

VIEWPOINT

By Daniel M. Isard

The Next Steps Proposed By the FTC and How to Beat Them at Their Own Game

Those who cannot remember the past are condemned to repeat it. – George Santayana

It was in the early 1980s the Federal Trade Commission started to investigate the way funeral homes charged for their services. Back then – more than two generations ago – when a death occurred, the consumer purchased the casket and vault and received all the other services of the funeral home. This included the removal of the body, arrangement planning, preparation of the body, livery of the deceased body and the family as well as the use of the funeral home for a gathering or the funeral home would bring the body to the place of worship for a visitation and/or service.

Ultimately, the funeral home brought the casketed body to the cemetery for interment. You got all the services (in

most cases) regardless of what casket and vault you purchased. If a family didn't want a visitation, the funeral home either issued a small credit or did nothing to amend the billing. The FTC didn't think this was right and after much investigation issued what we now know as the Funeral Rule.

What came out of the Funeral Rule was the General Price List that we see today. We went from a merchandise driven business (buy the merchandise and get all services included) to a merchandise and service driven business. This caused two dramatic shake-ups in the way funeral arranging was conducted. We now needed to reestablish our price on caskets and vaults and establish itemized pricing for all the line items within the GPL. The

Funeral Rule created a basket service fee to cover the matters that were common to all funeral arrangements, regardless of disposition from the place of death for a burial, shipping or cremation. That line item was the basic non-declinable service fee.

That is one fee that every family will be obligated to pay, regardless of their choices for the disposition of the body. Funeral home managers struggled to find the proper blend of the allocation of service fees to each of these non-declinable fees and declinable fees. The first decade under the Funeral Rule, many funeral business managers copied the allocation set by their competitors or set their prices a bit higher or lower. Some guessed at the allocation of their overhead. Many ignored the FTC

mandate, praying they would not be caught in a compliance audit.

Keep in mind, the Funeral Rule was promulgated in the mid 1980s. In 1985 computers were not an everyday used device. The internet was not the commercial highway it was, with AOL just getting started. In our funeral world cremation was chosen by families around 5% of the time. To not repeat mistakes in the future you need to understand the past.

Since the adaptation of the initial Funeral Rule, the FTC has modified it to deal with price shopping, caskets being shipped in from third parties and other evolving issues. Just prior to COVID-19, there was great pressure from a group of state attorneys general, led by the attorney general of California, to modify the Funeral Rule more dealing with online price disclosures. COVID stymied this effort.

During the two years COVID was driving all of our societal thinking, the massive increase in deaths that it brought changed many things in our society. First, during that time I did not see one article quoting the anti-funeral home organizations. In fact, we saw the opposite, with people respecting the efforts of all first (and last) responders. The pain of a loss of family or friend was exponentially increased by the inability for the community to come together and mourn. The FTC's request for public comment was obstructed in the winter of 2020 as the sequestration from the workplace carried over to government workers, including the FTC. But now, the FTC is investigating this matter again.

I for one am not anti-FTC nor pro-FTC. I believe in the good of the members of the funeral profession. I do not see the complaints of funeral homes taking advantage of people at a time of distress. I have been inside more than 2,000 funeral homes in my lifetime and met thousands of dedicated members of this profession. I can count on one hand those I would not trust. In previous years I have seen that there were usually about 1,000

complaints to the various federal organizations about a funeral matter. This is a lot, but when you put it in perspective of about 3-million funeral events it is not significant. Yet, here we are with the FTC inquiry being promoted by insignificantly small consumer groups and AGs to strengthen the Funeral Rule.

So, how do you protect your business? First, the issue is about prices being online. Why wouldn't you want them online? I think it goes back to the mid-1980s (and before) when you didn't want your competitor to know your prices. Yet, all the people who didn't want the competition to know their prices, knew their competitor's pricing. What a misplaced effort. You don't want the one person in the community that would never come to you for service to know your price, so you are going to keep your prices secret from everyone else in the community.

I do not believe that you should be mandated to post your prices online. I think you should want to post them online. Studies by my company and others have found that transparency in pricing is a consumer's desire. Some studies report more than half of those surveyed would not consider using a funeral home that does not have their prices online. I know, you think that it is difficult to show prices online. It is not. You can show packages. You can have a video that explains how to compute the funeral plan desired. You can create a worksheet online to make sure everything a consumer could or should want is included.

In my experience, I have seen studies that clearly demonstrate how consumers search for information on a funeral home. In 2000, almost 80% of consumers used a computer, about 15% a laptop and only 5% used a mobile phone or smartphone. Fast forward to today, those figures are reversed, with more than 80% using a smartphone. The website designs of 2000 were rarely mobile-enabled and today many sites are. Imagine that a large percentage of families are in a hospital

waiting area searching for the decision that they dread having to make.

The FTC is constantly told, "two funeral homes have vastly different prices." This leads them to think the profession is sinister. Yet, the price of a steak dinner at Golden Corral and Ruth's Chris might be 500% apart.

What are the key differentiators between funeral businesses? The largest cost in running a funeral home is the staffing. Some value-focused funeral homes use trade services to support a limited staff. Some experience-focused firms have a number of full-time staff with full health and retirement benefits. The investment in capital is different as many value-focused businesses are not equipped for a large gathering like an experience-focused business.

Some funeral homes have no bad debt as they require payment upon the arrangement, whereas others are more empathetic and extend payment terms. The typical firm that allows consumers to pay after the fact may have staff working to collect the proceeds from insurance or they may be satisfied with 2% of their revenue being bad debt. These factors all result in how there is a difference in the pricing between firms.

We do a terrible job of explaining this difference to consumers and the FTC. We must be our own best advocate. If you want consumers to know your prices, it is good for business. If you want people to understand the difference between your firm's pricing and others, spell it out for them.

The FTC is a consumer watchdog. I think history will clearly demonstrate that the move to itemized pricing protected the financial well-being of funeral homes as cremation rates increased and casket purchases declined. I believe that posting prices, in your language, with your style will represent a differentiation that will be good for your business. Do not fear the FTC. Fear your inertia to keep pace with every changing desire of consumers. •