

March 29, 2001

Nicole Della Rocco, Compliance Specialist  
New York State Credit Union League, Inc. and Affiliates  
19 British American Boulevard  
Latham, New York 12112-5118

Re: Membership Issues for Prepaid Funeral Accounts.

Dear Ms. Rocco:

You have asked whether a consumer must be a member of a federal credit union (FCU) before a funeral director deposits the consumer's funds in an account at the FCU under a prepaid funeral agreement governed by New York law. The New York law requires that the funds be held in a trust account. If the funds are refundable, the consumer must be a member. If the funds are nonrefundable, which state law requires if the consumer is an applicant or recipient of supplemental security income (SSI), then either the funeral director or the consumer must be a member.

New York law requires a funeral director to hold funds paid by a consumer under a prepaid funeral agreement in trust and deposit the funds into an interest bearing account at an FCU or other authorized depository. N.Y. GEN. BUS. LAW §453. The law requires a funeral director to place moneys paid under a prepaid funeral agreement for an SSI applicant or recipient into an irrevocable trust. §453(1)(b). The law provides that all other consumers may demand a refund before the delivery of any goods or services, and funeral directors must deposit those funds into a revocable trust account.

With a few exceptions not relevant to your question, FCUs may only accept payments on shares from their members. 12 U.S.C. §1757(6). The membership status of the owner of the funds determines if an FCU may accept the funds. Membership status is also determinative for insurance coverage purposes. 12 C.F.R. §745.0. Where the consumer has the power to demand a refund and revoke the trust, the consumer, as owner of the funds and settlor of the revocable trust, must be a member of the FCU. The revocable trust account is not eligible for share insurance coverage unless the settlor is a member of the FCU. 12 C.F.R. Part 745, Appendix, B. If the consumer is an applicant or recipient of SSI benefits and an irrevocable trust is established, either the consumer, as settlor, or the funeral director, as the trust's beneficiary, must be a member of the FCU. 12 C.F.R. §745.9-1, Appendix, G.

In the scenario presented in your letter, you suggest that a funeral director could deposit prepaid funeral funds into his business account at an FCU. The New York law expressly prohibits a funeral director from commingling funds deposited under a prepaid funeral agreement with "other moneys of the funeral firm, funeral director . . . or other person, firm or corporation" until the goods have been delivered or the services have been performed. §453(1)(a). The New York law requires that a

funeral director will establish a separate trust account for these funds.

Sincerely,

Sheila A. Albin  
Associate General Counsel

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