

UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION
WASHINGTON, D.C. 20580



June 22, 2004

T. Scott Gilligan, Esq.
Gilligan Law Offices
3734 Eastern Avenue
Cincinnati, OH 45226

Re: Receipt for Third-Party Caskets

Dear Scott:

This is in response to your letter of June 9, 2004, regarding further clarification of the FTC's position on providing receipts for third-party caskets. As you indicate, the FTC staff's position continues to be that which was first stated in 1988: The Funeral Rule requires that funeral homes sign a receipt acknowledging delivery of third-party caskets. Any other action which would act as a deterrent to a consumer who wishes to purchase goods from another party may violate the Rule's prohibition in Section 453.4(b)(1) against conditioning the furnishing of any funeral goods or services to a person arranging a funeral upon the purchase of any other funeral good or service.


You note that the receipt for the third-party casket that is presented to funeral directors often require that the funeral home acknowledge that the casket has been inspected and that the condition of the casket is acceptable. You have advised funeral homes to sign only the receipt that acknowledges delivery and receipt of the casket, but not to sign any receipt that also includes a representation regarding acceptance of the casket. You indicate that you have provided this advice because the funeral home is not a party to the contract and, therefore, are not in a position to legally accept the merchandise, much less be sure that the merchandise is what the consumer purchased. You include a copy of a Receipt of Third Party Merchandise form which you have suggested that the funeral homes provide to third-party casket companies that are delivering caskets. You ask whether the use of the NFDA receipt form would be acceptable under the Funeral Rule.

The NFDA's Receipt of Third Party Merchandise enclosed with your letter appears to be identical to the one you submitted in 1999 as Appendix B to your comments on the Rule Review. The form states that the funeral director acknowledges receipt of the merchandise, but that the acknowledgment does not constitute acceptance of the merchandise or its condition, which may only be given by the purchaser. The form also provides a space where the funeral home can note any visible defects or conditions that were present at time of delivery.

As you know, Section 453.4(b)(1) prohibits funeral providers from requiring consumers to purchase goods that they do not want. The Commission staff has interpreted that provision to also mean that the funeral provider must not unreasonably burden the consumer's choice to purchase an item from a party other than the funeral home. Among the practices that may violate § 453.4(b)(1) are requiring the consumer to be present when the casket is delivered and refusing to sign for delivery of the casket. It is my opinion that the NFDA Receipt of Third Party Merchandise does not constitute an unreasonable burden on the consumer, as long as it is not used as a justification for requiring the consumer to be present when the merchandise is delivered or for otherwise unreasonably requiring the consumer's physical presence to inspect or accept the merchandise.¹

I hope this information is helpful to you. Please note 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 on the Commission or any individual Commissioner. However, they reflect the opinions of the staff members who are charged with enforcement of the Funeral Rule. If you have any questions, please feel free to contact me at (202) 326-3115 (email cdanielson@ftc.gov).

Sincerely,



Carole I. Danielson
Senior Investigator and
Funeral Rule Coordinator

¹ For example, it may be a violation of § 453.4(b)(1) for funeral providers to refuse to use third-party merchandise in conducting agreed-upon funeral arrangements until the consumer or his/her representative physically inspects and/or accepts such merchandise.