
Memorial Society

A Funeral Consumers Alliance

Newsletter

October 2001

Lisa Carlson to Speak at Annual Meeting

Annual Meeting, all are welcome

Saturday, November 3, 2001, 1:30 p.m.
Mount Auburn Cemetery,
580 Mount Auburn St.
Cambridge, MA

Directions by car: From the west take Rte. 2, which becomes Fresh Pond Parkway, to Brattle St. Turn right. The cemetery is on your left just after Brattle St. joins Mt. Auburn St.

From the Mass. Pike or downtown Boston: Take Storrow Drive west. After crossing the Eliot Bridge to Cambridge, bear right, then left onto Fresh Pond Parkway. Then bear left onto Mt. Auburn St.

Public Transportation: The 71 bus from Harvard Square runs about every 12 minutes and the ride is about 10 minutes. It has a stop opposite the cemetery

Our speaker this year is Lisa Carlson. She is the Executive Director of the Funeral Consumers Alliance (FCA), a nonprofit national organization that monitors funeral practices. A dynamic speaker with a long track record as a strong consumer advocate, Carlson testified at the FTC hearings on the Funeral Rule in Washington, D.C. in 1988. Her group is leading the effort to improve consumer protection in the funeral industry, with new hearings that were held in 1999. Billing herself as an "outrageous older woman," she uses humor to bring difficult subjects into easy discussion. She has been interviewed extensively on radio and TV, including appearances on the *Donahue Show*, *Good Morning America*, the *Today Show* and National Public Radio. One funeral director called her "more dangerous than Jessica Mitford."

Carlson is the author of *Caring for the Dead: Your Final Act of Love* and *I Died Laughing: Funeral Education with a Light Touch* -- the title of her talk to us.

Lisa to speak at Springfield on
Oct. 14

Those in the central part of the state might consider attending the annual meeting of the Memorial Society of Western Mass. on Sunday, Oct. 14, 2001 at 3 P.M. It will be at the Unitarian-Universalist Society, 245 Porter Lake Dr., Springfield.(between Dickenson St. in Springfield and Converse St. in Longmeadow).

For Long-time Members: A Cautionary Tale

For many years after The Memorial Society was founded in 1962, members were asked to fill out a form indicating their final instructions, including the type of disposition and the name of a funeral home. They sent a copy to us, and we kept it on file so that when death occurred, if the other copies could not be found, the family could call us and ask us what the member wanted done. Almost no one asked.

Presently those forms began to take up an awful lot of space. People died without anyone calling us or they moved away, but the forms multiplied forever. When money got tight in the 1980s and the society's office moved to George Richardson's house (George being the then-president), the boxes of forms moved too and began to seriously displace the family treasures in George's basement.

Clearly something had to be done. The directors decided to stop storing forms and ask members to take on the responsibility of keeping their forms in an accessible place, telling their survivors where to find them, and making sure the chosen funeral home had a copy. But not all the older members read their newsletter that year.

In July of this year a long-time member whom we shall call Mrs. Simons died in a nursing home. Mrs. Simons had left copies of a Memorial Society form filled

out in 1974 with her sister, who lives in Florida, and the nursing home. Her instructions said that she wanted to donate her body to Harvard Medical School and that her designated undertaker was the Eastman Funeral Home, which was then recommended by the Memorial Society. She apparently had never notified the medical school of her intention nor checked to see if she was eligible or what procedures they required. Nor had she kept track of Eastman, which was purchased by and merged into Waterman (the most expensive funeral home in Boston), some years ago; Waterman in turn was bought by Service Corporation International (SCI), the largest of the funeral chains.

Upon Mrs. Simons' death the nursing home unsuccessfully tried to contact us, then followed Eastman's fading tracks and gave the body into the care of Waterman.

A friend of Mrs. Simons, a young woman who had been a close confidante, contacted us the second day after the death asking for advice. She knew nothing about us except that our name was on the form. She expected us to pick up the body and deliver it to Harvard Medical School.

We explained who we were and that we could not act as a funeral home; and we told her that the medical school would no doubt refuse the body, since they had had no prior arrangement with Mrs. Simons and death had occurred two days earlier (donated bodies must reach the medical school within twenty-four hours after death).

The friend put us in touch with Mrs. Simons' only next of kin, a sister in Florida. As next of kin she was the person authorized to control disposition of the body. She decided on cremation, but she was afraid she would be obliged to pay for it, since Mrs. Simons had no financial resources and was on Medicaid. We told her there was no danger of that, since the state of Massachusetts will pay up to \$1100 towards the burial or cremation of anyone on Medicaid. We advised her to FAX a written order to Waterman directing that Mrs. Simons be cremated, stating that she was not agreeing to pay for it and advising Waterman to make a claim to the state for the cost.

Mrs. Simons had left her birth certificate with her friend, and Waterman needed information from it to complete their paperwork. They asked her to deliver it personally, but we advised her to FAX the document to them and thereby avoid any face-to-face sales pressure to pay for the cremation or any of the fancy accoutrements dear to the funeral industry's heart.

In the end, Mrs. Simons could have saved her sister, her friend, the nursing home and even Waterman a good deal of trouble by keeping her records up to date

and keeping the people close to her informed. She should have talked with Harvard Medical School about eligibility and procedures and enrolled herself properly for donation. Above all, she should have checked from time to time to make sure that circumstances had not changed since she filled out that old Memorial Society form.

Memo to long-time members: If you still have one of those old forms lying around, *destroy* it and ask us for new ones. And once you have filled out the new ones, don't assume that the information thereon is engraved in stone. Don't send a copy to us, but rather to those concerned, the survivors and the funeral home.

Also note: Funeral expenses are paid out of the resources of the deceased or (if the person has insufficient resources) by the state. Only in certain special cases are next of kin obliged to assume them

Insurance-funded Funerals

In a previous newsletter we reported on the experience of one of our members who needed to cash in a Family Service Life ordinary (non-group) insurance policy sold her to fund a preneed funeral contract. She paid \$5,723 for a policy with a \$5,729 death benefit which increased at a 5%, non-compounded annual rate. At year nine of the policy she cashed it in for \$3,340, a substantial loss. The earlier report suggested avoiding insurance as a funding mechanism.

It turns out that the advice was wrong. Insurance can be an excellent funding mechanism. The problem with the policy described above is that the premium was 3.2 times what it should have been. A similar policy from S.B.L.I. costs \$1,803 and from Northwestern Mutual costs \$1,816. Both have increases in death benefit similar to the original policy, but the increases result from dividends, and so are not guaranteed. All three policies are individually underwritten, not guaranteed-issue.

Another surprise is that the competitive policies return most of the premium if you need to cancel. The original policy lost 62% of its value in the first year compared to 8% and 10% for the competitive policies. A funeral trust can hold back at most 10% if you cancel it.

The death benefit and cash values of the three policies above track quite closely; the big difference is that the premium of the first is more than three times that of the other two.

For a person in good enough health, purchasing an individually underwritten life insurance policy can be a very good way to finance a funeral. Just buy the policy from someone who doesn't overcharge for it and note the warnings about group life insurance in related stories..

Group Life Insurance Explained

In ordinary life insurance you apply to the insurance company and receive a policy that is the entire contract. In order for a given policy to be offered in this state all the forms and rates for the type of policy must be filed with the Division of Insurance. There are also certain mandatory disclosures before any money changes hands.

Group life insurance was originally used to provide employee benefits and was characterized by (1) group rather than individual underwriting, (2) one master contract, (3) administration by the employer, and (4) experience-rating. The master contract or policy was held by the employer, who was presumed to be acting in his employees' interest. Because this coverage wasn't sold but rather given to the insured employees, it was exempted from most regulation that covers ordinary life insurance.

When you purchase group life insurance you fill out a Group Insurance Enrollment Form, not a Policy Application. Then, after payment what you receive is a Certificate of Coverage, not a Policy. Here are excerpts from such a certificate, with italicized comments:

This certificate is evidence of coverage under a group policy. The whole contract consists of the policy, any attached endorsements, and the application for it.

But you don't even know who the policy holder is. You may review the master policy and application at Our home office.

Real convenient.

Any change in the policy is between the Policy Holder and Us, and does not require Your agreement.

Wow!

This certificate is subject to the laws of the state where the application for the Policy was signed. If part of it does not follow the law, it will be treated as if it did.

But we don't know where the application was signed.

Preneed Insurance Regulation

Almost all life insurance sold by funeral directors to fund preneed funeral contracts in Massachusetts is issued by two insurance companies. In the early 1990's both companies switched from writing individual policies to writing only group life insurance. They collected \$19 million in premiums last year just in this state.

Group life insurance sellers are exempt from *all* of the disclosure regulations applying to regular life insurance. They also are exempt from rate and form filing with the state. That is, of course, if the insurance sold by funeral directors *really is* "group life insurance" as defined in Massachusetts law. We don't think it is. The law defines six kinds of groups including employers and unions, none of which apply here.

We call on the Massachusetts Division of Insurance to either ban the sale of such group life insurance or to subject it to the existing regulations covering ordinary life insurance plus new regulations written specifically for funeral insurance. The new regulations could be based on the existing NAIC Model Regulations, though these need some updating to reflect the switch from regular to group life insurance.

The present situation is one of no regulation at all; that should change!

Prepaid Funeral Contracts: The Loophole

Since 1992 Massachusetts has had regulations, 239CMR, for preneed funeral contracts. In addition to a funeral trust or an insurance or annuity, they allow a third alternative as a funding mechanism:

The buyer has tendered payment in full for all funeral goods and services specified in the contract and has received satisfactory written evidence that those goods or services will be furnished at time of death.

The regulation says nothing at all about how the money is to be invested, access to the funds, disposition of income, cancellation, return of funds, and transfer of funds. There are verbose sections defining those things *only* for funeral trusts.

Lisa Carlson pointed out this loophole in her 1998 book, and we have asked the Board of Registration about it several times, but they seemed unconcerned. This spring a funeral trade newsletter *Funeral Monitor*, ridiculed this loophole. At the very next Board meeting on March 27, 2001, the Board "Voted unanimously to direct counsel to begin the process of emergence[sic] regulations regarding protection of pre need funds." The following month a delegation from the Mass. Funeral Directors Assn. asked the Board to expedite such regulation changes.

Amazingly, the subject has not been mentioned since then and as of mid September nothing has been sent to

the Regulation Review section of the Office of Administration and Finance

Risks to Prepaid Funeral Funds

In the most recent case involving preneed funeral funds there was a happy outcome. It was the bankruptcy of John D. Caron, the owner of two funeral homes in Haverhill and N. Andover. All the people who had prepaid were able to transfer or receive refunds of their money, a total of around \$130,000. The reason for this happy outcome was that there were sufficient real estate assets and that Mr. Caron directed his attorney to see that the preneed customers were taken care of.

Mr. Caron took advantage of the loophole in the preneed regulations to use the preneed money in his business rather than putting it in trust or insurance. To protect the preneed customers Mr. Caron's attorney filed for Ch. 11 (keep operating under court protection) instead of Ch. 7 (dissolution) and did not list the preneed customers as creditors. That permitted Mr. Caron to pay off the preneed customers with the proceeds of real estate sales in the ordinary course of business. In a liquidation under Ch. 7 these customers would have been unsecured creditors with a preference (sixth in a long list) for only \$1,800.

So where was the Board of Registration in all this? The bankruptcy filing was in October 1999. In the summer of 2000 there was informal discussion at a Board meeting referring to the Caron bankruptcy at which the Board's investigator said that he had visited Mr. Caron's business and that Mr. Caron was unwilling or unable to show him the preneed records. We passed that news on to the Lawrence Eagle Tribune and their reporter came to the next Board meeting to ask questions and then wrote a story. The reaction of the Board was immediate. They contacted the Attorney General's office with a request that they intercede in the bankruptcy case, which the AG did on August 3, 2000.

The motion to the bankruptcy court by the AG said that the regulation "mandates ... that the funds paid pursuant to a Preneed Contract ... be segregated in a trust account." It went on to list all the things required for a trust account. But the regulation doesn't require such a trust account; there is that third alternative, the big loophole (see related story). We don't know whether the AG's office just didn't carefully read the regulation (it is rather hard going), or if there were other reasons for the misrepresentation. The motion did correctly state that the regulation requires in case of bankruptcy filing that the funeral establishment formally notify each buyer of a preneed funeral contract.

The AG intervention did pry loose the preneed records and later did cause the funeral establishment to run ads to alert any unknown potential claimants. The overall happy result, that the people got their money returned or transferred, happened primarily because of the valuable real estate and Mr. Caron's direction to his attorney to take care of the preneed customers in the way he set up the bankruptcy filing.

The case points out the inadequacy of both the regulation and its enforcement. Lets hope the inevitable next case turns out as well at this one.

Other Preneed Cases

There have been two other cases concerning the money for prepaid funerals in Massachusetts in the last few years. One, for the Morrison Funeral Home in Wakefield resulted in a jail term for Mr. Morrison, but none of the \$200,000 was recovered.

Another case concerned the Bullock Funeral Home in Boston. A complaint came to the Board that Mrs. Bullock wasn't preparing proper Statements of Funeral Goods and Services Selected (essentially the contract between buyer and seller) required by law. After long negotiations, all held in private, Mrs. Bullock agreed to surrender her license and establishment certificate, thus retiring and closing the business. The Board says that there were no records concerning preneed contracts (if such existed) and so no way to notify the buyers. The written consent agreement with Mrs. Bullock makes no mention of preneed funds.

Several months later one man who had prepaid Mrs. Bullock came before the Board to complain that he couldn't get his money back or transferred. The Board's attorney assisted the man in getting the money transferred. The Board says that he assisted several others in getting their money and as far as they know every buyer was refunded or transferred. But how could they know? The buyers were never notified, nor did the Board insist on advertising to notify them as in the Caron bankruptcy case.

Maine has had a recent case in which \$400,000 was lost. Rhode Island has a case now in which the amount is yet unknown.

Preneed Guarantee Fund

Seven states have some form of guarantee fund to protect people who prepay for their funerals. Shouldn't Massachusetts have one? We have one for home improvement contractors, why not one for prepaid funerals?

The challenge is to structure the fund so it is self-financing (because of state budget constraints) and so it covers existing preneed contracts, not just new ones.

Any member with knowledge of the workings of any of the existing Mass. guarantee funds or with an interest in helping to get such a fund enacted please contact us.

Designated Agent

A person has the right to direct what is to be done with his body after death. Absent direction from the decedent, the authority for such decisions rests in the next of kin, in order of priority starting with the spouse. In the case of people who are estranged from their legal spouse or next of kin or who are not married to their domestic partner this can lead to big problems. Written instructions, formally witnessed, are a good idea. You might also wish to appoint a Designated Agent either to act to implement your directions or to make decisions that have priority over those of the next of kin.

Board of Registration v. Memorial Society

Looking thru the state archives of old annual reports of the Board of Registration we find that the Board noticed the Memorial Society soon after its founding in 1962 and was not pleased. The Board devoted most of their FY 1964 annual report to their efforts against the Society. They were shocked that the Memorial Society published names of funeral directors and prices. They held a hearing in which they demanded of the funeral directors concerned to "write such a letter demanding that their names not ever be used again in any manner in connection with the Society."

It was made very clear to the two gentlemen representing the Society that any recurrence would be cause for the funeral director to bring suit against the Society and would be cause for revocation of the funeral director's registration if such a thing were to

happen in the future.[March 24, 1964 minutes]

The annual report ends with this marvelous peroration:

As a result of this hearing, much has been accomplished and it is the opinion of the Board that the Society as well as the Funeral Directors will give complete co-operation and for that reason, *the profession throughout the State will be protected as intended and has been the aim of the Board with regard to law enforcement.*[emphasis added]

Indigent Funerals

Massachusetts pays a funeral establishment \$1100 to bury an indigent person, for example a person in a nursing home supported by Medicaid and SSI. This amount has been unchanged since 1983, while the dollar is only worth about half as much now. The present statute has a list of services that must be provided for the \$1100:

1. removal of body
2. procuring of death certificate and burial permit
3. embalming and dressing of body
4. furnishing suitable burial garment
5. furnishing suitable casket, bearing metal plate with name of deceased engraved thereon
6. furnishing outer case of pine wood
7. furnishing hearse for transporting body of the deceased to a cemetery
8. furnishing conveyance for transporting to such cemetery the immediate family of the deceased
9. procuring of a clergyman, of the religion that the deceased professed, to officiate at the funeral
10. procuring a burial place for the body of the deceased
11. opening the grave, and obtaining the use of interment devices

Each year a bill is introduced in the legislature to increase the dollar amount, but keep the list of services the same. It never passes, and is even less likely to pass now with tax revenues expected to shrink.

Perhaps then the list should shrink if the dollars won't grow. Note that cremation isn't even mentioned.

For indigent war veterans the legislature did increase the stipend to \$2000 two years ago. That statute has no list of services like that shown above. The legislation was enacted as an outside section or rider to the appropriation bill.

Susan Twist 1949 - 2001

Susan Twist took over the secretarial duties of the First and Second Church in Boston on October 29, 1968, as a 19-year-old just out of high school. A "people person," Susan soon came to know and help everyone, and as a result, to be the one everyone turned to for help.

Our Memorial Society had been founded in 1961 with a Board consisting of an Episcopal priest, a Catholic priest, a Reform Rabbi, a few lay members, and a Mass. General gynecologist, Dr. George S. Richardson, who became its first president.

Over the years its location shifted, and its administration was carried out by a succession of able persons, notably Dr. Richardson's wife, Rebekah. But for more than 10 years Susan Twist was a key person in our administration. She received and filed our mail, prepared and mailed new member packages, maintained the mailing list, produced and mailed the newsletter, answered inquiries, and, most of all, was available for any immediate need.

After 1992 the Board was reorganized. John Van Dusen became President, and continues to this day to oversee the total operation of our group. Byron Blanchard was elected Treasurer, and with his wife, Paula, began taking over many administrative tasks and many new initiatives.

Susan Twist began to be seriously ill in 1996, and more and more of what she did was quietly undertaken by Byron and Paula.

Susan's death on April 2, 2001, deprived us of a warm and caring friend.

Change of Name

In the proxy on the last page we ask you to approve changing our name to Funeral Consumers Alliance of Eastern Massachusetts. Our national organization changed its name from Funeral and Memorial Societies of America to Funeral Consumers Alliance three years ago. The reason was that people misunderstood what a memorial society is and thought it was a funeral industry organization.

Under the new name the national organization has received a lot of press coverage, including a mention in Dear Abby that drew 50,000 responses. Funeral Consumers Alliance was the only consumer resource mentioned in the May article in Consumer Reports. To tie into this national publicity is the reason for changing our name. To do so requires approval of our members in person or by proxy at the annual meeting.

Reorganization

After nine years of active participation in the operation of the Memorial Society, your Treasurer wishes to step down from the day-to-day activities and concentrate on his tasks monitoring the activities of the funeral industry and its regulation. A possible new title would be Industry Monitor.

To accomplish this change we need members to step forward to handle the following tasks:

- Pick up the mail and see that it is processed.

- Prepare and mail new member packets.

- Maintain the mailing list.

- Deposit checks and keep accounts.

- Prepare the annual Public Charities report.

- Produce and mail the newsletter.

- Contact local councils on aging and hospices.

To this end we hope to arrange a special meeting of the Board of Directors and persons interested in helping with these or other tasks. A tentative date is Saturday, November 17, after lunch, with location to be determined, probably in Boston or Belmont, on public transportation. If you are interested please note on the proxy form, we will contact you with more information. You may also contact our President, John Van Dusen, 38 Pond St., Marblehead, MA 01945, 781-631-9760.

PROXY

(Please vote by proxy if you do not plan to attend the Annual Meeting. Complete this form and send it to: The Memorial Society, 66 Marlborough Street, Boston, MA 02116.)

PROXY VOTE: (Fill in only if you will not attend the Annual Meeting.)

I hereby authorize the Clerk of the Society to vote for:

- | | | |
|---|-----|----|
| (1) The Slate of Officers as proposed | Yes | No |
| (2) To change our name to Funeral Consumers Alliance of Eastern Massachusetts | Yes | No |
| (3) Such other matters as may lawfully come before the meeting. | Yes | No |

Signature:

Date:

VOLUNTARY CONTRIBUTION FORM

Yes, I would like to support The Memorial Society. The one-time membership fee covers only a portion of the Society's expenses. Your inclusion of a tax-deductible contribution is greatly appreciated.

Contributions: () \$5; () \$15; () \$25; () \$40; () \$60; () \$100; () Other _____

Thank you very much for your consideration.

REORGANIZATION MEETING

Yes, I am interested in attending a special meeting on Nov. 17th to discuss my possible assistance to the operation of the society. My phone number is:

Keep the portion below for reference.

NOMINATING REPORT

President - John Van Dusen (Lawyer, Marblehead)

Vice President - Jan Buhrman Osnoss (Librarian, Martha's Vineyard)

Treasurer - Byron Blanchard (Retired Electrical Engineer, Lexington)

Clerk - Paula Blanchard. (Writer, Lexington)

Board members in addition to above:

Harry L. Jacobs (Retired psychologist/physiologist, Wayland)

George S. Richardson (Physician, Nahant)

Larry O'Brien (Woburn)

The Memorial Society, Inc.

[Funeral Consumers Alliance of Eastern Massachusetts]

66 Marlborough St.

Boston, MA 02116

Toll-free 1-888-666-7990 will reach our answering machine. A volunteer will return your non-emergency call within 48 hours. Emergency contact phone numbers are provided.

The Memorial Society, Inc.

A Funeral Consumers Alliance

66 Marlborough St.

Boston, MA 02116

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Annual Meeting Notice

Speaker: Lisa Carlson

Saturday, November 3, 2000, 1:30 P.M

Mount Auburn Cemetery

Cambridge, MA