

Mortuary Trusts (Prepaid Funerals)



A **Mortuary Trust**, or pre-paid funeral contract (also called a “Pre-Need Funeral Arrangement”) is an agreement between a purchaser (payor) and a funeral home that acts as a trustee (keeping the funds safe for their final use). The purchaser may or may not be the person who receives the funeral goods and services at death (beneficiary).

A pre-paid funeral agreement can save you money if certain prices are guaranteed. Some prices may not be guaranteed, so read the trust agreement carefully. Ask questions if you are unsure about any part of the agreement.

In 1999, Maine revised its laws about pre-arranged funerals. The most recent version is found at Title 32 of the Maine Revised Statutes Annotated, Sec. 1401 and following.

This information is not legal advice. We offer it as a public service. We urge you to contact one of our Legal Services for the Elderly Helpline attorneys if you have any questions regarding Mortuary Trusts.

Some important provisions in the law are:

- The funeral home must deposit monies received in a federally insured account or in a trust account within 10 days of receipt;
- The financial institution must provide a copy of the deposit confirmation to the purchaser within 30 days after the deposit by the funeral home;
- If the trust agreement is not revocable, it must have a provision that allows transfer to another funeral home (trustee);
- The agreement must state what happens to any money left after the funeral goods and services have been provided. Usually the funeral home gets to keep any excess;

- Any fees other than the cost of the goods and services must be reasonable and conform to the fee schedule set up by Maine’s Funeral Board.

The Maine Funeral Board has drafted a standard form to be used for any Mortuary Trust (pre-paid funeral) purchased after 1999. If you are buying pre-paid funeral goods and services be sure that the agreement has the words “Maine Mortuary Trust Agreement” at the top. READ the entire agreement before you sign it. Better yet, before you sign, have the funeral home fill in the guaranteed prices. Then, take the agreement home to look it over.

If you already have a pre-paid funeral contract, some of the newer provisions of Maine law may not apply.

Some advantages of a Mortuary Trust are:

- Many prices are guaranteed;
- Making decisions ahead of time with a clear head may avoid excessive expenses that come with high-pressure sales talk;
- A Mortuary Trust is an exempt asset under MaineCare up to a certain dollar limit (currently \$12,000). This means the asset doesn’t count in determining financial eligibility.



Some disadvantages of a Mortuary Trust are:

- They are often not revocable (you can’t get your money back). However, you can transfer the trust agreement to another funeral home;
- You may not be able to transfer the trust to another state. If the beneficiary moves and is living out of state at death, additional expense may be added;
- If you decide to change from a standard funeral with burial to cremation, you will probably lose money by being “locked into” the earlier agreement.

For more information, call the Legal Services for the Elderly Helpline for free legal advice.

LSE Helpline
1-800-750-5353

