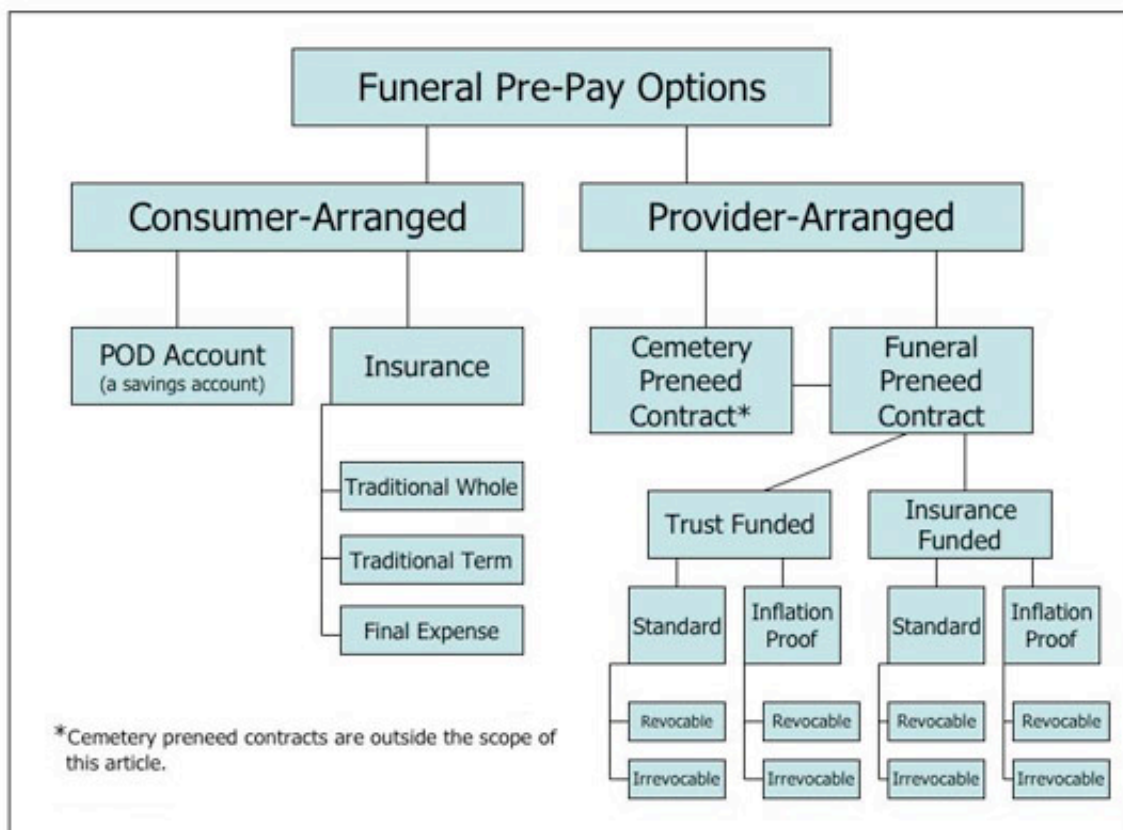


Pre-paying for funerals: The decision is yours

More North Carolinians are preplanning funerals for themselves or loved ones. Planning your funeral ahead of your death can relieve your survivors of the burden of making sometimes difficult decisions about funeral options in the midst of limited time and tender emotions that surround your death. On the other hand, pre-paying for your funeral is a more complicated decision to make, and ultimately, you must make the choice about whether and how to set aside funds to cover your funeral's cost. We can offer some information to clarify your options.

Paying for a funeral: A plethora of choices

Several avenues exist for consumers who want to cover some or all of their funeral expenses before they die. These can include instruments mostly in the consumer's control (e.g., payable-on-death savings accounts, life insurance, and final expense insurance) as well as instruments offered by the funeral provider (preneed funeral contracts and preneed cemetery contracts). Each has its own advantages and disadvantages.



Options controlled by consumers

Payable-on-death (POD) savings accounts, readily available at many banks, allow you to have full control over the assets and any earnings on them (although the earnings tend to be

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meager). They also avoid probate, so that the funds become available to your designated beneficiary as soon as your death certificate is arranged, in plenty of time to pay for funeral expenses. On the other hand, the beneficiary likewise has complete control over the inherited assets and is not obligated to spend them on your funeral expenses.

Life insurance policies, both term and whole life, generally provide payouts that exceed the cost of a funeral. You can change the beneficiary of the policy without penalty. There may be some penalties for early claims, so check the fine print. Again, the beneficiary can use the proceeds as he or she chooses, not necessarily to cover your funeral expenses. Also, the payout from a life insurance policy usually takes more time, so that a claim filed upon the policyholder's death probably will not be processed in time to pay for the funeral expenses although it may be seen as a form of reimbursement. The pros and cons of term life insurance policies versus whole life insurance policies fall beyond the scope of this article, but are important considerations if you choose this path.

Final expense policies have the same advantages and disadvantages of other life insurance policies except that they generally have smaller payouts (and thus require smaller investments), sometimes as little as \$5,000. Even though the name implies that the proceeds will be used to pay funeral expenses, the beneficiary is not obligated to spend them that way.

Options arranged by funeral provide

In the funeral industry, purchases of funeral goods and services before death are commonly referred to as preneed contracts. North Carolina law governs both **preneed funeral contracts**, which you would arrange with a funeral home staff member, and **preneed cemetery contracts**, which you would arrange with a cemetery representative. Preneed cemetery contracts cover cemetery merchandise or services such as mausoleum crypts, niches, memorials and vaults. However, our focus in this document is on the former, preneed funeral contracts, since these are the source of most consumer complaints received by Funeral Consumers Alliance.

A closer look at preneed funeral contracts

Generally, our national organization, Funeral Consumers Alliance, advises funeral consumers to pre-plan their funeral arrangements but usually not to pre-pay for them through preneed funeral contracts because of some common pitfalls such contracts can involve. FCA keeps abreast of funeral industry scandals involving preneed funeral contract trust accounts in which consumers have lost some or all of their invested funds. However, North Carolina does provide funeral consumers with some statutory protections related to preneed funeral contracts that are not always available to residents of other states, so this article takes a pro-and-con approach to the value of preneed funeral contracts, leaving the final judgment to the consumer.

As the flow chart depicts, there are two main types of preneed funeral contracts: insurance-funded and trust-funded plans. Insurance-funded plans cover defined funeral goods and services in exchange for premiums paid in advance. In a trust-funded funeral, the customer

pays into the trust either in installments or in a lump-sum. In either case, the funeral establishment that arranges the preneed contract is called the “preneed licensee.”

In North Carolina, these contracts also may be either revocable or irrevocable, inflation-proof or not. It is very important for the consumer to know these options exist and to understand exactly what they are being offered. Please note the flow chart for a visual representation of these options.

Arguments in favor of arranging preneed funeral contracts:

- Through preneed funeral contracts, you can save your children at least some of the expense of your final arrangements.
- If the contract is inflation-proof and you continue to live for quite some time, you could save money in the long run if inflation in the prices of funeral goods and services outpaces the earnings on the contract funding source.
- You can be assured that the funds will be applied toward funeral arrangements as intended since these types of contracts establish the preneed licensee as the entity to receive the proceeds at the time of death.
- The proceeds from the contract will be available in time to be applied to the funeral, unlike insurance or final expense policies controlled by the consumer in which a beneficiary claim submitted after the death can take more time.
- You can require specific funeral arrangements, which can be useful where relatives disagree as to what kind of funeral the deceased should have. According to North Carolina general statutes, preneed funeral contracts are ranked higher than other written instructions left by the decedent in terms of specifying funeral type, place and method of final disposition. Also, once money changes hands in a contract, the funeral provider no longer has the option not to serve a family where dissension about funeral arrangements exists.
- When you arrange and pay for your own funeral in advance, you might be more apt to make frugal choices than your survivors would make in the emotional turmoil of after-death arrangements.

Arguments against arranging preneed funeral contracts:

- These contracts do not cover third-party costs over which the preneed licensee has no control, such as flowers, obituaries and cemetery costs.
- Independent crematories not owned by a licensed funeral home cannot obtain a preneed funeral establishment license. This means that if you want to arrange a preneed funeral contract for a cremation, you will have to work through a funeral home, usually at higher cost.

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- Your preferences with regard to final arrangements may change, or the specific goods and services you establish may not be available when you die, complicating matters at the time of need.
- Even if you have a revocable contract, the preneed licensee may retain up to 10 percent of a trust-funded contract's assets, if you change your mind. In the case of insurance-funded revocable contracts, the penalty for revoking the contract depends on the insurance policy's terms. While insurance is usually portable, you may get less back than you paid in if you change your mind and cash out. Insurance plans can have all sorts of restrictions. Many will not pay the full benefit — or anything at all — during the first few years you pay premiums.
- The preneed licensee may go bankrupt or go out of business. While the statutes cover various situations in which the preneed licensee may no longer be able or willing to perform the contract's terms, ultimately there may be no successor licensee voluntarily willing to assume the original contract. In that case, the N.C. Board of Funeral Service would assign the contract to a new licensee, but that funeral establishment would have the right to establish a new preneed funeral contract with different terms.
- North Carolina has a recovery fund to protect consumers who have suffered financial loss as a result of a licensee's "malfeasance, misfeasance, default, failure or insolvency," but the process of seeking recovery may be time-consuming and uncertain, and the consumer must pay the costs of any attorneys hired to represent them. In any event, North Carolina statutes establish the recovery fund as a consumer *privilege* rather than a *right*, and the decision rests with the funeral-home-dominated N.C. Board of Funeral Service.

Choosing between revocable and irrevocable preneed funeral contracts

If an individual is spending down assets to qualify for Medicaid, monies spent on *irrevocable* preneed funeral contracts can be set aside and not counted among the individual's assets. If the plan is an insurance-funded revocable contract, you would be forced to cash it in, losing some of its face value, in the process of becoming Medicaid-eligible, and in the case of a trust-funded revocable contract, you would forfeit up to 10 percent of the investment in the same process.

Generally, we advise consumers to select an irrevocable preneed contract only if they are indeed preparing to qualify for Medicaid—and not to choose an irrevocable preneed contract because they think they *might* someday become Medicaid-eligible. If the contract is irrevocable, it can be transferred to another funeral provider only upon court order under a narrow set of circumstances, assuming, of course, that the other funeral provider is willing to accept the contract's terms.

Choosing between standard and inflation-proof funeral contracts

States vary in their definitions of "inflation proof." In North Carolina, the forms used to establish an inflation-proof contract state that the funeral home "will provide all services, facilities, and merchandise listed" in the accompanying statement of goods and services selected "without regard to future price increases." However, by N.C. law, the funeral home is entitled to funds that might remain after the inflation-proof contract is performed,

including any interest or other earnings gained, unless the purchaser and the preneed licensee agree otherwise in writing at the time the contract is drawn. Conversely, in standard contracts, in the rare event that the actual cost is less than the principal plus earnings, the difference would be refunded to the consumer.

If the preneed funeral contract is inflation-proof, be sure the attached statement of funeral goods and services selected “specifies the weight and thickness of metal or wood used in the casket and obtain photos of any merchandise selected as well as any price displays or descriptors located on the merchandise,” advises Paul Harris, executive director of the North Carolina Board of Funeral Service. In the event that a casket or other item selected is no longer manufactured, such detailed specifications will aid in making sure that the consumer receives substitute items of comparable or greater value and would be used when auditing performed contracts. If the substitutions at time of need are made at the family’s option (assuming the decedent has allowed substitutions), then the value of the original item together with any inflationary increase in value are subtracted from the at-need price of the substituted item.

Some general questions to ask about a preneed funeral contract¹:

- If I am paying over time, what will be my total cost when I’ve paid in full?
- What if I can’t keep up the payments?
- How much will be returned to me if I revoke the contract?
- What happens if I move to another town or state?
- Can I transfer my contract to another funeral home?
- How can I be sure the money will be there when I die?
- What will happen if your firm goes out of business before I die?
- Do I need more time to think this over on my own?

Tips to follow if you do arrange a preneed funeral contract

- If you do arrange a preneed funeral contract, be sure to place all documents related to it in a location accessible and known to your survivors. Tell them about the basic terms of the arrangement and the funeral home you have chosen. Remind them from time to time. If your survivors aren’t told about the contract or forget about it, all the monies you have invested will be for naught.

- At the time of this writing, a preneed funeral contract in North Carolina cannot be used to identify the agent authorized to make remaining funeral decisions at the time of death. [The N.C. Board of Funeral Service indicates that revisions to the contract forms soon will address this issue.] North Carolina statutes create a hierarchy of parties to be identified to serve this role in the absence of any valid written instructions left by the decedent. If you want to specify an authorizing agent other than the person the statutes would point to, you may want to use a written, witnessed and notarized statement to achieve this purpose.

¹ Thanks to Lisa Carlson of Funeral Ethics Organization for this list of questions.

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For more information about funeral preneed contracts or to file a complaint, contact:

North Carolina Board of Funeral Service

1033 Wade Avenue, Suite 108

Raleigh, North Carolina 27605

919-733-9380 or

NC toll free 800-862-0636

<http://www.ncbfs.org/>

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