

# Caring for the Dead in

## Texas

Persons in Texas may care for their own dead. The legal authority to do so is found in the Health and Safety Code:

*Sec. 711.002. DISPOSITION OF REMAINS; DUTY TO INTER. (a) Unless a decedent has left directions in writing for the disposition of the decedent's remains as provided in Subsection (g), the following persons, in the priority listed, have the right to control the disposition, including cremation, of the decedent's remains, shall inter the remains, and are liable for the reasonable cost of interment:*

- (1) the person designated in a written instrument signed by the decedent;*
  - (2) the decedent's surviving spouse;*
  - (3) any one of the decedent's surviving adult children;*
  - (4) either one of the decedent's surviving parents*
- ...

There are no other statutes which might require you to use a funeral director.

### Death Certificate; Report of Death

Texas is now using electronic death registration (EDR), also called Texas Electronic Registrar (TER), and, although required by law, not all physicians and funeral directors are on the system. A death record can be initiated three ways: by the physician (or if unexpected by the medical examiner or justice of the peace), the funeral director, or the registrar of the jurisdiction where the death occurred. (This may be different from the residence of the deceased.)

The funeral director or person acting as such must file a *report of death* form with the local registrar within 24 hours. This form is prescribed by the Department of Health, one copy of which serves as the authority to transport a body within the state. The form (VS-115) is available from the local registrar or on the vital statistics unit website:

< <http://www.dshs.state.tx.us/vs/field/>>

Go to "Forms," then "Funeral/Mortuary Services." Print off two copies. The local registrar can then initiate the death certificate process and forward the record to the

medical certifier if the doctor is using the system. If not, the registrar will print out the drop-to-paper *death certificate* which must be carried to the physician for the cause of death and a signature. The remaining information must be supplied, typewritten or in black ink. The death certificate must be returned to the local registrar within ten days for the remaining entries into the system.

### Fetal Death

A certificate of stillbirth (fetal death) is required if weight is 350 grams or more (about 12 ounces); if weight is unknown, it is required after 20 weeks of gestation. A fetal death certificate must be filed as the paper alternative described above. There is no EDR provision for fetal deaths.

### Transporting and Disposition Permit

A copy of the Report of Death serves as a burial transit permit within the state. If the body is to be transported out of the state or cremated, the local registrar may be asked for a separate Burial Transit Permit.

### Burial

The 2006 Attorney General's opinion (GA-0448) states that a family may bury on their own property without the survey and filing requirements of an incorporated cemetery. The Texas Funeral Service Commission has a page on-line regarding family cemeteries and home burial. Few cities, if any, will allow burials within their city limits outside of a designated cemetery. In a rural area, a sensible guideline is 150 feet from a water supply and 25 feet from a power line. Draw a map of your land showing where the family burial ground will be and pay to have it recorded with the deed. The top of the casket must be not less than two feet below the surface of the earth.

### Cremation

A Burial Transit Permit is required for cremation. There is a 48-hour wait before cremation unless the person died of a contagious disease. The local medical examiner, or—if none—a justice of the peace, may waive the waiting period. A pacemaker must be removed, and authorization by next-of-kin or designated agent is required. Persons may authorize their own cremations prior to death.

A person may scatter cremated remains over uninhabited public land, over a public waterway or sea, or on the private property of a consenting owner.

### Other Requirements

One portion of the Health and Safety Code says a body must be embalmed or refrigerated (to 34°–40°) after 24 hours unless it is in a sealed container. Another part of the code—relating to body donation—says an “unclaimed” body must be embalmed within 24 hours. Why not refrigeration? It may be an impossible task in a scattered society to determine whether a body will be “claimed” within 24 hours and whether embalming would be approved. Refrigeration is a far more effective method of body preservation.

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 Texas at <[www.finalrights.org](http://www.finalrights.org)>.

### State Governance

The Texas Funeral Service Commission has seven members. Four are public members, two are funeral directors, and one is a cemeterian. In addition to funeral homes, the Commission regulates crematories and cemeteries. Before taking office, Commission members must go through a training program on open meeting laws as well as funeral and cemetery law, administrative law, and disciplinary procedures among others. How remarkably responsible!

<[www.tfsc.state.tx.us/](http://www.tfsc.state.tx.us/)>

The Department of Banking regulates perpetual-care cemetery trust funds and preneed funeral trust transactions.

<[www.banking.state.tx.us/](http://www.banking.state.tx.us/)>

The Insurance Department regulates various kinds of insurance including funeral insurance.

<[www.tdi.state.tx.us/](http://www.tdi.state.tx.us/)>

It also has a mess on its hands, as Lincoln Memorial Life Insurance, Memorial Service Life Insurance, and National Prearranged Services are all in liquidation after mismanagement by the Cassity family. Guaranty funds may cover some of the shortages but not all

### Prepaid Cemetery and Funeral Funds

A portion of each lot sale, usually 15%, must be dedicated to perpetual care in all perpetual care cemeteries. Most municipal, religious, fraternal, and association cemeteries are not perpetual care cemeteries,

though some may have funds set aside for care and maintenance of their cemeteries.

The cemetery laws have a very peculiar exclusion buried in Chapter 715—“Certain Historic Cemeteries.” A nonprofit corporation may petition the district court to take over and restore a cemetery that’s more than 75 years old if there is no existing organization actively maintaining the cemetery. Unlike other cemeteries, however, these may not establish crematories.

Both funeral directors and insurance people may be given a permit to sell preneed funeral contracts. Obviously, the insurance folks won’t offer funeral trusts as a funding vehicle, but they must pass out an information brochure during any sales pitch. It’s okay as far as it goes but doesn’t clearly spell out the degree of risk for consumers, such as getting only about half your money back if you cash in an insurance policy ahead of time. The Department of Banking is required by statute to have an informational web site which is listed on the brochure. (There is life insurance and funeral insurance, among others. With funeral insurance it’s not really insurance at all, with no risk to the insurance company as there is with life insurance. If you plan an \$8,000 funeral, you’ll pay \$8,000 to let the insurance company play with your money until you die. Maybe double that if you pay over time.)

There are Department-approved forms for preneed purchases, one for trust-funded ones and one for insurance. If paying by installments, a total cost must be given, an excellent consumer protection provision. Thanks to Jim Bates, a board member of both the Funeral Consumers Alliance of North Texas and the national FCA board, the department recently re-wrote these forms in straightforward plain language. The staff members he worked with were genuinely concerned about doing right by the public, and should be commended for their enthusiasm about working with consumer advocates.

90% of your preneed *funeral* money is supposed to be placed in **trust**. The seller gets to keep a 10% **commission** right away. If you are making installment payments, however, the mortician doesn’t get just 10% of each payment; undertakers can keep 50% of what is paid until the commission is in their pockets. (There are 29 states that require 100% trusting. Preneed is alive and well in those states. Why wouldn’t Texas want the best consumer protection, too?)

The preneed purchase of *cemetery* services and vaults are treated like other preneed *funeral* purchases, with 90% **trusting** required. Advance purchase of markers and monuments, however, is not protected. That is, there are no trusting requirements and no provision for a **refund** if you were to change your mind.

(To its credit, Texas does not permit “**constructive delivery**,” a warehousing mechanism by which trusting requirements are avoided in other states.)

In 1993, the statutes were amended to permit a one-time raid of prepaid funeral accounts. Undertakers were allowed to claim and withdraw anything over and above 110% of what a consumer had paid. “Excess earnings” they called it. “Legalized embezzlement” would be more like it. In the four months prior to the end of the year, there was a huge sucking sound at the banks: the funeral industry claimed and received more than \$58.6 million! If a trust account had been earning 5% a year, it should have generated enough to offset the 10% commission the undertaker had already claimed and to add 10% more, in just four years or so. Therefore, thoughtful folks who had paid for their funerals, say, ten years earlier *lost six years of interest* in this grand give-away to the funeral industry. Some obviously lost a lot more.

The outrageous deeds of the 1993 legislature didn't stop with the Raid-o Grande. Funeral homes may now add **finance charges** to installment preneed sales. When you finance a car, house, or other retail purchase, you get to use the item. But a finance charge on a lay-away plan before they lay you away? The undertaker gets a commission, the undertaker gets the interest even if you cancel, and the undertaker now wants you to pay a little extra for the bother of cashing more than one check! (As of 2001, the seller gets only half the **interest**.)

A purchaser may **cancel** a revocable agreement, but kiss half of the **interest** and the 10% commission goodbye.

By the way, if your family didn't know about a prepaid irrevocable account and used another provider at the time of your death, there is no statutory provision for a refund.

You may irrevocably assign an insurance policy to a funeral provider only for Medicaid eligibility purposes, a sensible provision.

Oh, yes, if you are paying on installment and still owe a balance, don't forget to let the funeral home know if you have moved. If the funeral home can't find you for three years, it can take the interest and declare your prepaid funeral funds “abandoned” (if the Banking Commissioner agrees). Although the principal goes to the state, the state will owe you nothing—nada—unlike the practice in Canadian provinces that protects a consumer's interest under such circumstances.

A **guaranty fund** of sorts was established (as of 1988) to protect consumers from mortuary default on prepaid funeral accounts sold by licensed establishments—not cemetery purchases. In most states, that's to help out if a rascal took off with your money and it was never put into trust, but it wouldn't cover situations in which your funeral funds might have been turned over to the state. In Texas,

however, it doesn't cover you if you have the misfortune of purchasing a preneed agreement from someone who is not licensed by the state to sell preneed. Preneed sellers need a license to steal?

What about funeral **insurance**, you might ask? About the only good thing that can be said for insurance is that it's relatively portable from one funeral home to another. However, it may not appreciate as quickly as money in a trust. Insurance companies decide at the end of each year how much to share with their customers, depending on how much money their investments have made after paying commissions and the money brokers.

Watch out for the greedy double-dippers. Once an undertaker has collected an initial 10% on a trust account, your 90% can be used to purchase funeral insurance. *Voilà!* A second commission for the mortician. Yes, you will get a right-of-refusal letter, but if you ignore the deadline on this “negative notice” and don't say “no” in time, your account will automatically be moved—a little or a lot lighter than before.

As of December 2008, there were \$2.928 billion dollars in prepaid funeral contracts; 55% are insurance-funded; 45% trust-funded.

### Consumer Concerns

- The death rate in Texas can support approximately 645 full-time mortuaries; there are, however, 1,339. Funeral prices tend to be higher in areas where there are “too many” funeral homes.
- Finance charges are permitted for installment purchases of prepaid funeral and cemetery arrangements. This should be repealed immediately!
- Trusting requirements are inadequate. 100% of prepaid cemetery goods and services should be placed in trust, with a provision for cancellation and refund. The trusting requirement for preneed funeral purchases also should be increased to 100%, with all interest retained in the account until need.
- Sellers get to keep half the interest and 10% if the contract is cancelled or transferred. Funeral agreements should be fully transferable with interest, and—in the case of revocable contracts—fully refundable, with all interest returned to the buyer.
- There is no annual reporting requirement to the purchaser of prepaid funeral goods and services. This paperwork would not only be helpful to the family of a deceased to indicate prepayment, it would let you know how much you actually still have to pay for your funeral.
- Substitution provisions are inadequate. Survivors should have the right to approve the substitution of any merchandise if what was selected in a preneed contract is no longer available.

- In spite of the Guaranty Fund and until the Texas laws are changed, it is probably a *terrible* idea to prepay for a funeral or any cemetery merchandise and services in this state, given the raw deal a consumer would get in trying to transfer or back out of such a purchase. Your own trust account in a bank will be safer, will be portable, and will accumulate interest regularly. You may be able to make it irrevocable if assets need to be sheltered for Medicaid eligibility.
- The 48-hour wait before cremation is totally unnecessary when survivors are in agreement and is causing additional charges to families for “storage” or embalming. That the waiting period may be waived in case of disease would indicate that an earlier cremation is probably in the interest of the public health.
- Identification and tagging of the body at the place of death before removal should be required.
- The standards for ethical, professional conduct should be strengthened. That would make it easier for a consumer to prevail when filing a valid complaint. (See Ethical Standards in the Appendix.)
- The Funeral Commission has prepared an information brochure for consumers that funeral directors must give to persons inquiring about funeral arrangements. It also spells out the procedure for filing complaints. It is vague and weak in spelling out the pitfalls of prepaying for a funeral in Texas, and that portion should be rewritten.
- Crematories may be owned only by funeral establishments or cemeteries. This kind of business restriction should be either changed in the legislature or challenged in court. Generally, states have a right to make limiting laws only for the public good. There is no justification for effectively limiting crematory operation to these.
- Crematories must place a label on a non-permanent container for cremated remains that discloses: “The temporary container is not intended for the permanent storage of cremated remains in a niche, crypt, cremation interment container, or interment space.” If there is no glass on the front of the niche or the interment space is covered with dirt, who cares what kind of container holds the cremated remains? The funeral director who lost the sale of an urn, that’s who. And that’s who undoubtedly got this ridiculous law onto the books. (Carlson’s father-in-law, Charlie, donated his body to the local medical school. When the family received the cremated remains some months after his death, the cardboard container was marked, “Temporary,” a ploy Carlson had read about in *Funeral Service Insider* to get families to purchase expensive urns. A few months later, Carlson had an opportunity to inform one of the crematory operators that Charlie

was a great believer in education and was now a *permanent* traveling display of sleazy sales tactics. Both Slocum and Carlson have traveled with Charlie in his “temporary” container.)

- This state has no laws regulating the body parts business.

### Miscellaneous Information

- Educational requirements for funeral directors: high school plus mortuary college, national exam, state exam, and one year of apprenticeship. Unfortunately, the National Board Exam put out by the International Conference of Funeral Service Examining Boards has been deemed out-of-date and irrelevant by some industry practitioners.
- There is a statutory duty to comply with the written wishes of the decedent. If you are estranged from next-of-kin, one may use the “Appointment of Agent to Control Disposition of Remains,” downloadable on the Commission web site.
- A casket display must include a reasonable selection of at least five adult caskets, with the least expensive one visibly displayed in the same general manner as all other caskets.
- If there is a fee for obtaining cash advance items, it must be disclosed in advance.
- The language of the FTC Funeral Rule has been adopted in the Funeral Service Commission rules, making it more enforceable in Texas.
- Medical examiners are appointed physicians. Justices of the peace are elected.
- A person who has killed another may not be buried in the same cemetery as that person’s victim.
- Disinterment may be done with the permission of the cemetery, of the lot owner, and the person with the right to control disposition. If there is no agreement, then permission must be gotten from a county court. Notice must be given

*This chapter was sent for fact-checking and review to the Texas Department of Banking, the Texas Funeral Service Commission, The Texas Insurance Department, and the Texas Department of Health—Vital Statistics Unit. It was also sent to San Marcos lawyer, Lamar Hankins, past president of Funeral Consumers Alliance.*

*Russell Reese, Director of Special Audits in the Department of Banking, wrote back. “The Texas Department of Banking is not able to review and edit the document you forwarded. The content of the document has not been reviewed by the Department and its accuracy is not confirmed. Representations in your book that the Texas Department of Banking in any way approved or*

*reviewed its content must be removed.” One has to wonder why Mr. Reese’s agency is “not able” to review this chapter or why he would not be eager to have input on consumer information. The people who will benefit are the ones paying his salary.*

*Lamar Hankins, Austin attorney and past president of FCA, had an eagle eye for corrections and added some interesting information that was not in the original draft.*



## 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 nonprofit 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.