

Caring for the Dead in

Oklahoma

Persons in Oklahoma may care for their own dead. The legal authority to do so is found in:

Title 59 § 396.12b Conduct of Funeral Services . . .
A. Each funeral conducted within this state shall be under the personal supervision of a duly-licensed funeral director. . . .
C. Nothing in this section regarding the conduct of funerals or personal supervision of a licensed director . . . shall apply to persons related to the deceased by blood or marriage.

§63-1-317. Death certificate . . .(b) The funeral director or person acting as such who first assumes custody of a dead body shall file the death certificate.

While the statutes are pretty clear about your rights as next-of-kin, it may come as a surprise to clergy that those in the funeral business apparently aspire to a role of spiritual leadership, as the rules promulgated by the Funeral Board read:

235:10-1-2 . . . “Funeral Service” means a ritual or ceremony conducted with a body or bodies present with said ritual or ceremony conducted prior to final disposition. A funeral service shall be conducted by a licensed funeral director . . .

At the risk of meddling with religion even further, the Funeral Board has decided that those who care for their own dead should skip any funeral or prayers over the dead altogether, for the rules go on:

*235:10-1-3 When Board rules are not applicable . . . Board rules shall not apply where an individual related to the deceased by blood or marriage provides a burial receptacle and buries the related deceased **without embalming or conducting a funeral service.** [emphasis added].*

My advice? Go ahead anyway. The courts would surely affirm your right to freely engage in the religious or spiritual activity of your choice—at a time of death or any other time.

Death Certificate

Oklahoma is not yet using electronic death registration (EDR) although they are for births. Once EDR is started, a paper worksheet will be available from the office of Vital Records or possibly on-line.

The family doctor or a local medical examiner will sign the death certificate within 48 hours, 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 registrar within three days and before final disposition.

Fetal Death

A fetal death report is required for each fetal death.

Transporting and Disposition Permit

The medical examiner will issue a burial-transit permit if the body is to be moved out of state. The fee for this is \$100.

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 or depth. A sensible guideline is 150 feet from a water supply, 25 feet from a power line, with two or three feet of earth on top. Plan your family cemetery away from boundaries with neighbors, too.

Cremation

A permit for cremation must be obtained from the medical examiner. The fee for this is \$150, the highest in the country. Most crematories insist that a pacemaker be removed, and authorization by next-of-kin is required. The crematory will return the disposition authorization to the issuing registrar. There are no laws regarding the disposition of cremated remains. You may do as you wish.

Other Requirements

Regulations—which apply only to funeral directors—require embalming or refrigeration after 24 hours. Weather and reasonable planning should be considered. 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 Oklahoma at <www.finalrights.org>.

State Governance

The Oklahoma Funeral Board has seven members. Two are consumer representatives one of which should be from the healthcare field. The five funeral director members are recommended to the governor by the trade association, an unfortunately political ploy. There are no crematory operators specified to be on this board, even though crematories are now licensed by the Funeral Board as a “funeral establishment.” They must be run by a funeral director, a totally outrageous and unreasonable requirement that closes out any low-cost cremation providers for consumers. Furthermore, there is almost nothing in the mortuary school curricula on running a crematory and nothing in the study guide for the national exam about cremation. The change in the law put one cemetery-owned crematory out of business.

<www.okfuneral.com/>

Prepaid funeral arrangements are governed by the Department of Insurance.

<www.ok.gov/oid/>

Prepaid cemetery transactions are monitored by the Banking Commissioner.

<www.osbd.state.ok.us/>

Prepaid Cemetery and Funeral Funds

Ten per cent of cemetery lot prices must go to perpetual care. When purchased preneed, 65% of *cemetery services* and 65% of the retail price of an outer burial container and 110% of the wholesale cost of other *cemetery merchandise* (*i.e.*, markers) must be placed in **trust**, although “**constructive delivery**”—a certificate saying it's in the warehouse—can avoid this requirement. A **refund** would be nearly impossible if you were to change your mind or move. The seller may withdraw the interest after administrative fees have been paid. A surety **bond** can avoid trusting requirements entirely. An annual **report** must be made to the Banking commissioner. Cemeteries run by religious and benevolent organizations are exempt from these requirements.

Finance charges are permitted for cemetery sales. It is outrageous to permit such charges on a layaway plan before they lay you away.

When a vault is sold by a *funeral* establishment, only 65% must go into trust, as is required when sold by a cemetery. 90% of the remaining funds must be placed in an insured **trust** fund. Sellers may withdraw up to 1.146% a year for administration. An annual **report** to the commissioner is required.

A consumer may **cancel** a funeral contract and claim a **refund** of the “net value”—money paid plus **interest**, less the 10% “commission” and administrative fees.

Insurance is permitted as an alternative to trusting. The consumer must give permission to convert a trust to insurance. Just say “no.” The seller already took 10% of your money before putting it in trust. The seller may simply be looking for a commission on the insurance which may have limitations on benefits in the first few years and in any event would give back pennies on the dollar if you wanted to cash it in.

Those selling preneed funeral arrangements must supply a **bond** or letter of credit in the amount of \$300,000 or 15% of the funds collected, whichever is less. Fifteen percent is hardly adequate protection against default.

Restrictive Casket Sales

This heading shows up in only three state chapters: Louisiana, Oklahoma, and Virginia [and the Louisiana law was struck down in 2011].

The statutory definition of a “funeral director” in Title 59 § 396.2 -2.(d) indicates that funeral directors sell funeral service merchandise. Well, of course. The statute goes on to define “funeral service merchandise or funeral services” as “those products and services normally provided by funeral establishments.” If one were to ask what *normal* was 100 years ago (when local artisans made the caskets and a group of women came in to lay out the dead), it would be very different from what is in practice today.

When the Stone Casket Company in Oklahoma City began to lose its funeral home clients to large corporations, the folks there decided to sell caskets directly to the public. The state Board of Embalmers and Funeral Directors promptly requested an injunction and restraining order.

District Court Judge Amick, however, found that the mortuary board had overstepped its bounds in trying to limit the casket trade and that the state had no compelling interest in restricting who may sell a casket.

Undaunted, the Board of Embalmers and Funeral Directors pressed on, and, on October 2, 1998, the Court of Civil Appeals finally granted the injunction.

One has to wonder what was in the drinking water of Judges Garrett and Joplin—two of the three judges who sit on the Court of Appeals. (Judge Jones had the good sense to dissent.) The decision reads in part:

The State has a legitimate interest in regulating funeral services because those services relate to the preparation and disposal of human remains. Such laws protect the public health and safety of the citizens of Oklahoma. Caskets are directly involved in the burial of human remains. A casket is a part of the funeral service business and cannot be separated as an independent item. The casket, in which human remains are buried, directly impacts sanitation.

(Footnote 4) Theoretically, the Oklahoma public could obtain the same casket sold by Casket Company from telephone sales by out of state casket sellers or sales via the Internet without either of these sellers being licensed by the State of Oklahoma. It is apparent to this Court that the State of Oklahoma may prohibit the importation into this state of contraband property. This certainly includes caskets which may not comply with construction requirements and fail to prevent contamination of the environment. Licensing is a proper method for enforcement of safety and health rules.

Caskets as contraband property? Casket police? Yikes! And what construction requirements has any state established for the building of caskets? None, not even Oklahoma! Actually, Oklahoma may not interfere with interstate trade, only the U.S. Congress.

But there's a striking new philosophy being put forward by the judges for the use of a casket: "to prevent contamination of the environment." In many countries, Muslims and Jews bury a body directly in the soil. If there is a sweeping and rampant environmental crisis in these countries, it's a well-kept secret. And what about the rancher who buries a dead steer with his backhoe? Will Garrett and Joplin suggest they use a cow casket the next time? For the public health, of course.

In 2001, the Institute for Justice filed a challenge to the Oklahoma law in the U. S. District Court for the Western District of Oklahoma. Unfortunately, the court deemed it a legislative issue, not proper for the court to decide and dismissed the case.

Clearly, any restriction on who may sell caskets or other funeral supplies is a restraint of trade that subverts the FTC's provision specifically permitting consumers to purchase from the funeral provider *only* the goods and services desired. While the Funeral Board wishes to make it illegal for retail casket sales in Oklahoma, a

funeral home must accept any casket that an Oklahoma resident orders from another state, driving that money elsewhere. Legislators are supposed to look at the fiscal implications of any law and might want to re-think this one. Until legislators change the laws, you may want to order your casket via the internet or get directions for building your own.

Consumer Concerns

- The death rate in Oklahoma can support approximately 142 full-time mortuaries; there are, however, 415. Funeral prices tend to be higher in areas where there are "too many" funeral homes.
- The laws which appear to limit church groups and next-of-kin in caring for the dead or holding funeral ceremonies should be amended to clarify their rights.
- Retail casket sales are not permitted by anyone other than a funeral director. (High school graduates, by the way, may sell caskets preneed via telephone, as long as they are hired by a funeral director to do so.)
- Trusting requirements for prepaid funerals are inadequate. All prepaid funeral and cemetery money (100%) should be placed in trust. If an elderly parent needed to move to another state—perhaps to be cared for by an adult child—a more reasonable amount would be available. (Twenty-nine other states require 100% trusting. Preneed is alive and well in those states.)
- 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 that would help to "enforce" trusting requirements.
- There is no requirement that when merchandise is selected on a guaranteed-price, preneed agreement that a clear description is given and that merchandise of equal quality and construction must be substituted if the original item selected is not available. Survivors should have the right to approve any substitution.
- There is insufficient statutory provision to protect consumers against default of prepaid funeral agreements if funds were never put in trust. A guarantee fund should be established.
- Until better preneed laws are passed that increase trusting and include adequate provisions for substitution, transfer and cancellation, it is probably a *terrible* idea to prepay for a funeral in Oklahoma.
- There is no requirement to identify and tag the body at the place of death before removal.
- There is a requirement to display at least five caskets but no requirement that low-cost caskets be included in that display.

- There is no restriction on taking a mark-up on cash advance items nor any requirement to disclose how much it is if a mark-up is taken. Consumers may wish to request an invoice for such charges.
- The ethical standards for funeral directors are weak and need to be well-defined and expanded. (See Appendix.)
- The procedures for handling funeral complaints seem totally inadequate. Initially, only one funeral board member, along with the executive secretary, examine the complaint to determine if the complaint should be referred to the full board. According to Rule 235:10-9-5, "After a complaint has been filed, all interested persons are prohibited from discussing the complaint with any member of the Board or the hearing officer, if one has been designated." If one of the consumer representatives was not the initial investigating board member, a complainant presumably may not contact the consumer rep in an effort to bring the complaint before the full board. "Resolutions" of complaints do not require the consent of the complainant.

Miscellaneous Information

- The educational requirements for becoming a funeral director/embalmer in Oklahoma are: an associate's degree (60 credits or about 2 years) in mortuary science, one year of apprenticeship, and a passing score on the state exam and the National Board Exam. Alas, practitioners and consumer advocates alike have deemed the exam irrelevant and out-dated..
- Medical examiners are appointed, not elected.
- You may name a designated agent for body disposition in an affidavit, helpful if you are estranged from next-of-kin. Written wishes of the deceased are to prevail.
- The FTC Funeral Rule has been adopted by statute.
- Tissue banks must be accredited by the American Association of Tissue Banks. With new standards for nontransplant tissue banks, there should be good regulation of the body parts business.
- A permit from the state Commissioner of Health is required for disinterment.

This chapter was sent for review to the Oklahoma Department of Banking, the Department of Insurance, the Department of Public Health, and the State Funeral Board. Telephone correspondence with the health department was very helpful. No response was received from the others.



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 straightforward, 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 nonprofit companies that accept body donations, check our website: <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> 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.