

# GRAVE CONCERNS

## DIGGING UP THE DIRT ON CEMETERY SCAMS

Grave desecration, double-sold plots, abandoned and poorly maintained cemeteries, and stolen cemetery funds are just a few of the problems that consumers face when they search for their final resting place.

By Catherine Elton

When Robert Scott stood at the edge of each of his parents' graves and watched as their caskets were lowered into the earth, he trusted, as do all Americans who bury their loved ones, that it was the last time that their remains would see the light of day. But now, more than 10 years after his father was buried and nearly 2 years after his mother was buried, Scott is not so sure that that is the case.

Scott is part of a class-action lawsuit that alleges that the managers of Eden Memorial Park in Los Angeles routinely ordered gravediggers to crack open the burial vaults of existing graves to make room for new, adjacent graves. According to legal documents that were obtained by

Consumers Digest, one worker for the cemetery claims that he and other workers were instructed to break the vaults, and were told to hide their activities and not tell anyone about them.

And for good reason. Sometimes, after the vaults were broken into, pieces of bone, clumps of hair and scraps of clothing would tumble into the new, adjacent grave, only to be scooped up by a backhoe bucket and dumped onto a refuse heap, according to the documents. Tightly packing in graves enabled the cemetery to sell hundreds more grave sites and bring in millions in revenues, according to one of the lawyers who represents the plaintiffs, which number 800 families and could grow, lawyers say, to include some 50,000 participants. This maneuver caused incalculable grief and anger for the relatives who had laid their loved ones to rest there.

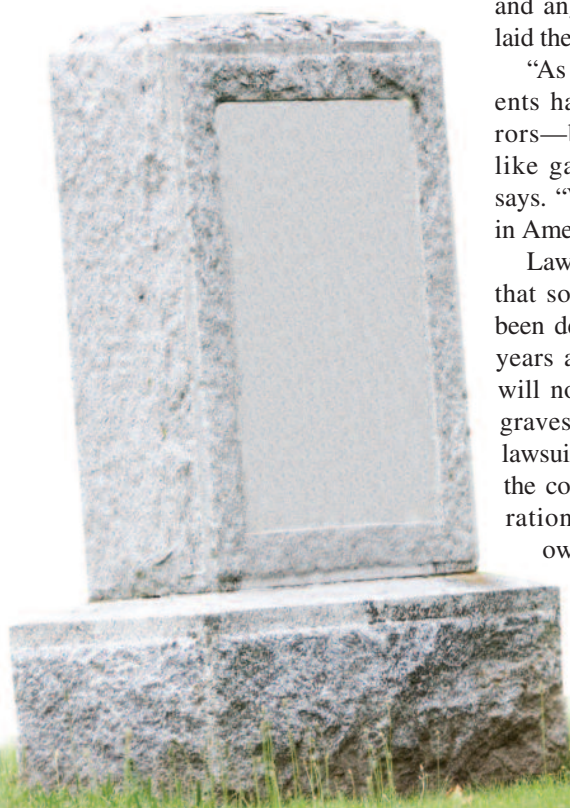
"As Holocaust survivors, my parents had already seen enough horrors—bodies and bones discarded like garbage in the camps," Scott says. "Who would think they do that in America?"

Lawyers for the plaintiffs estimate that some 1,500 graves might have been desecrated in the past 10 to 15 years at Eden Memorial, and Scott will not know whether his parents' graves were among them until the lawsuit enters its discovery phase in the coming months. Service Corporation International (SCI), which owns Eden Memorial and 362 other U.S. cemeteries, declined to comment because the allegations are a part of an ongoing case.

Sadly, the charges of disturbing human remains to create more grave sites and to increase revenues are not unique to Eden Memorial or the company that owns it. In recent years, there have been several similar cases of grave desecration, and although these are clearly the most harrowing of consumer abuses that occur at cemeteries, they are far from the only ones that do. Thirty-seven interviews with consumers, consumer advocates, lawyers, former industry insiders and state government officials revealed several.

For example, cemetery owners and managers often place too little money into trust funds that are designated for permanent maintenance of cemeteries, or they dip into those supposedly sacred funds to cover other expenses—including even personal spending sprees. This practice leads to substandard maintenance and the outright abandonment of the cemeteries. Consumers who plan ahead and pay for their plot and other products and services at the cemetery (known as a *pre-need* purchase) might be sold a contract that they cannot afford. If they move or change their mind about where they want to be buried before they die, in most states, they are not guaranteed a full refund on services and merchandise that they never received or used. Pushy and oftentimes commission-based cemetery salespeople commonly use misinformation, a lack of transparency and onerous surcharges to get consumers to spend more money with them.

How is it possible that such outrageous abuses take place? Several factors combine to make the cemetery in-

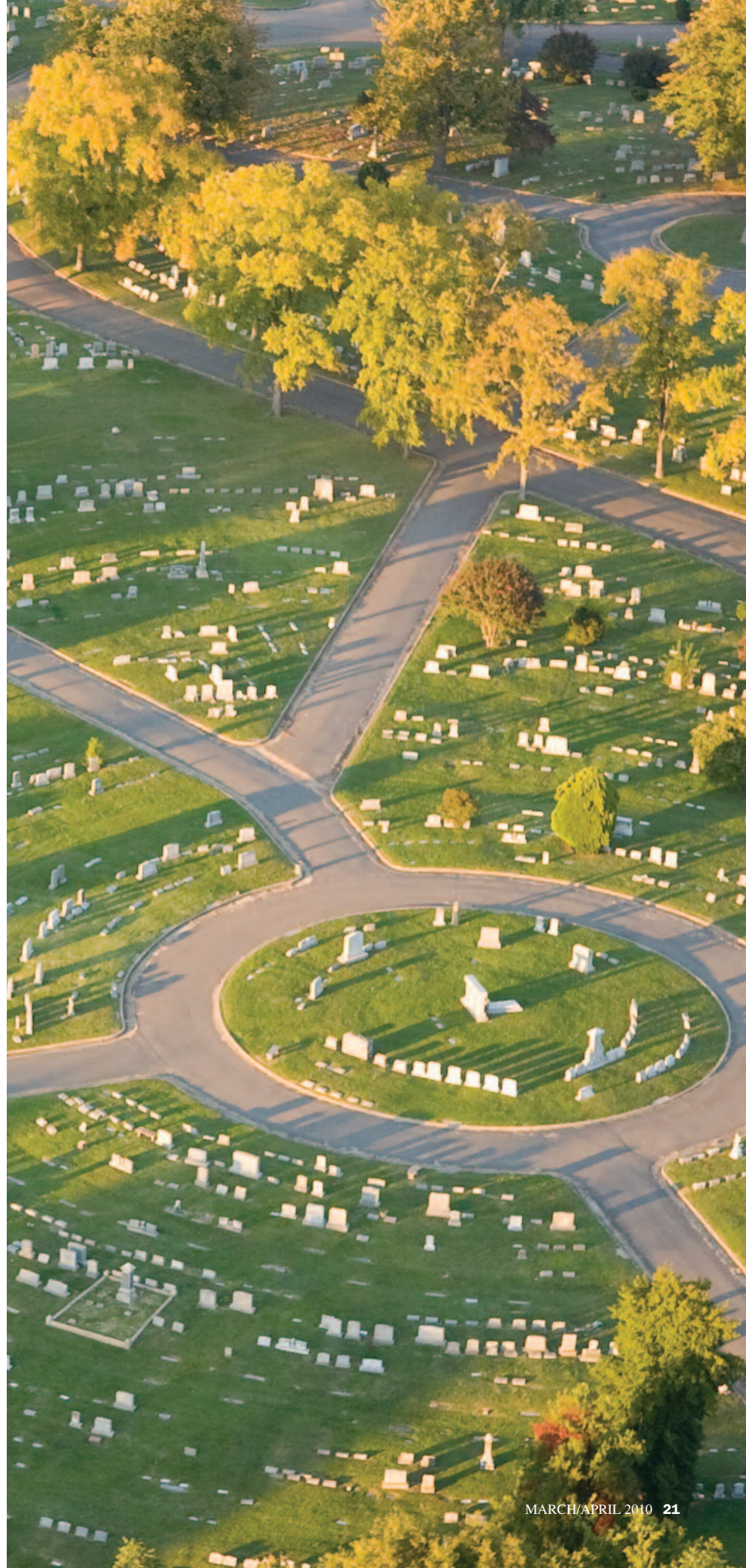


dustry a treacherous one for consumers. It starts with the fact that many people make burial decisions that typically can cost \$2,000 to \$12,000 under emotional duress. That means that too many consumers are reluctant or emotionally unable to haggle over a contract for the final disposition of their own or a loved one's remains—and unlikely to question any suspected abuses. Meanwhile, the federal government is missing in action. This leaves states to regulate the industry as they see fit, which, all too often, they do inadequately. Add to this the lucrative nature of the cemetery business, and you have fertile ground for rampant consumer abuse. Of course, many cemeteries are well-run, ethical operations. The problem is that you often can't tell whether the cemetery with which you are dealing is one of them until it is too late.

**PLOT PROFITS.** The allegations that were made at Eden Memorial were not the first of their kind to be leveled against Houston-based SCI. In 2001, relatives of people who were buried in the two SCI-owned Menorah Gardens cemeteries in southern Florida sued, alleging that workers were disposing of human remains to make room for more graves. As is alleged in Eden Memorial, the Menorah Gardens lawsuit claims that the cemetery broke open vaults and disturbed remains in an attempt to generate more revenues by packing more graves into close quarters. In 2003, the company settled with the plaintiffs for \$65 million—admitting no wrongdoing—and \$35 million was placed in trust for pending, related litigation. It settled with Florida for \$14 million as part of a plea agreement.

Nevertheless, SCI hardly is the only cemetery company that has faced accusations of desecrating graves to make more money. In the summer of 2009, four employees of Perpetua-owned Burr Oak cemetery in Alsip, Ill., were arrested for allegedly disinterring corpses and dumping them in a weedy lot, so the workers could sell the spaces to others.

Such examples of what cemetery critics call *grave recycling* are both common and by no means an exclusive practice of corporate-owned cemetery chains, says Carolyn Jacobi, who worked in cemetery sales and manage-



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ment for 18 years and now runs Eternal Justice, which is a nonprofit, death-care consumer advocacy organization. Jacobi says she has seen evidence of grave recycling even in church-owned cemeteries.

The double selling of graves is not always a function of greed but irresponsible business practices. According to Bob Roberts, who runs CemOps, which is a cemetery-management consulting firm, the vast majority of double-sold graves are preventable and accidental occurrences. The problems often stem from the poor record-keeping that plagues the industry, he says. Problems typically

**digging for dollars** | double selling of graves can be the result of greed or mismanagement.

occur when cemeteries change hands and the records or maps that identify the location of the buried are missing or are so poorly organized that new managers can't understand them.

"The double selling of plots is one of the more common complaints we get," says Joshua Slocum, who is executive director of Funeral Consumers Alliance (FCA), which is a nonprofit consumer advocacy organization that monitors the funeral and cemetery industries. "It happens with all kinds of cemeteries, but [it] seems to be more frequent with cemeteries that were once local and were bought by big chains."

According to Slocum and others, in the 1980s and 1990s, large chains engaged in a fast-paced cemetery acquisition war in which, experts say, they were more concerned with determining the number of cemeteries that they were purchasing rather than ensuring whether those cemeteries had record-keeping problems or other management issues.

How in the world can such problems be curtailed? Following the Burr Oak scandal, Illinois lawmakers passed a law that requires that the location of every burial be recorded on an individual's death certificate and entered into a statewide database. This prevents two death certificates that have the same burial location from being registered. And it should dissuade cemetery operators from recycling graves and help authorities to nab the perpetrators who do, law-

makers say. So far, there is no provision to prevent the double sale of graves that are purchased pre-need, but state authorities say they are studying that issue.

Unfortunately, for now and the foreseeable future, it's really up to you to make sure that a cemetery's plot isn't double-sold. When you purchase a plot, make sure to get a map of the cemetery and that the plot that you visited is the same one that is on your deed.

It's worth noting that FCA and the senior-citizens advocacy group AARP don't recommend that you purchase pre-need burial services. And we tend to

agree, especially if there's any chance you'd move before you die, and, therefore, have an interest in getting a burial plot at a different cemetery. In short, pre-need purchases are a risky investment given that there's no guarantee of any refund in most cases.

But if you decide to purchase pre-need, you must take some extra steps to make sure that the grave that you purchase isn't sold to anyone else. Roberts suggests that you visit the cemetery some time after the purchase and ask cemetery officials to see the logbook and a printout of a computerized record to make sure that the location that was recorded in both sources matches the location that is stated on the deed. You also should visit the grave site to make sure that no one else has been buried there.

Although there isn't much that you can do to prevent the kinds of problems that were alleged to have occurred at Eden Memorial, you might want to ask how many inches separate each grave. Roberts believes that plots should be at least 42 inches wide to accommodate the coffin and the vault and leave enough room on either side for the safe digging of adjacent graves. After the Menorah Gardens case, Florida mandated that graves must be 42 inches wide, but most states don't specify grave width.

**BREACH OF TRUST.** The U.S. cemetery industry is predicated on the assumption that the upkeep of cemeteries

will be maintained forever. But there's little guarantee that a cemetery will have enough money to provide for maintenance after it sells the last grave site. By law, *perpetual-care* cemeteries in all states must contribute a dollar amount or, more often, a percentage (typically from 5 percent to 20 percent) of each grave sale to a maintenance fund to cover the cost of upkeep long after the last grave was sold.

But as it turns out, the majority of U.S. cemeteries are owned and managed by churches or towns, and, with only a few exceptions, these cemeteries are exempt from these laws. Furthermore, in some states, privately held cemeteries can opt out of the perpetual-care category if they advise consumers by displaying a sign on the entrance gate or the office door of the cemetery and including a note in the contract that they are not *perpetual*, or *endowed-care*, cemeteries. In practice, however, the distinction is lost upon the consumer, and cemetery operators might not make it clear, says Bill Stalter, who is a lawyer who specializes in death-care transactions.

Even if you choose a perpetual-care cemetery, it doesn't necessarily mean that the cemetery will be able to care for the property forever. According to Hayden Burrus, whose firm performs financial-risk analyses for cemeteries, if a cemetery contributed nothing or little until it became legally required to do so and if the cemetery were fairly close to capacity at that time, it is likely that that cemetery wouldn't have enough money for upkeep. And even if that weren't the case, some cemeteries still can run into trouble, Burrus says, because the laws are one-size-fits-all, regardless of the operating costs of each cemetery or the particular standard of care.

Although states mandate that cemeteries contribute to perpetual-care funds, few states conduct audits or exams of these funds. In most states, cemeteries must submit forms that show that the contributions were made, but sometimes these forms aren't reviewed. When we asked Tracy Hicks, who is Indiana's cemetery regulator, whether the perpetual-care contributions worked on an honor system, she said, "basically, yeah." In other words, even though the law states that money must be con-

tributed to perpetual-care funds, there's no guarantee in many states that each cemetery complies with the law.

Figuring out whether a cemetery has enough funds to provide perpetual care isn't the kind of math that even a savvy consumer can perform. So, you must take steps to protect yourself, say experts whom we interviewed. According to Stalter, before you start to shop, you should learn about your state's maintenance-funding laws. You should ask the cemetery about the laws, whether the cemetery is a perpetual-care or an endowed-care facility, and whether the cemetery maintains a trust that adheres to state law. "It should be a red flag if the operator cannot explain what state requirements are," Stalter says. You also should ask for the name of the trustee and the market value of the trust (which can vary wildly among cemeteries) and, if it is audited, whether a report can be provided. You're not necessarily looking for specific numbers from these trust documents or audits; mostly you're just checking to see how transparent the cemetery is when it comes to revealing such information. If a cemetery operator can't or won't answer these questions, you should keep shopping.

**CRIMINAL INTENT.** Sometimes perpetual-care trust funds are established and contributed to regularly, but cemetery operators misappropriate their funds while the cemeteries are neglected. For example, relatives of people who were buried at Bayside Cemetery in Ozone Park, N.Y., allege in a lawsuit that the synagogue that owns the cemetery used perpetual-care funds to maintain the synagogue while the cemetery fell into a shocking state of neglect. And sometimes, cemetery operators just steal the funds. For instance, in 2005, a judge ordered the manager of Frederick Douglass Memorial Park in New York to return more than \$600,000 in perpetual-care funds that authorities claimed were used to cover personal expenses.

Swollen pre-need trust funds also have proven to be tempting for unscrupulous cemetery operators. In 2009, authorities in Mississippi disclosed that the pre-need trust fund at Green Acres Memorial Park in Vicksburg had just a little more than \$200 in it, instead of the \$374,000 that



**PLOT PROOF.** When you purchase a plot, visit the site at the cemetery to make sure that it matches what's on the deed.

should have been there. It's not clear whether the money was stolen or just lost because of poor management. But the loss of funds was illegal in either case, the state says.

But what happened in Mississippi is small potatoes compared with what happens elsewhere. Robert Nelms was convicted in Indiana and Michigan courts of embezzling \$24 million from the trust funds (pre-need and perpetual care) of cemeteries that he owned in those states. Authorities allege that Nelms embezzled \$24 million from these trust funds with the assistance of Smith Barney investment adviser Mark Singer, who also has been charged in the scheme. According to authorities, Nelms illegally withdrew money from the trust funds to pay for the cemeteries he purchased and a \$1.2 million home for himself in Indiana. Singer also is alleged to have aided Clayton Smart, who at press time awaits trial in Tennessee on charges of stealing \$20 million from a Memphis cemetery that he owned. Smart also faces charges in Michigan that he embezzled \$70 million from 28 cemeteries there.

Obviously, there is little that you can do to prevent or predict such criminal behavior, but outright theft isn't the only risk for consumers who purchase pre-need burial plots. If you change your mind about your burial plans or if you move to another state and decide that you would rather be buried there, most

often you won't get a refund on your burial plot.

In addition, depending on where you live, often you won't even get back a full refund on opening and closing fees, a headstone or a grave vault that you purchase pre-need at a cemetery. (New Jersey and New York are the only states that require a 100 percent refund, but neither of those refund mandates includes money spent on burial plots.) We can't help but believe that not getting back a full refund amounts to legalized theft, because the money was spent on services that haven't been performed and merchandise that hasn't been delivered. Even a top official with the main trade group for cemeteries acknowledges that consumers are getting a raw deal in this regard. Robert Fells of International Cemetery Cremation and Funeral Association tells *Consumers Digest* that when it comes to unused services and merchandise that hasn't been delivered, consumers should get their money back (minus a small fee that is related to the cemetery's expenses).

If you made a pre-need purchase but move somewhere else, you should check to see whether the cemetery will allow you to apply the money that you've spent for the plot and services there to another cemetery. There are 800 cemeteries that participate in the "credit exchange" for cemetery plots and services, Fells says, but that option wouldn't apply for cre-

mation services the cemetery provides.

Unfortunately, a lot of other cemeteries take a different approach. Some cemeteries even use the legal concept of *constructive delivery*, in which they consider a headstone or vault that you buy to be “delivered” (and therefore, used) after they hand you a receipt for the product, Slocum says. Outrageous!

You don’t even have to change your mind to run the risk of losing money on a pre-need deal, it seems. Angela Maney-Sorrell, who worked for 21 years at Eternal Hills, which is an SCI-owned cemetery in California, says she saw numerous cases in which sales staff sold burial contracts that were worth thousands of dollars to consumers for only 3 percent down. She says it frequently was obvious that the customers were sold more than they could afford and that many of them defaulted on their payments, which resulted in the cancellation of their contract.

Because their payments went toward their burial plot first, the consumers didn’t receive a refund upon cancellation, and they lost the plot if they hadn’t paid the balance in full. (They got a credit toward another plot, which was good for 1 year.) When Maney-Sorrell complained about this and other unethical practices that concerned her, she says, she was chastised by management for putting her customers before the company. She later was demoted and transferred to another cemetery far from her home. She sued her former employer, and at press time her case was about to go to trial. SCI wouldn’t comment on Maney-Sorrell’s allegations because of the lawsuit.

**FRUSTRATING FEES.** Although consumers who forgo pre-need purchases avoid the pitfalls and dangers of those transactions, the loved ones of these consumers (called *at-need* customers in industry parlance) face another set of challenges. Cemeteries are not included in Federal Trade Commission’s Funeral Rule, which regulates funeral homes. Among other things, these regulations require funeral homes to provide printed price lists for products that they sell. It requires full disclosure of the laws that govern funeral sales and allows you to buy products and services individually, instead of being forced to purchase a

package that might contain unwanted items. It also forbids funeral homes from refusing to handle a casket that is bought elsewhere or from charging a fee to do so.

The practices that are prohibited by law at funeral homes are rampant at cemeteries, critics say. Those critics say cemeteries often charge consumers different prices for the same merchandise depending on how much they believe that a consumer can pay. Aggressive salespeople often push grief-stricken consumers to buy more than they need or originally wanted, and to buy all of their burial-related products from the often overpriced cemeteries. Consumers might be able to get a better price on a vault or headstone by purchasing it from the funeral home or an outside vendor. But Jacobi and Slocum say consumers regularly complain to their groups that cemetery workers tell them that they must purchase these products from the cemetery. And if customers purchase products elsewhere, they are punished with onerous “inspection” fees that the cemeteries can request for outside products—amazingly, even when the product comes from the same vendor that the cemetery uses, experts say. The “bogus inspection fees” can run up to a few hundred dollars, Slocum adds.

Even more unscrupulous are the “installation fees” that a cemetery charges on outside monuments—even when the monument company is the one that installs it. According to Jacobi, who also serves as the consumers’ advocate for Monument Builders of North America, depending on the state in which you live,

cemeteries can charge \$1 per square inch as an installation fee for monuments, whether they install it or the monument company does. This fee (which also may be called a *setting-fee* or a *monument maintenance fee* by cemeteries) can run well over \$1,000 on a modest headstone.

These problems are just some of the reasons why Rep. Bobby Rush, D-Ill., introduced a bill in September 2009 that would bring the cemetery industry—including those that are owned by churches and municipalities—under FTC’s Funeral Rule. At press time, the bill was in subcommittee, so we don’t know when—or whether—it will become law. Even if Rush’s bill becomes law, it likely won’t fix everything. The bill fails to address issues that fall outside the purview of FTC, which include regulating pre-need and perpetual-care trust funds. Although the bill requires cemeteries to keep better records and maps of burials, it doesn’t go nearly as far as the new Illinois law that creates a database where all burials are recorded. And the bill does nothing to address the outrageous issue of refunds.

It’s sad to say that, for now, you are largely on your own when it comes to cemetery transactions. Forget ghosts and goblins. Because of unscrupulous salespeople, managers and owners, too many cemeteries live up to their reputations as truly scary places. ●

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