

FUNERAL ALTERNATIVES GROUP

25 Tampa St.  
Lewiston, Me 04240

MAINE MORTUARY TRUST AGREEMENT

for the benefit of

the provision of funeral and burial services to the beneficiary. The mortuary trust consists of the initial payment made for that purpose upon the signing of this agreement, any money added to the fund at a later date, and all interest and investment income earned by the fund, less fees and taxes paid pursuant to the terms of this agreement.

1. Parties

*Payor.* The payor is the person who is funding this mortuary trust, or the duly appointed legal representative of such person. The payor is:

\_\_\_\_\_  
(name, address, city, state, zip)

\_\_\_\_\_  
(relationship to beneficiary)

*Funeral home.* The funeral home is the trustee for all money paid into the mortuary trust. The funeral home may be an individual, a firm, an association, a partnership or a corporation. The payor hereby appoints the funeral home identified below as trustee. The funeral home need not post bond or enter security. By signing this agreement, the funeral home accepts this appointment as trustee of the mortuary trust.

**Funeral Alternatives Group, 25 Tampa St., Lewiston, ME 04240**

*Contact person.* The person for the funeral home to contact on behalf of the payor with any questions concerning the mortuary trust is identified below. This may be the payor or another person chosen by the payor:

\_\_\_\_\_  
\_\_\_\_\_  
(relationship to beneficiary)

\_\_\_\_\_  
(telephone)

*Beneficiary.* The beneficiary is the person who will receive the funeral and burial services described in this agreement. The beneficiary :

\_\_\_\_\_  
(name)

2. Initial Payment

\$ \_\_\_\_\_

The funeral home hereby acknowledges receipt in trust of an initial payment in the amount shown. Payment was made in the form of cash  Xcheck  
Credit Card  share draft cash  money order. (*check one*) If payment

was made by check, share draft or money order, a photocopy must be attached to each copy of this agreement.

3. Deposit of Initial Payment

The funeral home shall deposit the initial payment in a separate account in the financial institution or credit union identified below within ten (10) days after receipt of the initial payment from the payor:

Kennebec Savings, Sewall St., Augusta, Me 04330  
(name of financial institution or credit union, address, city, state, zip)

**Important Instructions to Payor**

1. Make your check, share draft or money order payable solely to the financial institution or credit union identified above—not to the funeral home.
2. Write the names of the funeral home and beneficiary on the check, share draft or money order for identification purposes.
3. For your protection, mail a copy of this agreement to the financial institution or credit union with instructions to contact you if the initial payment is not received from the funeral home.

**4. Deposit of Additional Payments**

The funeral home shall deposit any money added to the mortuary trust at a later date within ten (10) days after receipt of the additional money from the payor.

**5. Record of Account**

The funeral home shall maintain a complete record of the initial payment and any additional payments into the trust, including principal and interest, and of all fees and taxes paid from the trust. The record must contain the name and address of the financial institution or credit union and the dates and amounts of all deposits and withdrawals. The trustee must make the record available for inspection by the payor.

**6. Permissible Investments**

The initial deposit into the mortuary trust shall be deposited in:

- a federally insured deposit or share account  a trust account. *(check one)*

A deposit in a trust account may be invested in or used to purchase only the following:

- Federally insured deposit or share accounts;
- Securities issued, insured or guaranteed by the United States or by any agency or corporate or other instrumentality of the United States;
- Municipal securities that are exempt from registration under 32 MRSA §10502(1)(A); and
- Permanent life insurance, other than variable life insurance and annuities, from an insurer authorized to transact insurance in this State, subject to the provisions of 24-A MRSA, chapter 27. A funeral home, its employees and agents may not receive any commission, fee or other consideration from an insurer in connection with the procurement or purchase of insurance permitted by this subparagraph.

If the funeral home subsequently transfers or deposits all or any part of the mortuary trust into the investment category not initially selected by the payor (i.e., federally insured account or trust account), the funeral home shall notify the payor within ten (10) days after making the deposit or transfer. No additional consent of the payor is necessary to authorize the change.

**7. Revocability**

This mortuary trust agreement is  revocable  irrevocable. *(check one)*

A *revocable* agreement may be terminated by the payor at any time, in which case the funeral home shall refund the entire mortuary trust to the payor, less any fee permitted by paragraph 20 and any taxes paid pursuant to paragraph 21. The refund shall be made within thirty (30) days after receipt of written notice of revocation from the payor.

An *irrevocable* agreement may not be terminated by the payor. However, the payor retains the right to transfer the mortuary trust to a different funeral home at any time by requesting the resignation of the trustee and appointing a successor trustee. See paragraphs 17 and 18.

**8. Guaranteed Price Mortuary Trust**

The mortuary trust created by this agreement is a *guaranteed price* mortuary trust. The funeral home may also offer a *credit for service* mortuary trust, but is not required to do so. We will

I have explained to the payor the difference between the guaranteed price mortuary trust created by this agreement and a credit for service mortuary trust.

\_\_\_\_\_

(funeral home)

I understand the difference between the guaranteed price mortuary trust created by this agreement and a credit for service mortuary trust.

\_\_\_\_\_

(payor)

honor out of state cremation provided we are contacted first upon passing.

**9. Funeral Goods and Services Selected**

Upon the death of the beneficiary, the funeral home shall provide the funeral goods and services selected by the payor on the Statement of Funeral Goods and Services Selected. The Statement of Funeral Goods and Services Selected must include the manufacturer, model number and a detailed description of any funeral merchandise selected by the payor. *Funeral goods and services must be selected at this time.*

A copy of the Statement of Funeral Goods and Services Selected is attached to this agreement.

#### 10. **Guaranteed Price; Substitute Goods**

The funeral goods and services described on the Statement of Funeral Goods and Services shall be provided regardless of the amount of money in the mortuary trust at the time of the beneficiary's death. If any of the funeral goods specified in the Statement of Funeral Goods and Services Selected are no longer available at the time of the beneficiary's death, the trustee shall substitute goods of equal or better quality.

#### 11. **Treatment of Cash Advance Items (check one)**

*(Cash advances are out-of-pocket payments made by the funeral home to third parties for newspaper notices, cemetery or crematory charges, clergy honoraria, pallbearers, flowers, death certificates, and the like. The specific cash advance items that the funeral home has agreed to provide are listed on the copy of the Statement of Funeral Goods and Services Selected that is attached to this agreement.)*

The cash advance items described on the Statement of Funeral Goods and Services shall be provided regardless of the amount of money in the mortuary trust at the time of the beneficiary's death.

The payor agrees to reimburse the funeral home for cash advance items paid for by the funeral home in excess of the amounts shown for those items on the Statement of Funeral Goods and Services Selected. The payor understands that he or she will be separately billed for these excess amounts upon the conclusion of the funeral.

*Cash advance items must be selected at this time.*

#### 12. **Permissible Uses of Trust Funds**

The funeral home shall apply the mortuary trust funds solely to—

- The price of the funeral goods and services and cash advance items selected by the payor pursuant to paragraph 10;
- Any amounts retained by the funeral home for the funeral home's own use pursuant to paragraph 14;
- Any complete refund to the payor required by paragraph 8 if this mortuary trust agreement is revocable and the payor has revoked the trust.
- Payment of any fees permitted by paragraph 20;
- Payment of taxes pursuant to paragraph 21 or otherwise.

#### 13. **Amounts Retained by Funeral Home For Its Own Use**

The funeral home may withdraw and retain for its own use any funds remaining in the trust following payment for the funeral goods and services and cash advance items selected (or their substitutes).

#### 14. **Transfer of Mortuary Trust**

This agreement constitutes the payor's written consent to the direct transfer of the mortuary trust funds by the funeral home from one financial institution or credit union to another financial institution or credit union, or, if the trust is revocable, to the payor. The funeral home may direct the transfer of the mortuary trust funds to another financial institution or credit union for any reason consistent with the purpose of this agreement and the governing law and rules. No additional written consent of the payor is necessary to authorize the transfer.

#### 15. **Withdrawals of Mortuary Trust Funds**

The funeral home may withdraw money from the mortuary trust only upon presentation of a certified copy of the death certificate of the beneficiary and only for the purposes listed in paragraph 13, provided that presentation of the death certificate need not be made for withdrawals to pay fees as permitted by paragraph 20, to pay taxes as permitted by paragraph 21 or otherwise, or to pay the complete refund to the payor permitted by paragraph 8 (if this mortuary trust is revocable and the payor has revoked the trust).

#### 16. **Resignation of Funeral Home as Trustee**

The funeral home shall resign as trustee if—

- The funeral home becomes unable or incapable of continuing to act as trustee;
- The funeral home for any reason no longer desires to continue as trustee; or
- The payor for any reason requests the funeral home to resign as trustee.

A voluntary resignation of the funeral home as trustee shall be ineffective unless the trustee has delivered written notice of the resignation to the payor, accompanied by an accounting of trust funds, at least fifteen (15) days before the effective date of the resignation. When the payor has requested the resignation, the trustee shall deliver a written resignation and an accounting of trust funds to the payor within fifteen (15) days after delivery of the written request.

**17. Appointment of Successor Trustee**

In the event of the resignation or incapacity of the funeral home as trustee, the payor may appoint a different funeral home as successor trustee.

**18. Change of Trustee Upon Change of Ownership**

Within thirty (30) days after a change of ownership of the funeral home, the new owner shall notify the contact person identified in paragraph 2 of the change and shall inform the contact person that the new owner has assumed the role of trustee under this agreement and will provide all funeral goods and services required by this agreement.

**19. Fees**

No fees may be charged against or deducted from the mortuary trust by the funeral home except for the following:

Description	Amount
Transfer of account by appointment of successor trustee.....	0
Revocation of revocable agreement.....	0
Actual financial and tax administration of the account performed by or on behalf of the funeral home.....	0

**Notice to Payor**

The *maximum* fees the funeral home can charge for the three services listed above are contained in Chapter 16 of the rules of the State Board of Funeral Service. As initially established by the Board, those maximum amounts were: 7% of trust funds, not to exceed \$200, for a transfer; 7% of trust funds, not to exceed \$200, for a revocation; and 25% of net interest earned per annum, not to exceed \$100, for annual tax and financial administration. This agreement may not contain any other fees.

XTrust earnings shall be treated as personal income of the payor. The payor will be responsible for payment of any tax due on trust earnings.

If the trust is within the applicable contribution limit for treatment as a “qualified funeral trust” under federal tax law, the funeral home shall elect such treatment on behalf of the trust and shall pay any federal income tax due directly from trust funds.

*The funeral home does not provide tax advice to the payor other than as required by the instructions to IRS Form 1041. The payor is encouraged to consult an independent tax advisor to determine which of these two options is more advantageous to the payor. The payor acknowledges that s/he is not relying upon the tax advice of the funeral home.*

**20. TAXES (check one)**

**21. Maine Law Controlling**

The situs of this mortuary trust shall be Maine. The validity, construction and administration of the trust shall be governed by Maine law, including but not limited to the provisions of 32 MRSA §1401 and Chapter 18 of the rules of the Maine Board of Funeral Service.

**22. Binding on Legal Representatives**

This agreement is binding upon and inures to the benefit of the heirs, devisees, personal representatives, successors and assigns of the parties.

Dated at Funeral Alternatives Group\_dated \_\_,\_\_\_\_, 2010

Payor: \_\_\_\_\_

(Funeral Director signing on behalf of funeral home)

\_\_\_\_\_  
(owners of funeral home)