



Caring for the Dead In New Jersey

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

In New Jersey a dead body becomes a hostage of the funeral industry, one of only eight such states that require the use of a funeral director (Connecticut, Illinois, Indiana, Louisiana, Michigan, Nebraska, New Jersey, and New York). In almost no other situation is a private citizen forced to use a for-profit business to fulfill the interests of the state. The statutes also conflict with each other:

45:27-22 Control of funeral, disposition of remains.

22. a. If a decedent, in a will . . . appoints a person to control the funeral and disposition of the human remains, the funeral and disposition shall be in accordance with the instructions of the person so appointed. . . . If the decedent has not left a will appointing a person to control the funeral and disposition of the remains, the right to control the funeral and disposition of the human remains shall be in the following order, unless other directions have been given by a court of competent jurisdiction:

- (1) The surviving spouse of the decedent or the surviving domestic partner.*
- (2) A majority of the surviving adult children of the decedent.*
- (3) The surviving parent or parents of the decedent.*
- (4) A majority of the brothers and sisters of the decedent.*
- (5) Other next of kin of the decedent according to the degree of consanguinity.*

Alas, the control evaporates with the requirements to use a funeral director for filing the death certificate.

26:6-6 *Execution of death certificate. (2003) a. The funeral director in charge of the funeral or disposition of the body of any person dying in this State shall be responsible for the proper execution of a death certificate in a legible manner, or by means of the NJ-EDRS, and filed in exchange for a burial or removal or transit permit with the local registrar . . .*

26:6-8 *Duty to furnish particulars; verification. In the execution of a death certificate, the personal particulars shall be obtained by the funeral director from the person best qualified to supply them. . . .*

If the laws cannot be repealed given the growing interest in home funerals, they will likely generate a court case contesting their constitutionality. In a 1909 federal case, *Wyeth v. Cambridge Board of Health*, the court ruled:

. . . the refusal to permit one to bury the dead body of his relative or friend, except under an unreasonable limitation, is also an interference with a private right that is not allowable under the Constitution of the Commonwealth or the Constitution of the United States.

Death Certificate

New Jersey is now using electronic death registration. Within 24 hours, the doctor in attendance, a registered professional nurse, or the county medical examiner must initiate the death certificate, stating the cause of death. The remaining information must be supplied and “verified” by a funeral director. How exactly is a funeral director supposed be able to verify information that could only come from the family themselves? In other states, a paper worksheet is available to home funeral families and the data is entered by a state or local registrar. Parents may file a birth certificate if no doctor is involved.

Fetal Death

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

Transporting and Disposition Permit

The electronic death registration will generate a burial or removal permit, once the death certificate information is complete. The fee for this is \$5, back down from \$15, thanks to a veto from the Governor. This permit is to be given to the cemetery, crematory, or other place of disposition and then filed with the registrar of that district within 10 days.

Burial

There are no state statutes that specifically permit or prohibit home burial. It is also 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 are no state burial statutes or regulations with regard to burial locations. A sensible guideline is 150 feet from a water supply, 25 feet from a power line. Plan your family cemetery away from boundaries with neighbors, too. The top of an adult casket must be covered by four feet of earth; a child's casket by three and a half feet of earth. When a vault is used, the depth requirement is reduced to six inches.

Unlike other states where burial constitutes a permanent easement on the land, the New Jersey cemetery statutes provide, "Human remains buried on property that is not part of a cemetery may be removed by the owner of the property provided that removal is in compliance with applicable law and the remains are then properly re-buried in a cemetery."

When burial is arranged, the burial permit must be filed with the local registrar within 10 days. When there is no person in charge of the burial ground, "No Person in Charge" must be written across the face of the permit.

Cremation

The burial permit is sufficient for cremation. (The New Jersey legislature had the good sense in 1983 to eliminate the requirement for a medical examiner's permit.) There is a 24-hour waiting period prior to cremation. Authorization by next-of-kin is required, and a pacemaker must be removed. There are no laws regarding the disposition of cremated remains. You may do as you wish.

Other Requirements

A body to be shipped by common carrier must be embalmed unless the destination will be reached within 24 hours, an unfortunate requirement as most airlines will accept a body in a sealed casket when honoring religious objections to embalming.

In other cases, bodies in New Jersey must be buried, cremated, embalmed or refrigerated to 45 degrees or cooler within 48 hours after death. (*New Jersey Administrative Code 8:9-1.1*) Remember that there are no embalming police with a stopwatch, so home funeral families should not worry about meeting an exact temperature requirement.

Medical Schools for Body Donation

Body donation to a medical school is another option for disposition. Find the information for New Jersey at <www.finalrights.org>.

State Governance

There are thirteen members of the state Board of Mortuary Science; four of those are public members, one is a government member, and the remaining eight are morticians. The Mortuary Science Board has some unique powers. It is authorized to make rules “. . . for and in the interest, preservation, and improvement of the public health, morals, safety and welfare.” Morals?

<www.njconsumeraffairs.gov/mort/>

The New Jersey Cemetery Board oversees the cemetery business. The board has ten members—five cemeterians, two public members, one is the Commissioner of Community Affairs or the commissioner’s designee serving ex-officio, one member is the Attorney General or his designee serving ex-officio, and one member is the designee of the Commissioner of Health and Senior Services.

<www.njconsumeraffairs.gov/cemetery/>

Crematories are licensed, regulated, and inspected by the Department of Health. One does not need to be a funeral director to run a crematory.

Prepaid Cemetery and Funeral Funds

As of 1971, all newly established New Jersey cemeteries must be run by non-profit organizations. “Plenty” of private, for-profit cemeteries had been established prior to that, Carlson was told by a Cemetery Board office staffer. Cemeteries are tax-exempt, which means the taxpayers are subsidizing for-profit cemetery companies.

Cemeteries may not be affiliated with a funeral home or sell vaults and markers. In spite of that, Loewen (which went bankrupt, reemerged as The Alderwoods Group, and was then purchased by Service Corporation International) managed to get into the cemetery business back in the 1990s. Somehow the lawmakers were conned into making it legit by 2004, grandfathering it as existing for-profit that can run cemeteries:

45:27-7.1 Certificate of authority to provide management services for a cemetery, issuance to certain for-profit entities.

1. a. A for-profit corporation, partnership, association or other private entity that managed or operated a cemetery in this State prior to January 14, 2004, shall be issued a certificate of authority to manage

or operate a cemetery by the New Jersey Cemetery Board and may continue to manage or operate that cemetery on or after that date, notwithstanding its for-profit status and shall be subject to all the applicable provisions of the “New Jersey Cemetery Act, 2003,” P.L.2003, c.261 (C.45:27-1 et seq.). A for-profit corporation, partnership, association or other private entity that managed or operated more than one cemetery in this State prior to January 14, 2004, shall be issued one certificate of authority pursuant to this subsection covering all such cemeteries.

There may be a plus side to this. Many of the old cemeteries are run by volunteers, with no perpetual care funds. The cemeteries are deteriorating and at risk of being abandoned. It may be the for-profit folks who take over but will necessarily raise prices.

Cemeteries must have a posted price list.

In-person soliciting for the purpose of selling funeral services is not permitted. Prices charged for preneed purchases may not exceed those on the current price list.

Unless one is purchasing funeral insurance, all prepaid *funeral* money must be placed in trust with the interest to accumulate. If the money is to be deposited in a pooled trust account, the trustee (financial manager) may withdraw a 1% commission annually. In the case of these “master trusts”—which are heavily promoted by morticians—the commission is often shared with morticians or with their state associations. The purchaser has a right to an annual report reflecting the amount and interest accrued. This does not seem to be mandatory, and there appear to be no reporting requirements for individually trusted accounts.

If a provider converts a trust account to funeral insurance, the commission and any other differences must be disclosed to the purchaser. The law is not clear whether the purchaser’s permission is required for such a conversion.

A person may transfer or cancel a prepaid arrangement at any time, for a full refund including interest (less the 1% annual commission that probably has been withdrawn). “Constructive delivery” is not permitted.

If merchandise selected preneed is no longer available at the time of death, the provider may substitute “goods of equal quality, value and workmanship.” The word “value” may be a problem, however. A casket that cost \$950 ten years ago was quite a fancy casket. For \$950 today, many funeral homes would offer up a gray cloth-covered “minimum” casket with the goal of getting the survivors to ante up some extra dollars for something “nicer.”

Consumer Concerns

- The death rate in New Jersey can support approximately 294 full-time mortuaries; there are, however, 729. Funeral prices tend to be higher in areas where there are “too many” funeral homes.
- There is no provision for an adequate description of funeral goods selected preneed nor for a substitution of equal quality if the selected item is no longer available at the time of death.
- There is no annual reporting requirement to the purchaser of prepaid funeral goods and services, paperwork that might be helpful to the family of a deceased to indicate prepayment and would help to “enforce” trusting requirements.
- There is no guarantee fund or other protection against default of prepaid funeral funds.
- While the preneed regulation in New Jersey is not too bad, it may be unwise to prepay for a funeral until there are adequate provision for substitution and reporting.
- The requirement to embalm when shipping by common carrier is offensive to some religions or personal beliefs and should be repealed.
- There is no requirement that low-cost caskets be included in any display.
- There is no requirement to identify and tag the body at the place of death before removal.
- The standards for ethical, professional conduct are weak and should be more well-defined. That would make it easier for a consumer to prevail when filing a valid complaint. (See Ethical Standards in the Appendix.)
- The language of the 1984 Funeral Rule was incorporated into the regulations, but that has not been updated to reflect the changes of 1994. Adopting the Rule by reference would save the state from having to update its own laws every time there’s a change.
- Funeral homes may not provide food or beverages, a ridiculously outmoded and consumer-unfriendly policy.

Miscellaneous Information

- Educational requirements for becoming a mortuary science practitioner: two years of college, one year of mortuary school, and two years of apprenticeship. Three years of college reduces the

apprenticeship requirement to one year. A state exam and practical exam are also required.

- Cash advance items must be billed at the actual cost to the funeral director.
- You may name an agent in your will to handle your funeral arrangements but be sure a copy of that will is easily accessible; never leave only one copy in a safety deposit box that may not be easy to access as soon as the will is needed.
- Any organization operating as a tissue and organ procurement outfit must be run not-for-profit and be registered with the state. New Jersey is one of the few states with such regulation of the body parts business.
- No special permit is required for disinterment but must be done at the direction of the person with the right to control disposition.



This chapter was sent for review to the Board of Mortuary Science, the state Cemetery Board and the Department of Public Health. The Cemetery Board staffer didn't seem to think prices would go up or that legislators had been "conned." No response came from the Mortuary Board. Vital record information was verified by telephone.