

October 3, 2002

Ted Cruz
Director, Office of Policy Planning
Federal Trade Commission
Washington, D.C. 20580

RE: Summary Statement – Panel On Caskets and Funeral Goods Internet Sales;
FTC headquarters; October 9, 2002

Dear Mr. Cruz:

I am pleased to appear as a panelist to discuss anti-competitive efforts that restrict Internet sales of caskets and other funeral goods and services. I will be representing my own views as Director of the Maryland Office of Cemetery Oversight, although I serve as Chair of the North American Cemetery Regulators Association's Consumer Affairs and Education Committee. I intend to present the following perspectives during the panel proceeding.

The country's state cemetery regulators generally have jurisdiction over the sale of these items when sold by a cemetery. In addition, some states also regulate these sales when made by land-based retailers other than cemeteries and funeral homes. When Internet vendors are placed in question, the state cemetery regulators generally treat this class as they do their land-based counterparts. For example, New York's cemetery regulator does not regulate third-party casket sales, so it chooses not to regulate the Internet sector either. Iowa, on the other hand, does regulate the pre-need component of third-party casket vendors, and similarly regulates, in identical fashion, the Internet provider of pre-need casket sales. Accordingly, Iowa requires Internet providers of pre-need caskets to be licensed, to comply with pre-need trusting and annual reports or to demonstrate appropriate insurance vehicle financing, and to follow all standards of operational and contractual performance.

My state of Maryland is one of the few states that requires registrations and regulates all land-based "burial goods" providers that do business with Maryland consumers. This includes vendors of caskets, outer burial containers and memorials, whether sited within Maryland or land-based in another state, usually one contiguous to Maryland. These vendors must apply for a Permit for the business and a "Registered Seller" personal license for the owner/manager. All sales personnel must also apply for a "Sales Counselor" registration. Requirements for the granting of the personal registrations are minimal: there are no education, experience or training standards. There is a good moral character questionnaire that must be answered appropriately for past criminal or professional disciplinary history. Requirements for the issuance of the business Permit likewise deal mostly with past bankruptcies or professional disciplinary history, and are rarely unmet. It is more appropriate to describe the Maryland application process for authorized death care businesses and sales individuals as a registration rather than a licensing program. Both

business and individual registrants must comply with the Office's ethics and professional standards regulations and are subject to statutory mediated complaint and disciplinary procedures. Trusting and trust reports or appropriate insurance financing is also required for all pre-need sales.

When the Internet is used, Maryland has required those companies that are land-based in the State to become registered. If the Internet business is not physically situated here, my Office does not make it mandatory for the business to apply and be issued registrations. I have reached this position because Maryland statutes do not specifically address treatment of Internet sales and constitutional questions of interstate commerce implications are unresolved. Further, Congress may have indicated its preferred direction to States when it first enacted and then recently extended the prohibition of State-imposed taxes on Internet sales.

Maryland has, on the other hand, encouraged Internet death care companies to voluntarily apply and become registered with our Office. We already have had some businesses agree with our contention that marketing themselves to consumers in Maryland as Maryland licensed businesses gives them a competitive edge in overcoming consumer concerns about doing business over the Internet. In effect, the vendor can claim to its prospective Maryland customers that, "We are licensed by the State of Maryland and must comply with the highest standards of performance required by law. If you ever need assistance or information about your contractual rights or ever have a dispute or complaint about our service, you may contact the Maryland Office of Cemetery Oversight which has full jurisdiction over this transaction." We feel Internet providers who voluntarily submit to State regulation can utilize these associated marketing benefits to help instill consumer confidence in the transaction and significantly increase sales.

Much of the variation in how States choose to regulate Internet sales is due to the legal and legislative uncertainty surrounding State regulatory options. Any statutory direction or statement of policy from the Federal government, particularly from the Federal Trade Commission, would greatly assist States in defining their proper regulatory role in this growing sales medium.

Sincerely,

Steven V. Sklar
Director,
Maryland Office of Cemetery Oversight