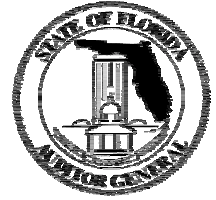




# Special Examination



*Results of a Joint Examination Conducted by  
the Office of Program Policy Analysis and  
Government Accountability and the Auditor General*

March 2002

Report No. 02-21

## Florida's Regulation of the Death Care Industry Has Many Weaknesses

### *at a glance*

In Florida, both the Department of Business and Professional Regulation and the Department of Banking and Finance regulate funeral homes and cemeteries to protect consumers from economic harm and/or emotional distress caused by transactions with professionals and businesses that do not meet state requirements. Our review focuses on the Department of Banking and Finance's regulatory activities and reveals many weaknesses in the regulation of the death care industry.

- The department has not performed cemetery examinations in a timely manner.
- The department has inadequate follow-up procedures to ensure that cemeteries correct violations found during examinations and inspections.
- The department's examination methodology needs improvement.
- The department's examination files are incomplete.
- The department's statutory enforcement authority is unclear and the department interprets its authority narrowly.
- The department tends to mediate complaints rather than take strong disciplinary action.
- Current statutory disclosure requirements do not provide sufficient information to the department and the public.
- The state's regulation of the death care industry is unnecessarily fragmented.

### Purpose

Pursuant to ss. 11.511 and 11.45, *Florida Statutes*, the Director of the Office of Program Policy Analysis and Government Accountability and the Auditor General jointly initiated this project in response to a legislative request to examine the Department of Banking and Finance's regulation of the funeral and cemetery industry. Concern about this issue was raised when Menorah Gardens and Funeral Chapels, a funeral home and cemetery in West Palm Beach, was accused of burying decedents in the wrong burial plots and disinterring remains without prior authorization.<sup>1</sup>

This examination evaluates

- the effectiveness of the Department of Banking and Finance's oversight of cemetery companies and other funeral service providers;
- whether changes in state law or oversight are necessary to adequately protect the public; and
- whether regulation of the death care industry should be conducted by one state agency.

<sup>1</sup> A civil lawsuit has been filed against Service Corporation International (SCI), the company that owns the funeral home and cemetery. The Office of the Attorney General, as well as the Department of Banking and Finance, investigated the allegations and filed a civil complaint against SCI.

## Special Examination

Although two state agencies have responsibilities for regulating the death care industry, our review focuses on the Department of Banking and Finance. This department has the primary role in licensing and monitoring cemetery companies and pre-need funeral and burial sales by entities such as Menorah Gardens and Funeral Chapels. Mismanagement of the Menorah Garden Cemetery is at the center of the allegations against the company.

## Background

The death care industry—consisting of funeral homes and cemeteries—is a multi-billion dollar business, with American consumers arranging more than two million funerals every year at an average cost of \$5,500 each.<sup>2</sup> Moreover, a growing number of consumers pay for funeral and cemetery services in advance, a practice known as “pre-need,” or pre-paid funeral service arrangement. An estimated 9 to 11 million Americans have spent \$21 billion on pre-need funeral services.

Because death care transactions are so expensive, emotionally charged, and subject to abuse, both the federal and state governments regulate the industry. The federal government, through the Federal Trade Commission, administers the “Funeral Rule,” which declares that it is an unfair or deceptive practice for funeral providers to (1) fail to provide accurate price information to consumers; (2) require consumers to purchase items that they do not want; or (3) embalm decedents for a fee without authorization. However, the Funeral Rule does not apply to cemeteries that sell funeral goods (e.g., caskets, burial vaults, and cremation urns). Furthermore, there is no federal regulation of pre-need funeral services.

Most state governments also monitor and regulate cemeteries and funeral service providers. Specifically, 48 states have laws

regulating cemeteries, and 49 states have laws regulating funeral homes.<sup>3</sup> Typically, state boards, as well as offices of attorneys general and departments of health, professional regulation, banking, and insurance, regulate death care businesses. State laws are also the primary regulatory mechanism for oversight of pre-need funeral service arrangements.

In Florida, two state agencies regulate the death care industry—the Department of Business and Professional Regulation (DBPR) and the Department of Banking and Finance (DBF). Exhibit 1 (page 3) lists the segments of the industry regulated by each department.

## Department of Business and Professional Regulation

DBPR’s Board of Funeral Directors and Embalmers administers Ch. 470, *Florida Statutes*, and is responsible for licensing and regulating funeral directors, embalmers, direct disposers and their facilities. The board’s goal is to guard public health and safety by ensuring that individuals entering these professions meet minimum qualifications and that those practitioners that violate the law are appropriately disciplined.

The board’s primary activities include

- administering professional licensing exams;
- issuing and renewing licenses and registrations;
- annually inspecting licensed facilities; and
- taking disciplinary action against licensees that have violated Ch. 470, *Florida Statutes*.

In Fiscal Year 2000-01, the board had oversight over 3,960 licensed funeral services professionals (e.g., funeral directors and embalmers).

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<sup>2</sup> According to data collected by the U.S. Bureau of Labor Statistics, funeral expenses grew faster than the rate of inflation between 1990 and 1998.

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<sup>3</sup> *Survey of State Cemetery and Mortuary Laws and Regulations*, International Cemetery and Funeral Association, 1997.

**Exhibit 1**  
**Florida’s Death Care Industry Is Regulated by Two State Agencies**

Department of Business and Professional Regulation Regulates	Department of Banking and Finance Regulates
<p><b>Funeral Directors</b> – Individuals licensed to sell, arrange, and direct funeral services and to manage the operation of funeral establishments</p> <p><b>Embalmers</b> - Individuals licensed to disinfect or preserve dead human bodies by replacing certain body fluids with preserving and disinfecting chemicals</p> <p><b>Direct Disposers</b> - Businesses that are licensed to cremate remains without embalming or any attendant services or rites such as funeral or graveside services</p> <p><b>Funeral Establishments</b> - Licensed facilities where a funeral director or embalmer practices funeral directing or embalming</p> <p><b>Centralized Embalming Facilities</b> - Facilities, not physically connected with funeral establishments, in which embalming takes place</p> <p><b>Direct Disposal Establishments</b> - Registered facilities where a direct disposer practices direct disposition</p> <p><b>Incinerator Facilities</b> – Registered facilities where dead human bodies are reduced to a residue by direct flame (cremation) or by intense heat (calcination)</p> <p><b>Refrigeration Facilities</b> - Facilities that are not physically connected with funeral establishments, crematories, or direct disposal establishments, which maintain space and equipment for the storage and refrigeration of dead human bodies</p> <p><b>Removal Services</b> - Services that operate independently of funeral establishments, that handle the initial removal of dead human bodies, and that offer service to funeral establishments and direct disposal establishments for a fee</p>	<p><b>Cemetery Companies</b> - Legal entities that own or control cemetery lands or property</p> <p><b>Cemeteries</b> – Places dedicated to and used or intended to be used for the permanent interment of human remains</p> <p><b>Exempt Cemeteries</b> - Cemeteries that are exempt from licensure under Ch. 497, <i>Florida Statutes</i>, but are over five acres</p> <p><b>Certificates of Authority</b> - Businesses that are authorized to sell pre-need contracts for burial or funeral services or merchandise</p> <p><b>Certificates of Authority for Branch</b> - Branch offices of certificate of authority holders</p> <p><b>Pre-Need Sales Agents</b> – Individuals who are authorized to sell, offer, and execute pre-need contracts on behalf of all entities owned or operated by the seller’s sponsoring certificate-holder</p> <p><b>Burial Rights Brokers</b> - Individuals who are authorized to act as a third party to the sale or transfer of three or more burial rights in a 12-month period, for compensation. Burial right means the right to use a grave space, mausoleum, or other area for the disposition of human remains.</p> <p><b>Monument Establishments</b> – Facilities that are authorized to operate independently of a cemetery or funeral establishment for the purpose of selling monuments (e.g., grave markers, vases, etc.) or monument services.</p>

Source: Department of Business and Professional Regulation and Department of Banking and Finance.

**Department of Banking and Finance**

Pursuant to Ch. 497, *Florida Statutes*, the Florida Funeral and Cemetery Services Act, DBF regulates numerous death care industries, including sellers of pre-need funeral goods and services, cemetery companies, and monument establishments. Exhibit 2 shows the number of active licenses under the department’s authority in Fiscal Year 2000-01. An additional 3,000 cemeteries are exempt from state licensure; these include county and municipal cemeteries, religious institution cemeteries of less than five acres, and family burial sites.<sup>4</sup>

<sup>4</sup> Although these cemeteries are not required to be licensed, they are subject to some requirements of Ch. 497, *Florida Statutes*, including maintenance of burial records and burial without regard to race and color.

**Exhibit 2**  
**Department of Banking and Finance Had Oversight Over 3,581 Death Care Businesses and Professionals in Fiscal Year 2000-01**

Type	Number Issued
Pre-Need Sales Agents	2,571
Certificates of Authority	332
Certificate of Authority for Branch	336
Cemeteries	173
Monument Establishments	103
Exempt Cemeteries	40
Burial Rights Brokers	26
<b>Total</b>	<b>3,581</b>

Source: Department of Banking and Finance.

The department regulates the businesses under its jurisdiction through the Bureau of Funeral and Cemetery Services and eight regional

## Special Examination

offices.<sup>5</sup> The bureau, located at the department's central office in Tallahassee, provides administrative support for the operation of the Board of Funeral and Cemetery Services, which is responsible for

- reviewing and approving licensure applications, trust agreements, pre-need sales contracts, and cemetery by-laws;
- evaluating examination and complaint investigation reports to determine if sufficient evidence exists to support probable cause that a violation of law has occurred; and
- taking disciplinary action against licensees that have violated state law, including issuing guidance letters, citations, and cease and desist orders, levying fines, and suspending and revoking licenses.<sup>6</sup>

The department operates on a decentralized basis, with the eight regions having authority to conduct regulatory inspections and examinations and to impose sanctions for noncompliance. The bureau's central office has no direct line authority over the regions and is advisory only. At the regional level, staff conducts periodic inspections and examinations of licensees to ensure compliance with Ch. 497, *Florida Statutes*. Statute and rule require the department to inspect cemeteries annually and to examine cemetery companies and certificate of authority holders at least once every three years. Inspections are intended to ensure that cemetery licenses and notices, burial records, and grounds are being appropriately maintained. Examinations are more in-depth and are intended to ensure compliance with state law and to verify that all trust account monies are indeed trusted and maintained in accordance with state law. Regional office staff

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<sup>5</sup> In 1995, the department decentralized many functions, delegated activities to existing regional offices, and created additional regional offices to assume these tasks. The regions are autonomous, with regional directors answering directly to the Comptroller.

<sup>6</sup> The board and the department are authorized to take disciplinary action against licensees that have violated the law. Disciplinary actions include issuing guidance letters, levying fines, and issuing cease and desist orders. The department does not have the authority to suspend or revoke licenses; only the Board of Funeral and Cemetery Services has that authority.

also investigates and mediates consumer complaints.<sup>7</sup>

## Findings

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The state regulates funeral and cemetery service providers to protect consumers from economic harm and/or emotional distress caused by transactions with professionals and businesses that do not meet state requirements. To fulfill this responsibility, the Department of Banking and Finance and the Board of Funeral and Cemetery Services are required to review and approve applications for licensure and registration; examine and inspect licensees on a regular basis; investigate and mediate consumer complaints; and discipline licensees that violate the law. Clear regulatory requirements and enforcement of these requirements are essential to ensure effective industry oversight and adequate consumer protection.

However, our review found many weaknesses in the regulation of the death care industry. These are noted below.

- The Department of Banking and Finance has not performed cemetery examinations in a timely manner.
- The department has inadequate follow-up procedures to ensure that cemeteries correct violations found during examinations and inspections.
- The department's examination methodology needs improvement.
- The department's examination files are incomplete.
- The department's statutory enforcement authority is unclear and the department interprets its authority narrowly.
- The department tends to mediate complaints rather than take strong disciplinary action.
- Current statutory disclosure requirements do not provide sufficient information to the department and the public.
- The state's regulation of the death care industry is unnecessarily fragmented.

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<sup>7</sup> Central office staff investigates some consumer complaints; this typically occurs if complaints are in the Tallahassee area or if they involve issues that would have statewide implications.

## Menorah Gardens case illustrates problems

A widely publicized series of alleged incidents at Menorah Gardens and Funeral Chapels illustrate what can happen when the state's regulation of the death care industry is inadequate.<sup>8</sup> The company, whose pre-need funeral and burial sales and cemetery are regulated by the Department of Banking and Finance, has been accused of burying decedents in the wrong plots and disinterring remains without prior authorization. According to officials from the company that owns the funeral home and cemetery, Service Corporation International, the previous owners' re-mapping of a section of the cemetery without adjusting burial records caused problems with burials. Service Corporation International claims that the re-mapping resulted in re-numbering of burial plots, which was not reflected in burial records.

While the current accusations against Menorah Gardens were made public in November 2001, the department's examination process revealed problems with the company's burial records as early as 1996. For example, a 1996 department examination report noted that two decedents were buried in the wrong burial plots; likewise, a 1998 examination found that three decedents were not buried in the spaces they had purchased.

However, neither the department nor the board took significant enforcement action in response to the identified problems. In 1996, the department sent the business a copy of its examination report but took no follow-up or enforcement action. In 1998, the executive director of the board sent the business a letter advising that Florida law had been violated and the licensee should govern itself accordingly, but again the department took no other follow-up or enforcement action. The department or the board could have levied a fine or suspended or revoked Menorah Gardens' license because

<sup>8</sup> "Suit: Bodies Misplaced at Cemeteries," *Palm Beach Post*, December 20, 2001; "Funeral Operator Accused of Digging Up Bodies," *The Miami Herald*, December 20, 2001; "Funeral Company Accused of Desecration," *The New York Times*, December 21, 2001.

of these infractions.<sup>9</sup> Had the department followed-up to see if previously cited problems had been corrected and/or taken stronger regulatory action when violations were discovered, the problems at Menorah Gardens may have been more effectively and timely addressed. Instead, the problems at the cemetery continued and affected additional families, leading to a lawsuit and the media attention of late 2001.

Our review determined that the Department of Banking and Finance's regulatory processes need improvement, especially with regard to completing examinations according to statutory timeframes, following up on findings of noncompliance, and its examination methodology. Moreover, the department rarely imposes sanctions as authorized by Ch. 497, *Florida Statutes*, and indicates that its statutory authority is unclear. In addition, other weaknesses in the law and fragmentation of industry oversight between two agencies diminish consumer protection and limit a coordinated approach to regulation.

## The department's examination process needs improvement

The department has established a standard methodology for completing examinations and inspections of cemeteries. However, our review of this process determined that some examinations were not being performed in a timely manner and that follow-up in instances of noncompliance was not always adequate. We also found that the department's examination methodology was insufficient and examination files were not always complete.

### *Examinations not being performed timely*

State statute and administrative rules require that examinations of entities licensed under Ch. 497, *Florida Statutes*, be conducted at least

<sup>9</sup> According to s. 497.309(1), *Florida Statutes*, a record shall be kept of every burial in the cemetery; rule 3F-11.001(2)(nn), *Florida Administrative Code*, indicates that the minimum penalty for failure to maintain accurate burial records is a reprimand and/or fine, and the maximum penalty is revocation of license. Furthermore, s. 497.233, *Florida Statutes*, states that the board may reprimand, fine, or suspend or revoke the license of a licensee that has shown negligence in the operation of a cemetery.

## *Special Examination*

once every three years and that licensed cemeteries be inspected each year.<sup>10</sup> Department procedures further provide that inspections are to be made during those years that an examination is not made, or when a complaint has been filed. However, our review determined that examinations were not always performed every three years, nor were inspections performed each year that an examination was not made. Where a determination of timeliness was possible, we found that for the licensees we selected for testing, only half were examined and inspected on a timely basis. Several factors contributed to this failure, including

- unavailability of qualified staff in some regions;
- lack of uniform guidelines governing the scheduling of the examinations;
- different interpretations of the law by each region; and
- lack of centralized monitoring of the examination and inspection processes.

The department should also examine and inspect some licensees more frequently than once every three years because some businesses pose a higher risk. Our visits to several cemeteries and discussions with department personnel disclosed the existence of certain cemetery characteristics that are indicative of increased risk of burial record errors. Consideration of such risk factors in scheduling examinations may increase the opportunity to timely detect cemetery errors and related control problems. Risk factors include cemeteries

- with plot sizes 36 inches wide (unless pre-vaulted), which are only slightly wider than the standard width of a burial vault, leaving no room for error in the location of the

gravesite and increasing the chance of encroachment on adjacent sites;<sup>11</sup>

- that do not use fixed survey pins as a means of locating gravesites, which may result in some cemeteries that rely upon imprecise, non-perpetual landmarks (e.g., sidewalks, fences, or trees) as points of reference to identify gravesites;
- that have plot maps that do not match the actual layout of the cemetery;
- with the appearance of a haphazard placement of headstones or footstones, which may be indicative of the lack of a properly surveyed cemetery; and
- with a history of problems, disclosed through prior examinations, inspections, or complaint investigations.

To ensure that the entities licensed and regulated under Ch. 497, *Florida Statutes*, are timely examined and inspected, the department should adopt a standardized and consistently applied methodology for scheduling examinations. In developing that methodology, the department should incorporate a consideration of cemetery characteristics and the related risks. In addition, the department should establish policies and procedures that require the Bureau of Funeral and Cemetery Services to periodically monitor each regional office's compliance with the adopted methodology.

### *Inadequate follow-up of noncompliance*

Department procedures require that at the completion of an examination or inspection, a written report of any instances of noncompliance be provided to the licensee along with a written request that the regulated entity respond to any noted instances of noncompliance within 30 days.<sup>12</sup> Department

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<sup>10</sup> Section 497.431, *Florida Statutes*, requires examinations of entities licensed under Ch. 497, *Florida Statutes*, at least once every three years. Rule 3F-6.006, *Florida Administrative Code*, requires that the department conduct inspections of licensed cemeteries each year.

<sup>11</sup> Pre-vaulting involves the excavation of all or a part of unused cemetery property and the simultaneous placement of a series of vaults that are then buried and used when needed. Pre-vaulting allows the placement of vaults with much greater precision.

<sup>12</sup> Findings involving deficits in required trust fund balances require the licensee to immediately rectify the deficit through a deposit of funds, with confirmation of the deposit provided independently to the department by means of a written notification from the licensee's trusting agency. Findings of noncompliance that do not involve trust fund balance deficits require a written response from the licensee addressing each finding and explaining any actions the licensee has taken or is planning to take in order to resolve the finding.

written procedures do not require that examiners verify that licensees have taken corrective action, other than for noncompliance involving trust fund balance deficits. For findings of noncompliance that do not involve trust fund balance deficits, it is the department's policy to rely on each examiner's judgment as to whether the licensee's response is adequate and whether department verification of the licensee's reported corrective action is warranted.

Absent written department procedures requiring examiners to verify licensee resolution of significant examination findings, errors and other noncompliance with governing statutes and rules may not be timely corrected. To ensure appropriate monitoring, the department should adopt written policies and procedures relative to the follow-up of examination and inspection findings. Those policies and procedures should require examiner verification of the correction of significant errors and other noncompliance with governing statutes and rules.

### ***Examination methodology needs improvement***

The department has established a standard methodology that is to be used in performing examinations and inspections. However, our review of these procedures determined that the methodology does not include significant coverage of the accuracy and completeness of cemetery burial records or of the effectiveness of cemetery controls affecting the accuracy and completeness of burial records.

The nature of recent complaints at Menorah Gardens and Funeral Chapels, as well as results of our tests, indicate that there is a need for expanded department coverage of burial records. For instance, our tests of the accuracy and completeness of the burial records for 15 plots at each of 20 cemeteries disclosed a total of four instances in which the burial record did not match the physical observation of the gravesite. In one instance, a gravesite was

found to be empty, although the cemetery's burial records indicated that the site was occupied. In three instances, the burial site shown by the cemetery's records did not agree with the location of the burial site containing the applicable headstone.

To help ensure that burial record errors do not escape timely detection, the department should revise its standard cemetery examination methodology to include a review of relevant cemetery controls and detailed tests of burial records.

### ***Examination files incomplete***

As part of the examination process, department procedures require the completion of an examination questionnaire, which identifies the required examination tasks and which is to be signed and dated by both the examiner and the reviewer. Department procedures also require completion of an examination review checklist, which documents supervisory review of the examination when signed by the reviewer.

However, our review determined that examination files often lacked evidence that an examination was completed or had been subjected to supervisory review. Of the 21 examination files reviewed, 2 lacked both a questionnaire and checklist to support the completion of an examination; 5 lacked the signatures of both the examiner and reviewer on the questionnaire to indicate their acceptance of the responsibility for the work performed; and 9 lacked a checklist to support the completion of a supervisory review.

A policy requiring centralized monitoring of each region's examination files by the Bureau of Funeral and Cemetery Services would help ensure that examinations are completed and that the examiner and reviewer have accepted responsibility for the work performed. In addition, requiring that pages or sections of the examination files be numbered or tabbed would allow examiners to demonstrate the completion of each examination step through cross-referencing. Cross-referencing would facilitate the supervisory review and enhance the usefulness of the files as a training tool.

## **Chapter 497, F.S., does not sufficiently ensure consumer protection**

Chapter 497, *Florida Statutes*, guides the department's oversight of the death care industry. Our review of the law determined that its intent and the extent of the department's statutory authority are unclear, with the department narrowly interpreting the law's purpose and its staff demonstrating varied understanding of the department's jurisdiction. In addition, the department's stance regarding discipline of licensees is generally conciliatory, with the department preferring to encourage licensees to settle with complainants rather than taking stronger enforcement action against licensees even when warranted by repeat or serious violations. This conciliatory approach may be warranted in some instances, but when applied excessively and repeatedly over time, it diminishes the deterrent value of enforcement. Moreover, the law has inadequate requirements for cemetery companies' submission of information to the department and disclosure of information to the public.

### ***The department focuses its efforts on pre-need services rather than cemetery regulation***

Although the law provides for the department to regulate both pre-need funeral services and cemeteries, the department's regulatory activities focus primarily on pre-need sales. The law provides that purchasers of pre-need funeral and cemetery services should be protected from economic harm and that the failure to maintain cemetery grounds properly may cause consumers significant emotional distress. However, staff from seven of the department's eight regional offices indicated that their main responsibility for fulfilling the examination requirements of Ch. 497, *Florida Statutes*, was to audit pre-need trust funds, not to evaluate cemetery records or the care and maintenance of cemetery grounds. This limited emphasis on cemetery regulation is also shown by the department's inadequate regulatory procedures for cemeteries. As noted earlier, the department's cemetery examinations do not

include sufficient procedures for verifying that licensees are properly maintaining cemetery grounds and burial records.

In addition, department staff interprets the law's enforcement provisions narrowly, and this interpretation varies across the department's regions. For example, staff in one region asserted that if examinations or complaint investigations revealed a problem with something other than pre-need sales, the department has no jurisdiction and cannot take disciplinary action. Similarly, staff from another region reported that Ch. 497, *Florida Statutes*, is unclear with regard to the department's authority to take enforcement action when violations are revealed via examinations; the staff indicated that the statute only mentions specific disciplinary actions with regard to complaint investigations.

As the regions have full authority to perform regulatory activities and impose sanctions under the department's decentralized organizational structure, this perception by the regional offices that they have limited responsibility to regulate cemeteries has resulted in inconsistent and inadequate enforcement of Ch. 497, *Florida Statutes*.

To resolve this problem, the Legislature should amend Ch. 497, *Florida Statutes*, to clarify the department's regulatory responsibilities and enforcement authority. If the Legislature wishes the department to place more emphasis on regulating cemetery records and conditions, and to take aggressive enforcement actions when it detects violations, the Legislature should clearly charge the department with these responsibilities.

### ***The department tends to resolve complaints rather than take strong disciplinary action***

Although investigating consumer complaints is one of the department's core regulatory activities, and it has the authority to take a wide range of enforcement actions against licensees that have violated the law, the department tends to mediate complaints rather than take strong disciplinary action. This can compromise consumer protection because it weakens the



department’s deterrent power and allows licensees that have violated the law to continue operating with little fear of serious sanctions.

Investigating and responding to complaints should be vital to the department’s mission of protecting consumers from funeral service providers and cemetery companies that do not meet state requirements. In some instances, investigating complaints is the only mechanism in place to facilitate action against a business or individual. For example, pre-need sales agents are not subject to department examination, but the department has the authority to investigate complaints against licensees. Similarly, although exempt cemeteries are not subject to examination or inspection, the department is authorized to investigate and mediate consumer complaints against such businesses. In Fiscal Year 2000-01, the department received 460 complaints against funeral and cemetery businesses.

Under state law and administrative code, the department or the Board of Funeral and Cemetery Services may take various enforcement actions against licensees they find have violated the law (see Exhibit 3). Enforcement actions range from issuing a guidance letter (in which the department advises the business what its legal responsibilities are but imposes no sanction) to revoking a license and should take into consideration the nature of the violation and licensees’ disciplinary history. However, the department and board also are authorized to dispose of violations through mediation and may designate as “mediation offenses” those complaints where harm caused by the licensee is economic in nature or can be remedied by the licensee. The problem apparent from inadequate enforcement is that neither the statute nor administrative code describes what specific violations should not be considered mediation offenses.

**Exhibit 3**  
**A Wide Range of Enforcement Actions Can Be Taken Against Unlawful Licensees**

Entity	Enforcement Actions
Department of Banking and Finance	Reprimand/Guidance Letter Fine Cease and Desist Order Injunction to Restrain Violations
Board of Funeral and Cemetery Services	Reprimand/Guidance Letter Fine Cease and Desist Order Injunction to Restrain Violations Probation Suspension of License Revocation of License

Source: Chapter 497, *Florida Statutes*, and Ch. 3F-11, *Florida Administrative Code*.

In practice, the department and the board use the mediation provisions of Ch. 497, *Florida Statutes*, to resolve most consumer complaints without taking enforcement actions. We reviewed 241 complaints closed in Fiscal Year 2000-01 and found that the department and the board rarely imposed formal sanctions.<sup>13</sup> For example, once a complaint investigation determined that a violation had occurred, the department and board used conciliatory disciplinary actions such as sending a guidance letter and facilitating resolution of the complaint issue to the individual consumer’s satisfaction (i.e., settlement) in 59.5% of the cases (see Exhibit 4). The department took an administrative action (generally entering into a stipulation agreement) in 17.7% of the cases, and imposed a fine in 12.7% of the cases. In 8.9% of the cases, the department and board took no action against licensees who had violated the law. Furthermore, the board did not suspend or revoke any licenses or place any licensees on probation during this time.

<sup>13</sup>Over one-third of the cases (90) reviewed had substantiated violations; for 11 of those cases, the action taken could not be determined, so the cases were left out of the analysis.

## Special Examination

### Exhibit 4

#### The Department Disposes of Most Verified Complaints Through Settlement

Disciplinary Action	Percentage Disposed (n=230)	Case Examples
Settlement	46.8%	<ul style="list-style-type: none"> <li>Purchaser of pre-need funeral services was entitled to a refund but did not receive the refund within 30 days (per s. 497.419(10), <i>F.S.</i>). Licensee provided the consumer's refund.</li> <li>Purchaser of pre-need funeral services discovered that the purchased plot was occupied at the time of need (violation of s. 497.309, <i>F.S.</i>). Licensee acknowledged the error and offered to inter the decedent in a new plot; consumer accepted the offer.</li> </ul>
Guidance Letter	12.7%	<ul style="list-style-type: none"> <li>Purchaser of pre-need funeral services was entitled to a refund but did not receive the refund within 30 days (per s. 497.419(10), <i>F.S.</i>). Department sent the licensee a guidance letter and licensee provided the refund.</li> <li>Purchaser of pre-need funeral services discovered that the purchased plot was occupied at the time of need (violation of s. 497.309, <i>F.S.</i>). Department issued a guidance letter; consumer filed civil litigation and received \$15,000 from the licensee.</li> </ul>
Administrative Action	17.7%	<ul style="list-style-type: none"> <li>Seller of pre-need funeral services failed to place money in trust (violation of s. 497.413, <i>F.S.</i>) and sold pre-need contracts to another company that did not hold a certificate of authority from the department (violation of s. 497.405, <i>F.S.</i>). Department filed an administrative complaint and entered into stipulation agreements with the defunct business and the company that purchased the contracts. Agreement called for the appropriate funds to be trusted, the transfer of pre-need contracts to a new provider, and refunds for all consumers who requested them.</li> </ul>
Fine	12.7%	<ul style="list-style-type: none"> <li>Licensee failed to construct a mausoleum within four years of the first sale of mausoleum space (violation of s. 497.257, <i>F.S.</i>). Board of Funeral and Cemetery Services' probable cause panel found probable cause and issued a \$1,000 fine.</li> <li>Licensee failed to install a monument in the correct location (violation of s. 497.317(2), <i>F.S.</i>) and failed to maintain a section of the cemetery that was adjacent to a mausoleum under construction (violation of s. 497.233(1)(j), <i>F.S.</i>). Board of Funeral and Cemetery Services' probable cause panel found probable cause and issued a \$2,000 fine.</li> </ul>
No Action Taken	8.9%	<ul style="list-style-type: none"> <li>Licensee failed to install a monument in the correct location (violation of s. 497.317(2), <i>F.S.</i>). The investigation determined that the marker had been removed to facilitate interment in an adjoining plot; it was replaced incorrectly. Department took no action.</li> <li>Licensee admitted to disinterring remains without prior authorization (violation of s. 497.515(7), <i>F.S.</i>). Board of Funeral and Cemetery Services' probable cause panel did not find probable cause. Department closed the case.</li> <li>Purchaser of pre-need funeral services discovered that the purchased plot was occupied (violation of s. 497.309, <i>F.S.</i>). Licensee admitted to the error and offered to remedy the situation; consumer refused and filed civil litigation. Department closed the case.</li> </ul>
Referred to Another Agency	1.3%	<ul style="list-style-type: none"> <li>Crematorium did not cremate the decedent in a timely manner and gave the consumer the wrong cremains (violation of Ch. 470, <i>F.S.</i>). Department referred the case to the Department of Business and Professional Regulation.</li> </ul>

Source: Analysis of Department of Banking and Finance complaint files and activity tracking system data.

While the department and board's emphasis on mediation may be appropriate in many situations, we found several cases that appeared to merit stronger disciplinary action. For example, our review of case files found at least three instances where consumers discovered that burial plots they had pre-purchased were occupied. In two of the cases, the department's response was to issue a guidance letter and mediate a settlement between the consumer

and licensee. In the remaining case, the department took no action. The infrequent use of stronger enforcement action such as fines can reduce the department's deterrent power, as licensees are not compelled to correct problems that may be widespread. To ensure that the department or the board require corrective action that would deter future, similar occurrences, Ch. 497, *Florida Statutes*, should be amended to prescribe minimum disciplinary

actions for the most serious violations of the law and to define mediation offenses.

***Disclosure requirements are insufficient***

Another weakness in the department’s statutory provisions is that the legal requirements to disclose information to the department and consumers are insufficient. For example, cemetery companies are not required to survey their burial grounds in order to produce a map showing sections, plots, avenues, walks, or other subdivisions, along with descriptive names or numbers to identify each plot. In addition, while licensees are required to make detailed maps available to the department during the examination process, they are not required to permanently file cemetery maps with the department. Entities wishing to establish a new cemetery, or license an existing cemetery, are only required to submit

- a map showing the location of the cemetery, and
- a legal description of the property including a statement as to the number of acres contained therein.<sup>14</sup>

Surveying cemetery grounds and properly identifying individual burial plots is essential to ensuring that there is a complete record of every plot and that burials and pre-need sales are properly identified. Without adequate mapping of cemetery grounds and clear identification of individual plots, cemetery companies, the department, and the public have no accurate means of identifying whether plots are currently sold or available. Such conditions can lead to double sale of plots, wrongful burial, and unintentional disinterment.

Further, pre-need funeral sales and cemetery licensees are required to provide limited information to the public. As shown in Exhibit 5, Ch. 497, *Florida Statutes*, currently requires licensees offering to provide burial rights, merchandise, or services to disclose

<sup>14</sup> Rules 3F-5.004 and 3F-5.005, *Florida Administrative Code*. Entities wishing to establish new cemeteries are also required to submit a development plan

information primarily related to the cost of goods and services.

**Exhibit 5  
Florida Statutes Require Limited Information to Be Disclosed to the Public**

Information That Must Be Disclosed to the Public
<b>Accurate information regarding the retail prices</b> of burial merchandise and services offered for sale by the licensee.
<b>Full disclosure of all regularly offered services and merchandise</b> before the selection of burial services and merchandise; disclosure shall identify the prices of burial rights, services, and merchandise provided by the licensee.
<b>Good faith estimate</b> of all fees and costs the customer will incur to use any burial rights, merchandise, or services provided.
<b>Copy of the by-laws</b> of the licensee, upon request.
<b>Written contracts</b> must be provided upon the purchase of any burial right, merchandise, or service; the Board of Funeral and Cemetery Services must approve the contract form. Contracts shall <ul style="list-style-type: none"> <li>▪ provide an itemization of the amounts charged for all services, merchandise, and fees;</li> <li>▪ include a description of the merchandise covered by the contract; and</li> <li>▪ include a signature page with purchase price; amounts to be trusted, refunded upon cancellation, and allocated to merchandise, services, and cash advances; toll-free number of the Department of Banking and Finance; and statement that the contract can be cancelled within 30 days of execution.</li> </ul>

Source: Section 497.333, *Florida Statutes*.

Funeral homes and cemeteries, however, are not required to provide consumers with cemetery maps, plot information (e.g., plot dimensions), or detailed information about the agencies that regulate the industry. Also, licensees are required to provide funeral home and cemetery by-laws to consumers only upon request.

The lack of detailed information about funeral and burial goods and services, as well as about the agencies that regulate service providers, may prevent consumers from making informed decisions and put them at greater risk of economic harm or emotional distress.

To ensure adequate information is provided to the department and consumers,

- section 497.201, *Florida Statutes*, should be amended to require cemetery companies to survey and plat cemetery grounds and

## Special Examination

submit a detailed map for approval by the department or board, and

- section 497.333, *Florida Statutes*, should be amended to require cemetery companies to provide consumers with a map of the cemetery and physical description of the purchased burial plot (e.g., plot dimensions) and to display posters and brochures that describe how the death care industry is regulated, with instructions for how to file complaints.

## Regulation of death care industry is fragmented

The problems previously discussed are complicated by the current fragmentation of state regulatory oversight of the death care industry. Currently, many funeral homes and funeral directors licensed under the Department of Business and Professional Regulation are also conducting activities that are subject to oversight by the Department of Banking and Finance. For example, funeral homes wishing to sell pre-need funeral services contracts must obtain a certificate of authority from DBF and must also be licensed by DBPR. Similarly, funeral directors must be licensed by DBPR, and if they sell pre-need funeral services, they are subject to regulation by DBF.<sup>15</sup>

This regulatory system causes several inefficiencies: (1) two agencies maintain parallel licensing, support, and management systems; (2) the two agencies have separate regulatory boards; and (3) the dual regulation results in multiple visits to licensees and their businesses by state inspectors. Furthermore, citizens and the industry must deal with two organizations for resolution of licensing, complaint, and enforcement issues.

Other states have avoided these inefficiencies by creating one regulatory body to oversee the death care industry. As shown in Exhibit 6, California, Minnesota, and Oregon regulate the death care industry under a single entity. Moreover, Minnesota and Oregon have one

<sup>15</sup> Funeral directors are exempt from licensure as pre-need sales agents, but their pre-need sales activities are scrutinized via DBF's examination of certificate of authority holders (e.g., funeral homes).

state law that applies to all death care businesses and professionals.

## Exhibit 6 California, Minnesota, and Oregon Regulate the Death Care Industry Through One State Agency

Regulating Entity	Regulated Industry/ Profession
<b>California</b> Department of Consumer Affairs, Cemetery and Funeral Bureau	Funeral Establishments Funeral Directors Embalmers Cemeteries Cemetery Brokers Cemetery Salespeople Certificates of Authority Crematories Cremated Remains Disposers
<b>Minnesota</b> Department of Health, Mortuary Science Section	Funeral Homes Crematories Morticians Funeral Directors Cemeteries
<b>Oregon</b> State Mortuary and Cemetery Board	Funeral Service Practitioners Embalmers Pre-Need Salespeople Funeral Establishments Cemeteries Crematoriums

Source: California, Minnesota, and Oregon official state websites.

A consolidated program could be administered by either of the agencies currently involved in oversight. There are advantages and disadvantages to placing regulation of the death care industry with either department. For example, the expertise needed to inspect and audit pre-need trust funds favors locating the program with the Department of Banking and Finance.<sup>16</sup> However, the core function of the Department of Business and Professional Regulation is regulatory oversight of businesses, professions, and their activities. Exhibit 7 describes the advantages and disadvantages of placing industry oversight with either department.

<sup>16</sup> The Legislature could overcome the single aspect contrary to this placement (i.e., lack of accounting expertise for auditing of trust funds) by approving a type 2 transfer of personnel and assets from the Department of Banking and Finance to the Department of Business and Professional Regulation.

Exhibit 7

There Are Advantages and Disadvantages to Locating a Consolidated Regulatory Entity Under Either the Department of Business and Professional Regulation or the Department of Banking and Finance

Consideration	Located in DBPR	Located in DBF
Licensing and permitting businesses and professionals	Primary activity of the department	Not a primary activity of the department
Inspecting licensee operations	Primary activity of the department	Not a primary activity of the department
Examining/auditing financial condition of licensees	Not a primary activity of the department	Auditing trust funds fits readily with department audit activities.
Investigating complaints against licensees	Primary activity of the department	Primary activity of the department
Taking disciplinary action against licensees	Primary activity of the department	Primary activity of the department
Overseeing licensees through a board	Primary activity of the department	Not a primary activity of the department
Organizational structure	Would readily fit the department structure	Unknown, given ongoing cabinet reform actions

Source: Analysis of information from the Department of Business and Professional Regulation and the Department of Banking and Finance.

To reduce regulatory fragmentation and increase efficiency, we believe that regulation of the death care industry should be consolidated within one agency, with the existing boards combined into one. We believe that consideration of the advantages and disadvantages generally favors placement of a consolidated program with the Department of Business and Professional Regulation.

## Conclusions and Recommendations

The Department of Banking and Finance’s examination process needs improvement, especially with regard to completing examinations according to statutory timeframes and following up on findings of noncompliance. Moreover, Ch. 497, *Florida Statutes*, as implemented by the department, does not sufficiently ensure consumer protection. In addition, fragmentation of industry oversight between two agencies diminishes consumer protection and limits a coordinated approach to regulation.

- To ensure that the entities licensed and regulated under Ch. 497, *Florida Statutes*, are timely examined and inspected, we recommend adopting a standardized and consistently applied methodology for

scheduling examinations that incorporates a consideration of cemetery characteristics and the related risks. The department should also establish policies and procedures to periodically monitor each regional office’s compliance with the adopted methodology.

- To ensure that significant examination findings, errors, and other noncompliance issues are corrected timely, we recommend that the department adopt written policies and procedures relative to the follow-up of examination and inspection findings that require examiner verification of significant errors and other noncompliance with governing statutes and rules.
- To ensure that burial record errors are detected in a timely manner, we recommend that the department revise its standard cemetery examination methodology to include a review of relevant cemetery controls and detailed tests of burial records.
- To ensure that examinations are performed in accordance with department procedures, we recommend that the department adopt a policy requiring the Bureau of Funeral and Cemetery Services to conduct periodic monitoring reviews of each region’s regulatory activities, including those relating to the performance of examinations

## Special Examination

and inspections. We also recommend that the department's examination methodology be amended to include provisions requiring that the contents of examination files be numbered or tabbed and cross-referenced.

- To clarify legislative intent to regulate cemeteries, we recommend that s. 497.002, *Florida Statutes*, be amended to require the department to place equal emphasis on regulating cemeteries and pre-need funeral and burial sales. The section should also include a statement of authority that makes it clear that the entity responsible for administering Ch. 497, *Florida Statutes*, has the authority to take enforcement action on all violations of the law, including violations revealed via examinations, inspections, and consumer complaints.
- If it is the Legislature's intent that licensees that violate major provisions of Ch. 497, *Florida Statutes*, be subject to stronger enforcement action, we recommend that s. 497.133, *Florida Statutes* be revised to prescribe specific minimum disciplinary actions for those violations considered the most serious violations. Furthermore, s. 497.119, *Florida Statutes*, should be amended to designate which violations are intended to be mediation offenses.
- To ensure adequate information is provided to the department, we recommend that s. 497.201, *Florida Statutes*, be amended to require all licensed cemeteries, as well as all new and existing cemeteries seeking licensure, to survey and plat the cemetery and submit an official map of all sections, plots, avenues, walks, or other subdivisions to the department or board for approval. Licensed cemeteries should also be required to file updated maps with the department or board whenever changes are made to burial grounds.
- To ensure adequate information is provided to consumers, we recommend that s. 497.333, *Florida Statutes*, be amended to require licensees to disclose additional information to the public. Specifically, licensees should be required to give consumers a current copy of licensee bylaws, regardless of whether the customer requests such information. Licensees should also be required to provide consumers a map of the cemetery and physical description of the purchased burial plot (e.g., plot dimensions). In addition, licensees should be required to prominently display posters and brochures that describe how the death care industry is regulated. The department already produces a brochure describing pre-need funeral and cemetery sales; additional materials that describe regulation of the entire death care industry and resolution of consumer complaints should be developed and disseminated to the public.
- To reduce regulatory fragmentation and increase efficiency, we recommend that responsibility to regulate death care professionals be consolidated within one agency, with the existing boards combined into one. Although either the Department of Business and Professional Regulation or the Department of Banking and Finance could oversee the industry, we believe that DBPR is the more appropriate agency to regulate the death care industry.

## Agency Response

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In accordance with the provisions of s. 11.513, *Florida Statutes*, a draft of our report was submitted to the Department of Banking and Finance for their review and response. The Comptroller's written response is reprinted herein (Appendix A, page 15).



ROBERT F. MILLIGAN  
COMPTROLLER OF FLORIDA

**OFFICE OF COMPTROLLER**  
DEPARTMENT OF BANKING AND FINANCE  
**STATE OF FLORIDA**  
TALLAHASSEE  
32399-0350

March 15, 2002

Mr. William O. Monroe, Auditor General and  
Mr. John W. Turcotte, Director, Office of Program  
Policy Analysis and Government Accountability  
111 West Madison Street  
Tallahassee, Florida 32301-1450

Dear Messrs. Monroe and Turcotte:

This will serve to acknowledge receipt of the special joint examination conducted by your offices on the Bureau of Funeral and Cemetery Services within the Department of Banking and Finance. The recommendations contained in the report will provide this agency with valuable observations that we will thoughtfully consider and take appropriate corrective action.

The Department is keenly focused on finance, and in this regard, the protection of consumer financial investments in preneed contracts will continue to be closely scrutinized. It should be noted that any agency given the responsibility of regulating the preneed industry must have the skills and intent to meet the mission requirements of this financial service.

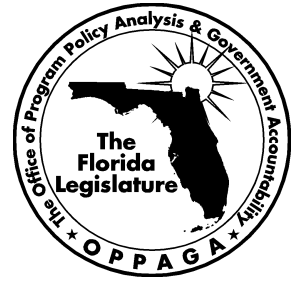
I have purposely established for the Department a priority of effort as follows: a focus on consumer education; "for cause" examinations; fiscal accountability; safety and soundness examinations/investigations. The fact that the purposeful application of scarce resources results in the placement of routine examinations in a lower priority status is acknowledged and accepted.

Should you have any questions, please do not hesitate to contact either my staff or me.

Sincerely,

/s/Robert F. Milligan  
Comptroller

RFM/ibr



# *The Florida Legislature*

## *Office of Program Policy Analysis and Government Accountability*

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- [Florida Government Accountability Report \(FGAR\)](#) is an Internet encyclopedia of Florida state government. FGAR offers concise information about state programs, policy issues, and performance. Check out the ratings of the accountability systems of 13 state programs.
- [Best Financial Management Practices Reviews of Florida school districts](#). In accordance with the *Sharpening the Pencil Act*, OPPAGA and the Auditor General jointly conduct reviews to determine if a school district is using best financial management practices to help school districts meet the challenge of educating their students in a cost-efficient manner.

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***John W. Turcotte, Director, OPPAGA***

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