



# Before Prepaying Your Funeral, Know Your Rights



State of New York  
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## Want to plan your funeral now? Want to be sure that your family doesn't have to pay for your funeral?

You can preplan your own funeral and pay for it in advance. But, before doing so, you should know about New York State's "Pre-Need Funeral Consumer Protection Act." This brochure explains your rights under the law, and the decisions you need to make when preplanning or prepaying your own funeral, or that of a friend or relative.

## What is the difference between preplanning and prepaying?

You can preplan your funeral **WITHOUT** paying now. But, be sure to compare several funeral homes before deciding. It's important to choose a funeral home that has a good reputation as well as competitive prices. Once you've selected a funeral home, you can discuss your wishes with the funeral director. When your plan is complete, the funeral director will keep it on file until it is needed. Your estate will then have to pay for the services at the rates being charged when your funeral is held.

In addition to preplanning, many people choose to prepay their funeral expenses. Prepaying for a funeral allows you to pay for your funeral ahead of time.



There are two ways to prepay. You can enter into an agreement with a funeral home, and the money will be held in the name of the funeral home as trustee for you. Or, you can deposit the money in a bank passbook account for the benefit of the funeral home. Either way, you agree to pay a specified amount of money, in one lump sum or in installments.

## Are there advantages to preplanning funeral arrangements?

Yes. Preplanning can give you the opportunity to select a funeral service which will meet your needs and wishes. It can reduce the concerns of your family or friends who would otherwise have to guess what you would have wanted for your funeral. A local funeral director can provide professional advice on this important matter.

## Are there advantages to prepaying funeral arrangements?

Yes. You can have the peace of mind that comes with knowing that the money needed for your funeral has been set aside. If the funeral director has guaranteed the funeral, your survivors will not have to worry about how to pay the bill. When you prepay, the funeral director will provide a Pre-Need Agreement which addresses many important matters, such as: how the final

expenses will be determined; if additional funds will be needed when death occurs; what will happen if the merchandise selected is no longer available; and, what will happen if any money remains after the final funeral bill is paid.

## Are there drawbacks to prepaying?

Yes. As with any financial transaction, there are potential drawbacks. While the “Pre-Need Funeral Consumer Protection Act” gives New Yorkers some of the strongest protections in the country, it does not provide absolute protection. There are some things you must study carefully before entering into a prepaid funeral arrangement:

- \* Make sure you always have a pre-need agreement for services whenever you prepay a funeral, whether it is directly with a funeral home or on your own with the funeral home as a beneficiary.

- \* Let someone you trust know that you have prepaid your funeral arrangements and the name of the funeral home. Otherwise, they may select a different funeral home and pay again.

- \* Always deal with a funeral home with which you are familiar and comfortable, or that has been recommended by someone that you trust.

- \* Know how and where your money is being deposited.

- \* If you pay by cash, get a receipt and keep it in a safe place.



## How do I prepay my funeral?

Contact several funeral homes to compare prices. It's also important to choose a home with a good reputation within the community. Once you've made your choice, meet with the funeral director. Prior to making any selections, the law requires the funeral director to give you:

1. A General Price List with the current prices for any merchandise, services and facilities offered by the funeral home.
2. A Pre-Need Itemization Statement that lists the items of merchandise, services and facilities you have chosen, and the price of each. You can leave the details of some items open until you have made a final decision, or until you have chosen someone to make these decisions for you.
3. A Pre-Need Agreement that outlines all the terms, as well as your rights as the purchaser. It must also state how the principle and interest will be applied to the cost of your funeral services and merchandise at the time they are provided. Funeral homes may offer a "guaranteed" funeral or a "non-guaranteed" funeral in the agreement.

## What is a "guaranteed" funeral?

With a guaranteed funeral, the funeral home guarantees to provide the services, merchandise and facilities you selected for the amount of money in your account. The guaranteed funeral is not affected by future price increases



since the funeral home accepts the principle and interest as payment-in-full. Your estate will not have to pay anything extra for those items that are guaranteed. A guaranteed funeral will not include certain items, such as cemetery costs, clergy fees, death certificate fees, etc. However, the funeral home cannot charge more than its ACTUAL cost for these items.

## What is a "non-guaranteed" funeral?

With a non-guaranteed funeral, the funeral home provides the items and services you selected, at the rates being charged at the time of your funeral. The principle and interest of your account will be applied to the home's total charges. If this amount does not cover the expenses, your estate will be charged the difference. If the amount in your pre-need account is greater than your funeral costs, the excess money will be refunded.

## Is it possible to prepay cemetery, crematory, clergy and death certificate costs?

Yes. But many funeral homes prefer not to include these expenses because they have no control over them. If you want to prepay these expenses, they will probably be non-guaranteed. As an alternative, you can deal separately with the cemetery or crematory, or monument dealer.



## What happens to the money I prepay to a funeral home?

The funeral director must deposit your money within 10 days in an interest-bearing account or a government-backed investment, such as U.S. Treasury bills.

## How will I know my money has been deposited?

The funeral director must notify you where your money has been deposited within 30 days of the deposit. Also, the location and amount of interest earned will appear on the IRS form 1099-INT (or equivalent) sent to you in January of each year. Check the account information carefully each year. Also, upon your written request, the funeral home must advise you of the total value of your account, including principle and interest.

## Am I responsible for paying income taxes on the interest earned by this account?

Yes. It is still your money.

## Can I get my money back if I change my mind?

Yes. You can withdraw the principle and the accrued interest at any time.



The funeral director cannot charge any processing or administrative fees, or penalties for early withdrawal.

## Can my next of kin change my pre-planned or pre-paid funeral arrangement?

Yes. Changes in the funeral arrangements you have chosen can be made by your next-of-kin when death occurs. If you do not want the arrangements to be changed, you should speak with an attorney. An attorney can tell you what additional legal documents, beyond the pre-need agreement, are needed to prevent any changes.

## What happens if the home sells its business to another funeral home?

Both funeral homes must provide written notification to you WITHIN 30 DAYS of the sale. At any time, you can: change your arrangements; request your money back with interest; or, give written authorization to transfer the funds to another funeral home.

## What happens if the home goes out of business?

The funeral home must return your money, with interest, or you can give



written authorization to transfer the funds to another funeral home. The funeral home must notify the state Health Department of the disposition of all of the money being held in trust for Pre-Need Agreements. If the funeral firm fails to notify the state Health Department, and the owner relocates, it may be difficult to get your money back.

To confirm that the state Health Department has been notified that a funeral home has gone out of business, call the Bureau of Funeral Directing at (518) 453-1989.

## What can I do if I am treated unfairly?

If you think that you have been a victim of unfair or illegal practices, you can file a written complaint by writing: Bureau of Funeral Directing, New York State Department of Health, Empire State Plaza, Corning Tower, Albany, New York 12237-0681. In addition, the state Attorney General can seek a court order for restitution and issue fines.

*For more information on preplanning or prepaying, see your local funeral director.*

