



## Caring for the Dead In Florida

Please refer also to the general introduction to state chapters—“Caring for the Dead: Necessary Information.”

The language typically used to allow families to care for their own dead is a reference to a “funeral director or person acting as such.” That language has been removed from Florida statutes, which now read as follows:

*FS 382.006 Burial-transit permit—(1) The funeral director who first assumes custody of a dead body or fetus must obtain a burial-transit permit . . . . The application for a burial-transit permit must be signed by the funeral director and include the funeral director’s license number.*

However, this does not have to be construed restrictively. In checking this chapter prior to publication and again in 2013, Vital Statistics Administrator Kenneth Jones pointed out the following section of statute:

*382.008 Death and fetal death registration—(2)(a) The funeral director who first assumes custody of a dead body or fetus shall file the certificate of death or fetal death. **In the absence of the funeral director, the physician or other person in attendance at or after the death or the district medical examiner of the county in which the death occurred or the body was found shall file the certificate of death or fetal death.***  
[emphasis added]

Therefore, next-of-kin and designated death care agents claiming custody of the body may care for their own dead in Florida. Mr. Jones elaborates in an email to Slocum dated May 29, 2013:

*Dear Mr. Slocum:*

*In reply to your email, Florida Statutes were amended to clarify the definition of funeral director.*

*The revision simply clarifies the definition of a funeral director so that its use throughout the statute is clear. It has nothing to do with the family's ability to act without the use of a licensed funeral professional. Deleting the words "or other person" does not preclude the family handling final disposition. The following statute addresses what to do in the absence of a funeral director.*

*[reference to statute cited above]*

*Hopefully this clarify the changes in House Bill 171 and that Vital Statistics has not changed any of its procedures regarding burial transit permits.*

*Please advise if you have any questions.*

*Ken Jones  
Deputy State Registrar/Bureau Chief  
Florida Department of Health  
Bureau of Vital Statistics  
Post Office Box 210  
Jacksonville, Florida 32231*

## **Death Certificate**

It is the responsibility of the person acting as a funeral director to prepare a typewritten death certificate with all required information and take to the physician or medical examiner for completion of the medical certification of death. The attending physician or district medical examiner will sign the death certificate within 72 hours after presentation. The death certificate must be filed in the county of death within five days of death and before final disposition.

Florida began electronic death registration in 2010. When that is in full-swing statewide, families caring for their own dead will continue to use the paper procedure. A blank death certificate can be gotten from a county health office.

## **Fetal Death**

A fetal death certificate is required when death occurs after 20 weeks of gestation. If there is no family physician involved, the district medical examiner must sign the fetal death certificate.

### Transporting and Disposition Permit

The local registrar or deputy registrar in the county health department will issue the burial-transit permit after you file the death certificate. There is no fee for this permit. The permit must be obtained within five days after death and prior to final disposition of the body. It must be filed in the county where disposition takes place, within ten days.

### Burial

Cemeteries of less than five acres do not need to be registered with the state. It is unlikely that there are local zoning regulations regarding home burial, but you should review them before planning a family cemetery. If your land is in a rural area, draw a map of the property showing where the burial ground will be and have it filed with the deed. That may be all you have to do to establish your family cemetery. There must be 12 inches of earth on top. A sensible guideline is 150 feet from a water supply and 25 feet from a power line or neighbor's boundary.

When burial is arranged, the family member acting as the funeral director must sign the burial-transit permit and deliver it to the local registrar within 10 days. If there is no person in charge, the words "no person in charge" must be written across the face of the permit.

### Cremation

A medical examiner's authorization on the burial-transit permit is required for cremation. The usual charge for this varies from one county to the next. There is a 48-hour wait before cremation. After the first 24 hours, refrigeration is required. Most large hospitals have refrigeration facilities, but if the storage becomes crowded, removal may be requested. All but a few crematories have refrigerated storage for which a fee is often charged.

Most crematories insist that a pacemaker be removed, and authorization by next-of-kin is required if one did not authorize one's own cremation prior to death. The crematory will sign the disposition permit which must be filed with the local registrar within 10 days. There are no laws regarding the disposition of cremated remains. You may do as you wish.

### Other Requirements

Refrigeration or embalming is required after 24 hours. If the person died of a contagious or communicable disease, the doctor in attendance should be consulted.

## Medical Schools for Body Donation

Body donation to a medical school is another option for disposition. Find the information for Florida at <[www.finalrights.org](http://www.finalrights.org)>.

## State Governance

There has been significant reorganization of Florida funeral and cemetery regulation. The current Board of Funeral, Cemetery, and Consumer Services is under the aegis of the Department of Financial Services. There are ten members, one of whom is the state health officer or designee. Two are funeral directors, one other a funeral director with a preneed license and a crematory. Two are ceterierians, and one a monument dealer. Three are public members, at least one of which is 60 years of age or older and another who is a CPA. No two board members may work for the same company. This board regulates funeral homes, funeral directors, direct disposers (the state's unfortunate name for no-frills cremation and burial businesses), refrigeration facilities, body transport services, embalming facilities, crematories, monument dealers, and prepaid funeral and cemetery purchases. As of late 2010, Florida now insists that anybody in the direct disposition service must be a funeral director—an unnecessary and anti-competitive requirement.

<<http://www.myfloridacfo.com/FuneralCemetery/>>

## Prepaid Cemetery and Funeral Funds

Florida has some excellent anti-tying provisions for cemeteries:

*497.280 Illegal tying arrangements.—*

*(1) No person authorized to sell grave space may tie the purchase of any grave space to the purchase of a monument from or through the seller of any other designated person or corporation. . . . No person who is authorized to sell grave space and no cemetery company or other entity owning and operating a cemetery may:*

- 1. Require the payment of a setting or service charge, by whatever name known, from third party installers for the placement of a monument;*
- 2. Refuse to provide care or maintenance for any portion of a gravesite on which a monument has been placed; or*
- 3. Require waiver of liability with respect to damage caused by cemetery employees or agents to a monument after installation . . .*

All cemetery goods and services available must be disclosed on a printed or typewritten price list. 10% of the grave, columbaria, or mausoleum price must be set aside for perpetual care.

All preneed contracts must be on state-approved forms which are sequentially numbered. The contract may be made irrevocable only for people applying for Medicaid. That said, watch out for the lousy refund or transfer provisions.

With so many thoughtful and thorough provisions in Florida's funeral and cemetery laws, it is astonishing that the preneed portions of the laws are among the worst in the country, especially in a state full of retirees and snowbirds. You are at risk of losing a large portion of what you paid if you move or change your mind. Were AARP and other senior groups asleep at the wheel?

100% of all money for cash advance items must be placed in trust. Not counting the cost of interment rights, only 70% of prepaid funeral and cemetery services and 30% of retail or 110% of the wholesale cost of merchandise must be placed in trust. "Constructive delivery" can bypass this requirement for monuments, markers, and outer burial containers. This is accomplished by issuing a certificate of ownership and warehousing the merchandise. Once "delivered," the cemetery is under no obligation to issue a refund even if the items have never been used.

Substitution of merchandise of equal or greater quality is required if the specified items are not available.

A consumer may get a full refund within 30 days of signing any *cemetery* or funeral contract. At any time after that, a consumer may get a full refund of services, facilities and cash advance items—not merchandise—by providing a written request. Since only 70% of services went into trust and the funeral folks must dig into their pockets for the other 30%, this may be a difficult check to receive from a cash-strapped funeral home. One woman had been given the run-around for nearly a year before she was advised to contact the state. The seller keeps all interest.

A consumer is entitled to a full refund of funeral merchandise only if "the preneed licensee cannot or does not deliver." If your funeral plans have changed from body burial to cremation, you'll have no use for the \$2,000 casket. The family of one woman who died in New Jersey on a trip back north was told, "The casket is in our warehouse. Come and get it." The FAQ page on the board's website states: "A licensee that is willing and capable of delivering the purchased merchandise is not required to make a refund." If a purchaser defaults on time payments, the seller may keep all merchandise money.

Trusting requirements can be avoided if a bond or letter of credit has been filed with the state.

The only reporting requirement seems to be from the trustee holding pre-paid funds to the seller. Funds for administrative costs may be withdrawn from the interest earned.

Florida has a Preneed Funeral Contract Consumer Protection Trust Fund to provide restitution in the case of a delinquent provider. The consumer gets an amount equal to what was paid, with no consideration for interest. Any claim must be filed within one year of the going-out-of-business or bankruptcy of the preneed seller. How might consumers be guaranteed notification? The law doesn't say.

### Consumer Concerns

- The death rate in Florida can support approximately 674 full-time mortuaries; there are, however, 755. This ratio is not as bad as in many other states, but funeral prices tend to be higher in areas where there are “too many” funeral homes.
- In some areas of Florida almost all funeral homes are owned by one of several large corporations, limiting choices for price-sensitive consumers.
- The rights of families and religious groups to care for their own dead are not clearly defined in the statutes.
- Finance charges are permitted for installment purchases of prepaid cemetery arrangements. This is outrageous. When you finance a car, house, or other retail purchase, you get to use the item. But a finance charge makes no sense on a lay-away plan before they lay you away.
- Trusting requirements are insufficient. All money (100%) for prepaid funeral goods and services should be placed in trust, with better provisions for transfer or refund of monies paid plus interest. “Constructive Delivery” or warehousing should not be permitted. Preneed is alive and well in the 29 states that require 100% trusting.
- There is no annual reporting requirement to the purchaser of prepaid funeral and cemetery goods and services, paperwork that might be helpful to the family of a deceased to indicate prepayment. Such reporting would help to “enforce” the required trusting, as well.
- Until the Florida laws are changed, it is probably a terrible idea to prepay for a funeral or any cemetery merchandise and services, given the lack of adequate protection for consumers. Your own trust account in a bank will be safer.

- While Florida requires that the least expensive casket be displayed in the same manner as the more expensive caskets, there is no requirement that low-cost caskets be carried by a funeral home. (One woman said she was shown only two caskets—a plain pine box and a \$4,000 casket.)
- An escape clause in the regulations says that disclosure of “a discount or rebate” is not necessary even though cash advance items must be listed in the amount charged to the funeral home. Consumers may wish to ask for the invoice for each cash advance item.
- Not all funeral homes include the cost of cremation in a “Direct Cremation” package. To its credit, statutes state that advertising would be misleading if it “makes only a partial disclosure of relevant facts.” Apparently, however, the state is not cracking down on this.
- There is no adoption of FTC requirements by reference even though many of the Florida requirements parallel those of the FTC. A few have been omitted (e.g., the timing of when price information must be given), and—without specific reference—any future amendments of the Funeral Rule will have to be acted on separately in Florida, not an efficient use of legislative time.
- There is no law permitting you to name a designated agent to make your final arrangements. In situations where you are estranged or distant from next-of-kin, this could be important. One family complained to Slocum that an SCI funeral home held their mother’s body in refrigeration until the family could get consent signatures from siblings in all corners of the US. This, despite the fact that mom had prepaid, and by doing so, had authorized her own cremation in advance according to Florida law.

### Miscellaneous Information

- Educational requirements for becoming an embalmer: mortuary college and a passing grade on the national exam; one year of internship after school is also required. An associate’s degree (two years) is required for a funeral director’s license, plus exam and internship. Alas, the national exam is a total embarrassment, deemed “irrelevant” and “useless” by consumer advocates and industry practitioners alike.
- Direct disposers and body transport services are licensed. An exam is required covering state laws and determination of death. A law passed in 2010 specifies that direct disposers must be funeral directors.