



UNITED STATES OF AMERICA
Federal Trade Commission
WASHINGTON, D.C. 20580

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June 16, 2016

T. Scott Gilligan, Esq.
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Dear Mr. Gilligan:

You have asked for a “clarification” of the applicability of staff opinion 15-1 to situations where there is “no claim that the consumer had inquired about the offering of caskets or containers.” That opinion stated staff’s view that a funeral provider violates the Funeral Rule if its personnel place a consumer in a casket display room to wait to speak to a funeral director without first showing the consumer a Casket Price List (“CPL”).¹

The Funeral Rule requires a funeral provider to show “people who inquire in person about the offerings or prices of caskets or alternative containers” a CPL “upon beginning discussion of, *but in any event before showing caskets.*”² As the Funeral Rule Compliance Guide has stated for years, this means that “[c]onsumers must be able to look at the price list before discussing their options or seeing the actual caskets.”³ This requirement is based on evidence in the rulemaking record that less expensive caskets “often are not shown” when caskets are displayed, and is designed “to ensure that consumers have a bona fide opportunity to purchase low-cost caskets . . . if they so desire.”⁴

Even now, casket display rooms do not always include “all caskets and alternative containers offered which do not require special ordering.”⁵ They may display only a limited selection. To ensure that consumers are aware that low-cost caskets that are not on display

¹ Staff Opinion to T. Scott Gilligan (June 29, 2015) (emphasis added), *available at* https://www.ftc.gov/system/files/documents/advisory_opinions/opinion-15-1/opinion_15-1.pdf.

² 16 C.F.R. § 453.2(b)(2)(i). The same requirements also apply to the Outer Burial Container Price List (“OBCPL”). 16 C.F.R. § 453.2(b)(3)(i).

³ Complying with the Funeral Rule (April 2015) (“Compliance Guide”) at 13. The Compliance Guide makes the same statement about the OBCPL. Compliance Guide at 14.

⁴ Statement of Basis and Purpose, 47 Fed. Reg. 42260, 42290 & n. 317 (Sept. 24, 1982).

⁵ 16 C.F.R. § 453.2(b)(2)(i).

are available, the Rule insists that funeral providers show the CPL to consumers “in any event before showing caskets.”

Allowing providers to escort prospective customers to a casket display room to wait for a funeral director who could respond to an inquiry, without first showing them a CPL, would be to endorse a simple expedient for evading this core Rule requirement. Thus, we cannot accept your argument that funeral providers have no obligation to show consumers a CPL until the consumer “inquire[s] in person” about caskets or their prices.

Your request expresses concern about the impact of opinion 15-1 on certain marketing venues for funeral goods and services, including storefront facilities in strip malls, shopping mall stores, and mall carts and kiosks. In those venues, providers may choose to show selected caskets and vaults, or pictures or models of them, in locations where consumers cannot avoid viewing them immediately upon entering the store or approaching the display. Because the casket displays in these venues are often limited by space constraints to a small number of selected caskets, the rule’s requirement that a CPL be provided to inform consumers about the availability of lower-cost caskets that are not on display assumes increasing importance.

Given the unique circumstances of the venues at issue, and in the interest of enhancing competition and innovation, staff will exercise its enforcement discretion not to take action against providers of funeral goods and services operating out of strip mall storefronts and shopping mall stores, carts, or kiosks, that show caskets or pictures or models of them, if they display and make available copies of their CPL clearly and conspicuously at prominent locations in such venues. The CPL display must be located immediately inside each store entry, or on all sides of a cart or kiosk display, and must include clear and conspicuous signage inviting consumers to take a readily available copy.⁶

Please be advised that the views expressed in this letter are those of the FTC staff. They have not been reviewed, approved, or adopted by the Commission, and they are not binding upon the Commission. However, they do reflect the opinions of those staff members charged with enforcement of the Funeral Rule. Staff Funeral Rule opinions are now routinely posted on the FTC website currently located at: [Advisory Opinions | Federal Trade Commission](#).

Respectfully yours,

/s/

Craig Tregillus
Funeral Rule Coordinator

⁶ Staff also will exercise its enforcement discretion not to take action where vaults or grave liners, or pictures or models of them, are on display in these facilities, if the same requirements are met for posting and providing copies of the OBCPL.