

Protecting your future



THE USEFULNESS OF PRE-BURIAL CONTRACTS

PRESENTED BY

THE GRAHAM NUCKOLLS CONNER LAW FIRM

gnclawfirm.com

The Usefulness of Pre-Need Burial Contracts

by David Silver

What happens to our remains after we die is the very definition of “someone else’s problem.” However, this can be a difficult and emotional issue for the loved ones that we leave behind. There are a lot of choices that someone needs to make: Cremation or burial? Fancy casket or economy model? Should there be an open casket? What clothes should the deceased wear? Should the deceased be buried with any jewelry? Small, private ceremony or publicize and invite everyone? Should the obituary be published in other towns? How much should be paid, and who will pay the bill?

I have witnessed family members fight each other over “what mama would want,” and I have seen families struggle with paying for funerals for their loved ones. I know of other families who have spent so much money on an elaborate funeral that I imagined I could hear the deceased rolling over in his grave at the end of the funeral. For some families, the stress of planning and paying for a funeral rivals the stress of losing the family member. However, if the deceased had the foresight to obtain a Pre-Need Burial Contract, then their family only

has to answer two questions as it relates to the funeral: “What day and what time?”

A Pre-Need Burial Contract is a contract that a person makes with a funeral home to leave instructions about how to deal with his or her remains. You make all the choices and you can leave as many specific instructions as you would like. Even if you don’t pre-pay for the services you request, your family would likely be very grateful for these instructions. There are some legal formalities required to properly create enforceable burial instructions, but any funeral home should be able to accomplish this. However, you should be aware that, while a POA Agent can pay the bill, the POA Agent does not have authority to create legally binding burial instructions.

If you decide to pre-pay for your planned funeral, the money does not go directly into the funeral home’s bank account. If your death is imminent, the funds could be placed in a state-regulated trust account. Otherwise, you actually purchase a specialized (and state-regulated) insurance policy that will pay the proceeds directly to the funeral home after your funeral. You could pay in a lump-sum all at once, or you can schedule payments over time, and there are options that allow the total amount to be paid if you die before all payments are made. If you already have an insurance policy to pay for this, the policy can usually be assigned to the Pre-Need Burial Contract.

If the funeral home goes out of business, or if you move out of state or otherwise

decide to use a different funeral home, the insurance proceeds (including any investment gains) from the Pre-Need Burial Contract will go to whatever funeral home is eventually used. While the original funeral home usually guarantees that the amount received from the pre-need insurance will cover all of the requested services, another funeral home may charge more or less for those same services.

If you or your spouse should ever require nursing care and apply for benefits from Medicaid, Special Assistance, or VA Aid and Attendance, the purchase of an irrevocable Pre-Need Burial Contract is a permitted use of funds during the spenddown period. Additionally, the pre-need insurance policy is not considered a countable asset when determining eligibility for these benefit programs.

A funeral is a bill that is eventually coming for all of us. You can leave this to others to plan and to pay, risking discord, distress and over-spending among your loved ones, or you can contact your chosen funeral home and make these decisions for yourself. It is difficult enough to get over the loss of a loved one, you and your family may both find comfort in knowing that the only funeral-related questions that your family needs to answer at your death are “What day and what time?”

David Silver teaches The Legal Environment of Business in ECU's Department of Finance. Dave is also a Partner with The Graham.Nuckolls.Conner Law Firm in Greenville, specializing in Elder Law.