent regulations, may be lost.

Every state has its own laws about pre-need contracts, and some protect consumers more than others. In Maryland, for example, all pre-need contracts can be revoked unless they are designated irrevocable (for the purpose of preserving the funds if public assistance is necessary).

But you need to read the fine print to find out whether you'll get all your money back if you cancel the contract and under which circumstances. By law, all pre-need contracts can be transferred from one funeral establishment to another. There are several ways a pre-need funeral contract can be funded.

One is to take out a life insurance policy for the amount needed. In this case, there may be a period of time that must pass before the full benefit is available. There often is a commission paid to the agent who sold the policy, which may be the funeral director in some states. Some states allow the funeral home to be the beneficiary of the policy once the person covered dies, including the District of Columbia.

In some states, including Maryland, this is prohibited, although the funeral home may be an assignee of the benefit. This designation is revocable in Maryland unless the policy was taken out for the purpose of guaranteeing funds for funeral services for someone who is preparing to qualify for Medicaid. In some states, the funeral home may be considered the owner of the policy and cash it in at any time, but this is

not the case in Maryland. Delaware law is similar to Maryland's in many respects. In Maryland, if there are funds in the life insurance policy in excess of what is spent on the funeral, those funds go to the beneficiary of the policy. This may not be what happens in other states.

Another way a prepaid funeral may be funded is to set up a trust. In that case, the interest that accrues on the funds belongs to the purchaser and is returned to the purchaser if the trust is revoked prior to the death of the purchaser. After the death, the interest goes to the funeral home as part of the funding for services. As the interest accrues, because it still technically belongs to the purchaser, it is taxed as income to the purchaser even though it will go to the funeral home at the time of death.

At the time of death, any funds in the trust in excess of what is needed for the funeral goes to the funeral establishment. According to current law in Maryland, the money in such a trust must be invested in an interest bearing account or life insurance policy and may not be invested in risky assets. FCAME testified against recent proposed legislation that would have expanded the type of investments where money in a pre-need trust can be invested in order to better protect those assets.

FCAME also is working to get legislation passed in Maryland that would require funeral establishments in the state to register pre-need contracts with the Maryland State Board of Morticians and Funeral Directors to increase the likelihood pre-need contract beneficiaries would get back all the funds they prepaid.

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Plain Talk is the newsletter of the Funeral Consumers Alliance of Maryland & Environs, the volunteer-run regional chapter of the national non-profit consumer education and advocacy organization, the Funeral Consumers Alliance (FCA). FCAME serves residents in Maryland, DC and Delaware.

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To join or remain a member of FCAME, we encourage a donation of \$25 or more at least every other year.

What you get for your membership:

- Information and advice that enable you to make more informed choices when planning funerals, burials, cremation, memorial services and other options for after-death care.
- Periodic newsletters with current information and advice that supplement what we provide on our website, www.mdfunerals.org.
- Results of periodic price surveys of the funeral industry in our area.
- Advocacy in regulation & legislation.

When did I last donate?

Mailing labels now show a date that indicates when your membership will expire. We request a donation from you on or before that date, or a note indicating you want to remain a member, or we will stop mailing you our newsletter and will feel we have lost a friend and valued supporter.

Funeral & cremation prices vary widely

FCAME's latest mortuary price survey revealed some funeral homes charge five times as much for virtually the same services. Data obtained from 380 funeral homes in Maryland, DC and Delaware in late 2014 and 2015 showed their prices for two of the least expensive options - direct cremation and immediate burial. Whether or not either of those options is selected by

the consumer, the prices listed provide a good indication of which establishments are more expensive than others. The survey results demonstrate the importance of comparing prices to avoid overpaying for funerals. Survey results were mailed to FCAME members' homes in July and also are available on the FCAME website www.mdfunerals.org

Pre-need contracts can be a problem

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If you or a family member has a pre-need contract, it's good idea to review it and make sure it still meets your needs and those of your family, that the funds are safe and accounted for, and that you understand and still approve of the terms, including which if any items are guaranteed to be paid for in full at the time of need, and what is not covered. You may make changes to a pre-need contract or cancel it in Maryland, DC, and Delaware, unless the policy is irrevocable.

For more information about pre-need contracts in Maryland, see Maryland state regulations (COMAR) Title 10 Subtitle 29, chapter 06. See also the online course "How Much Do You Know About Maryland's Pre-Need Statute?" which is written for funeral directors but contains much useful and easy to understand information. For more information about pre-need contracts in the District of Columbia, see DC Municipal Regulations Title 17, Chapter 31, rule 3117. For more information about pre-need contracts in Delaware, see Delaware state code title 5, chapter 34.