



# Caring for the Dead in

## Indiana

In Indiana, a dead body becomes a hostage of the funeral industry, one of only eight states that requires the use of a funeral director. (Connecticut, Illinois, Indiana, Louisiana, Michigan, Nebraska, New Jersey, and New York.) In no other situation is a private citizen forced to use a for-profit business to fulfill the interests of the state. While the majority of the statutes in the Indiana Code clearly recognize the rights of families or a designated agent to control the disposition of a body, one statute stands out in conflict, inviting a court challenge. This one was surely passed to benefit the special interests of the mortuary industry and is buried near the end of the Embalmers and Funeral Directors section of the Code:

*IC 25-15-8-25. A local health officer may issue a [disposition] permit under IC 16-37-3-10 only to a funeral director . . . .*

Another section of the funeral directors code, IC 25-15-2-10, says that clergy are exempt from the mortuary licensing laws if “the funeral is arranged and directly supervised by a funeral director.”

Mormons, Muslims, and Orthodox Jews have not always found undertakers to be cooperative in accommodating religious bathing and dressing rituals. The Hmong have also had trouble finding sympathetic services for their extensive family involvement at a time of death.

The public health code has no such restrictions and deals only with the necessary concerns of the state. Indeed, parents may file a birth certificate in Indiana if there is no doctor involved. What’s the big deal about a death certificate?

*IC 16-37-3-2. As used in this chapter, “person in charge of interment” means a person who places or causes to be placed a stillborn child or dead body or the ashes, after cremation, in a grave, vault, urn, or other receptacle, or otherwise disposes of the body or ashes.*

*IC 16-37-3-3. The person in charge of interment shall file a certificate of death or of still birth with the local health officer. . . .*

*IC 16-37-3-10. Upon receipt of a properly executed certificate of death or stillbirth or, when authorized by rule of the state department, a provisional certificate of death, a local health officer in the county in which the death occurred shall issue a permit for the disposal of the body.*

Even under the funeral directors' statutes a family's rights are acknowledged:

*IC 25-15-9-18. . . .the following persons, in the order of priority indicated, have the authority to designate the manner, type, and selection of the final disposition and interment of human remains:*

- (1) An individual granted the authority in a funeral planning declaration executed by the decedent under IC 29-2-19.*
- (2) An individual granted the authority in a health care power of attorney executed by the decedent under IC 30-5-5-16.*
- (3) The individual who was the spouse of the decedent at the time of the decedent's death.*
- (4) The decedent's surviving adult child. If more than one (1) adult child is surviving, any adult child who confirms in writing that the other adult children have been notified, unless the licensed funeral director or licensed funeral home receives a written objection from another adult child.*
- (5) The decedent's surviving parent. If the decedent is survived by both parents, either parent has the authority unless the licensed funeral director or licensed funeral home receives a written objection from the other parent.*

It's hard to understand why the legislators did such a half-hearted job on the right of disposition. What if the spouse is estranged? While “any adult child” may make funeral arrangements, who decides if there is a conflict between more than one? Ditto for surviving parents? In some states, such disputes may be settled by the Probate Court. In Indiana, that court seems empowered to deal only with wills and assets. Too bad.

*IC 25-15-8-1 Grounds for Discipline . . . A licensee that . . . takes possession of human remains without*

*authorization from the person legally entitled to custody of remains . . . may be disciplined. . . .*

With the rapid growth of the home funeral movement, there will likely be efforts to find ethical legislators willing to repeal 25-15-8-25 and related offending language. Funeral directors might even decide that's in their best interests, too, rather than perpetuating an unwanted monopoly. Morticians will always be needed; not everyone will want a home funeral.

### **Death Certificate**

The family doctor or a local health officer will sign the death certificate, stating the cause of death. The remaining information must be supplied, typewritten or in black ink. The death certificate must be filed with the local health officer prior to final disposition.

Indiana is testing electronic death registration that should go into effect some time in 2011. When that is adopted the procedure will change somewhat.

### **Fetal Death**

A death certificate is required in a case of stillbirth after 20 weeks of gestation.

### **Transporting and Disposition Permit**

The local health officer will issue the authorization for disposition upon receipt of a properly executed death certificate. A burial transit permit (two copies) is required if the body is to be transported by common carrier. An out-of-state transit permit, for bodies brought into Indiana, must be filed with the local health officer.

### **Burial**

Burial in Indiana must occur in an "established cemetery" and have a cover of not less than two feet of earth. To establish a family cemetery in a rural area, it must be surveyed, with a plat recorded with the county. Unfortunately, it appears statutes require almost all cemeteries to maintain a \$100,000 maintenance trust fund. The legislature clearly intended to regulate commercial cemeteries, not to lay such a burden on private family burial grounds (religious cemeteries, for example, are exempt from the requirement), but until the statute is clarified, some families may have difficulty. As of this writing, one town is citing this statute while it does everything in its power to stop an 82-year-old woman from burying her husband on her rural 300 acres, going so far as to send the sheriff to her house! Perhaps your town or county won't take such a hostile stance (and we certainly wouldn't recommend bringing the maintenance fund law to their attention).

Cemeteries less than an acre are taxed at the rate of \$1. If your family cemetery is more than 10 acres, it is required to be registered with the state.

### **Cremation**

There is a 48-hour wait prior to cremation unless waived by the local health officer. (One might wish to seek this waiver if the crematory intends to charge a holding fee.) A pacemaker must be removed, and authorization by next-of-kin or other authorizing agent is required.

An authorizing agent must sign a statement saying that arrangements have been made for viewing the body (or for holding it until other services with the body present have been arranged first). Some funeral homes will interpret this to mean that they can require ID viewing and charge for it. Identification and tagging of the body at the place of death prior to removal would be a more responsible requirement. Indeed, to avoid any such extra charges, you may want to announce to the funeral director that you plan to view the body at the place of death.

The crematory can send cremated remains only to a funeral home or cemetery, a bizarre requirement since they may be retained by the person with legal control. Or they may be disposed of in a crypt or cemetery, on the property of a consenting owner, on uninhabited public land or a waterway. A form recording the disposition must be filed with the county recorder within ten days of the final disposition. There are no cremains police checking to see if they are still on your mantel.

### **Other Requirements**

There are no embalming requirements in Indiana. Disposition must occur within "a reasonable time" after death. When death has occurred from an infectious disease, consult the doctor in attendance.

### **Medical Schools for Body Donation**

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

### **State Governance**

There are eleven members on the Funeral and Cemetery Board—four funeral directors, four cemeterians, two consumer members, and one member from the public health department. (No more than five may be of the same political party.) However, cemeterians may not vote on funeral issues and funeral directors may not vote on cemetery issues. This seems to negate the positive aspect of having a combined board.

<[www.in.gov/pla/funeral.htm](http://www.in.gov/pla/funeral.htm)>

Crematories are licensed by the Funeral and Cemetery Board and may be operated by anyone so licensed—not necessarily a mortician. Unfortunately, there is no representation on the Board.

Cemetery personnel may not sell markers or monuments for a profit if any public funds are accepted by that cemetery. Cemeteries have the exclusive right to open and close graves or to install markers. This is an unfortunate limitation if one is dealing with a for-profit cemetery and appears to violate the Sherman Anti-trust Act.

### Prepaid Cemetery and Funeral Funds

A portion of ground interment rights or crypt sales must be placed in perpetual care: 8% for crypts, 15% for lots. There is a Consumer Protection Fund for Cemetery Maintenance, with 1% for that. That fund is not available to municipal, religious or small cemeteries under ten acres.

100% (90%) of all money paid preneed for funeral or cemetery goods and services must be placed in **trust** and the **interest** allowed to accumulate with the funeral home as the sole beneficiary. The seller may take up to 10% for administrative expenses. Perhaps that was a legislative typo that should have been only 1%, a more realistic figure for the actual cost and more in line with what other states allow. In another part of the statutes, “reasonable” administrative expenses are to be paid according to the rules of the department of financial institutions. We wonder what that department thinks about an \$800 administrative fee for an \$8,000 funeral.

“**Constructive delivery**” can bypass the trusting requirement. “Delivery” usually is accomplished by issuing a certificate of ownership and warehousing the casket, vault and/or marker, although few states are checking to see if the goods are actually there. Once “delivered,” it is almost impossible to get a refund even if the items have never been used. If a person opted for cremation at a later date, a burial vault would not be needed, for example.

All preneed funeral policies are **irrevocable** after 30 days. At that point, the seller may pocket the 10% permitted for administration. The irrevocable requirement seems a strange limit on consumer choice. Only the “settlor” (the person for whom a preneed was purchased) may **transfer** a prepaid funeral contract to another funeral home. What does a daughter do if Mom dies while visiting her in Arizona? All contract terms must be fulfilled with any transfer, so constructive delivery mischief and the 10% that got taken out *may* get undone, but it sure looks like any need to transfer could be riddled with problems.

All prepaid funeral contracts must guarantee to supply goods and services of **equal value** at the price paid, without additional charge. Current industry literature warns against guaranteeing prices because funeral inflation exceeds the interest usually received on such contracts. Therefore, one must wonder if folks in Indiana have a great deal going or whether funeral homes are finding mischievous ways around the law to collect the difference. The word “value” is an obvious problem. A \$795 casket ten years ago would have been far fancier than a \$795 casket today.

**Finance charges** are permitted for installment purchases of prepaid funeral services and merchandise. This is outrageous and should be repealed immediately! When you finance a car or house, you get to use either. But a finance charge on a lay-away plan before they lay you away?

Excess money left over after the contract services have been provided is to be returned to the family, an unlikely event, given funeral inflation.

Sellers of preneed funeral plans must make an annual **report** to the state board of prepaid funds collected.

Indiana has a preneed **Consumer Protection Fund** that may accumulate up to \$1 million. It is financed by a fee for each preneed contract written—\$2.50 for those under \$1,000 in value, \$5 for those \$1,000, and \$10 for those \$1,500 and more. This fund will be used in the case of default by a funeral provider. Given that several preneed meltdowns have far exceeded \$1 million, this cap seems inappropriately low today.

### Consumer Concerns

- The death rate in Indiana can support approximately 222 full-time mortuaries; there are, however, 649. Funeral prices tend to be higher in areas where there are “too many” funeral homes.
- Finance charges on preneed purchases should not be permitted.
- Substitution of equal value is a problem. There is no guarantee that an adequate description will be listed on the preneed contract. Survivors should be allowed to approve any substitution of equal quality and construction.
- Constructive delivery (warehousing) is permitted to bypass the trusting requirement for preneed purchases.
- There is no annual reporting requirement to the purchaser of prepaid funeral goods and services, paperwork that might be useful to the family of a deceased and which would help to “enforce” the trusting requirement.

- Given the loopholes and the irrevocable requirement for preneed contracts, it is a **terrible** idea to prepay for cemetery and funeral expenses in Indiana unless one must set aside assets for Medicaid eligibility. Money in your own bank account will be safer, is more transferable, and allows for a change in plans. Twenty nine other states require 100% trusting. Preneed is alive and well in those states. Why doesn't the legislature want the same protection for Indiana residents?
- There is no requirement to identify and tag the body at the place of death before removal.
- There is no requirement that low-cost caskets be included in any display.
- The statute on mark-up of cash advance items is vague and does not appear to forbid a mark-up or require disclosure of the exact amount of any mark-up if there is one.
- The FTC Funeral Rule has not been adopted in this state, which would give consumers more protection.
- Settling funeral disputes when the deceased has not left specific instructions is not readily available without large legal expenses. In other states, that task is assigned to the Probate Court which one may use without hiring a lawyer.
- Ethical standards are not clearly defined. Clarity in standards may be necessary for valid consumer complaints to prevail. (See Appendix.)
- This state has no laws regulating the body parts business.

### Miscellaneous Information

- The educational requirements for becoming a funeral director in Indiana are one year of college and one year of mortuary school (or two years of mortuary school) plus one year of apprenticeship. All must pass a state-approved exam.
- A crematory may not sell inorganic matter (e.g., gold) retrieved from a body.
- A county coroner is elected, many of whom are morticians with a conflict of interest.
- You may name a designated agent for body disposition in a "funeral planning declaration." The state-specific form may be found in the Indiana code 29-2-19-13.
- There is no state assistance for burial of indigents.
- A disinterment order must be obtained from the state Department of Health. A licensed funeral director must be in charge.

*This chapter was sent for review to the Funeral and Cemetery Board and the Department of Health—Vital Records, with minor changes offered by each.*

## Necessary Information

Many people over the years have asked for a checklist for performing a family-directed funeral. Would that were so easy! While the process is not excessively complicated, there are many things families need to contemplate and many differences in state laws, so it is impossible to distill the process into a sound-byte-style checklist.

There are, however, some basic components common every family-directed disposition:

1. A doctor, medical examiner, or nurse practitioner must certify the death by completing the medical information on the death certificate.

2. The death certificate must be completed and filed before the body is buried or cremated.

3. Most states require you to get a permit for transportation or disposition before moving the body and before final disposition.

4. You will need to do a walk-through ahead of time with all parties involved, from the local registrar of vital statistics to the cemetery, crematory, or medical school where the body will end up. Some of these parties may need to be shown in advance that what you're doing is legal if they haven't experienced a family-directed funeral before.

## Avoiding Careless Errors

Those who choose to handle death privately must take great care to follow all state and local regulations. The requirements are not complex, but failure to meet them can lead to unpleasant situations and create a climate in which professionals become less willing to work with families.

One crematory, for example, was sued for rejecting a body sent by a family. The case was thrown out of court, and rightly so, because the family had merely hired someone to deliver the body without a death certificate, transit permit, or authorization from next-of-kin for cremation. Another crematory will no longer accept bodies directly from families because in one case, the family had assumed that medical personnel would fill out the forms properly. While that seems like a reasonable assumption, in this case the cause of death as stated by the medical examiner on the permit to cremate was not written exactly as it had been on the death certificate, and the state later made an issue of it. In short, the procedures are quite simple and straight-forward, but it is necessary to pay close attention to the details and to be vigilant about errors that may be made by others.

## Death Certificate

Great care must be taken in completing the death certificate. Whiteout or other corrections are not usually permitted. If an error is made, you may have to start over again with a new certificate. Most states have implemented an Electronic Death Registration (EDR) system, which doctors and funeral directors can log into rather than writing on a piece of paper. Private individuals will not be allowed to use the on-line system, but vital statistics departments should have a paper alternative for families who perform their own funerals. Check your state chapter and your local vital statistics office ahead of time for the proper procedure.

For all deaths, a death certificate signed by a doctor stating the cause of death must be filed—usually in the county or district where death occurs, or where a body is found, or where a body is removed from a public conveyance or vehicle.

If complicated laboratory work is needed to accurately determine the exact cause of death, the physician or medical examiner may write “pending” or a similar phrase for the cause of death and release the body for disposition. In those few cases, a delayed or corrected death certificate will be sent to the state registrar by the physician when the cause of death is known.

In addition to the medical portion, facts such as “mother’s maiden name” must be provided by the family. Unless the signature of a licensed funeral director is required by state statute, the family or church member

who is handling the arrangements must sign the death certificate (or paper alternative in states with EDR) in the space marked “funeral director,” followed by his or her relationship to the deceased, immediately after the signature.

States vary in the time required for filing the death certificate with the local registrar, but this must usually be accomplished before other permits are granted and before final disposition.

## Fetal Deaths and Miscarriages

A special death certificate or fetal death report is required in all but two states for fetal deaths. Eleven states seem to require registration of all fetal deaths. In a majority of states, a fetal death must be registered if it occurs after 20 weeks of pregnancy. In Hawaii, the requirement goes into effect after 24 weeks. Some states gauge pregnancy duration by fetal weight, e.g., 350 grams (12½ oz.), and because any unattended death—including fetal death—could require a coroner’s investigation, a physician should be called. Even if there is uncertainty as to whether reporting requirements are applicable, reporting a fetal death may be helpful in obtaining insurance benefits in some situations.

## Autopsies: Dealing with a Coroner/Medical Examiner’s Office

Autopsies are generally required when cause of death is violent, unexpected, uncertain, or “unusual,” including suicide. For this reason, the police should be called when death occurs outside a hospital or nursing home, is “unattended,” and falls into one of the categories above. But it is not necessary to call 911 for an ambulance or police if the death is not unusual. For example, it wouldn’t make sense to call 911 if Grandma died in her sleep at 85, and doing so would bring on unnecessary commotion.

Death from a contagious or infectious disease may also necessitate involvement with a coroner or local health officer.

When donating the body to a medical school, a family should request that no autopsy be performed. The decision will depend on circumstances surrounding the death, and the state may order an autopsy in suspicious cases.

The practices in coroners’ offices vary widely. In California, it is legal for medical examiners to amputate fingers for identification and remove tissue and organs for study. One woman discovered that her father had been buried without his heart when she arrived at a workers’ compensation hearing and saw the heart presented as evidence.

The condition in which a medical examiner or coroner returns an autopsied body varies considerably. We've had reports from families and home funeral guides stating the body was barely tacked back together, and work had to be done to better sew up the incisions. Some families planning a home funeral might wish to engage a funeral director for this. On the other hand, we've heard from several families who did this work themselves.

The term *medical examiner* is usually reserved for those with medical training, and the person in such a position is often appointed by the department of health. In a few states, the word *coroner* is used interchangeably with medical examiner. Generally, however, the term coroner implies an elected position. In California, a medical degree is required for a candidate to run for coroner. In many other states, however, anyone may run for the office, with or without medical training. A coroner may be a practicing funeral director or have a direct relationship with a funeral home. In Pennsylvania, more than half the coroners' offices have a funeral director on the staff. To avoid any appearance of impropriety, a coroner or medical examiner may rotate pick-up calls among all funeral homes within the jurisdiction, but this is not always the case. Funeral directors from various states have complained that a local coroner-funeral director ends up getting more business when he's on duty as the coroner. This is unethical, and consumers have no obligation to use the funeral home whose director is acting for the state as a coroner.

## Home Death, Home Visitation

With hospice support, many people are able to die at home in familiar surroundings, near familiar faces. In some states, an "expected" death can be certified by an attending nurse. A home death can allow the family time to obtain permits and make necessary arrangements. Turning off the heat in a room or turning on an air-conditioner can make it reasonable to contain a body without further action for 24 to 72 hours or more. People often ask, "Doesn't the body smell?" No, not usually for the first two or three days, at 70 degrees or less, but each situation must be considered individually. Often in waning days a failing person stops eating and drinking, so the body will become somewhat dehydrated before death. Noxious odors are therefore unlikely during the next few days. The robust body of someone who finished a meal of corned beef and cabbage just prior to death, however, might produce telltale odors.

For some, there is therapeutic value in keeping the body at home for at least a brief period, allowing the family a chance to congregate and deal with the death,

as often occurred in the front parlor two or three generations ago.

## Nursing Home Death

When death is anticipated in a nursing home, it will be important to work out your plans with the nursing home staff ahead of time. If the deceased has had only a semi-private room, for example, the nursing home may have no other location to hold the body while paperwork and other errands are done. Staff members are accustomed to calling a funeral director, regardless of the hour, for quick removal. Out of consideration for other residents, it may not be feasible for the nursing home personnel to allow a long delay while permits, a container, and vehicle are obtained.

When Carlson's Uncle Henry died at a care facility, she didn't have a dignified way to move the body out. She called a friendly funeral director to pick up and bring the body to her home where it was placed in a cremation box. She and her husband drove it from there to the crematory.

## Hospital Death

Disposition of a fetal or infant death can be handled entirely by the hospital as a courtesy if a family so chooses. When other deaths occur in a hospital, the relative on hand should ask the nursing staff to remove any life-support articles such as catheters, IV needles, and feeding or breathing tubes. A catheter is held in place by a "balloon" and is not as simple to remove as an IV needle. Some of the nasal tubes appear especially disfiguring after death and may be of concern to other family members who are expected later to help with the death arrangements.

Some hospitals may be reluctant to release a body directly to a family without the use of a funeral director. If the death is expected, you should alert the hospital staff of your intentions ahead of time. If hospital personnel are confused or believe incorrectly that they can refuse to release the body to the family, a telephone call from your lawyer (or Funeral Consumers Alliance) may be in order. It is also important for families to recognize the legitimate needs of hospitals. Some hospitals may have no storage facilities for dead bodies while permits are obtained and may insist on calling a funeral director for immediate removal after death if there is to be any significant delay.

## Body and Organ Donation

Donation of eyes and other organs must be done under sterile conditions and usually within a short time after death. Because organ-donor cards may not be immediately available to hospital personnel, next-of-kin

should make the decision to donate known to attending staff at the earliest time possible. Hospital employees are often reluctant to approach a grieving, distressed family. Anyone who can find emotional healing in a gift of life or sight is encouraged to take the initiative in making such an offer even if the time of death is uncertain. The corneas of elderly persons can usually be used, and eyes (and sometimes skin) may be donated even if total body donation to a medical school is subsequently planned.

With the increasing success of organ transplants, consideration should be given to whether organ donation takes priority over body donation. There may develop a competition between those needing body parts and those who need whole bodies. Loss of a major organ involving a thoracic incision usually makes a body unacceptable for a teaching donation because of the difficulty in embalming a system interrupted by recent surgery. Carlson and her husband, Steve, have written in on the body donation cards they carry that organ donation is to be considered first. If organ donation is not needed, only then should their bodies be considered for body donation to a medical school. If their bodies are not accepted, they want a plain pine box send-off.

Body donation to a medical school may be an option even if the deceased has not enrolled in such a program. For up-to-date information about the needs and requirements of medical schools, as well as for-profit and non-profit companies that accept body donations, check our website: <[www.finalrights.org](http://www.finalrights.org)>

### **Embalming**

No state requires routine embalming of all bodies. Special circumstances—such as an extended time between death and disposition—may make it necessary under state law. Interstate transportation by a common carrier may also necessitate embalming, although most airlines will waive that requirement if there are religious objections. Refrigeration or dry ice can take the place of embalming in many instances. Check the Yellow Pages (or the on-line equivalent) for a source of dry ice. Frozen gel packs such as those used for picnic coolers can also work, though you will need enough to swap out when one set gets warm. In some states, embalming may be required by law if the person has died of a communicable disease, although this is a seriously flawed requirement.

### **Moving A Body**

Never move a body without a permit (or without medical permission if your state allows that in lieu of a permit)! Always call ahead before moving a body even if you have a permit. A medical school, cemetery, or

crematory staff member who is unprepared, or a town clerk who just isn't sure about family burial plots may need some time and help in doing his or her job. By calling first to make arrangements at the destination, you will be expected and prepared. Remember that even if your state permits families to perform their own funerals, crematories, cemeteries, and medical schools are not legally required to work directly with consumers. You will want to know in advance whether the staff will accept the body directly from you (and you may be able to persuade them to do so by explaining your plans in advance).

The use of a simple covered box allows some dignity for all involved in the handling and moving of a body, regardless of final disposition. If a family chooses to build the container for delivery of a body for cremation, they should consider the size. A standard cremation chamber opening is 38 inches wide and 30 inches high. A container two feet wide and 14 to 18 inches deep is usually sufficient for most bodies, however. One crematory mentioned that most home-made boxes tend to be too large. Simple cardboard containers (or caskets) can be purchased from funeral homes (though some will refuse to sell the box only). Or check the internet; the FCA site at <[www.funerals.org](http://www.funerals.org)> has a listing of casket sellers in many parts of the country, and many will ship a simple cardboard or wood casket in knockdown form, ready to assemble. Some boxes are more expensive than others because of construction. Some are paraffin-coated, others plastic-lined, and some have plywood bottoms.

You should also consider the length of the box when you choose the vehicle for transportation. Most states require a permit for transportation or disposition. The death certificate must usually be completed first, and often a special permit-to cremate is needed prior to cremation. In many states, funeral directors serve as deputy registrars. If death occurs when local municipal offices are closed, a funeral director may be needed to furnish or sign the disposition or transit permit, especially in states using electronic death registration (EDR) widely. As a deputy of the state in this function, the funeral director should not charge for this service unless such a charge is set by the state.

### **Body Fluids**

After death, the blood in a body settles to the lowest points, leaving the upper portions pale and waxy, with purple mottling below. Some parts of the body may swell a little. Fluids may be discharged from body orifices. It will be helpful to use absorbent material—such as towels or newspapers—underneath. A sheet can help with wrapping and moving the body. If the person has

died from a communicable disease, it will be important to take all health precautions. Use a pair of latex rubber gloves. Your state may require the use of a funeral director in such a case. Consult your family doctor for instructions if the information for your state is not specific or if you are concerned.

When an autopsy has been performed or death occurs from trauma, the body may be wrapped in a vinyl body bag—available from a funeral director—to prevent additional leakage or seepage. A plastic, zippered mattress cover might work as well. However, if you plan on cremation, avoid any such materials whenever possible.

## **Out-of-State Disposition**

All states honor properly acquired permits of other states when a body is to be moved interstate. There may be local regulations for disposition, however. Check by telephone before setting out for the destination.

## **Burial**

In some states, when burial will be outside the county or town where death occurred, you will need an additional permit to inter (whether on private land or in a cemetery) from the local registrar in that area. The statutes and regulations of some states include depth requirements for burial; these are listed in the state chapters in this book. Standard practice in many states is to place the top of the coffin at least three feet below the natural surface of the earth. A burial location should be 150 feet or more from a water supply and outside the easement for any utility or power lines.

## **Cremation**

When cremation is chosen, an additional permit is often required from the local coroner or medical examiner. There is a fee for this which varies by state; the highest we know of is Oklahoma's \$150 charge. If the deceased did not sign a cremation authorization prior to death, authorization from next-of-kin or a designated agent is required by most crematories. Usually this can be obtained by fax, Western Union, or overnight mail if family members live out of state.

Next-of-kin is determined in this order (although it varies slightly from state to state):

- (1) surviving spouse
- (2) adult sons and daughters
- (3) parents
- (4) adult siblings
- (5) guardian or “person in charge”

That is, if there is a surviving spouse, his or her permission is all that is required. If there is no surviving spouse but several children, all adult sons and daughters may be

required to grant permission for disposition by cremation (though some states require only one adult child to consent). Adult siblings must assume responsibility if no spouse, offspring, or parents survive.

Be sure to check the chapter for your state to see if the law allows you to designate an agent to carry out your wishes for final disposition. “Designated agent” laws allow a person to choose anyone (it need not be a family member) to have the sole legal authority to direct the cremation or other form of disposition. It is extremely helpful to name an agent ahead of time so that family disputes will not hold up the arrangements or wind up in probate court. Gay, lesbian, and transgender people should take special care to designate an agent if their state has a designated-agent law. We have seen some terrible problems with blood families swooping in to take the body away from the decedent’s same-sex partner. (This problem can also be averted, of course, in the increasing numbers of states with same-sex marriage.)

A pacemaker must be removed before cremation. The services of an attending physician, the medical examiner, or a funeral director can be requested for this. On the other hand, one funeral director told Carlson, “Anyone can do it.” A pacemaker is about the size of a silver dollar, embedded just under the skin, usually near the neck or lower on the rib cage. A shallow incision with an X-Acto knife would make it readily accessible, and the wires to which it is attached should be snipped. If a pacemaker is not removed and explodes during the cremation process, repairing damage to the cremation chamber may be the liability of the person delivering the body.

## **Selecting a Crematory**

There is no consistency among the states when it comes to the operation of crematories. Some states allow only cemeteries to run crematories, barring funeral homes from owning them. A few other states allow only funeral homes to operate crematories, and bar freestanding crematories from doing business directly with the public. Still other states permit crematories to operate independently and do business with consumers directly. Generally, crematories run by funeral homes are less likely to work directly with a family, as they want consumers to pay them to do everything. At Cook-Walden funeral home in Austin, Texas (owned by SCI), the staff told an FCA board member that they would accept the body and the death certificate directly from the family, but the direct cremation price was the same (\$2,400!) even though the family would be doing almost all the work.

As with all entities involved in a family-directed funeral, you may need to contact several crematories ahead of time to find one that will work with you. Carlson took Uncle Henry to a crematory an hour and a half away where the cost was \$225. The nearby crematory would not take a body from a family, and lists prices close to those in Austin.

### **Obituary (Death Notice)**

Traditionally, an *obituary* is a news article published when a well-known person dies. A *death notice* is called in by the family or funeral director and published, usually at a price, to inform others that death has occurred. However, in current usage, the terms are generally interchangeable.

When a death occurs, it is almost impossible to personally notify everyone who knew or cared about the deceased. Close friends and relatives, of course, should be informed by phone before they read about the death in the newspaper. But a death notice may help assure that the news reaches a wider circle of acquaintances in a timely manner. It should mention any services planned, even if a memorial gathering is scheduled for a later date.

More people are learning about the deaths of friends and acquaintances on-line than ever before. As newspaper readership declines, putting a notice of death on your—or the decedent's—Facebook page (or other social media) may spread the news more quickly than relying on a newspaper obituary alone. While e-mail is considered by some to be the most impersonal form of communication, many people are grateful to be notified quickly by e-mail, especially if they spend a lot of time on-line.

If you do choose an obituary, call the paper to learn its policies and any costs. Your local paper may have a standard format for obituaries or expect certain information to be included. An obituary can generally be phoned in or e-mailed. If there is no funeral director involved, the person at the paper may ask for a copy of the death certificate just to be sure that the obit is not a practical joke (as has happened from time to time).

The cost varies a lot but can be quite high; it's not uncommon to see obituary charges of \$500 or more. Of course, most people want the obituary to tell the story of the person who died, and the longer it is, the higher the price. When Slocum's close friend died in 2010, the obituary Slocum wrote would have cost \$700 to put in the *Syracuse Post-Standard* (and it wasn't that long). The funeral director suggested putting only the necessary details about the time and place for Michael's memorial service in the paper, and publishing the longer obituary on the funeral home's website, which they

offered free. Thank you, Newcomer Funeral Home. Lisa's Uncle Henry was a colorful character—a friendly, witty street person who got to know almost everybody he met. A long obit with several of his life stories was the only practical way to get the word out to everybody. It was expensive, but was the one costly item that seemed important.

### **Miscellaneous but Still Important**

- It is not uncommon for family members to forget to remove jewelry at the time of death.
- A family using the time of a mortician for advice should find it reasonable to pay a consultant's fee.
- If a person who works in a funeral home or crematory offers to file a death certificate, you should expect to pay for the service.

When private death arrangements are made in an area of the country where the practice is still uncommon, you can expect some hesitancy on the part of involved persons such as registrars and town clerks. Some hospitals may even be reluctant to release the body to a family. We have tried to include in each state chapter relevant legal citations enabling family disposition. People in authority, accustomed to delegating their duties to funeral directors, may have to be informed of their responsibilities. That can be frustrating, particularly when you are enduring a time of loss and grief.

The majority of these people will probably be concerned with performing their duties appropriately. Few will intentionally want to hinder your choice if you have followed all required procedures and if you seem well-informed.