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TO: Hon. Nikki R. Haley FAX NUMBER: (803) 734-5167

RE: Mark Smith DATE: 7/16/14

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July 16, 2014

**VIA E-MAIL: [agwilson@scag.gov](mailto:agwilson@scag.gov)**

The Honorable Alan M. Wilson  
P.O. Box 11549  
Columbia, S.C. 29211

**RE: Guaranteed Pre-Need Contract for Funeral Services**

Dear Attorney General Wilson:

I was made aware of an issue between all South Carolina funeral directors and the South Carolina Department of Consumer Affairs. The funeral directors have taken the position, as explained in the attached memorandum, that the guaranteed pre-need contracts are irrevocable after 30 days and that any money that is paid becomes the property of the funeral home at the time of death. On the other hand the South Carolina Department of Consumer Affairs believes that if the consumer, prior to death, changes the contract then the price is no longer guaranteed and the funeral home is to refund any excess.

I am writing to request, if at all possible, that you clear up what we believe to be the inconsistencies between the position of the South Carolina Department of Consumer Affairs, the forms that they provide to the funeral homes, and Section 32-7-20 of the South Carolina Code of Laws (1976) as amended.

With warmest regards, I remain

Sincerely,



Francis J. Cornely

FJC/sb

cc: Hon. Nikki R. Haley  
Mark Smith

### ISSUE

Funeral homes in South Carolina are authorized to enter into guaranteed pre-need contracts.

Contract forms are provided by the South Carolina Department of Consumer Affairs (SCDCA).

The form indicates that the consumer has 30 days to cancel otherwise the contract is irrevocable.

The form also indicates that at the time of death the consumer is entitled to services and the funeral home is entitled to all the money.

This is also supported by South Carolina Code §32-7-20(b), which seems to indicate that it does not matter what price you use because the funeral home is entitled to all the funds in the account at the time of death.

#### THE SCENARIO IS THIS:

In 2008 a funeral home and a consumer enter into a guaranteed price pre-need contract for funeral and burial.

In 2010 the consumer changes her mind and wanted to be cremated so she executed a pre-need authorization for cremation.

Since it was beyond the 30 days and the original contract was a guaranteed price pre-need contract, the funeral home takes the position that the consumer was not entitled to a refund.

SCDCA, despite the language in the contract and the statute, believes the consumer would be entitled to a refund (the difference between the original 2008 contract and the subsequent 2010 contract) at the time of death.