

A black and white photograph of a grassy field, likely a golf course, with a large white number '1' in the upper right corner.

Circling the Hearses

THREE-YEAR-OLD LORENZO FARMER'S TINY BODY lay locked up in a Salt Lake City hospital morgue for days in 2006. It wasn't that he had no family; his grief-stricken parents had been by his side. It wasn't that the family didn't know what to do for his funeral; they were unusually clear-minded and resolute. Lorenzo was going back to the Fort Hall Indian Reservation in Idaho for a traditional Native American funeral. But the hospital wouldn't release Lorenzo to his own mother and father thanks to a new state law that made the dead in Utah hostages of the funeral industry.

"It was like a wall. Everybody was telling us 'No, no, no. We can't release the body to a family member. A funeral home has to be involved,'" Lorenzo's grandmother, Wendy Rodriguez, told the *Herald Extra*.

Until 2006, Utah law followed those of most other states; if no funeral director was involved, the family member *acting as the funeral director* could sign the spot on the death certificate describing the final disposition of the body. After May 1 of that year, however, only a funeral director could. Lorenzo finally made it back to his parents' arms, but not until Fort Hall consumer advocates David Robles and Marcia Racehorse-Robles found a sympathetic funeral director—as shocked at this law as we were—who signed the certificate and refused to take a fee. And not before Lorenzo's parents, Adrian and Crystal, had to endure the outrage of being denied the custody of their own son and the prospect that a mortuary might forcibly embalm his tiny body.

"You just go with whatever they tell you to," said Rodriguez. "We were just going to have to do it because we thought that was the only way we were going to get him back home."

The Utah Funeral Director's Association (UFDA) and the legislators who danced to their tune were responsible for this family's misery. In a brazen act of self-dealing, the UFDA told state lawmakers the slight change in wording in the death certificate law was part of a housekeeping bill to clean up technicalities. The bill slipped onto the "consent calendar," where non-controversial acts get a rubber stamp.

"The primary goal was to protect the consumer more than anything," UFDA President Tod Bonzo told the *Herald Extra* when the story broke. "It is a protection for human health . . ."

It defies believability that UFDA was trying to protect the public by requiring that every citizen pay for the services of their dues-paying funeral homes. Utah was the latest to join the few other states with laws that restrict or prohibit full family control over their funeral rituals.

Fortunately, consumer activists stepped up. Joyce Mitchell, President of FCA of Utah, gathered families, consumer advocates, and Native American tribal representatives to testify against the restrictive law. Dave Robles and his wife, Marcia Racehorse-Robles, drove from Idaho and stalked the halls of the Utah legislature with Mitchell, pushing hard to restore this important family right. Their collective efforts sparked newspaper coverage and support from influential talk-radio hosts. Thanks to Mitchell's Representative, Brad Daw (R-Orem), HB 265 passed the House overwhelmingly, and Senator Luz Robles (D-Salt Lake, no relation to Dave Robles) became an enthusiastic Senate sponsor. The governor signed the corrective bill into law in 2009.

State Laws Denying Rights of Grieving Families

Eight other states continue to restrict families' rights to funeral privacy. Every one of these nonsensical prohibitions offends fairness and decency and reeks of an industry meddling to prevent consumer choice and protect its members' income:

- Connecticut requires a funeral director's signature on the death certificate and bars anyone but a funeral director or embalmer from removing a body or transporting it.
- The Illinois administrative code (which appears to have been changed after the publication of Carlson's 1998 book) defines "funeral director or person acting as such" to include only funeral directors or their employees or "associates." This means a mother couldn't obtain a disposition permit for her own deceased child, but any anonymous "associate" of a licensed funeral director could.
- Indiana law says burial permits can be given only to funeral directors, even though other statutes clearly refer broadly to the "person in charge" of the disposition, the next-of-kin.
- Louisiana law mandates funeral-director involvement in obtaining all necessary permits and funeral director presence at the final disposition of the body. Who knows what nefarious activities families

and preachers might get up to if left alone at the grave with a casket! New York has similar requirements.

- Michigan health department officials have always been uncooperative with home-funeral families, and statutory changes in 2003 and 2006 now give them a legal excuse for their resistance. All death certificates must now be “certified” by a funeral director—though the statute doesn’t even define what that means. Even more strangely, the wills and probate section of the law requires all body dispositions to be conducted by a licensed funeral director.
- Nebraska law requires a funeral director to supervise all dispositions and gives funeral directors the right and authority to issue “transit permits” to move the body out of state.
- New Jersey statutes changed after the publication of Carlson’s 1998 book, revising sections of law that had allowed families to care for their own dead before that. References to the “person acting as” her own funeral director disappeared from the law.

While family-directed funerals are still permissible in Minnesota, the state tightened the screws in 2007. The law change barred families from using pickup trucks for transporting their dead (a hearse would be just fine, though). When Carlson and Slocum complained about this in response to a press interview, David Benke, director of the Health Department’s mortuary science section said, “If that’s what you want, go to one of those countries where they have no rules or regulations. You can dig a hole and bury a body in your back yard.” (Mr. Benke was apparently unaware that Minnesota law did allow for family cemeteries on private land.)

Also, the state decided to keep its one-of-a-kind law requiring embalming for public viewing—religious or personal objections be damned. Once again, consumer activists mobilized, and they found the sympathetic ear of Representative Carolyn Laine. Laine successfully shepherded a bill into law in 2010 that rolled back these nonsensical restrictions and finally ended Minnesota’s dubious claim to fame as the only state that required embalming for public viewing.

Funeral Directors Write Their Own Laws

The great majority of laws covering funeral licensing and practice were historically instigated by the National Funeral Directors Association and its handmaidens at the state level. Nearly all funeral licensing boards in the various states are dominated by funeral directors. They routinely ignore legitimate consumer complaints and sweep abuses under the rug.

Take Alabama as an example. The Alabama Examiner of Public Accounts (the state's inspector general) published a scathing audit of the Alabama Board of Funeral Service in 2007. Some of the findings showed that the board lacked transparency or even any kind of reasonable record keeping. The Examiner found the Board didn't have a website (it does now), Board members didn't respond to e-mails, the majority of office records were handwritten on paper (in 2006!), and the Board couldn't even provide a list of all licensed funeral homes in the state, as required by law. More worrisome, the report also indicates (though in careful language) that the Board falsified its own inspection records, claiming to have inspected far more funeral homes than any human could have in the time allotted. What's more, three funeral homes told the Examiner that the Board's associate executive secretary "requested money (other than normal fees) for board services."

Too often, state regulatory boards and the trade associations they align with lobby for laws that keep out competition—and write regulations to thwart entrepreneurs who want to lower funeral costs. As they see it, they're following a grand American tradition. As the 10th Circuit Court of Appeals put it in a bizarre decision upholding Oklahoma's right to outlaw direct-to-consumer casket sales, "Dishing out special economic benefits to certain in-state industries remains the favored pastime of state and local governments."

Most people who have a bad experience with a commercial funeral home quickly learn the difference between consumer protection and *industry protectionism*. Missouri widow Marilyn Oehlschlaeger called Funeral Consumers Alliance in 2006 after her husband's funeral. She claimed the funeral home never gave her a price list, and when she got the bill (more than \$9,000) there were hundreds of dollars in charges for items she never asked for and didn't want. Oehlschlaeger and her two daughters told Slocum they repeatedly asked the funeral director for specific services and told him to strike off the extras they didn't want. "He kept saying, 'But we have these packages now,'" Oehlschlaeger said. "I told him we didn't want a package."

Slocum wrote a detailed letter to the state funeral board and the Attorney General pointing out the funeral home's legal misdeeds under the Federal Trade Commission's Funeral Rule and state law. During the complaint process, funeral home employees harassed Oehlschlaeger continually, calling her at home and pressuring her to meet with them and resolve the issue (a favorite ploy of corporate mortuary chains to make sure their *pattern* of misbehavior goes undetected). Slocum advised her not to meet with them—especially without a lawyer—and to let the complaint process play out. In the end, all she got from the state board (five funeral directors and one public member) was a one-paragraph letter saying the board hadn't found any legal violations. No explanation was given for how the board failed to see the

statutory violations Slocum pointed out. The Attorney General's office did no better, claiming it had no jurisdiction over the funeral board.

How We Got Here

The legal profession have their associations for mutual improvement. So do clergymen, chemists, Boards of Health, civil and mining engineers, physicians and surveyors It is well known that we can never have an educated profession of funeral directors unless we compel it by legal enactments as a sanitary measure I would have a law regulating the care and burial of the dead the same as there is for medicine.

—Hudson Samson, *President of the National Funeral Directors Association, addressing NFDA's fifth annual convention in 1886.*

President Samson would be pleased with the progress trade groups have made over the past 124 years. All 50 states today have laws controlling the business of undertaking (though Colorado and Hawaii have no specific regulatory body enforcing them). Some are so detailed they prescribe in feet the length of the room in which the dead are embalmed or bar the use of profanities or "unprofessional" language in the presence of the deceased. So far as we know, none of the dainty dead have complained.

Today 48 states and the District of Columbia require some level of education, usually two years of college, before a person can get a funeral director's license. The majority require funeral businesses to have on-site embalming rooms. Many require funeral homes to have casket showrooms and chapels with minimum seating capacities. Massachusetts requires funeral homes to haul bodies in a vehicle used exclusively for transporting corpses—it's illegal to take the van out to McDonalds on one's lunch hour.

There is, of course, much justification for government regulation of the funeral industry. Very few people buy more than one or two funerals during their lifetime, and, when they do, it's almost always at a time of grief and vulnerability. The problem is that instead of protecting the public from deceptive sales practices and fraud, the laws and regulations too often protect the dismal traders from public accountability.

The funeral business is so effectively insulated from free-market competition that many families can't even imagine a funeral home free of faux-Victorian sitting rooms and a fleet of Cadillacs. Rules and regulations that make it hard for simple-burial businesses to thrive force consumers to pay for the upkeep and taxes that go along with a fancy facility.

Real consumer-protection laws are rare. It is no accident that the deck is stacked in favor of undertakers and their pocketbooks. When the National

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Funeral Directors Association first organized, the motivation to establish an “educated profession” wasn’t learning for learning’s sake. The founding funeral directors knew that if they could convince lawmakers to require elaborate facilities and special schooling and certification, the burgeoning trade could keep out competition while raising prices to an “appropriately” high level.

NFDA’s longtime apologist-in-chief, William Lamers, compiled 100 years of “The Words And Deeds of Funeral Service Practitioners” into *A Centurama of Conventions*. This thin 1981 paperback mixes gravitas and fawning. (One half expects to find “I ♥ my undertaker!” scribbled in the margins.) Sympathetic though he is to the undertakers’ plight, Lamers states their aims more candidly than they do:

One of these [concerns] was securing passage of laws setting high standards of training and education for admission to funeral service. Such laws would make certain that only qualified persons would be licensed by public authority.

The idea of undertakers as a Capital P Profession wasn’t easy to put over. Before the last quarter of the 19th century, most Americans called on their undertaker (often a local cabinetmaker) to supply a coffin, bring chairs to the home, and to lend a general helping hand to the family members as they buried their dead. It would have seemed absurd that such prosaic work needed the eagle eye of a state bureaucracy to enforce complicated educational and legal requirements. Surely undertakers did not need the level of training required of doctors, lawyers, and other highly paid professionals.

Indeed, 19th-century undertakers complained bitterly about the difficulty of convincing the public and politicians to clear all obstacles on their road to Professionalism:

The greatest assistance we want, and in my humble opinion the strongest protection we stand in need of, is the recognition before the law we justly deserve, and that the law shall require at our hands that degree of proficiency our calling is capable of, and that mead of protection we are competent to give and the public stand in need of and should demand Although in every state where we tried, our bill has fallen and failed of passage”

— NFDA President Robert Bringhurst, 1890

If only President Bringhurst were around today; the campaign to lock up the funeral market has been a stunning success. While some states (California, Texas and Florida, for example) allow stripped-down, simple funeral businesses to exist in the form of “direct disposition” establishments, many others prevent innovation with arbitrary and picayune requirements. And

while most states require funeral homes to have an embalming room, they don't require them to have their own refrigerator to serve those who object to embalming on personal or religious grounds.

Enforcing Petty Rules While Ignoring Consumer Protection

Massachusetts is typical. Funeral directors have long complained that instead of rooting out crooks, employees of the Board of Registration of Funeral Directors and Embalmers slap businesses with fines for all sorts of minor infractions that have nothing to do with consumer protection.

A 2006 press release from the Board brags that inspectors collected \$2,200 in fines after finding "code violations" in the embalming rooms at six funeral homes. Small wonder, as state regulations give the overzealous inspector (tax collector) a smorgasbord of opportunities. Massachusetts funeral homes must:

- have a "chapel sufficiently large and sufficiently equipped for the conduct of an average funeral service" with a minimum of 300 square feet;
- not have any living space on the same floor as the funeral business unless the owner promises not to offer customers food or drinks;
- be physically connected, if the business consists of multiple buildings; and
- have an embalming room at least 12' by 14' with a tile or cement floor; any rubber mats used have to be at least 3/16" thick, and the room must have "one standard-type sanitary operating table; one flush-rim sink, one floor drain. . . one sanitary waste receptacle which is opened by a foot pedal; and a standard-type instrument sterilizer."

Anyone who wants to open a funeral home offering customers low-cost, no frills-burials can forget it. They'll have to sink money into a for-profit chapel even if the religious service is at a church, or even if there is no service. They will pay for an elaborate embalming room, with nice thick mats, even if, like an increasing number of Americans, their customers reject embalming. Consumers pay for this frippery through higher prices, even if they choose a simple burial or cremation—all those sunk costs have to be paid for somehow.

Not only that, but the Massachusetts board has been operating in secrecy, going into illegal executive (closed) sessions, according to a longtime volunteer for the Funeral Consumers Alliance of Eastern Massachusetts. Byron Blanchard says the board refused to e-mail him copies of the minutes of its

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public meetings in 2006 and now refuses to even give him a paper copy. See the Massachusetts chapter for more of the state's secretive, anti-consumer behavior.

(In fairness, we should add that Massachusetts has taken some pro-consumer actions. Regulators announced in 2009 they'd inspect 175 funeral homes and found 25 percent were violating the FTC Funeral Rule, with offenses such as failing to give price lists to undercover shoppers. In addition, the Division of Professional Licensure named the scofflaws—something the FTC refuses to do—and filed legal action against 46 businesses.)

Georgia has been going on prep-room raids, too. The state board (six undertakers, one consumer member) congratulated itself in a 2008 press release for catching red-handed two funeral homes for "failure to maintain in inventory the required 24 bottles of arterial fluid and 24 bottles of cavity fluid in the embalming room." The inspectors must have been too busy counting bottles of Firmatone and Cavity King (yes, they really are called that) to notice that the Federal Trade Commission found 13 of 15 Georgia funeral homes inspected in 2007 had Funeral Rule violations. Perhaps the vapors from all that formalin can also explain why the Board has ignored a complaint from an elderly man who claims a funeral home substituted a much cheaper casket for his wife's funeral than the one he paid for. Or, maybe it's because the funeral director cited in the complaint was a member of the state board.

The Wisconsin Funeral Directors' Examining Board suspended Cassandra Clarson's business license for a year after ruling she "aided and abetted unlicensed practice" by letting her partner, Roger Henke, "make funeral arrangements without a license." Henke's crimes? "Obtaining obituary information and preparing obituaries; meeting with families to discuss type of funeral services; contacting clergy to set the times and locations for funerals; discussing the costs of funeral services and the monies to be advanced."

The Janesville Gazette editorialized on August 23, 2007:

The rules appear to protect business interests and hinder competition that would benefit consumers Why can't a business manager handle such duties? Are we to assume that spouses of licensed funeral directors don't engage in such "unauthorized activity" in small funeral homes around Wisconsin? . . . If funeral homes must be licensed so they don't take advantage of grieving loved ones, shouldn't companies selling headstones or burial vaults be licensed?

Consumers Fight Back

All this hearse-circling has some state boards so dizzy they've forgotten they're not a sovereign power. In 2005, the Missouri State Board of Embalmers and Funeral Directors went after Larry Gegner, an elderly man who sold caskets on the weekend at a flea market, when they found out he was telling people they had the right to bypass funeral homes and bury their own dead. The five morticians and one public member of the Board took Gegner to court on a laundry list of charges. These included "unlicensed activities" such as selling caskets to the public—but *state law specifically permits citizens to sell caskets to the public without a license*. The Board also charged Gegner with vague violations such as "arranging" funerals without a license.

Funeral Consumers Alliance and a nonprofit law firm, the Institute for Justice, pushed back. FCA sent several letters to the Board pointing out their legal errors, and IJ lawyer Valerie Bayham appeared at hearings to defend Gegner. Eventually Gegner and the Board reached a court settlement in which he promised not to engage in "funeral directing" (although he never had done so), and the Board acknowledged his right to sell caskets as well as his free-speech right to give advice on family-directed funerals. Before the settlement, the Board made a final attempt to dictate the behavior of private citizens by inserting into the funeral directing regulations, "Whether a fee is charged shall not be dispositive in determining whether one is engaged in the practice of funeral directing." Translation from Lawyerese to English: "We have the right to control anything anyone in Missouri does with a dead body, even private families or religious groups, whether or not money changes hands."

After pressure from FCA, they backed off this position and, at the time of this writing have drafted new regulations making it clear families have the right to conduct their own funerals. The Federal Trade Commission also sued the Board, resulting in a consent agreement barring the Board from enacting further regulations that restricted casket and vault sales.

An Irrational Basis

Why do so many cockeyed laws stay on the books? Few consumers or advocacy groups realize there's a problem in the first place. The rat's maze of industry regulation is designed to stymie people with bureaucratic baffle-gab. Even fewer organizations know how to effectively challenge these laws, and those who do spend a lot of time pushing rocks up hills.

"There is a presumption that any law the government passes is a valid law, and that the burden is on the citizen to overcome this," according to Clark Neily, a lawyer for the Institute for Justice.

IJ does battle with the regulatory gatekeepers that keep small entrepreneurs out of fields from flower arranging to bug spraying. At any given time, IJ is apt to be fighting the Arizona Structural Pest Control Commission for bullying a teenager who made pocket money rat-proofing his neighbors' roofs without a license, or the Louisiana Horticultural Commission, which stands between helpless consumers and rogue florists who haven't passed a state test proving they know how to stuff daisies in a pitcher "so that the whole composition will be of good design."

The industry's arbitrary restrictions on who can sell what kind of boxes has given IJ plenty of grist for its mill. When Tennessee threatened the Reverend Nathaniel Craigmiles with criminal prosecution for selling coffins directly to the public, IJ sued the state in federal court and won. The 6th Circuit US Court of Appeals unanimously struck down the state's ban on retail casket sales as unconstitutional under the 14th Amendment.

Tennessee scraped the bottom of the vault to justify the ban; casket retailers don't have the necessary "psychological training" and retail caskets don't "protect the public health" the way mortuary caskets do. The Court didn't buy it:

...survivors must deal with a panoply of vendors in order to make funeral arrangements, from churches to food vendors for a wake, none of whom is required to have this psychological training. This justification is very weak indeed.

Indeed, the only difference between the caskets is that those sold by licensed funeral directors are systematically more expensive.

— Craigmiles et al v. Giles et al, 2002

IJ tried to rack up another victory against those Jessica Mitford called the "bier barons" with a similar suit against Oklahoma. Kim Powers and Dennis Bridges started an on-line casket business, only to be smacked down by the State Board of Embalmers and Funeral Directors. The Board thought the best use of taxpayer dollars was to fight for the right to require casket sellers to become full-fledged morticians with two years of college, a year of apprenticeship, and 25 properly preserved Loved Ones under their belts. The district court ruling described the uses to which undertakers put this specialized training:

Oklahoma funeral homes have attempted to increase the amount of money a consumer spends on a casket by showing higher-priced caskets more favorably in a showroom by strategic use of lighting, by placement of high-end caskets on rugs or beside sentimental sculpture, and by displaying less expensive caskets in unattractive colors alongside expensive caskets displayed in attractive colors. In at

least one case, an Oklahoma funeral home priced a low-end casket at \$695, which had a probable wholesale cost of between \$150 and \$120.

Yet the court ruled for the state. So did the 10th Circuit Court of Appeals, even though the court acknowledged that "Consumer interests appear to be harmed rather than protected by the limitation of choice and price encouraged by the licensing restrictions on intrastate casket sales." Even worse, the court ruled against free trade, even while acknowledging that "dishing out special economic benefits to certain in-state industries remains the favored pastime of state and local governments." IJ appealed to the Supreme Court in 2005 but the Supremes declined to hear the case.

How can judges support such bald-faced nonsense? Through the richly-named "rational basis" test. Ever since a precedent-setting 1877 Supreme Court case, US courts have bent over backwards to show deference to the supposed wisdom of state legislatures when they enact laws, no matter how transparently unfair. IJ's Clark Neily explains:

The original legal definition of insanity is the inability to tell right from wrong. So it is the first irony of the "rational" basis test that it is, according to that definition, insane . . . the rational basis test is nothing more than a Magic Eight Ball that randomly generates different answers to key constitutional questions depending on who happens to be shaking it and with what level of vigor. . . .

[The rational basis test leads to] judges simultaneously recognizing and refusing to protect fundamental constitutional rights; permitting government lawyers and witnesses to misrepresent—or at least disregard—material facts; preferring conjecture over evidence; saddling plaintiffs with a burden of proof that is technically impossible to discharge.

—No Such Thing: Litigating Under the Rational Basis Test, NY Journal of Law and Liberty, v. 1, no. 2

Courts that adhere strictly to this test (like the 10th Circuit in the Powers casket case) abandon facts and fairness. As long as the government can offer *any justification whatsoever* for the law, no matter how far-fetched or plainly dishonest, the Court will uphold it. Said a Second Circuit Court decision:

. . . the Government is under no obligation to produce evidence or empirical data to sustain the rationality of a statutory classification and can base its statutes on rational speculation.

Pretend an auto dealer's association gets sore over dealerships losing business to low-priced outfits like Jiffy Lube. So they send their lobbyist to get a

law passed outlawing grease-and-lube drive-ups and requiring all oil changes to be performed by a licensed dealership. Say a would-be Jiffy Lube owner takes the state to court, and shows the law was concocted to funnel business into full-service dealerships. But no, the state says, we created the law to protect consumers from fly-by-night grease jockeys who might wreck their engines. Under the rational basis test, the court would rule for the state, because the state *could have* meant to protect consumers, “rationally” speaking, even though everyone knows the truth.

That’s exactly what the 10th Circuit Court did in the Oklahoma casket case. The ruling is pure through-the-looking-glass reasoning:

The licensing scheme at issue here leaves much to be desired. The record makes it clear that limitations on the free market of casket sales have outlived whatever usefulness they may have had. Consumer interests appear to be harmed rather than protected by the limitation of choice and price encouraged by the licensing restrictions on intrastate casket sales. Oklahoma’s general consumer protection laws appear to be a more than adequate vehicle to allow consumer redress of abusive marketing practices. . . . But the majority is surely right that the battle over this issue must be fought in the Oklahoma legislature, the ultimate arbiter of state regulatory policy. I therefore conclude that the legislative scheme here meets the rational basis test and join in the judgment of the majority.

“Consumer Protection” in Regulating Crematories

Many states have fallen for plainly dishonest “consumer protection” arguments when they finally got around to regulating crematories. Seven states require crematories to be owned by, run, or affiliated with full-service funeral homes. Twelve states bar crematories from selling to the public directly; crematories in these states are relegated to working as wholesale trade jobbers for full-service funeral homes that purport to be selling cremation to their clients, but who do nothing but haul the body and file the death certificate. Most consumers would be shocked to find out the average cost of the actual cremation at the crematory is just a few hundred dollars. You’re unlikely to pay the undertaker less than a thousand.

Arizona funeral homes have just such a sweet deal. Now, you don’t have to be a funeral director to own or operate a crematory. You just have to have an incorporated business, pass a criminal and professional background check, and “be of good moral character.” But the law says you can’t sell a cremation that isn’t “arranged by a funeral establishment” unless “otherwise permitted by law.” We’d argue that since families clearly have the right to care for their own dead in Arizona, that selling a cremation to a family that brings

the body and the legal paperwork is permitted. Not so, claims the state. And what justification is there for forcing crematories to serve as second-class businesses at the beck and call of full-service mortuaries? We have to be able to regulate cremation, says the state. Then why not just regulate crematories *themselves*?

Such nonsense is par for the course when you start digging into the rationale for protectionist schemes. In 2002, Georgia regulators discovered 334 rotting bodies lying un-cremated on the back lawn and in broken-down hearses at the now infamous Tri-State crematory in Noble. Smelling an opportunity, the state's undertakers got behind a new law that they claimed closed a loophole that had allowed the Tri-State crematory to operate without regulation.

Under the old law, in effect at that time, a crematory that dealt directly with the public needed to be operated by a licensed funeral director. A crematory that dealt *only* with funeral directors was not regulated. The assumption, presumably, was that the funeral directors dealing with the crematory would check to be sure that the services they contracted for were being provided.

Because Tri-State dealt only with funeral directors, not with the general public, it did not need to be licensed or inspected. Think about this scenario: All the duly-licensed undertakers that sent bodies to Tri-State clearly didn't bother to do the most cursory checking; 334 corpses scattered about the property are hard to miss. In most instances, the funeral directors marked up the crematory charges by at least 100 percent, and usually more, when they passed them along to the consumer. Just *what* were all those undertakers doing to justify those prices?

The new law required all crematories to be inspected. That is obviously justifiable, given the horrible scene discovered at Tri-State. But none of the proponents of the new law could explain why requiring funeral director supervision of crematories was necessary to protect the public. Despite the evidence to the contrary, (especially in this specific case) we are supposed to believe funeral directors are inherently more ethical and conscientious than grubby old crematory operators.

Mortuary Schools Gloss Over Cremation Basics

The idea that crematory operators need the "special" training mortuary school provides falls apart when you look at what the 50-odd schools actually teach. There's little to nothing in many curricula on cremation, and the national board exam study guide for aspiring funeral directors—published by the International Conference of Funeral Service Examining Boards (ICFSEB)—glosses right over it. Carlson's Spring, 2005 *Newsletter for the Funeral Ethics Organization* found:

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Only two questions out of 150 deal with cremation in the Funeral Arts section of ICFSEB's National Board Study Guide. The purpose of the exam, it states, is to determine "the MINIMUM QUALIFICATIONS to function as an entry level funeral director"—

2. Cremation first gained widespread acceptance and practice in:

- A. ancient Rome
- B. Hebrew lands
- C. ancient Greece
- D. Scandinavian countries

12. The proper terminology for the placing of cremated remains into a final container is

- A. interment
- B. inurnment
- C. entombment
- D. cremains interment

Cremation isn't rocket science, but requires basic skills such as retort operation, maintaining a documented chain of custody for the body, and understanding the various state laws on who can legally authorize a cremation. These things aren't taught in many embalming schools. States would do far better for the public's protection and pocketbook to get rid of the funeral director monopoly and set up reasonable training and inspection requirements for crematories that serve the public. In fact, prospective crematory owners get more relevant training from the short courses offered by the Cremation Association of North America than they would from two years at America's mortuary colleges.

Where We're Going

There's cause for hope—and for worry. Most state boards are still dominated by the industry members they purport to regulate, and the consequences to consumers are dire. In 2006, the Kentucky legislature caved to industry fat-cat demands by outlawing lower-cost funeral homes from opening. Not outright, of course, but by requiring every funeral home to meet the most elaborate standards—an embalming room, visitation and ceremonial space, etc. They even tried to do away with citizens' rights to conduct private funerals until FCA stepped in. The new law, backed by the state board of four funeral directors and one "public member" (whose wife worked at a funeral home) was aimed at an upstart undertaker who wanted to offer low-cost direct burials and cremations from a storefront office.

A lawmaker in Wisconsin tried similar shenanigans, and only a good old-fashioned public humiliation in the media—courtesy FCA—persuaded

Phil Montgomery to amend his 2005 bill that would have outlawed “strip mall” funeral homes. In truth, the bill was written by the Wisconsin Funeral Directors Association. Montgomery justified his bill to a TV station thus: “The fact that when you squeeze one in between a Dunkin’ Donuts, you know, and a Hooters, I don’t believe it serves the industry, or the consumers well.” We must conclude it didn’t occur to Mr. Montgomery that those who objected to the staff attire at beach-themed restaurants need only stay next door and keep their eyes at casket level. Or that nobody would be required to go to a low-cost establishment if they preferred one in a tonier neighborhood.

The worst abuse of power we’ve seen so far came in 2007, when the North Carolina Board of Funeral Service accused the volunteer President of the Funeral Consumers Alliance of the Central Carolinas of practicing funeral service without a license and threatened her with criminal prosecution. The charges? Publishing an obituary that would lead the public to think this consumer group sold funerals. The only problem—President Mary Brack didn’t publish any obituaries. An FCA member family merely thanked the group for its help in one line in the obituary, “The Funeral Consumers Alliance of the Central Carolinas assisted the family.” Of course, we are to believe this had nothing to do with the fact that the nine-member board has seven funeral directors, six of them picked by the state’s two largest undertaker trade groups, *a right guaranteed to these lobbying groups by state law*.

Fortunately, at least a few lawmakers in a few states are wising up to rent-seeking rackets. Marilyn Oehlschlaeger—the Missouri widow whose case was discussed earlier in this chapter—became so disgusted with the regulators she went to state Representative Brian Baker’s office for help. Baker promptly filed House Bill 1588 in 2007. The bill would have put five new consumer advocates on the board to break the undertakers’ monopoly voting bloc. Sadly, it didn’t pass.

In Maryland, Representative Joanne Benson became fed up with the eight-undertaker majority on the state board thwarting her efforts to break the monopolistic licensing system in Maryland. She solicited testimony from FCA and its state chapter about the need to reform the board. Benson’s crusade successfully remade the board. Before 2008, the 12-member board consisted of eight funeral directors and four consumer members. The new board has 11 members; six are funeral directors, and five are consumer members. While the undertakers still have a majority, it’s a big step in the right direction.

The Lynch Lawsuit

Lawmakers in Michigan have told us they’re willing to work to restore families’ rights to perform their own funerals, but it will be an uphill battle against well-heeled lobbyists who swarm out of the woodwork like

drowning termites whenever such bills are filed. Advocates will likely have to contend with the silver-tongued Thomas Lynch, too. Lynch, an award-winning poet and author as well as the owner of several Michigan funeral homes, very much dislikes being questioned, and he appears to believe that dislike overrides the First Amendment rights of his critics.

In 2008 Lynch sued the Funeral Ethics Organization, Lisa Carlson personally, Funeral Consumers Alliance, and the Funeral Consumers Alliance of Idaho for libel in federal court. On what grounds? Carlson wrote an article in the FEO newsletter in which she noted that members of the Lynch family have publicly opposed families' rights to care for their own dead without using a funeral director (which they have). In a posting to an e-mail discussion list, Carlson also noted (correctly) that, in the PBS Frontline documentary *The Undertaking*, which profiled the Lynch funeral homes, funeral home staff were not shown giving consumers General Price Lists as required by the FTC. The tiny, volunteer-run, low-budget FCA of Idaho got dragged into the suit for reprinting this comment in their newsletter. And FCA's sin? A PowerPoint presentation titled "Deconstructing Thomas Lynch" that suggested profit was probably Lynch's motivation for writing a particular article praising lavish funerals. (The article is posted at <www.funerals.org>).

The court threw out the suit, of course, correctly observing that none of these statements was false or malicious. While it is tempting to comment further on Mr. Lynch's shenanigans, we don't think he deserves a stage for any more theatrics. For anyone interested, however, the lawsuit and various commentaries are on the FEO website: <www.funeraethics.org/newsletter>. The Funeral Consumers Alliance's website, <www.funerals.org>, also contains a number of articles on *l'affaire Lynch*.

Recommendations

It's time to bury the status quo in an unmarked grave. Industry-dominated regulation has done a whole lot to prop up outrageous funeral prices but almost nothing to stop consumer abuses. The near-universal requirement to go through two years of mortuary school before opening a funeral home only ensures the next generation of funeral directors will be indoctrinated by an outdated curriculum that's still harping on the "value of viewing and embalming" while teaching students little about cremation, green burial, alternative funeral options, religious diversity in funerals, or even how to set up a business website.

Sensible, fair, and effective regulation would:

- Restore families' constitutional rights to care for their own dead in the states where restrictions exist.

- Eliminate the need for expertise in embalming as a requirement to run a funeral home. Embalmers who serve the public should be required to have this training, of course, but there's no reason a simple disposition business owner should have to take classes in flooding the abdomen with formaldehyde.
- Eliminate requirements for funeral homes to have embalming rooms, "chapels," and other vestiges of old-school funeral parlors. Let the market decide what services are on offer. After all, no law requires McDonald's to sell poached salmon in dill sauce.
- Develop a test for prospective licensees that focuses on what's important for consumer protection. Test them on the FTC Funeral Rule, knowledge of state laws on funeral directing, prepaid funeral accounting requirements, and who has the legal right to make funeral decisions on behalf of a decedent.
- Require prospective licensees to do an apprenticeship of a reasonable length with a funeral business to gain practical experience. Vermont used to require that embalmers serve a one-year apprenticeship and funeral directors to assist with at least 30 funerals before becoming licensed. This worked perfectly well from time immemorial, but predictably, the Vermont Funeral Director's Association convinced lawmakers to require mortuary school attendance for licensure starting in 2009.
- Reform state licensing boards so industry does not have a majority voting bloc. A properly constituted board would ensure a spot for representatives of all trades regulated by the board—crematories, cemeteries, etc.—not just full-service funeral directors. Licensing boards should include as many or more disinterested consumer members as industry representatives.
- Consider abolishing the licensing boards altogether and place responsibility for licensing and oversight with a dedicated civil service staff, perhaps with an advisory board of funeral directors and public members to consult.
- Establish a clear, efficient complaint process for consumers with a grievance. Employ adequate staff sufficiently trained in funeral laws and regulations to fairly resolve complaints. Make complaints and resolutions public documents.

Are all of these reforms likely to take place in the foreseeable future? Of course not. Back in the 1980s, passage of the FTC Funeral Rule seemed to

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many to spell final victory for funeral consumers, and some predicted that CAFMS (the former name of FCA) would be out of business, with its goals accomplished. What a pleasant—but naïve—thought that was. But it is well worth the effort to work for reform and to help consumers to learn how the system works so they can protect themselves, especially when the regulators won't.

A black and white photograph of a field of tall grass, used as a background for the title.

Tricks of the Funeral Trade 2

IN MOST BUSINESSES, THE FORCES of supply and demand keep goods and services within the affordability range of those who will use them. Not so with funeral and cemetery purchases. According to a 1995 study done by the Wirthlin Group at the behest of the funeral industry, almost 90 percent of consumers did not shop around for a funeral: 45 percent picked a funeral home that served someone else in the family; 33 percent called the nearest mortuary (perhaps the only one in town); and 11 percent picked a funeral home based on the perceived ethnic or religious affiliation.

While we have seen an increase in the amount of price and service comparison shopping since that time, most people still say they choose a funeral home based on past use, proximity, or affiliation. But how do you know if “your family’s funeral home” that’s been burying your relatives for generations is charging reasonable prices? How will you know if their business practices are good or bad if you’ve had no other experience? Most of us will arrange one, maybe two, funerals in our entire lives. That’s not much to go on, and if you’re looking for the best service at a reasonable price, reflexively calling only the last funeral home your family used is not a wise decision. Funeral directors are well aware of these tendencies. In the trade magazines, they refer to consumers like you as “my families.”

Years ago, there was a funeral home in every other small town, and death care was acknowledged as a part-time job. When Carlson was growing up, the sign in Craftsbury Common, Vermont read “Upholstery—Hardware—Undertaking.” Little by little, morticians found they could raise their prices, and the sideline jobs diminished. If the funeral business were indeed a full-time, five-days-a-week job, the number of funeral homes that would be needed for the death-rate in each state would be far fewer than the number that exist (see chart on the next page).

Many funeral homes can handle more than one funeral a day, reducing the “needed” number accordingly. This probably explains the figures for California, Hawaii, and Nevada. In rural areas with sparse population, a funeral director does not expect the dying business to be full-time, and more

Funeral Homes

	Have	Needed		Have	Needed
Alabama	460	188	Montana	74	35
Alaska	26	14	Nebraska	287	59
Arizona	161	180	Nevada	59	78
Arkansas	349	114	New Hampshire	105	41
California	960	919	New Jersey	724	270
Colorado	186	124	New Mexico	76	61
Connecticut	296	114	New York	1878	582
Delaware	70	31	North Carolina	751	308
DC	40	19	North Dakota	109	24
Florida	852	677	Ohio	1167	427
Georgia	703	267	Oklahoma	414	142
Hawaii	18	39	Oregon	193	125
Idaho	85	44	Pennsylvania	1664	495
Illinois	1232	395	Rhode Island	93	38
Indiana	649	222	South Carolina	557	151
Iowa	600	110	South Dakota	101	28
Kansas	383	94	Tennessee	548	231
Kentucky	497	162	Texas	1339	645
Louisiana	400	160	Utah	98	57
Maine	151	50	Vermont	70	20
Maryland	294	174	Virginia	488	234
Massachusetts	644	207	Washington	237	192
Michigan	729	343	West Virginia	309	84
Minnesota	559	152	Wisconsin	549	181
Mississippi	450	112	Wyoming	35	17
Missouri	681	218			

Source: Funeral home numbers were obtained from state regulatory boards for year 2010. Mortality rates used to calculate the number of "needed" funeral homes were taken from CDC death statistics from year 2009.

establishments will be needed to cover the geographic area than the number generated by a simple death-rate formula. In most states, however, the number of funeral homes far exceeds that which can be reasonably supported—full-time—by the death-rate. In Kansas, Pennsylvania, and Vermont, an average funeral home might get only two funerals per week; in Iowa and Nebraska, there may be only one funeral per week. When that is the situation, the funeral bill is likely to be severely inflated in order to support the under-utilized staff and facilities.

Remember, you have but one life to give to your undertaker. Restaurants and clothing stores can induce you to become a repeat customer, perhaps dozens of times, but even the most cleverly marketed mortuary cannot. The more funeral homes per capita, the more thinly customers are spread. When volume is low, the only way to pay the bills is to raise prices.

Are You Going to Be a Willing Victim?

Most mortuary students say they go into the business to be of service to the grieving public. It's after they're hit with the hard facts of making a living and the slow rate of business that steering consumers to more expensive options becomes a preoccupation.

There is only one chance to get the funeral right. Therefore, you—as the buyer—have a special burden to inform yourself about your choices and educate yourself about the pitfalls. Since most of us will never arrange for more than one or two funerals, you won't have much practice. Knowledge is your best self-defense.

How Much Can You Afford?

There are, of course, ethical funeral directors who would consider it a professional embarrassment to push a family into buying more than they can afford. The sales pitches we describe below won't happen at every funeral home. But they're not rare, either. What most people forget is that a funeral is not just an emotional ritual; it is a business transaction. The funeral home staff have mortgages and taxes to pay just like everyone else, and they have a right to earn a living. Too often, though, funeral homes sell themselves on the idea of their importance—their unique, can't-be-replaced position in society. Don't make the mistake of believing that the more services you choose, the more “respect” you're showing for the dead. No fancy casket or elaborate funeral will mean you love or grieve your dead any more or less.

Josephine Black Pesaresi, daughter of the late Supreme Court Justice Hugo L. Black, described how her family honored her father's request for “simple and cheap”:

Our family had heard my father's views about funerals for many years. Appalled by the high costs, he felt that funeral merchants often took advantage of grieving families when they were at their most vulnerable. Coming from a humble background, he had seen families spend themselves into debt. He was equally appalled by any person who wished an elaborate and expensive funeral, seeing this as evidence that the person was “puffed up about his own importance in the scheme of things.”

. . . Huddling for a final conference, someone asked, "Shall we get the pink, the cheapest?" And we all gave a resounding 'YES.' We said we would buy the pink for \$165 with the cloth stripped off. The salesman said that was impossible, it would look terrible. We, however, wanted to see for ourselves since this was our coffin of choice. First one of us pulled away a little cloth to take a peek, then another ripped more forcefully, and finally we all started ripping off the fabric with careless abandon. Off came the bows, the coffin skirt, and all but a few patches of stubbornly glued pink organza. There stood a perfectly fine plain pine box. The debris littered the elegant carpet, but we were practically euphoric. We had followed my father's directive almost to a tee, with the added bonus of deflating pretensions in this very pretentious room (though my father would have felt some compassion for the poor coffin salesman).

For the full, delightful essay, visit: <www.funerals.org/faq/51-qsimple-and-cheapq-my-father-said>.

When you arrive at some funeral homes, the car you drive or the way you're dressed might be sized up. If your family is already known in that area, funeral directors probably have a rough idea of your income and financial worth. That's part of the funeral director's job—to anticipate what you might want. After all, a car dealer won't try to sell you a Kia if it appears you can afford a BMW.

You will probably be on your best behavior once you enter the funeral home, which is probably more elegant than your own residence. While the formal aura of many funeral establishments is set to honor the dead, it can also be intimidating. How would you respond to the following?

- "Given your position in the community, I'm sure you'll want to . . ."
- "Your mother had excellent taste. When she made arrangements for Aunt Nellie, this is what she chose."
- "I'm sure you want the best for your mother."
- "Most of our families pick the *traditional* package."

Most of these sample quotes fall into the category of "controlling with guilt." But you don't have to fall for this. You're the only one who can determine the most loving and meaningful way to say goodbye. It may be helpful to bring along a friend who's not as emotionally invested in the death, someone you trust to help you make the most rational choices.

Keep the following response in mind, even if you don't speak it aloud: *"If I spent according to how much I care, I'd be penniless—I'd be paying you for the rest of my life!"*

Funeral directors will usually ask how you plan to pay for the funeral, to see if there is insurance to cover the costs. If a policy is made out to the funeral director, you should find out if any unused portion can be returned to the estate, particularly if money is also needed for other expenses. If a specific funeral home is *not* the beneficiary of an insurance policy, it's probably better not to divulge the amount of any insurance. The cost of an insurance-covered funeral has a strange way of ending up to be just about the same amount as the policy, once that amount is known. One widow told the funeral home her husband wanted "any old wood box." But, knowing that she had walked in with a \$12,000 policy in her purse, the funeral director showed her a \$6,000 casket and told her it was "the only suitable thing for a man" that they had. The total bill was . . . you guessed it.

If there is no insurance and family funds are limited, don't be embarrassed to state that early in the funeral arrangements—you're not alone. Be careful about obligating yourself for more than you can reasonably afford. The beautiful \$10,000 funeral might not seem so wise six months down the road when you're facing increasing rent or college costs for children. **Federal regulations require funeral homes to give you prices by phone.** Shop around ahead of time—it could save you thousands of dollars. In addition, your local Funeral Consumers Alliance may have done some of the price-shopping for you.

Understanding the Paperwork

According to the Federal Trade Commission's Funeral Rule, you must be given a General Price List (GPL), a casket price list, and an outer burial container price list when you inquire about arrangements and prices. You may keep the GPL, though funeral homes don't have to let you keep the other lists. You must be given an itemized statement of your final choices when contracting for a funeral *before the funeral takes place*. Make sure the final statement has only those items you have selected. Don't leave the arrangements conference without this itemized receipt.

And while funeral homes may ask you to sign the contract, be sure to read the fine print carefully. Some contracts contain statements and conditions that we believe are illegal and unfair, such as "I was given all paperwork and disclosures required by the Federal Trade Commission." Most consumers won't know whether they've been given everything the law requires; they just want to sign the form and get it over with. This could harm your chances of bringing a complaint later, if that unfortunate necessity arises. Some state regulators have refused to hear consumer complaints about illegal sales practices because

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the family signed off on such contracts, even though they did so at a time of grief and confusion. We recommend you cross out any provision of the contract that you feel uncomfortable agreeing to before you sign it.

Professional Services Fees

The Federal Trade Commission allows a mortuary establishment to set a non-declinable fee for “Basic services of staff.” You must pay this fee in addition to the cost of specific funeral goods and services you select. The consumer gets almost nothing for this fee; it is sort of a cover charge or bench fee. As defined by the FTC, this may include the following:

- The funeral director’s time in helping you plan the funeral. (You’re paying to listen to a sales pitch. Do you pay your travel agent extra to try to sell you more expensive trips?)
- The time it takes to make arrangements with a cemetery, crematory or other funeral home if the body will be shipped out of the area (but burial, cremation, and shipping are listed elsewhere on the price list).
- The time needed to obtain required permits. (In some states, funeral directors can sign their own. A car salesman tosses in this kind of service as part of the cost of doing business.)
- The time for the funeral director to transcribe the death certificate information (which you must supply) and file the certificate.
- Faxing or e-mailing the obituary (which you may have written, and for which you may pay an extra charge to the newspaper for the advertising of the funeral home).

In addition to these basic services, the FTC *also* allows this fee to cover “unallocated overhead”—or even “all overhead,” according to an FTC staff publication. No other business is so protected; all others must recoup their costs for capital investment, taxes, insurance, answering services, and advertising by the price charged for each item offered. (See Chapter 8: “The Federal Trade Commission,” for a more complete description of this problem.)

Over time, most funeral homes have loaded more and more of their profits into the non-declinable fee, while low-balling the *actual* goods and services you receive (the funeral ceremony, the casket, etc.). By 2006, the average non-declinable fee was \$1,595 according to the National Funeral Directors Association, and it has risen since that time. It’s not uncommon to see fees as high as \$2,500, with some over \$3,000. This fee is almost always higher

than any of the actual services (such as a visitation) that you pick. This has perverted the intent of the Funeral Rule—to allow cost control through consumer choice. Families who make simpler arrangements pay just as much overhead as those who have a full-service, one-of-everything funeral.

To have the greatest control over what you spend for a funeral, determine the type of funeral you want ahead of time. A memorial service at your church would limit the amount of services required from a funeral home. In that case, finding one with a low charge for the “Basic services fee” may be particularly important to your pocketbook.

Embalming

Embalming is *not legally required* for most deaths. When burial or cremation will be delayed for several days, **refrigeration can substitute for embalming in many states**, though there are exceptions. Not all funeral homes have refrigerated storage, but most hospitals do. Most funeral homes—by policy—will not allow a public viewing of a body without embalming, but there is no state law that says the body must be embalmed and restored to a “life-like” condition for such an observance. In other countries, embalming is seldom done. A more complete description of embalming is given in Chapter 4.

The cost of embalming will be listed on the General Price List, but there may be additional related charges such as “other preparation of the body—dressing and casketing.” For some families, dressing Grandma and fixing her hair, rather than leaving it to the funeral director, might be a loving way to say goodbye. Keep in mind that all fees are optional once you’ve paid the non-declinable fee.

Shelter of Remains

This might not appear on a price list at all, but, if it does, it should apply only after the four or five days **that it might take to complete all funeral arrangements. The FTC does not permit a storage fee during usual funeral transactions. Unfortunately, the FTC issued an opinion in 2007 that allows funeral homes to charge for refrigerating unembalmed bodies.** (FCA argued this should be considered ordinary custodial care). Be sure to ask if the funeral home’s refrigeration charge is per-day or a flat fee.

Forwarding Remains

All general price lists will carry a charge for the handling of a body to be shipped out of the area. The price should include a description of what is covered. This usually includes paperwork, staff time, local transportation of the body, embalming, scheduling shipment, and a shipping container.

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Several companies specialize in shipping bodies. Inman Nationwide is one that has contracted with local funeral homes to serve as agents in every state. It pays those agents about \$900 (in 2010) for forwarding remains. Airfare is extra.

If you need to ship a body to another state and you're not going to conduct ceremonies in the state where death occurred, it's usually better to call a funeral home on the receiving end and let that business make arrangements. Why? Because most funeral homes charge far more for forwarding remains when arranged by *retail* customers (you) than the \$900 wholesale business-to-business charge.

Beware of Misleading Package Fees

If you are price-shopping among several funeral homes for a "direct cremation," be sure to ask if the package price includes the cost of a minimum container and the cost for the cremation process and permits. Many funeral homes do not have their own crematories, and this will be an additional expense which may not be apparent on first inquiry. It's hard to imagine how you can have a "direct cremation" without cremation, but this bit of mischief is permitted by the FTC.

If you choose "immediate burial," one package price may be a lot higher than another because it includes a minimum casket and a grave-liner or vault. In addition, some funeral homes have jacked up their service prices on immediate burial but offer a "discount" if you purchase the casket at the funeral home. This means a handling charge has been built into the services fees, a practice outlawed by the FTC.

Cash Advances

You might need goods and services from outside vendors: an organist, the obituary, special flower arrangements, opening and closing the grave. Some funeral homes add a fee for arranging these, but it must be so stated on the price list, something like, "We charge you for purchasing these goods and services." When a funeral director says, "We'll take care of everything—we'll get the new lettering on the stone," you might be paying more than you need to. While it may be convenient to let the funeral home make these arrangements for you, you may wish to consider saving money by making the contacts on your own.

ID Viewing and Other Cremation Ploys

"Yes, [identification viewing] is self-serving," admitted the speaker during an industry presentation titled "Keys to Cremation Success." "Often after viewing Mom in a cardboard box, the family will ask if we have something

a little nicer." His talk was titled "How to Add \$1,400 to Your Cremation Calls," given at a symposium sponsored by the *Funeral Service Insider*. One Florida SCI funeral director pitched a grim mental picture and a guilt trip ahead of time. To a woman phoning for the price of an immediate cremation for her aunt, he said, "You'll probably want to upgrade to a cremation casket [\$350 more, she later learned]. There will be an identification viewing, and most families don't want to see their loved one in a cardboard box."

With the growing cremation rate (36 percent nationally, and approaching 70 percent in some states), mortuaries are scrambling to recover the income they would otherwise be making from what Jessica Mitford called "the full-fig funeral." Over the years, some manipulative tactics have emerged, and "ID viewing" is one of the worst. It is one thing for a family to request a private visitation. It is quite another for the funeral home to require such a viewing.

One Vermont funeral director threatened "to wash my hands of this whole affair" when the family didn't want to view the grandmother's body. Terrified and feeling helpless (this was the only funeral home in town and the body was already there), they agreed. But they were traumatized by the experience: Grandma's body was on a cold metal table, her blouse undone and hanging open, and splotchy rouge on her cheeks. That was not how they'd wanted to remember her.

Many funeral directors insist ID viewing is necessary to make sure the right body is cremated. But the funeral home knows whose body it is when picking up the dead person from the hospital, nursing home, or family residence. ID viewing at the funeral home is unnecessary except under the very rare circumstances in which the identity of the deceased may be in doubt.

The statutes in Delaware and Maryland have specific language to require identification of the deceased by next-of-kin before a cremation can occur, but the identification, even in those states, can occur at the hospital, nursing home, private residence, or other place of death. A caretaker is almost always another "qualified person." Every state should require that a body be tagged before removal, a practice which would eliminate the industry's mischief with this ruse and avert mix-ups at chain-own businesses that use a central prep facility.

Some funeral homes have actually charged for ID viewing itself, rather than just using it as a sales tactic for more expensive merchandise. Others charge for "preparation for ID viewing." Except where required by state law any such fee may be declined unless the family requested such services; this was confirmed by the FTC on October 31, 1997. Families who were made to believe the viewing was obligatory and who would not have chosen it otherwise should request a refund of any related charges.

Finally, some funeral homes and crematories try to induce you to buy expensive urns by stamping TEMPORARY CONTAINER—NOT SUITABLE FOR LONG-TERM STORAGE on the plastic or cardboard container in which they return the ashes. The Texas Legislature danced to the funeral industry's tune and enacted a law in 2007 mandating that all crematories stamp such a warning on containers. Don't be manipulated. *You* get to decide what container is "permanent" or "suitable."

Carlson's father-in-law was a great believer in education. When his cremated remains were returned from the medical school in a box marked TEMPORARY, the family decided he would be a permanent example of this sleazy tactic. The box now often accompanies Slocum for his educational talks.

Funeral Conglomerates

Before you finish this book, you will have found many references to the problems at chain-owned mortuaries—especially Service Corporation International (SCI) and Stewart Enterprises. In the '80s and '90s, companies such as SCI, The Loewen Group (since bankrupt and bought by SCI), and Stewart went on a mortuary-buying spree, snatching up locally owned funeral homes at a rapid clip. If a funeral home was Palmer's Funeral Home yesterday (owned by John and Mary Palmer, third-generation funeral directors, born and raised in town), it will still be Palmer's Funeral Home tomorrow, even if the new owners are stockholders from around the world. But the prices and practices of the new owners may not resemble the business considerations of the Palmers at all.

It's common for these companies to keep on members of the original family in order to capitalize on their local reputation. You, the consumer, may have no idea that anything has changed—until you get sticker shock. SCI funeral homes, for example, are almost always among the highest-priced establishments in any market, sometimes three times more costly than other funeral homes. Some ex-owners who have stayed on in management positions have become disillusioned with the hard-sell tactics being promoted by the corporations and can hardly wait for their contracts to run out. In addition, many employees have told us privately over the years that management hounds them to sell, sell, sell, creating pressure on the workforce that leaves many feeling dirty about taking financial advantage of the grieving.

Pricey packages are the name of the game for SCI, which uses "Dignity" as its brand name. The "Smith" family's complaint (name changed to protect privacy) illustrates what Dignity looks like from the customer's point of view. When Mrs. Smith's father, "Mr. Collins," died in 2002, they went to the same funeral home they'd used when Mom died in 1996, having no idea it had since been bought by SCI. They wanted a funeral as close as possible to what they'd had for Mom, nothing more and nothing less. Mr. and Mrs. Smith and their

son wrote separate letters to the Texas Funeral Service Commission describing a grueling hours-long arrangements conference (emphasis added below):

[The funeral director] Mr. Simpson left the room for a while and returned with a list of funeral service packages that were available. These packages contained a number of items such as the service, the casket, the outer burial container, flowers, and so on. The family asked Mr. Simpson whether or not the options provided in the funeral service package [were] similar in kind to that provided for Mrs. Collins' funeral. He replied that it was and that the funeral service package was the best option because it provided an additional discount . . . *thus there was no reason to look at a pricing list for individual items.*

[Simpson] again explained that we would not save money by doing the funeral *a la carte* because the "packages" were so heavily discounted that the basics, e.g., casket, liner, hearse, and graveside services, were actually less expensive in a package than they were if purchased individually, and besides, all the extras were thrown in the package. We asked [him] to provide us with an estimate of the service we had purchased for Mrs. Collins at today's prices in an *a la carte* manner, and he "dodged" the question and failed, in retrospect, to truly answer any of our questions in that area.

Mrs. Smith continued to press for an itemized price list and objected to paying for things the family didn't want:

Mr. Simpson countered that "now" they were offering packages and that we would want the least expensive packages, as that would provide us with the best savings. As he went through the individual parts of the package, I noted that we did not plan to use the chapel as we were having a graveside service as we did in my mother's service. He explained that we still had to pay for the chapel because it was part of the package "that was saving us money."

And the price of Dignity? \$13,000 for the Smith family.

Comments by an SCI Employee

Jobvent.com lets you post anonymously about your employer. Of 10 SCI employees, only one had anything positive to say when we visited the site recently. Among the comments left:

We were told to sell Dignity plans, collect all monies immediately, give seamless service and ask for 10s on the J. D. Power surveys. It was quite difficult to sell the plans because they seemed overpriced

to most consumers and the offerings in the plans did not seem valuable to the families served.

Another example comes from an on-line mortuary chat:

I was employed by SCI for three years Once I was at a regional meeting. All were asked if they were funeral directors or sales people. The ones who raised their hands saying they were funeral directors were reprimanded and told they were not funeral directors but sales people Families do not matter to officials at SCI. Only the almighty dollar, and their prices are high.

"Counselors" are asked to visit mourners just a few days after a burial to get sales leads from friends and relatives of the deceased. Even more humiliating is the insistence of management to go door-knocking in neighborhoods to sell prepaid funerals and burial property. This is a company that goes under the brand name of Dignity Memorial. What is the dignity of taking advantage of people on what may be the worst day of their lives?

It may seem that we're piling on SCI in particular, but the company has long been a disproportionately large source of consumers' complaints to the FCA office. The complaints from families using SCI-owned facilities in states around the country are suspiciously alike and indicate to us a company-wide pattern. Similar behavior appears in an SCI manual leaked to the FCA office.

Of course, not every experience with a corporate-owned funeral home will be a bad one. In fact, we've spoken to employees at some chain-owned funeral homes over the years (in the course of helping consumers with complicated arrangements) who proved to be competent, straightforward, and genuinely warm. But if price and ownership are important to you, it's wise to check out just who owns "your family's funeral home." If it turns out to be a large chain, you may be faced with high prices and uncomfortable pressure you're not expecting. In that case, don't be afraid to walk out or move the body to another funeral home.

Corporate Trend Is Slowing

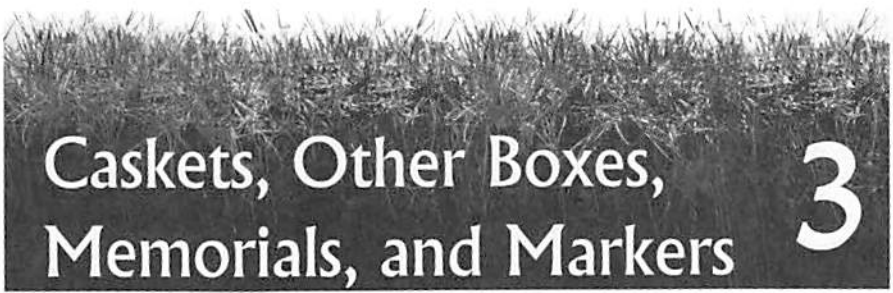
It's worth noting that corporate purchases of funeral homes have slowed in recent years, and some of the large corporations have sold off some of their properties after realizing they had overbought (and overpaid). While it is true that the publicly traded chains are the biggest funeral companies in the country and they have outsized market power in some ways, there's a common misconception that *most* funeral homes are now owned by these corporations. Not true. The big chains have owned between 10 and 15 percent of funeral homes in America over the years; the remainder are independent. Beware, though, that in some metropolitan areas (particularly in Florida with its concentration of elderly people) corporate chains have a near-monopoly.

Don't Put it Off

We teach our kids about religion, politics, money, and maybe even sex. But few of us teach our children about how to shop for a funeral. Said one funeral director, "Picking a funeral home without shopping around is like handing the funeral director a blank check." The most effective way to avoid excessive purchases at a time of emotional vulnerability is to talk about funeral options with your family ahead of time.

Talking about death won't make you die any more than talking about contraception will make you pregnant. While broaching the topic can seem uncomfortable or downright scary, countless families have told us over the years, "I feel so much better after having a frank talk about this; the fear is gone." Local Funeral Consumers Alliance groups have material on a variety of funeral topics, as well as local price information.

And if your family is especially hesitant, try some humor. Check out Carlson's book *I Died Laughing*.



Caskets, Other Boxes, Memorials, and Markers

3

YEARS AGO, THE MARK-UP ON CASKETS was often 200 to 500 percent to cover the other goods and services such as embalming, viewing, the funeral service itself, and transportation. If funds were limited, you were expected to pick a lesser casket, not skip the embalming or viewing. However, those choosing the least expensive caskets could expect a pretty short service.

After the Federal Trade Commission Funeral Rule went into effect in 1984, services had to be listed separately, but many funeral homes never reduced the casket prices to compensate for the other new charges. Consequently, it is not uncommon to see caskets—especially low-end ones—marked up to the point where the casket accounts for one-third of the total funeral bill.

Since 2000, and especially after Funeral Consumers Alliance filed a federal lawsuit against the major funeral chains and the biggest casket maker in 2005, many funeral homes are doing “price realignment.” In order to discourage consumers from buying discount caskets from third parties—even Costco, WalMart, and Amazon.com now sell them—some funeral homes have been lowering their casket prices to match, or nearly match, the competition. The funeral director will happily show you that he’s got a low-cost model, too, and it’s a brand-name!

But it’s a funereal shell game; once the casket price drops from \$2,000 to \$1,200, the basic service fee rises from \$1,200 to \$2,000. The bottom line for you is the same, but you lose the option to save money by purchasing a casket elsewhere. The trade magazines are pushing this concept to funeral directors, characterizing it as “putting your profits where they should be, in your services.” The truth is more prosaic: since the basic services fee is the only one the consumer can’t decline to pay, the undertaker can guarantee he gets as much profit from you as he believes he’s due. Cost-conscious consumers will want to compare a funeral home’s casket prices *and* service fees to find the best value.

Like any other business, the funeral industry has studied buying patterns. People tend to purchase one of the first three caskets they are shown—hurrying, perhaps, through a difficult choice. It isn’t hard to figure out

that among those first three will be ones with a good profit margin for the mortuary. When people are shown one casket marked \$1,000, one marked \$1,800, and one marked \$2,500, which would you guess gets picked most often? We are, indeed, a society of middle-of-the-roaders. "I didn't want to pick the cheapest," said one woman about her mother's casket. Many other families have told us they picked a "moderately priced casket." When we asked how they chose it, they invariably contrast the price with one that was more expensive, and one that was cheaper. "Moderately priced" appears to mean any price at all, as long as it's in the middle. So if a funeral home wants to make a bigger profit next year, there's a good chance that the first three caskets shown might be listed at \$1,800, \$2,500, and \$3,200—so now the \$2,500-casket will become the popular model.

Showing caskets by catalog—with large glossy photos—is becoming more common. It reduces inventory cost and makes another room available for public use. Most funeral directors carry such catalogs when they visit nursing homes and private residences. In states that require a minimum display of, say, "five adult caskets," that may be all you'll find on hand, with others shown by catalog only. Industry reports claim that consumers seem more comfortable with the catalog or computer selections, and that casket revenues actually increase.

The FTC requires that a casket price range be included on the General Price List and that a full casket price list be supplied before showing any caskets. Carlson mentioned this to a *Chicago Sun Times* reporter who was getting ready to take an AARP volunteer "shopping" for a funeral. If the lowest-cost casket is not on display, she suggested, ask to see it anyway. (Some funeral homes hide the low-cost ones.) A couple of weeks later the writer called back: "You were right. When the nice gentleman I was with asked to see some less expensive caskets, they took us to a hallway on the way to the boiler room."

Similarly, a New Hampshire widow didn't think she could afford a \$2,500 casket, the least expensive one on display. Her irate daughter reported that the mother was taken to a dark cold basement full of cobwebs. Half-way down the stairs her mother turned and fled. As a result, her dad's body ended up in the \$2,500 casket.

"Protective" Caskets

The FTC's Funeral Rule makes it illegal for funeral homes to claim caskets will preserve the body indefinitely, but many flout the spirit of the law with deceptive language that refers to "protective" caskets. It is not uncommon to see something like this on price lists:

We offer many different styles and prices of caskets and an alternative container from which to select. Since many caskets that appear similar in appearance may differ greatly in quality and construction, we offer the following in order to assist you in making an informed decision.

- **PROTECTIVE:** These caskets are designed by the manufacturer to resist the entrance of air, water and other outside elements. They may be constructed of varying gauges of steel, copper or bronze.
- **NON-PROTECTIVE:** These caskets are not designed by the manufacturer to resist the entrance of air, water or other outside elements. They may be constructed of metal, hardwood, or wood products covered with fabric.

One is tempted to imagine a casket maker sitting down with the designers and saying, "Make sure these won't keep out air, water, or other elements."

The rubber gasket on a so-called protective casket adds just a few dollars to the manufacturing cost, but it may add hundreds to the retail price. A "sealer"—as many funeral directors call them—will not stop the decomposition of the body; it actually complicates the process. Instead of the natural dehydration that would otherwise occur, the body will putrefy in the oxygen-free environment. These gaskets are actually supposed to be one-way seals that let out the build-up of gases inside, but—as described in the company literature—they're subjected to a vacuum test before shipping to make sure no air can get in. You might call them "self-burping" caskets.

If, however, they are closed too tightly, the gasses can't get out and the caskets explode, as one Jacksonville, Florida woman found out three years after her father was entombed in his mausoleum crypt. A new funeral home was then contacted, a new casket was supplied by the manufacturer, and—after a change of clothing and a quick clean-up—a new entombment ceremony was held, sort of, amidst the stench. (See the Cemeteries chapter for a more complete description of the problem).

In addition to the seal, some of the more expensive Batesville steel caskets offer "cathodic protection"—a bar of magnesium serving as a "sacrificial cathode" to deter rusting. Similar mechanisms are used in water heaters, providing protection for three years or so. Batesville, however, used to stand behind its 16-gauge steel caskets for up to 50 years. Following several lawsuits, it has drastically lowered the number of years it will warranty a casket.

To its credit, California requires the following disclosure on all price lists:

**THERE IS NO SCIENTIFIC OR OTHER EVIDENCE THAT ANY CASKET
WITH A SEALING DEVICE WILL PRESERVE HUMAN REMAINS**

It's wise to step back for a second and consider whether a "protective" or "warranted" casket makes any sense at all. No casket will make the deceased any less dead, no casket will prevent decomposition, and how many of us are likely to exhumate grandma decades later to make sure she's still dry?

Deception on this issue has occurred for a long time, despite consistent evidence that the gaskets serve no worthy purpose. Back in 1994, Clarence Miller wrote in *The Funeral Book*:

Do not for one moment think that just because a casket has a rubber gasket designed to keep out air and water that it will. I have seen caskets disinterred after one month that were full of water though they were sold as "air and water tight. . . ." In more than 35 years as a mortician, I do not have any faith at all in so-called "sealer" caskets.

Even a Batesville representative said recently that he was uncomfortable with the word "sealer." "They're water and leak *resistant*," he said.

Responsible funeral homes have realized that making unrealistic promises is not only unethical; it can lead to lawsuits from aggrieved consumers. Some are describing their caskets in more factual, and less emotionally manipulative, terms, such as "gasketed" instead of "protective." A few have even said they won't sell "sealers" unless a customer insists, because they're a waste of money and a scam.

But not all. Slocum and a colleague, Sherry Swett, joined an undercover camera crew from Good Morning America in 2004 to go "funeral shopping." Posing as a family planning for Aunt Lillian's imminent demise, they stopped at several Connecticut funeral homes. In the casket room at one, the funeral director was eager to fulfill their every final wish. One member of the crew "innocently" asked about the price differences between the various models, and our host lit up. "This one's sealed," he said patting the top of a costly silver-colored model. "Won't let air or water in." "What does that mean?" Swett asked. The funeral director explained that it would keep Aunt Lillian in perfect shape. "Now, I've pulled up some caskets over the years, and these really work. We could open it up 30 years later and"—kissing the tips of his fingers as if to say '*magnifique!*'—"she'd look just like the day she died."

The second funeral home said we shouldn't buy "one of those caskets" from a discount retailer because they were "all seconds," and "tin cans."

In an article in the January 1998 issue of *Mortuary Management*, David Walkinshaw wrote: "From consumer surveys, it is clear that families select caskets mainly on eye appeal. . . . That is the reason that casket companies produce inexpensive caskets in rather unflattering finishes. If they looked too good, people would buy them."

52 Final Rights

Of course, there are well-made caskets that cost less than \$800—or at least *should* cost less than that. But as Walkinshaw noted, to discourage customers from selecting low-end merchandise, these otherwise perfectly dignified caskets are often ordered in “ugly” colors—the most common being those covered with dull gray cloth (wholesale cost about \$200). Some funeral homes refer to them as “welfare caskets.” Yet when a priest or nun who has taken a vow of poverty dies, this same casket might be ordered in burgundy or navy blue. Suddenly, it is no longer a “welfare casket.” If the price and basic design of a modest casket seem right for you, ask what other colors can be ordered. Usually a funeral home can get a more attractive replacement within a day or so.

Third-Party Casket Sellers

It is illegal for a funeral home to charge a handling fee if you use a family-built casket or purchase one elsewhere. We have seen some price lists that say that any such casket must meet state and cemetery or crematory requirements. Few such requirements exist. Occasionally, a funeral home will state that the casket must be “deemed suitable” by the funeral director. This is manipulative and illegal because the funeral director may not refuse your choice of a casket. Some establishments may make it inconvenient to use another firm’s box, insisting that you be present when the casket is delivered, so they won’t be “responsible,” though this is also a violation of the Funeral Rule. On the other hand, you just might want to be there—to assure that no one “finds” a torn lining, a dent or scratch, or a smear of dirt and grease on the third-party casket after it is delivered. Retail casket sellers have long complained of such underhanded tactics.

Though it’s been 27 years since the Funeral Rule became effective, there’s a surprising amount of drama from the trade still swirling around the issue of third-party caskets. The trade magazines and blogs are filled with what can only be called whining from funeral directors looking for an excuse—any excuse—to find fault with any box they don’t sell. The FTC has issued more than 10 years’ worth of advisory opinions in an attempt to clarify what seems to be a very simple concept. The Commission states:

- Funeral homes can’t require you to be present when the casket is delivered.
- Funeral homes can’t require you to inspect the casket on delivery.
- Funeral homes can’t refuse to allow third-party delivery staff to use the funeral home’s equipment to bring the casket inside.
- Funeral homes can’t refuse to accept a third-party casket during any time period in which the funeral home would ordinarily accept delivery from its own casket supplier.

Only three states still require that only a funeral director sell caskets—Louisiana, Oklahoma, and Virginia—clearly a ploy by the local undertakers to shut out competition and a violation of the intent of the Funeral Rule. Columnist George Will compared this to a hypothetical law requiring everyone who sold shoes to be a licensed podiatrist. Casket artisans and retailers in those states might call the boxes they're selling "hope chests"—there is no state that forbids a family from burying a body in a hope chest. Of course, consumers in those states may order a casket shipped in from another state, and a mortuary may not refuse the family's right to use it. Check on-line for retail casket sellers. Both Costco and WalMart now sell caskets on-line, too.

Caskets and Cremation

The Funeral Rule gives you the right to refuse a casket for cremation. All funeral homes must provide a minimum "alternative container." The least expensive would be a cardboard container for perhaps as low as \$50, but some funeral homes are known to charge \$395 or more for such a box. By law, you have a right to supply your own.

With the rapid growth of the cremation rate, some funeral homes have set up separate displays of cremation caskets, with separate listings on the Casket Price List. But funeral directors may not stop you from using a lower-cost cremation casket for viewing or burial, although some have tried. While certain containers may be suggested to families who are planning a viewing prior to cremation, any comment that one is "not suitable for viewing" is manipulative and illegal, yet still common.

Many funeral homes also offer rental caskets for viewing before cremation. These look just like ordinary caskets—they're usually wood—but the interior bedding is attached to a replaceable cardboard liner. When the viewing is over, the bottom end of the casket swings out like the hinge on a pick-up truck, and the cardboard insert slides out and goes to the crematory. The funeral home can then order another lined insert for about \$100, and rent the same casket shell repeatedly.

You're likely to pay \$700 to \$900 per day for a rental casket to hold a dead body. By comparison, the most expensive room at the Waldorf-Astoria in New York City (priced on April 27, 2010) cost \$559 per night and sleeps two living people, with some rooms as low as \$259. Does your rental casket feature high-speed wireless Internet, mini-bar, maid service, and a marble bathroom?

Outer Burial Containers

Outer burial containers (vaults or grave-liners) can be as expensive as caskets, with some prices going as high as \$7,000 or more. These, too, may have "sealer" mechanisms, which may offer the caskets some "protection" from ground water if the cemetery is built near a high-water zone. In that case, it may seem

reasonable at first blush to choose a “sealer” vault. But unfortunately, a sealer is likely to pop to the surface during a flood and float away. That’s what happened during the 1993 flood in the Midwest and the 1998 flood in the southeast, and cemetery personnel had a terrible time getting everyone buried again where they belonged. Even if high water is not a problem, what is one protecting with an expensive vault? Decomposition of the body will occur regardless.

A grave-liner (a simpler container that serves the same function) is usually less expensive than a vault. A basic concrete model (without the gold-spray paint or the bronze lining) will probably cost \$400 to \$900. A polypropylene “bell cover” should be another option and is easier to install. The vault or grave-liner keeps the ground from settling after burial so the cemetery people can enjoy easy mowing and maintenance. Because not all cemeteries require liners or vaults, be sure to check the policy yourself if you’d prefer to avoid this expense. No state has a law requiring an outer burial container and some national cemeteries (including Arlington) do not use them.

In an effort to sell an expensive vault, one Vermont funeral director told the ladies in his arrangements room, “I know a woman who told her husband to buy a cheap casket but an expensive vault because she was afraid of snakes.” As it turned out, this made it easier for them to opt for cremation before the transaction was over, much to the funeral director’s dismay.

Many vault companies have refused to sell directly to consumers, or to retailers that sell to consumers. Some that do sell to consumers have been boycotted by funeral directors. For Mary Lynn Broe, who handled funeral plans for her mother without a funeral director, getting the vault became a huge problem. When she tried to order a vault from an Illinois funeral home, the owners insisted she had to hire their unwanted services as well.

Some states, including New York and Vermont, allow consumers to refuse a vault on religious grounds. But good luck getting cemeteries to acknowledge this. New York’s on-line consumer guide doesn’t mention this option despite our reminders over the years, and staff at the Burlington city cemetery still tell the public (incorrectly) that “state law” *requires* a vault. (NY does allow cemeteries to charge a reasonable fee, however, for ground maintenance.)

Little Vaults for Urns

Stung by the rapid rise in cremation (and thus the decline in whole-body burial), many cemeteries are now requiring an “urn vault”—an outer container in which to put the box of cremated remains. While cemeteries that use heavy mowing equipment may have some legitimate concern about keeping the ground stable above caskets, urn vaults are truly a posthumous Russian nesting-doll racket. Some cemeterians will say, with a straight face, they require them in case someone wants to disinter the urn sometime in the future. The vault will guarantee that the urn or box remains intact or that

you won't "put a fork through Mum," as one SCI salesman in Australia put it. An urn vault price of, say, \$595 may be mentioned by the sales rep, who is not likely to volunteer that less expensive ones are also available (see the Cemeteries chapter for some suggestions). Although you may wish to shop around, any saving could be offset by an "inspection fee," "installation fee" or "opening and closing fee," all bogus charges to make up for lost profit.

Some states restrict who may sell a vault. Cemeteries that do sell such items may not forbid you from purchasing them—or memorials—elsewhere.

Memorials & Markers

While it is a violation of the Sherman Anti-Trust Act for cemeteries to refuse to accept monuments bought from outside dealers, few state regulators are on top of the problem. We've seen many consumer complaints that cemeteries refuse to accept a third-party monument, or have come up with trumped-up fees or bogus policies. The daughter of a veteran wrote to FCA telling of how one cemetery refused to place a temporary marker on her father's grave pending the arrival of his government headstone:

My father was a veteran of the Air Force and Navy. He was career military. Unfortunately, we did as many people do and did not make burial plans until my father died.

Upon arriving at Pine Ridge, the manager—Tom—took us into his office to help us make decisions. We asked about the veteran's marker. We were told that they take a very long time to arrive at the cemetery (7 months at the minimum) [the VA reports 90 days] and that we would have to pay extra to have it installed at the cemetery and that the cemetery would not maintain a veteran's marker. Tom told us that if we bought a marker from them that my father's grave would not go unmarked and that they would place a temporary marker on his grave until the one we selected arrived.

We selected and ordered a Pine Ridge marker. The cost was over \$4,000 for the interment and Marker. Several days after my father died, I visited the grave, and it was not yet marked.

Another family wrote:

My grandfather died in 1983 and still has no headstone, the 3rd wife never paid for it. So I know he is a veteran (navy) and is eligible for a VA headstone/marker. This cemetery only does flat markers, that's fine. They will not accept the 24×12×4 stone marker but do accept the 24×12×3/4 bronze marker plate. The kicker is that the bronze marker plate requires a stone base . . . which would cost additional monies. Keep in mind the plate is the same size as the plain stone without a bronze plate. They insist upon the base being 28×18×4. My

guess is to boost sales of stone through their company. Sure they accept other bases from outside companies that are 28×18×4 but who would do that? They clearly came up with a way to charge outrageous amounts extra. Oh and they charge an 83 cents [per square inch] installation fee which is 3× most cemeteries. Then they charge a lower than normal amount for the stone, so it worked out the same in the end but functions to make it appear cheaper though them.

The state of Georgia has been very good to cemeteries. In 2006, the legislature passed a bill allowing cemeteries to charge customers \$125 (up from \$50) if they buy a monument from someone other than the cemetery. The law calls this “reimbursing” the cemetery for “reasonable costs in assisting in the siting of a monument,” and “supervision and inspection of the installation,” but this is really just a penalty for smart shoppers who find a cheaper tombstone elsewhere.

While it’s a good idea to complain loudly (and perhaps threaten to go to the local TV or newspaper consumer reporter) if you find yourself strong-armed this way, it can be difficult to get state regulators to take action. Cemeteries are very poorly regulated, and most states don’t have specific laws prohibiting this kind of behavior.

Consumers have run into trouble with independent monument dealers, too. Just as we don’t recommend paying for your funeral or grave in advance, we advise against buying a marker ahead of time (unless, perhaps, you plan to have it installed at the cemetery immediately). Some people have lost their money when the monument store they paid years in advance has gone out of business.

When shopping for a marker:

- Get a copy of the cemetery’s rules and regulations. You’ll want to know what monuments are permitted ahead of time so you won’t waste money on a stone the cemetery won’t accept.
- Shop around. Independent monument companies may have better prices than the cemetery (if the cemetery sells monuments).
- Get a schematic or drawing of the marker and the lettering ahead of time for your approval before consenting to have the stone made. It’s better to catch mistakes before they’re carved in stone.
- Do business in writing. Too many families rely on a business’s “word” over the phone, and if the marker doesn’t get installed for a long period of time, or if the design is wrong, they have nothing on paper to prove the business made a mistake.

A black and white photograph of a field of tall grass, which serves as the background for the title section.

Embalming

A beautiful memory picture?

4

MOST PEOPLE DON'T KNOW THAT embalming is almost never required. In some circumstances, state laws may dictate embalming if there will be delayed disposition, but even then, in most cases, refrigeration can usually suffice. In 19 states, embalming is never required under any circumstance.

And contrary to the widespread misperception that embalming preserves a body indefinitely, cosmetic funeral-type embalming usually only holds a body for a few days. A stronger solution of chemicals (such as medical schools use to keep cadavers preserved for years) might turn the body to shoe-leather, inconsistent with the industry's description of a "beautiful memory picture."

The misconceptions can have unfortunate results. In one case that came to our attention, S.S., a 21-year-old only child, died on Friday from an accidental overdose of prescription drugs. He was embalmed on Saturday, and there were visitations for this devastated family all day Sunday, Monday, and half of Tuesday. The stench started on Monday, however, and by Wednesday—while arranging for burial in the next state—it was unbearable.

While the funeral industry has long promoted the myth that embalming "protects the public health," in reality it creates a danger for embalmers while offering no health benefit to the living. Embalmers open bodies that might otherwise be intact, thus potentially exposing themselves to fluid-borne pathogens. The formaldehyde they use is highly toxic and is a respiratory irritant. The Centers for Disease Control report embalmers have a 13 percent higher death rate (over any given time period) as compared to the population at large, and a 2009 study reports an increased risk of some forms of cancer from formaldehyde exposure in funeral service jobs. (See the November 24, 2009 issue of *Journal of the National Cancer Institute*.)

No "Pretty" Options

Randy Garner, a trusted funeral director friend of ours, read a draft version of this chapter and made a point worth highlighting: Nothing that happens to our bodies after death is "pretty." Embalming is not unique in that

respect. Cremation, obviously, burns the body until there's nothing left but bone. Decay of the body, depending on many factors, can range from going back to the earth in a compost-like fashion to a situation in which the body putrefies and turns to a smelly liquid. One of the newest options, alkaline hydrolysis (see the Green Burial chapter) dissolves the body in lye, and few of us would want to open the canister and watch.

So why are we writing a chapter singling out embalming? Because of the widespread public ignorance about what the process is, why it's used, and when it's "required." There is no single aspect of the conventional American funeral process that is so widely misunderstood or that has been so forcefully marketed to the funeral-buying public. Many people are shocked to learn that the US and Canada are the only countries where embalming is so widespread as to be considered routine and ordinary. It is rarely done in most other countries (although the international US and Canadian funeral conglomerates are now pushing it hard elsewhere including Japan, England, and Australia).

Worse still, the majority of the public believes embalming is usually required by law when the opposite is true. In a 2007 article for *The Journal of Consumer Affairs*, researchers Steve Kopp and Elyria Kemp surveyed more than 200 adults to determine their knowledge (or lack thereof) of funeral rights and requirements. Sixty-six percent of those surveyed thought embalming was required by their state's laws if the body was not immediately buried. That is *never* the case in *any* state. This comports with our experience talking to thousands of Americans—most people default to the idea that embalming is usually or often required by law, and almost all of them report believing that the law requires embalming for a public viewing of the body.

No one needs to explain that cremation means burning or that cadaver donation to the medical school means dissection. But since embalming is so widely misunderstood, and since it is often used as the foundation from which to sell the most costly type of send-off, it deserves special attention.

History of Embalming

The Egyptians began embalming the bodies of wealthy and important people sometime before 4000 BC, and the practice spread to other ancient cultures. Generally, the bodies were soaked in a carbonate of soda, and the viscera and brains were removed. Herbs, salts, and aromatic substances were packed into the body cavities. Then the bodies were wrapped in cloth that had been soaked with preservatives. Variations of these procedures were employed as embalming spread to other cultures. For example, Alexander the Great was reportedly embalmed with wax and honey. Knowledge of embalming moved to parts of Europe about 500 AD but was not widespread,

although the bodies of several well-known historical figures (including King Canute and William the Conqueror) were preserved.

In the 19th century, Italian and French scientists developed techniques to inject preservatives into veins and arteries. The practice reached the US during the Civil War, when it was used to delay decomposition of the bodies of war victims that needed to be transported long distances before burial. When President Lincoln was assassinated, his body was embalmed to allow public viewing in locations throughout the country. It was considered an unusual step to take, in an unusual period of national sorrow.

In his book *Inventing the American Way of Death*, 1830-1920, James Farrell comments: "Before 1880, people viewed embalming only as an historical phenomenon, an exotic custom of the ancient Egyptians." He notes that with organized encouragement from a rapidly emerging funeral industry, "... by 1920, almost all dead bodies were embalmed, not just those intended for transport."

As an example of how sophisticated the practice had become in those four decades, Farrell cites a 1920 advertisement by a Boston undertaker:

For composing the features, \$1.

For giving the features a look of quiet resignation, \$2

For giving the features the appearance of Christian hope and contentment, \$5.

The Reverend William L. Coleman, in his book *It's Your Funeral*, notes that "The science of embalming had largely been abandoned for 1,500 years" and its sudden re-emergence in the late 19th and early 20th centuries was controversial. "Both Christians and humanitarians often objected strenuously," Coleman writes. "They had visions of bodies being severely mutilated. Ministers denounced it as a desecration of the 'temple of God.'" That view continues to be held by some religions, including Orthodox Judaism.

Yet despite such objections, embalming became an expected part of the majority of death arrangement packages offered by US funeral directors. Why? What are the benefits that have come into demand in North America but seem less important to the rest of the world?

"Sanitation" and Other Snake Oil

Embalming was promoted early on as a means of preventing premature burial, a horror that had been verified in several instances in the late 19th and early 20th centuries. Even today, we've heard older folks expressing this concern. Farrell quotes the Portland, Oregon, city attorney in an address to the 1910 convention of the National Funeral Directors Association (NFDA)

as saying: "There is consolation in the thought that when a man's undertaker is finished with him, he can be reasonably sure he is not in a trance." That seems a harsher form of "consolation" than the practice of some religious groups which delay body disposition for three days to allow time for the exit of the spirit. Is it really more horrific to wake up underground or on a porcelain table with formaldehyde coursing through one's arteries?

Sanitation was another—and perhaps the most emphatic—argument made by the funeral industry in its early promotion of embalming. The idea was that embalming served to disinfect bodies, preventing the spread of diseases. The funeral industry, emerging between 1880 and 1920, successfully convinced the public (through the efforts of the newly formed National Funeral Directors Association) that professional services were necessary for proper care of the dead—with compatible laws and regulations quickly following.

Embalming was the centerpiece of that effort. Families could place a body on ice to slow its deterioration, but only an experienced "professional" could embalm. In fact, embalming remains the only specific skill undertakers possess that any business person of ordinary competence does not. The livery drivers, the carpenters, the furniture sellers, and others involved in body disposition, quickly found they could—with minimal training in a mysterious art—leap to a whole new social status in the community. Most of the time, all it took was the stomach for a little blood-letting.

As justification for elaborate funerals that include embalming, morticians often cite a quote attributed to Gladstone: "Show me the manner in which a nation or a community cares for its dead and I will measure with mathematical exactness the tender mercies of its people, their respect for the law, and their loyalty to high ideals." A recent past president of the National Funeral Directors Association wrote of how he'd embalmed his own mother, describing it as a "gentle cleansing process." That is a fine sentiment, but it would be a hard sell to anybody who has actually witnessed a modern embalming.

Modern Embalming Practices

The major differences between current funeral practices and those used by the Egyptians are the use of modern chemicals and equipment and an emphasis on temporary cosmetic restoration rather than mummification. The process consists of both arterial embalming (draining the blood and filling the veins and arteries with pink-colored chemicals) and cavity embalming (emptying fluids from the chest and abdomen, replacing them with sufficient preservatives to afford a temporary delay in decomposition). The job is performed on an embalming table, which is surrounded by a conduit to catch body fluids and route them to a special container or—more often—the sewer system. First, the body is washed with a disinfectant

solution. Then the limbs and joints are massaged to counter the effects of rigor mortis so the body can be positioned. The face is restored and features set, using prickly-topped plastic cups under the eyelids to keep them from sliding open and wire or suture to close the jaws. A little Vaseline or super-glue can keep the lips together.

Then arterial embalming begins. The embalmer chooses one of several (or in some cases many) locations in which a major artery and vein are in close proximity—the armpits, the neck, and/or the groin—and makes an incision. An injection needle is placed into the artery and drainage forceps into the vein to allow blood to flow into the table trough. An injection machine pumps a chemical solution (dyed for the proper effect on body color) into the artery while body parts are massaged to assist the flow. If the embalming is done too quickly, the features are likely to swell. So far, it's a relatively "surgical" procedure.

The next step, however, is cavity embalming. A trocar (a large-bore hollow needle) is connected to an electric aspirator (a pump that removes fluids from abdominal and chest cavities). The trocar is inserted near the naval and jabbed around inside the abdomen and chest to puncture various organs while the blood and waste are pumped out. The body is then filled with a formalin solution to kill microorganisms and retard decay. The anus and vagina are packed with cotton. Or—if the practitioner is up-to-date on the latest devices—the "A/V Closure" (a 4½" white plastic self-tapping screw) might be used to prevent leakage "while preserving the dignity of the deceased." Up to this point, the process has taken about 45 minutes to one hour.

In most cases the body is then cosmetically restored. The extent of this depends on the condition of the corpse and the wishes of the family. Sometimes a little rouge, face cream, and hair styling will do. But if the face appears somewhat emaciated, additional steps may include injection of tissue-builder with a hypodermic needle to flesh out the cheeks. If the body is severely mutilated or decayed the embalmer will do whatever it takes to restore the body to recognizable form with wax, plaster of Paris, and additional makeup. Dinair Airbrush Systems—a company that touts its equipment for stage and screen—has also been giving demonstrations of cosmetic magic to morticians, even recreating the little crow's feet and wrinkles if need be.

The Myth of Sanitation

The belief that embalming prevents the spread of disease is still widely held, but public health as a reason for embalming has long been refuted by medical authorities. Back in 1977, the Consumer Reports book on funerals (*Funerals: Consumers' Last Rights*, Copyright 1977, Consumers Union of United States, Inc., Mount Vernon, NY 10553) noted that disease does not run rampant in countries where bodies are seldom embalmed. Furthermore,

studies show that embalming does not affect certain bacteria or viruses. Evidence of tuberculosis, smallpox, anthrax, tetanus, and AIDS have all been found in embalmed bodies shortly after death.

Even more revealing is an admonition from a sales rep for Dodge Chemical, which manufactures embalming fluids. In the case of death from Creutzfeld-Jakobs disease, the rep said don't even take the body into the funeral home. One form of embalming fluid actually keeps the disease alive.

There's nothing new about the knowledge that embalming does more to endanger public health than to preserve it. In 1977, a British Columbia deputy health minister was quoted as saying, "It is our view that the process of embalming serves no useful purpose in preventing the transmission of communicable disease. In those few cases where a person dies of a highly infectious disease, a far better procedure would be to wrap and securely seal the body in heavy plastic sheeting before removing it from the room where death occurred." Other Canadian health authorities have gone even further; in several provinces, embalming is forbidden for about 12 infectious diseases.

Astonishingly, however, as late as this writing in 2011, eight US states still *require* embalming for infectious or communicable diseases. Only six states recognize the potential health hazard *from* embalming. Delaware, Hawaii, Missouri, Montana, North Carolina, and Ohio specifically forbid it in the case of infectious disease, or require immediate disposition, which would preclude embalming.

Dr. Michael T. Osterholm, Director of the Center for Infectious Disease Research and Policy at the University of Minnesota, was surprised at the misinformation the Minnesota Funeral Directors Association was putting before lawmakers on this subject. He testified during a 2010 hearing on a bill that would improve families' rights to care for their own dead. In a supporting letter, he wrote:

In the recent Senate hearing, I had the opportunity to hear the testimony of a representative of the Minnesota Funeral Directors Association. Frankly, I was extremely disappointed by the scare tactics they used in that testimony to suggest to the Committee that dead bodies in general pose a significant infectious disease risk.

Osterholm's letter is one of the most candid statements of the scientific consensus on this issue, and it's worth quoting at length:

In this regard, I also render my best professional judgment that the mere presence of a dead body without regard to its embalmed status and one that is not leaking blood from an open wound or perforation, does not pose any increased risk of infectious disease transmission for the person who might handle that body or review it in a

private setting. Once a human dies, infectious agents that would be of any concern, including those on the individual's skin or internal organs is greatly diminished.

The lack of risk of infectious disease transmission in the handling of a dead human body without incisions or perforations is obvious when one realizes that today many dying individuals receive hospice care in their own home from family and loved ones without health-care training and without measurable infectious disease risk to these same persons. To now suggest that somehow the death of that individual makes that body a new and major infectious disease concern is simply without scientific merit. I believe the scientific facts supporting the course of actions provided under the provisions of your bill will allow loved ones to more intimately grieve the loss of their family member, colleague or close friend without increasing the risk of the transmission of infectious diseases to any of these individuals.

We have contacted the Centers for Disease Control many times over the years, and each time they've confirmed that CDC has *never* prescribed embalming as a public health measure. In short, there is *no* genuine controversy—it's a scientific fact that dead bodies do not pose a health risk to anyone except in very rare cases. As Ron Hast, a longtime funeral director and publisher of *Mortuary Management* magazine has noted, it's hard to square the fact that funeral directors cry out in alarm over the danger of unembalmed bodies when they pick them up all the time from hospitals and homes, and they're certainly not wearing HazMat suits when they do.

The sanitation argument is still widely believed, however. Until recently, the NFDA perpetuated that myth on its website and through its Consumer Education Series Brochures: "The foremost reason for embalming is the protection of public health. . . . Untreated remains pose serious public health concerns."

Those states with embalming requirements for any reason should eliminate them. After reading the chapter on embalming in Carlson's 1987 book, Mack Smith, executive director of the state funeral board in Kansas, had the good sense to seek amendments to that state's regulations, eliminating the embalming requirement for many diseases including AIDS. (The old embalming requirement had not allowed those who had cared for ailing AIDS friends prior to death to continue their care after death.) Immediate cremation or burial is now an alternative to embalming for the virulent diseases such as Ebola and rabies.

Embalming Costs

While embalming fees vary greatly, the national average at this writing is in the neighborhood of \$500, though SCI funeral homes are charging up

to \$1,495. The price varies according to the amount of restoration that is needed or requested. There might be an additional \$200 charge for autopsied bodies, for example. Medical examiners and coroners have a very mixed reputation on the condition in which they release a body, so sometimes an additional charge may be justified.

Actually, a \$500 embalming fee strikes us as an extremely modest charge for a service that requires training, significant expertise, overhead expense, is not particularly pleasant, and which puts workers in jeopardy of blood-borne pathogens as well as exposure to highly toxic chemicals. On the other hand, embalming is usually performed as part of a larger package that includes other items with high-profit opportunity.

Why Embalm?

If you donate your body to a medical school, you can expect it to be embalmed, although the procedures are quite different from those used by undertakers. Schools generally keep bodies for six months to two years, and there is no other practical way to keep a body intact for that long.

Some state laws—until they are changed—may require embalming in certain circumstances. For example, Idaho requires that a body be embalmed or refrigerated if it will not reach its destination within 24 hours of death.

Even if there is no statutory requirement in your state, some form of preservation may be desired if there will be a delay of several days in gathering kin and scheduling services. However, refrigeration is just as effective (or more so) at preservation and involves no toxic chemicals or invasive procedures. Dry ice can also be used, as it is, for example, by medical couriers when carrying organs for transplant. Check on-line or in the Yellow Pages for a source. Frozen gel packs may also be used. In the past, people stored bodies on ice for long periods because it sometimes took relatives a week or more to arrive.

Another factor to consider is that the population has become more mobile, so most funerals can now be held within two or three days after death. For ordinary purposes, such as a private family-directed wake at home, temperature control is usually sufficient. In most cases (though there are exceptions), a body will keep for two to three days at 70 degrees or cooler without offensive decomposition or odor.

The most common argument for funeral-type embalming today is that friends and family have an emotional need to see the body one last time before final disposition. But having spoken with a great many people on the subject, we have heard that viewing a restored corpse did not always fulfill that need. In some cases, the body was made to appear so lifelike that it became even harder to say goodbye. In other cases, it looked like nothing more than a statue or mannequin, a caricature of the departed friend or relative.

Viewing

After the FTC's Funeral Rule was passed, funeral homes were required to print the following disclosure on the General Price List:

Except in certain special cases, embalming is not required by law. Embalming may be necessary, however, if you select certain funeral arrangements, such as a funeral with viewing. If you do not want embalming, you usually have the right to choose an arrangement that does not require you to pay for it, such as direct cremation or immediate burial.

While the Rule now keeps funeral homes from insisting upon or charging for embalming when minimal services are selected, it fails to acknowledge a number of issues—including religious or moral objections to embalming—for funeral plans that did not call for "immediate" disposition. Many funeral directors have remarked that the phrasing suggests it isn't possible to have a viewing without embalming. The original Rule was drafted in the late 1970s and early '80s, an era when it was unheard of in the US to have a viewing of any type without embalming. Today, many more funeral homes are offering private family viewing without embalming, and many West Coast funeral directors tell us that presenting a body without embalming has long been considered acceptable.

FCA, in its efforts to seek Rule amendments, will ask that "or other time-ly arrangements" be added to the above disclosure. With other options for keeping a body from decomposing, it should be the choice of the family whether or not the body is embalmed prior to viewing, not a funeral industry or state mandate.

The Difference between Viewing and Visitation

While there are regional differences in the use of these terms (sometimes also called "calling hours") the authors have chosen the following descriptions for clarity. A viewing is when the body is visible. A visitation may be with a closed casket or with the body not present at all. In the case of an unexpected death—when a family is grappling with the reality of what has happened—there is often a strong need to see the body of the person who died and to hold or touch the person. In most of these situations, the body will have been taken to a hospital for rescue efforts or to determine the cause of death.

Some hospitals will be very cooperative in letting the family spend time with the body over many hours, especially with an infant or child death. Others may have limited space and will expect the body to be moved quickly. When you have out-of-town family that can not arrive for 24 hours and

you choose to use a mortuary, you may want to ask for "private family viewing." Only occasionally is this listed on a General Price List, so there may not be a charge, but you should expect to pay a fee of around \$150 to \$200 if you request the body be cleaned up, dressed, etc. Sometimes the GPL will limit this to "no more than one hour"—a practice we find appalling if it shortens the family's grieving time. You may certainly demand the time you need but be willing to pay any additional fees for extended use of the facilities.

There is less formality with a private family viewing, and the body is often laid out on a covered table. A casket is distancing, making it more difficult to get close—to cradle one's arms around the dead person.

Whether you choose to have the body embalmed for this private time is a personal decision. There is no legal reason that would require embalming for such a viewing, and the funeral home may not impose embalming if it is not required by state law for the time period elapsed since death.

In the case of an expected death, most people have begun to say their good-byes, and there is less need to see the body to accept the reality of events. When the end comes, it may be seen as the end of a period of intense pain and therefore a blessing. Many undertakers insist, however, that a viewing is necessary for "closure." That you will probably pick a more expensive casket is surely part of the motivation in promoting a viewing rather than just a visitation.

In the past it was common to have two or three days of viewing or visitation. Today, industry reports indicate that consumers who want a viewing or visitation at all are asking for only one day or even just a few hours prior to the funeral.

A visitation also offers informal time for gathering and remembrances, but the casket is either closed or not there at all. A visitation without the casket present can be scheduled anywhere, anytime—without the cost or formality of funeral home involvement. Those who have opted for visitation—not viewing—have found the occasion to be intimate, personal, and in some instances more comfortable. Whether in quiet banter, surprised laughter, or tender tears, spontaneous sharing is comforting. There certainly is value for the family when friends and colleagues talk freely about the significance of their relationships with the deceased.



Cemeteries

For-profit and non-profit

5

WHILE MAJOR CEMETERY SCANDALS SEEM to occur every few years, 2009 was the year the federal government woke up to the need for regulation. In July, investigators discovered at least 300 graves dug up—the remains strewn about the property—in Chicago's Burr Oak Cemetery. Hundreds of family members poured through the gates, frantic to discover whether their relatives were among the desecrated.

The historic cemetery was vitally important to Chicago's black community. It was the final resting place for jazz legend Dinah Washington, many other prominent African American activists and entertainers, and thousands of everyday Chicago citizens. A newspaper photo showed the rusting casket of Emmet Till, tossed on a junk heap in an outbuilding, the torn satin lining visible through the glass viewing window. (This is the casket photographed in national magazines following Till's brutal murder in 1955, a graphic display that helped to galvanize the civil rights movement. Following the casket's reappearance in 2009, Till's family donated it to the Smithsonian Institution.)

On July 27, Representative Bobby Rush convened a hearing on cemetery regulation before the House Energy and Commerce Committee's Subcommittee on Consumer Protection.

Forty-two-year-old Roxie Williams, a Chicago mother with relatives buried at Burr Oak, was the unfortunate star witness. Flanked at an oak table by the Rev. Jesse Jackson, Jr., and Dinah Washington's great-grandson, the Rev. Don E. Grayson, she told the committee how her mother scrimped and saved to bury Roxie's father, who died when she was 11. Years later when she went to visit the grave, the cemetery had "lost" him.

"This was a time I first realized that something went terribly wrong at this place," she told the committee. "I went where I had always gone to see my father, and the headstone was gone and it was just grass there. I freaked out . . . There was no headstone for my father, only my grandmother . . . When I explained what happened, the lady told me not to worry about it—she would look into the incident and give me a call. I refused to leave until

she gave me an answer of where my father's headstone was. She said it must be a mistake, because although they had a record for my grandmother, they did not have a record for my dad. My whole heart sank."

Slocum testified on behalf of FCA at the same hearing, delivering a grim verdict: With no federal oversight of cemeteries, the states had failed to protect grieving consumers from the most common frauds. While heart-wrenching stories about desecrated graves get national attention, he said, regulators have failed to address the everyday ongoing abuses of cemetery consumers that don't make the headlines. Because cemeteries don't even have to comply with the FTC Funeral Rule's requirements of printed price disclosures and freedom of choice in purchasing, grieving families are routinely subjected to deceptive sales practices that drain their wallets and stymie their choices.

Following the hearing, Rep. Rush introduced HR3655, the Bereaved Consumers Protection Act, which would force a recalcitrant Federal Trade Commission to expand the Funeral Rule to cover cemeteries, crematories, and third-party merchandise sellers. The bill had not passed into law by the close of the 2010 session. At that time, though, investigations were under way by both the Government Accountability Office and 60 Minutes, so there's room for hope that the issue won't be dropped. Until and unless such legislation re-emerges, it's "buyer beware" in most states. This chapter will show what to expect when you buy from a cemetery and how to avoid some of the most common misunderstandings and deceptive practices.

From Churchyards to "Memorial Parks"

No one knows how many cemeteries exist in the United States. If you count family burial grounds, historic or abandoned graveyards, and the thousands of currently operating cemeteries, there are likely hundreds of thousands, maybe more. The earliest cemeteries, like those found in rural parts of New England and the South, are simple affairs, often located on family property or next to churches. If you live in a sparsely populated area, you may still be able to find a grave at a quiet, unpretentious graveyard run by a nonprofit association (often governed by neighbors who do so as a community service). In the small towns of Vermont, it's not uncommon to pay a few hundred dollars for a grave and a few hundred more for the guy with the backhoe.

While driving across the Shoshone-Bannock reservation in Idaho for a conference on Native American funerals, Carlson and Slocum were shown how the locals have maintained the simplest burial traditions. The graves had a quiet, timeless simplicity, the earth mounded gently over the top to sink naturally with time, each grave bordered with white stones.

At the other end of the spectrum are the modern descendants of Southern California's Forest Lawn Cemetery. Long the king of kitsch in cemeteries

(Evelyn Waugh satirized it in his 1948 novel *The Loved One* for strewing the landscape with reproductions of high art such as Michelangelo's David while at the same time running a gift shop full of tchotchkes and souvenir ashtrays), Forest Lawn inaugurated the age of the "memorial park." Throughout the 20th century, the dominant aesthetic in cemeteries was to make them look and sound like *anything but* a cemetery. No gloomy, draped urns or Victoriana in our modern "gardens of memory," just regimented rows of identical markers flush to the impossibly well-groomed ground—Levittowns for the dead.

The prices and practices among American cemeteries vary as widely as their landscapes. While some cemeteries still follow the historical model that burial grounds should be operated as a public good, a cemetery's nonprofit or religious status by itself is no guarantee of reasonable prices or practices. Some states require that cemeteries be incorporated as nonprofits, but that doesn't necessarily assure that they are inexpensive or ethical.

When his mother died in 2003, David Lahey inquired about buying a two-grave parcel in the historic section of Cincinnati's Spring Grove Cemetery. He wanted to be sure the cemetery would let him erect a fairly substantial central monument, that the lot would always be visible from the road, and that Spring Grove wouldn't add any more burials or plantings that would obstruct that view. Finicky? Certainly, but Lahey—a well-known and wealthy retired businessman—was willing to pay for what he wanted.

According to court documents from Lahey's 2010 suit against Spring Grove, the saleswoman told him there weren't any two-grave sections available, but there was a four-grave parcel. Lahey claims the saleswoman assured them the cemetery wouldn't bury anyone or plant any trees that would obstruct the view, because Spring Grove's rules would prevent this. So, he bought the parcel for \$29,130 and buried his mother. He then exhumed his father from a grave in Arkansas and had him reburied next to his mom.

Lahey's suit describes a series of meetings with cemetery staff members who contradicted what the saleswoman told him and offered ever-more-expensive remedies. If he wanted to guarantee the view on his parcel, Lahey would have to purchase up to \$14,800 in additional square footage. Given that his parents were already buried there, Lahey shelled out the money. Spring Grove never gave him a copy of the rules and regulations, and the cemetery's director admitted in a deposition that it was "very much not typical" for sales staff to give customers a copy of the rules before they buy. Had Lahey seen them, he might have thought twice—Spring Grove's rules give the cemetery the right to buy back any graves, at any time, with no mention of obtaining the family's permission (or any word on what they'd do with the body in an already-occupied grave).

Religious Cemeteries

Religious cemeteries are sometimes no better. Unknown to most parishioners, the largest Catholic archdiocese in the country runs its burial operations in a partnership with the second-largest for-profit funeral and cemetery chain on Wall Street. In 1997, the Los Angeles Archdiocese announced it would allow Stewart Enterprises to build and operate for-profit mortuaries in its cemeteries. Operating under the name "Catholic Mortuary Services," Stewart Enterprises today runs six funeral homes on the grounds of the LA Archdiocese's nonprofit cemeteries, and the archbishop has a new cathedral.

The archdiocese isn't shy about applying spiritual pressure to parishioners. From its website:

The final expression of our faith as Catholics is the blessed and sacred burial in a Catholic cemetery. It is our opportunity to rest among fellow believers, awaiting the resurrection to life everlasting in union with God. . . .

Burial in a Catholic Cemetery is an act of reverence and respect for the body which has housed our soul during our life in fellowship with Christ. Heavenly glory is the destiny for which God intends us. Death is not the end, but a rite of passage to eternal life, to full union with God. It is the sacred right, privilege and loving **duty** of every Catholic to choose such a burial [emphasis added].

Many grieving Catholics will doubtless find it to be their loving duty to pay for the expensive services of the church-sanctioned commercial funeral homes located at the cemetery, too. While the Archdiocese and Stewart Enterprises have characterized this partnership as offering one-stop arrangements that minister to the spiritual needs of Catholics, promotional materials suggest more temporal motivations. A Glendale man sent FCA a letter he received urging him to prepay for funeral and burial through "Catholic Mortuary Services." The letterhead includes a stylized Christian cross, and lists the names of six Catholic cemeteries in the Los Angeles Archdiocese: All Souls, Calvary, Holy Cross, Queen of Heaven, Resurrection, and San Fernando Mission. The letter states, in part:

In order to serve the needs of Catholic families better, the Archdiocese of Los Angeles has authorized the construction of mortuaries on land leased at six of its cemeteries Most importantly, families like yours can now preplan your funeral arrangements We will be happy to discuss with you in further detail the benefits of preplanning and how the new mortuaries will mean better service for Catholic families.

P.S. Mail the postcard in no later than November 26 to receive a preconstruction discount of \$200 off preplanned funeral services.

The letter did *not* say that Catholic Mortuary Services is a trade name of the for-profit Stewart Enterprises. For all any parishioner would know, this letter came directly from the church. And just how did Stewart Enterprises get hold of the names and addresses of the archdiocese's congregants?

Another Los Angeles Catholic sent FCA a similar flier she received. Co-branded "Catholic Cemeteries" and "Catholic Mortuaries" with a stylized cross. Under the headline **Preplan Your Catholic Heritage**, the flier features discounts on plots, crypts, and other property, with the exhortation "Buy now for **BEST LOCATION**." The discounts are good "till November only!!!" One hardly sees the 6-point type that reads "A subsidiary of Stewart Enterprises."

Like some funeral homes, some cemeteries capitalize on consumers' allegiance to their faith by explicitly naming or identifying the operation as religious. For example, the biggest funeral home and cemetery chain in the country, Service Corporation International (SCI) operates cemeteries catering to Jewish people with names such as Menorah Gardens and King David. For their sales materials, they use the brand name Dignity Memorial.

There are many reasons to choose a cemetery, including location, burial with other family members, or religious preference. But don't assume that just because a cemetery has a religious name that it's necessarily operated by a religious organization or that it's run according to your idea of appropriate religious principles. Such cemeteries' sales literature may be deliberately appealing to your emotions. It's wise to consider whether you're willing to have your religious allegiances exploited for commercial gain.

Mausoleums: Not So Clean, Not So Dry

Are you afraid of bugs? Does the thought of burial in the dank, dark earth leave you cold? Well, maybe a mausoleum is for you. Or maybe not.

Crypt space above ground has long been marketed as a "clean and dry" alternative to earth burial. Mausoleum operators aren't above appealing to your squeamishness to sell you a slot. But from an engineering perspective, shelving whole human bodies behind a thin wall and inviting mourners to come "visit" was never a good idea. Dead people decompose, and unless the mausoleum is properly engineered, they do it in a messy way.

A well-engineered mausoleum promotes air flow to dehydrate the bodies, with crypt slots angled backward to drain fluids that can otherwise breach the casket and run out the front. But many of these posthumous high-rises are shoddily constructed, and using the wrong kind of casket can lead to disaster. So-called sealer (or "protective") caskets have a rubber gasket that seals the space between the lid and the bottom. That is exactly what you *don't*

want. Trapping moisture and gases causes the body to putrefy into a festering soup. People from around the country have filed suit against funeral homes, casket companies, and mausoleums for duping them into believing these "protective" caskets and above-ground crypts would keep mom clean and dry. Horrified families have sent us photographs showing liquefied remains inside the casket and stains on the sidewalk from leaking fluids.

Many in the industry know the truth but conceal it in order to keep selling to the unwary public. At least four brands of Tyvek-type bags are peddled in the mortuary trade journals with coy claims to envelop the casket to "protect it." But they're not protecting the casket; they're protecting the mausoleum *from the casket*, as described in this ad in a funeral trade magazine:

Let Nature Take Its Course

We know what happens after the crypt is sealed. Your clients do not know, or do not want to know. Provide comforting visits over decades with Ensure-A-Seal's new and improved Casket Protector. Durable and strong, the cover is designed for both metal and wood caskets. The ONE-WAY check valve allows gases to escape. The NEW seamless, chemically hardened fiberboard tray contains liquids. Don't let natural processes destroy your facility's reputation.

Carlson's Funeral Ethics Organization newsletter unearthed a 1994 study on mausoleums by the Monument Builders of North America that examined how caskets held up over time in above-ground crypts:

MBNA found that the Catholic Cemetery Association was documenting an 86% failure rate for problems with wood and cloth-covered caskets, 62% for nonsealing metal, and 46% for "protective" or "sealer" caskets. Even with the somewhat better results, the report states in bold print, "It is highly unlikely that such protective sealer metal caskets employ sufficient mechanisms to contain body fluids or gases."

Betty Greiman learned the truth about mausoleums the hard way. "The crypt was open to put his casket in and when we looked in, we saw that my mother's casket was propped open with what looked like 2x4s. And I was hysterical," she said to a reporter for WKRC in Cincinnati.

Greiman filed suit against Forest Lawn Cemetery in Erlanger, Ohio, after discovering the owners were propping open all the caskets to ventilate them. Ventilation is, of course, exactly what a sensible mausoleum operator wants, but propping open the coffins without telling the families?

We've long wondered why mausoleums would even accept sealer caskets, let alone require them, as some do. And why would funeral directors—the

supposed professionals—sell such a casket to a family choosing a mausoleum interment? Perhaps many of them are genuinely (if inexcusably) confused. Many mausoleums require embalming on the grounds that it will prevent odors, but that won't help for more than a few weeks or months. Apparently some undertakers actually believe this is an acceptable long-term solution.

So do some mausoleum managers. Slocum had a bizarre conversation with the manager of a Florida mausoleum in 2003. A woman from Michigan who wanted to bury her husband in a crypt they owned in Florida sent FCA a copy of a letter from a "Planning Specialist" at Forest Hills Memorial Park and Funeral Home in Palm City, owned by Stewart Enterprises. In the letter, saleswoman Deanna Mitchell told the customer her husband would "need to be embalmed and in at least an 18-gauge steel casket for placement into the mausoleum crypt." The woman didn't want to embalm her husband and saw no need to waste money on a heavy 18-gauge casket.

Slocum asked the saleswoman why the mausoleum required embalming. "For preservation," she said. He then asked Stewart's regional sales manager why Forest Hills required an 18-gauge casket. Bill Baggett tried to claim "bylaws from the state of Florida" required an 18-gauge; it took some pressing for him to admit these were merely the cemetery's own bylaws (rules) that had been *filed with* the state regulatory office. So, why the 18-gauge? "Well, our 18-gauge caskets seal," he said. Given the problems associated with sealer caskets in warm climates, Slocum asked why the cemetery would even *want* a sealer in its crypt.

"Over the years we've transferred many of our *patients* to different spaces and we've never had that problem," Baggett replied.

Mr. Baggett must not read his trade journals. The weekly *Funeral Service Insider* published an article on "exploding casket syndrome" in 2003. FSI offered its readers four approaches to consider: do nothing, cut chunks out of the rubber seal, leave off some of the casket hardware so air can get it, or just unseal the box completely. Cutting pieces from the casket seal (the rubber gasket you paid hundreds more for because it would "protect" your loved one) was an idea from Curt Rostad, a well-known funeral director and industry commentator.

If you feel you must have mausoleum burial, take these precautions:

- Tour the buildings, and note any odors and any stains on the front of crypts or the floor or sidewalk beneath them.
- Do not purchase a sealer casket. If the mausoleum claims these are required, cross the mausoleum off your list.
- It's probably worth a few hundred dollars to buy an enclosure bag to zip up around the casket

What to Expect and What to Watch Out For

Because cemeteries are poorly regulated, many of the protections you have when shopping at a funeral home don't apply at the graveyard. Cemetery practices and terminology are widely misunderstood, too. Keep the following in mind before you buy.

Get the cemetery's rules and regulations—Few states require cemeteries to hand these to you, so you'll have to ask. Don't do business with any cemetery that won't hand them out. You need to know in advance what type of monuments (size, material, base, etc.) and decorations the cemetery allows. It's legitimate for cemeteries to set rules on the size, appearance, and materials for markers. Most cemeteries restrict the decorations you can leave on a grave; glass jars, decorative fencing, pinwheels and the like are often barred for aesthetic and/or safety reasons.

Understand what you're buying—A grave is not "real property" like your house and land. You don't own a 6x9 parcel of land outright, you've bought *the right to be buried there*. In ordinary parlance, we speak of "buying a grave," but what you've really bought is a *right of interment* at a particular spot. This is why you can't put up an unlimited number of decorations on the grave or erect any monument you want. Think of it like an apartment complex or a condo governed by an association; you have the right to live there, but you have to follow common rules.

Don't believe anyone who tells you something's required or barred by law—You can be almost certain that any claim about what the law requires or prohibits is false. Insist the salesman give you the legal citation on paper. So-called "family service counselors" making their living on commission are usually poorly trained and will often make up non-existent "laws" to get you to spend more. Mrs. B, a 70-year-old widow from Virginia, was browsing graves at a cemetery near Washington, D.C. "I didn't want a lot of fold-rol," she said. "So I asked if I could be buried in the pine boxes they used next door at King David Memorial Gardens. They told me the federal government wouldn't let me be buried in a pine box—that was only for the Jews."

No state requires a casket, a vault, or an outer burial container of any kind as a condition of burial. Most cemeteries, however, require at least a concrete liner to surround the casket to prevent the grave from collapsing. In New York and Vermont you can refuse a vault on religious grounds.

Don't be swayed by promises of "protection"—Any cemetery (or funeral home) that tells you a certain sealed or lined vault will "protect your loved one" is preying on your sentiments and lying to you. Any honest gravedigger will confirm it's impossible to predict the condition of a casket and vault if it's later exhumed. Some remain dry and intact; others (including the expensive "protective" type) are cracked and filled with water. No box of any sort

will keep the body from decomposing. None will keep water or dirt out for any certain length of time. If you would like an expensive casket for appearances at a funeral that's fine, but don't be fooled into thinking it will serve any function beyond what a minimal container can do.

Be aware of additional charges—Many people mistakenly believe once they buy the right of interment (the grave), that settles the matter. It doesn't. Even if you buy the grave ahead of time, you'll have to pay an opening/closing fee when the grave is actually dug and filled back in. Depending on the cemetery, this can range from \$200 to \$2,000 (\$800 to \$1,300 is typical, according to reports from consumers).

"Perpetual care" may not be—Many cemeteries will take a portion of the price you pay for the grave (5 to 15 percent) and put it in a perpetual care fund toward upkeep. In theory, the principal should stay intact, with the cemetery drawing the interest to pay for maintenance. In reality, that money often isn't enough, especially when the cemetery runs out of space and can't count on new sales revenue to bolster the meager earnings from the care fund. Consumer complaints of raggedy-looking or abandoned cemeteries have increased over the past 10 years.

Also, there are dozens of news stories every year about cemetery owners raiding the prepaid or perpetual care funds. An Oklahoma oil speculator was accused of draining \$20 million in funds prepaid by 13,000 Tennessee families and another \$70 million from 28 cemeteries he owned in Michigan. The Hawaii Attorney General is trying to recover over \$22 million. That the state says a company known as Rightstar failed to deposit. See Chapter 8 for more examples. Many cemeteries, of course, manage their money responsibly, but it can be hard to know what will happen down the line.

Think twice (or three times) before buying in advance—We estimate there are hundreds of thousands, maybe even millions, of already-bought graves nationwide that will never be used by the people they were intended for. Decades ago it was common for families to buy a grave for everyone in the household. They thought they were taking care of an unpleasant necessity ahead of time.

But it's not 1955 anymore. Few of us graduate high school, then attend the local college, marry a childhood sweetheart, get a job at the local company, then retire, then die and get buried in the hometown cemetery. Most people move several times during their careers, and even retirees frequently end up several states distant from where they thought they'd make their last home. More families are choosing cremation for this reason, and it's becoming less common for folks to make regular pilgrimages to burial spots.

Many elderly couples say they want to buy their own lots ahead of time "because my kids will want some place to come to remember me." But the truth is, many of them won't, and that doesn't mean they don't love their

parents. It means people are finding different ways to remember the dead that aren't bound to where the remains are buried. Perhaps your letters, recipes, or photographs mean more to them than the location of your coffin. What seems like a favor to your survivors may actually be an unwanted burden after you're gone. If the children need to choose cremation for financial or geographical reasons, they may be left with feelings of guilt because they couldn't afford to ship mom's casket across the country or they couldn't afford to fly "home" to visit the grave.

And what to do with these unused graves? There's a glut of pre-bought but unwanted graves on the secondary market, and it can be quite hard to unload one. With the rising cremation rate, the market for graves isn't likely to grow.

That said, if you're looking for a grave on the secondary market, prices are in your favor. It's worth checking to see if anyone in your area is selling one for less than the cemetery would sell it at retail price. To start your search, try <www.finalarrangementsnetwork.com> or <www.gravesolutions.com>.

Disposition of Cremated Remains

There are few restrictions on where ashes can be scattered or buried. You can do so on your own land or on someone else's with their permission in all states. While parks and national forests frown on scattering and may have rules against it (for fear that families may create a shrine), officials will privately admit they turn a blind eye as it's impossible to enforce a ban anyway. If you do, be discreet, and spread the ashes over a reasonable area. The remains look like white aquarium gravel, and dumping a quantity equivalent to about a five-pound bag of sugar on one spot is conspicuous.

And what about scattering at sea? Section 229.1 of the Federal Environmental Protection Agency law says anyone in the US can bury remains at sea so long as they take the remains three miles out from shore and report the "burial" within a month to the closest EPA office. But an EPA staffer said the agency is totally uninterested in enforcing this, and only one family in his decades of experience even bothered to file a report. "I don't care about cremated remains," he said. "We're trying to deal with real polluters." Cremated remains are nothing but small bits of bone, composed mainly of calcium. They're sterile and pose no health risk to people or the environment.

What about families who stand on the beach and scatter? Burials or scatterings that take place within three miles of shore fall under the Clean Water Act, rather than the EPA rules. States, not the federal government, enforce the CWA. We've never heard of a single state trying to stop families from scattering at the beach. If anyone "warns" you about the prohibitions on scattering, it's probably safe to thank them for their concern and go on your way. However, if you live in California, Indiana, or South Dakota, check your state chapter for some minimal but easy-to-work-around requirements.

If you're flying with cremated remains, be sure to keep them in a container that can be scanned by the X-ray machines at the airport (no metal boxes, and avoid heavy ceramics). The Transportation Security Administration won't let you through if the machine can't see inside, and they refuse to open any container that contains cremated remains for a hand inspection (likely because they don't want to be accused of tampering with someone's mom). Though it's not required by law, it's a good idea to bring a copy of the death certificate and crematory receipt with you in case anybody asks.

Cemeteries are counting on the burial of ashes to make up for some of the revenue they're losing as whole-body burial declines. Most offer in-ground urn burial, and many have built columbaria or set aside a portion of their mausoleums for urn-sized niches. Just as with whole-body burial, cemeteries have techniques to part you from your cremation dollars. One of the most common is the "urn vault." While you can make an argument that grave liners sometimes serve a purpose by keeping the ground level as the casket deteriorates over time, the tiny vaults-for-urns are a pure scam.

Cemeteries that require urn vaults insist they're necessary so that people can find and retrieve the ashes if they decide to disinter them later, or that they "keep the ground from collapsing." How many people are likely to dig up grandpa's ashes later? How far can a hole really collapse when the only thing to disintegrate is a jar the size of a flour tin?

Lucy Smith learned the name of the game when she tried to get out from under this expensive "Russian nesting box" racket. When Cadillac Memorial Gardens tried to sell her a polystyrene urn vault for \$275 (remember, this is a piece of plastic the size of a bread box), she went on the Internet and found the *exact same model*, direct from the manufacturer, for \$50 at the Triple-H site, <www.triplehcompany.com>. (Triple-H willingly sells directly to consumers, and we've found the staff to be helpful and polite over the phone.)

However, cemetery manager Jim Goodman refused to use it, first saying he was "liable," then claiming he had to make sure it could withstand 3,000 pounds of pressure per square inch. Slocum called him and asked why he wouldn't take the vault. Goodman hemmed and hawed and finally admitted the vault Lucy Smith had bought was "a Triple-H vault, the same one I use. It's fine." Then why did you tell Smith you wouldn't accept it? "I never told her that," Goodman said.

But he'd already given himself away the minute he picked up the phone: "Here's the problem—she's just tryin' to save a little money."

Just as with whole-body burial, **no** state requires an "urn vault" to surround the urn when burying ashes, and **no** state requires an urn as a condition of burying ashes.

Home Burial

Home burial is a fine old American tradition. A drive through the countryside will turn up many family cemeteries on private land. They add charm and genealogical interest, and many families are proud to have them. For those with land in rural or semi-rural areas, home burials are usually possible. Check your state chapter in this book and also your local zoning ordinances.

Whole-body burial sites should be at least 150 feet from any water supply. The slope of the land and the soil conditions should also be taken into account, especially where the earth is shallow, over ledge, or clay. Power lines should be avoided, because overhead power may be replaced with buried cable in the future.

There is strong historical precedent in the establishment of a family burial plot, but you should consider the long-range implications on land value in doing so because a graveyard becomes a permanent easement on the property in many states. In a 1959 Oklahoma case, *Heiligman vs. Chambers*, a grandson sued to keep the new landowner from moving family bodies to a town cemetery. The court upheld the right to permanency created by any such family burial ground, at least in that state. Other states have provisions for moving the graves from "abandoned" burial sites.

A family must realize that someone else in future years may not maintain a family cemetery after ownership changes. And while visitation rights may be protected by the Oklahoma precedent and common law, how would you feel returning to land that is no longer in the family?

For many, these deterrents are minimal compared to the satisfaction and personal identity that a home burial offers. No one else sets visitation hours, you don't have to buy an expensive vault, and the plantings or markers can be appropriate to the family or individual. When she buried the ashes of her husband, John, Carlson found a rough piece of slate, one too large to be moved easily, but one she could manage. She carved his name and death date on the one flat surface, using a Boy-Scout jackknife and a screwdriver. Acid rain will probably fade the writing in 50 years, but perhaps it won't matter by then. Because John was cremated, she was free to pick the garden site she wanted for his spot, without a permit. But because this is not registered in the town clerk's office as an official home burial site, there will be no guarantee of permanency in preserving recognition there. The slate marker may stay, but then again it may get moved.

Veterans' Burial Benefits

All honorably discharged veterans, their spouses, and dependents, are eligible for free burial in a national cemetery run by the Veterans Administration.

Remember, “free burial” *does not include funeral-home costs*. The family is responsible for all services from a funeral home, including transportation, embalming, any ceremonies at the funeral home, the casket, etc. If you choose to be buried somewhere other than a national cemetery, the government will provide a standard military marker, but you will have to pay for the grave, the opening and closing, the vault, and any other cemetery charges. Many states have set up cemeteries for veterans, especially if there is no VA cemetery in the state. You can expect to pay something at such a cemetery but probably at a significant saving compared to other options.

There are some special circumstances and benefits:

- **Death during active duty**—All funeral expenses will be paid by the military, including body preparation, casket, transportation to the place of disposition, interment (if in a national cemetery), and marker. In addition, as of July, 2005, next-of-kin are entitled to a “death gratuity” of \$100,000, retroactive to October 7, 2001.
- **Death due to a service-related injury**—There is a \$2,000 “burial allowance” which may be used to cover some of the funeral director’s expenses, the casket, and transportation to the cemetery. If death occurred in a VA facility, transport of the body to the cemetery will be paid, provided it is no farther than the last place of residence. If burial is not in a national cemetery, there is a \$300 “interment allowance,” but it is unlikely that will cover opening and closing or vault charges, let alone the cost of the lot.
- **Non-service-related death in a VA facility or while collecting a VA pension or disability compensation**—There is a \$300 allowance which may be used to defray some of the usual funeral expenses. Although burial in a national cemetery is free to these veterans, all other mortuary expenses are the responsibility of the family. Transportation to a national cemetery (not farther than the residence of the deceased) will be provided *only* if the death occurs in a VA facility. There is an additional \$300 interment allowance that applies *only* when burial is in other than a national cemetery.
- **Death of a veteran outside a VA facility, not receiving military pension or compensation**—There will be no funeral or burial allowances, nor will survivors be reimbursed for transportation to the cemetery. The lot in a national cemetery, any required vault, interment, a marker, and flag are the only burial benefits.



Preneed Sales It's NOT "all taken care of"

6

WHEN SLOCUM FIRST USED THE word *preneed* in conversation with his friend Paul (who knew nothing about the funeral business), Paul burst out laughing. With a deadly serious tone, he riffed off the old Caress soap commercials: "Before you need . . . you *pre-need*." The idea of paying for a funeral before you're dead—and the notion of selling it without using the words "funeral" or "dead"—seemed astonishing. But it seems like a very good idea indeed to many older Americans. According to industry reports, between a quarter and a third of all funerals performed annually have been prepaid.

Who are these Americans rushing off to the mortuary while they're still alive, eager to slap down \$7,000 or more for a party they won't attend until years from now? They're people like you, people like your parents, folks you go to church with. Why do they buy? Because the preneed sales industry knows very well how to take advantage of the anxieties and uncertainty most of us feel when we contemplate our own demise. Will my funeral be dignified? Will my children be able to afford it? Won't my death be hard enough without my survivors having to make stressful decisions while they're grieving?

Step into my parlor, said the "preneed counselor" to the prospect. Sign here on the dotted line, and don't forget to sign the check. No matter how much funeral costs rise in the future, you'll never have to pay another dime. And think of the kindness you're doing your children; all they have to do is call us at the time of need . . . and everything will be taken care of.

Who wouldn't find that impressive? No one likes buying funerals, and, boy, if you can beat inflation with a price-guarantee, it doesn't get much better than that. But wait a second—if a car dealer told you that if you prepaid for a model year 2020 Honda at today's retail cost and you'd never have to pay another dime, would you believe him? Wouldn't you wonder if the model you prepaid for would even be built in 2020? Would the dealership still be in business? Would you still want the same car when the time comes? Wouldn't you suspect there must be a catch, since the dealer has to make his profit somehow? Most of us would be highly skeptical of such too-good-to-be-

true promises. Unfortunately, too many otherwise savvy families walk into a funeral home doe-eyed, eager to believe the most unrealistic promises. Hearing soothing white lies is easier than having to face the cold emotional and financial facts about our own deaths. But this can cost you, or your next-of-kin, dearly.

Pat and Bud Cairns retired to Myrtle Beach in the mid '90s. They put most of their modest savings into a new mobile home and got by on Social Security. They also prepaid for their funerals, preferring to get what they thought *had to be* a huge expense out of the way. But, by Pat's own admission, they weren't thinking clearly when that decision was made. When the financial drain of monthly payments on graves and coffins they weren't yet occupying got to be too great, they had second thoughts. Trouble was, they prepaid a funeral home in Ohio, but they were living in South Carolina. The Cairnses had bought graves in Ohio, where they used to live, and while they were visiting Ohio, they thought it would be best to "take care of everything," but they hadn't thought the process through. Pat wrote to FCA in 2003:

My [insurance policy that will fund my funeral] will not be paid up for another two years, and should I die before that time, my husband or children would have to come up with the additional costs of my funeral [M]y question is, can I transfer my husband's contract to a funeral home in Myrtle Beach but choose a less-expensive funeral? Direct cremation, etc.? I'm sure the funeral home in Ohio would retain a generous portion of my husband's money, but if we could get what we need and can afford at the local establishment, matching it as closely as possible to the transferred total amount, it would be a blessing. I have been having nightmares thinking about what will happen if I, or any other relative on his side, had to pay the entire funeral bill.

Slocum wrote back to Pat, asking for all the contracts and financial records pertaining to her funeral. What he discovered was a shocking examples of a funeral home (and an insurance company) taking financial advantage of an elderly. While there were similar problems with Bud's prepaid funeral, we'll use Pat's as an example.

Pat bought a full-service funeral—embalming, viewing, funeral ceremony, casket, grave-vault, hearse—the works. But the itemized bill from the Ohio funeral home was written up as if Pat were likely to die in Ohio. The funeral home knew full-well the Cairnses lived in South Carolina (they paid for the funeral while visiting family in Ohio). How would this help her if, as was almost certain, she died at her home in the South? While Pat admits she should have been more alert, the mortuary certainly didn't ask any questions.

The funeral home talked Pat into making the agreement *irrevocable*. Irrevocable is a term that means the buyer can't cash out the money she's paid in ahead of time; it has to stay in a trust, or in an insurance policy. This protects the money from seizure by Medicaid if she ever needs Medicaid to pay for nursing care. Pat wasn't even close to going on Medicaid, but she was told this would "protect her money if ever she did." She'd unwittingly signed away the right to a refund based on the *chance* she'd go on Medicaid, not because she needed to immediately. In addition, Pat said, when she tried to transfer the money to a funeral home in South Carolina, the Ohio funeral home told her *irrevocable* meant she had no right to transfer her money to another funeral home—even though she couldn't use an Ohio mortuary when she died in South Carolina.

The financing was the most jaw-dropping part. Like many mortuaries, the Ohio funeral home sold insurance policies to customers, the proceeds of which would pay for the eventual funeral. And like many such policies, the customer can pay the premium in one lump-sum up front or by monthly payments over time. Pat chose the "affordable" monthly payments of \$82, for ten years. But if she completed 10 years of payments, she would have spent \$9,879 for a life insurance policy that would pay a maximum of \$5,745. You read that right. It's as if she'd walked into a bank and deposited \$10,000, only to have the teller say "Your deposit is worth only \$6,000, should you ever want to withdraw it." The insurance company, of course, would defend itself by saying that Pat was entitled to the full death benefit even if she died after making only one payment of \$82, but they know that's not likely to happen. By the time Pat contacted FCA, she'd already paid \$2,428 more than the policy would ever pay out for her funeral.

After pressure from FCA, the funeral home released Pat and Bud from their contracts, and the insurance company issued a full refund. In 2008, Pat wrote:

Dear Joshua,

Bud passed away on Wednesday. I chose [a funeral home] just a few miles away from our home and the funeral director was fair and honest, answering all of my questions and meeting my needs, without attempting to sell me anything I did not need. Bud was cremated February 7 and I have his ashes here at home in an inexpensive urn we purchased years ago at a thrift shop. It is an ice bucket, but so attractive we decided that at least one of us would be using it eventually.

And the total cost? Less than \$2,000. But this kind of resolution is unusual. Many families get locked into expensive prepaid contracts they can't get out of and have to chalk it up as a bitter lesson learned. Pat kindly agreed

to let us tell her story as a warning to other families. She readily admits she and her husband didn't read the fine print and were basically sleepwalking through the purchase of a full-service funeral that they really didn't want anyway. It was just easier, she said, to go along with what the funeral home called "traditional" than it was to think carefully about what they felt was really important and within their budget.

The Pitch

All successful companies must market their products. Sex sells, we know, and so does emotion. Since even the cleverest marketer would have difficulty using bikini beauties to sell coffins, preneed salesmen must resort to a subtler appeal. Maybe "that nice young man" from the local funeral home has stopped by your grandmother's house. If so, chances are he's been well-trained to find just the right buttons to push to get in the front door and back out again with a check.

National Prearranged Services developed this into an art. The Missouri-based company was the brain-child of James Douglas Cassity, whom the *Kansas City Star* described as a disbarred Springfield, Missouri, attorney who served a six-month stretch in federal prison for fraud in an unrelated tax-shelter scheme. Cassity's funereal empire included a chain of funeral homes in Missouri and more than a dozen other entities including life insurance companies. NPS worked around the country, signing up funeral homes as customers. NPS agents would sell prepaid funerals to citizens (funded by an NPS life insurance policy) on behalf of the funeral home, pocketing a hefty commission.

A Leaked Sales Manual

A sales manual leaked to FCA by a former NPS "Family Service Counselor" describes several techniques to use:

Getting in the Front Door

Good Samaritan:

"Hi, I'm Joe Counselor from ABC Funeral Home. I was visiting with Blanch Jones and she included you in some of her private plans. I need to visit with you for just a moment or so, then I'll be on my way."

Public Relations:

"Hello _____, I'm _____ with ABC Funeral Home. Mr. Funeral Director asked me to stop by. I need to visit with you just a moment or so, then I'll be on my way."

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If Joe Counselor isn't successful as a Good Samaritan or PR man, the guide suggests that he can employ a "survey":

"Hi, Mrs. Jones, my name is _____ and I'm a counselor with _____ Funeral Home, and we could use your help. We are conducting a survey to help us better serve the community. I need to ask you a few questions. May I come in?"

If that doesn't work, the guide assures us, simply repeat the script. Verbatim.

Once comfortably inside, Joe Counselor is to spend 30 minutes to "develop a relationship that is warm and sincere." This is accomplished by asking about Mrs. Jones' children, her job, and her hobbies. With Mrs. Jones suitably warmed, Joe Counselor should then "pick up kit, stand up and start moving toward the kitchen" while saying:

"Mr./Mrs. _____ made some private arrangements for their family, and they included you as someone they thought this could also help. May we use your kitchen table?"

Now the real softening begins. After sizing up his mark, Joe Counselor picks from one of three sentimental stories meant to illustrate the consequences of failing to pay for your funeral before you need it. The "Wrong Way" vignette tells the story of "Verna," an elderly lady who got into a fight with her sister when arranging their mother's funeral. Which wouldn't have happened if mom had paid for it ahead of time. For a "single woman with children," Joe Counselor uses the "Widow Story":

"Mrs. Bell, it gives you peace of mind today knowing that you are right there helping your kids like you always have. You know, Mrs. Bell, I have thought would my own mom be interested in something like this for financial reasons? No, probably not. But then I thought, what does my mom really care about? That would be her two boys That's why a lot of folks simply deposit this amount into their Memorial Account to have it over and done with. Would this be comfortable for you today?"

There are plenty of other ways for companies to induce you to prepay for your funeral or buy insurance for it. Even if they're less smarmy than NPS's theatrics, they all follow a pattern: Create a "problem" in the customer's mind, then offer a pricey solution. Late-night television ads for life insurance blare, "Did you know the average cost of today's funeral can be \$10,000 or more?!" People around the country get come-ons in the mail that feature bar graphs showing the rising cost of funerals over time. Better call us today to "lock-in prices," they say. But does your funeral *have to* cost \$10,000? Of course not. However, if you're like most Americans, you've never compared

prices at several funeral homes, and you probably don't know you have the right to pick and choose from the mortuary's price list to make a funeral that fits your budget. And even if you do choose a full-service funeral, Funeral Consumers Alliance chapters around the country routinely find the prices can vary by thousands of dollars, all within the same city.

Don't Bank on it

A series of high-dollar, high-profile financial meltdowns in the preneed industry kicked off in 2006, exposing the lax patchwork of inadequate regulation around the country. Clayton Smart, an oil speculator, shocked 13,500 families in Tennessee when he announced that the funeral homes and cemeteries he bought in 2004 wouldn't make good on the guaranteed preneed contracts the families purchased since the 1960s. Barry Yeoman, writing for AARP Magazine, described it this way:

The Brewers had no reason to question the honesty of Forest Hill. Its three locations had been in business since 1888, serving the rich and the poor alike, including such luminaries as Elvis Presley and his mother, Gladys. Like the Brewers, thousands of customers from Tennessee, Mississippi, and Arkansas had also trusted the company's reputation enough to buy pre-need policies. Then in July 2006, one of Forest Hill's new owners, Oklahoma oilman Clayton Smart, called a press conference to announce he was invalidating 13,500 pre-paid funeral contracts, including the Brewers'. While police stood by to prevent a customer riot, Smart explained that any contract holder who wanted to use his or her pre-need policy would have to pay an additional \$4,000, more or less, at the time of death, even if the plan was already paid in full. "Obviously, things were a lot cheaper in 1965," Smart explained. "I wouldn't have bought the business if I thought I'd have to honor those contracts."

Dozens of Forest Hill customers wrote to FCA in a panic. "We have recently spoken with a 'Family Service Counselor' at Forest Hill East, who informed us that the most we can expect to receive is \$899 per funeral," wrote one man who paid \$1,798 in 1980 for two full-service funerals for himself and his wife. "He said they are currently offering a service 'at cost' for \$4,000."

To its credit, Tennessee acted aggressively (although the horse was already out of the barn). The Department of Commerce and Insurance sued Smart's company, and the courts put a state receiver in charge of Forest Hill. The charges against Smart included violating the Federal Trade Commission's Funeral Rule, failing to submit accurate records of prepaid funeral accounts to the state, and failing to deposit 100 percent of customers' prepaid money

in a trust account as required by Tennessee law. The insurance department said Forest Hill failed to report more than \$21 million in trust account money to the state in 2006, and simply never deposited \$705,014.70 it collected from new customers that year.

Meanwhile in Michigan, the state claimed Smart—who owned 28 cemeteries there—made off with more than \$70 million from the trust funds. All that money came from families who bought graves ahead of time in good faith. Authorities in Tennessee recovered enough of the missing money to keep Forest Hill operating and making good on prepaid funerals, but proper regulation could have prevented the entire affair. (Note: At this writing, Smart's case is set to go to trial in March, 2011.)

The mother of all preneed meltdowns came in 2008, courtesy our friends at National Prearranged Services. Though most of its preneed sales were in Missouri, NPS sold a great number of preneed insurance policies in Texas and 42 other states. After placing the company under “confidential supervision” in early 2008, the Texas Department of Insurance ordered it to stop doing business and put it, and its satellite companies, into receivership by the fall.

Regulators in several other states had suspended NPS's business licenses too. Texas found the company was \$987 million in the red. In plain terms, it owed 200,000 customers payment for their eventual funerals, but was almost a billion dollars in the hole.

What happened? Investigators charged that NPS was cashing in the whole-life insurance policies it sold to customers to pay for their funerals, then replacing them with less valuable—and more expensive, premium-wise—term life policies. In a classic Ponzi scheme, the company desperately drummed up more innocent customers to pay the bills coming due as current customers died.

Fortunately for preneed customers, the life insurance industry has a fund to pay out when companies go bust. Unfortunately for funeral home owners, they'll only get paid face value on the contracts (no growth or interest). This means funeral homes that offered customers price guarantees on funerals will have to eat the difference, and we suspect some of them will try to squeeze survivors who may not know what they're entitled to. Indeed, one Texas insurance official told Slocum she was already getting calls from funeral directors asking “How am I supposed to service these contracts if there's no growth on the policies?” She told them, “That's your problem; you signed a contract with the customer.”

The NPS debacle pulled the curtain back on the sorry state of preneed regulation. For a time, it looked like states would get tough. Slocum testified to Missouri lawmakers as part of a working committee on preneed reform and pushed for 100 percent deposit of preneed money and tougher oversight.

Incredibly, legislators caved to whining from Big Preneed. At a hearing, one local funeral magnate said, "If you force me to deposit all this money up front, I won't be able to pay my preneed counselors to go out into the community and perform this valuable planning service for our citizens."

Missouri law allowed preneed sellers to skim 20 percent of a customer's prepaid money off the top along with interest. If Mrs. Jones changed her mind or moved, that 20 percent and all the interest was gone. Even worse, this encouraged a financial house of cards by allowing funeral homes to take tomorrow's profits today, creating a scheme dependent on new preneed customers to pay for the cost of those dying today. In the end, lawmakers gave in. While they tightened up oversight of preneed accounts and barred interest skimming, they barely nudged the deposit requirement—from 80 percent to 85 percent.

Constructive Delivery and Creative Accounting

You've probably never heard of the legal fiction "constructive delivery." It works like this. Say you buy a full-service funeral ahead of time. Embalming, viewing, graveside service, casket—the works. In states that permit constructive delivery, the funeral home can hand you a certificate stating you're the proud owner of Acme Casket 45-A, valued at \$2,000, and that it's in their warehouse. Under the law, that casket has been "delivered" to you. The same would apply to a vault purchased preneed with a grave. You're no longer entitled to a refund if you change your mind before you lie down in it. In some cases, the funeral home hasn't even ordered the casket or depleted its inventory. By law, you've taken delivery of the casket, and the funeral home or cemetery is now the owner of your money. Few states actually audit the warehousing.

Some states either permit constructive delivery or don't explicitly bar it, while others outlaw the practice, recognizing it as a sham. Be sure to check the state chapters for the laws in your state. Florida laws are among the worst. Cemeteries are allowed to consider monuments and vaults "delivered" to you, the customer, if they're stored on cemetery grounds in a "protected environment." And while the law cagily tries to pretend constructive delivery of caskets is prohibited, the devil is in the details:

[Consumer refunds on prepaid merchandise] shall be provided only if at the time that the preneed licensee is required to fulfill its obligations under the preneed contract the preneed licensee does not or cannot comply with the terms of the contract by actually delivering the merchandise, within a reasonable time, depending upon the nature of the merchandise purchased, after having been requested to do so.

So if you buy a casket ahead of time in Florida, then move to New York, the funeral home doesn't have to refund your money unless it "can't" or "won't" deliver the casket *at the time of your death*. What good does this do Mr. Jones who no longer wants the casket because he's decided on cremation? What about Mrs. Smith who's moved back north — should she tell her kids to just hope the Florida funeral home will ship the casket to the new funeral home by overnight express? One Florida woman paid for her funeral there but died during a trip to New Jersey. The service funds were transferred, but the New Jersey funeral director was told that the casket was in a warehouse in Florida and he would have to make arrangements to pick it up. In order to be sure they had a casket in time for the viewing, the family ended up buying a new one in New Jersey. There was no refund on the casket they didn't use.

Florida's Consumer FAQ page "helpfully" notes, "A licensee that is willing and capable of delivering the purchased merchandise is not required to make a refund. A purchaser does reserve the right to sell the merchandise if he or she so desires." Should the kids put the casket up for sale on eBay?

Worse still, Florida laws (and it's not the only state where this is true) let preneed sellers pocket a huge portion of your money up front. Sure, the law entitles the customer to a 100 percent refund of money paid on *services* but will you get it? It's hard to see how. The funeral home or cemetery has to deposit only 70 percent of what you prepay for services, and just 30 percent (or 110 percent of the *wholesale cost*) of the goods you buy in advance. Where's the money going to come from for that 100 percent refund you're entitled to?

Neptune Society Contracts

At least one company has expertly exploited such loopholes. The Neptune Society, a direct cremation company licensed in 49 states, aggressively markets its prepaid and overpriced cremations through direct mail and telephone calls. Consumers have complained to Funeral Consumers Alliance for years about the company's high-pressure tactics and deceptive contracts. When Carlson was executive director of FCA, she filed a complaint against Neptune with the Securities and Exchange Commission. Naturally, she didn't hear a word back.

Fast forward to 2008 when Colorado regulators were taking Neptune to court for the very things FCA has been warning about for more than a decade. The charges? In a rare example of readable, consumer-friendly language, the Colorado Division of Insurance put out a press release titled *Neptune Society Used "Bait and Switch" to Lure Consumers to Purchase Pre-Need Funeral Contracts*:

Allegedly, Neptune Society skirted the law by inducing consumers to purchase a "package deal" and sign two contracts: one for future

funeral and/or cremation services, and a separate contract for the immediate purchase of merchandise, such as a funeral urn, at grossly inflated prices. Most of the funds from the funeral services contract were held in trust, as required, but the funds from the "merchandise" contract were not trusted.

As an example,

- One contract purchaser paid a total package price of nearly \$1,333.
- Of that amount, 55 percent of the package price (about \$700) was charged for "up front merchandise" on a separate contract.
- Rather than place three-fourths of the entire \$1333 into trust as required by law, Neptune chose to place *only 75 percent* of the remaining \$610 into trust.
- This means a customer who had paid nearly \$1400 for a preneed funeral contract had *less than \$560 trusted*.
- In addition, the "merchandise" costs were inflated with a charge of \$349 for a funeral urn *valued at approximately \$13*.

The state also alleged Neptune—which relies on contracts with crematories around the country to do the actual cremation for them—lied about a non-existent agreement between the company and a crematory operator. The crematory owners said they had no contract to provide cremations for Neptune and that Neptune forged the owner's signature on legal paperwork.

Bottom line: Except in a handful of states, you can't trust the law or your representatives to look out for your financial well-being if you prepay for a funeral. Only 11 states get close to what we'd consider adequate protection for preneed consumers. In all other states you don't have the right to a 100-percent refund or transfer of your prepaid funeral money if you move or change your mind. Until that changes, you're far better off keeping your money in a pay-on-death account at your bank or credit union.

Trust or Insurance?

There are two primary ways to prepay for a funeral. A *trust fund* is like a bank account. Depending on your state laws, when you buy a trust-funded funeral some or all of your money is deposited at a financial institution. The second option is funeral insurance—you buy a whole-life policy designated to pay the funeral home at your death.

If you use insurance, you can usually pay a single premium up front or pay monthly premiums over time. Don and Gail Zeman went to Christy Smith Funeral Home in Sioux City, Iowa, to make funeral arrangements ahead of

time. They each chose a \$7,000-plus funeral. Not having the \$14,000 they thought it would cost, the funeral director sold them Homesteaders funeral insurance policies. They would later regret that purchase.

The Zemans' paperwork shows that the total funeral benefit for one funeral is \$7,262.37, and with the ten-year plans the monthly payments would be \$115—or \$230 total for the two of them. It was their understanding that they had up to ten years to cover the full cost. After paying nearly \$11,000 over the course of four years, the Zemans wanted to see what the exact balance was. They were shocked to learn that they were locked into those payments for the full ten years, with total payments of nearly \$28,000.

The Iowa Insurance Department has not protected consumers from this practice. Nothing on any of the paperwork showed that the payments would total nearly double the benefit at death. If the Zemans had been told that, they would have walked out the door. Now that they've stopped payments, the \$11,000 they've spent is worth only about \$6,000. They'll be using a different funeral home when the time comes.

Typical insurance policies pay limited death benefits during the first few years of premium payments. It's like Vegas—the house always wins. The insurance companies know how likely you are to die before you've paid up, and they've adjusted their rates accordingly. Most policies are held for at least five years before a death occurs. You can see what the odds are and why there is great profit in the funeral insurance business.

Beware of converting your trust-funded funeral to insurance! If a funeral home tries to get you to convert your trust to insurance, it's almost always a bad move. If you ever decide to cash out a trust fund (provided your state entitles you to a sizeable refund), you'll get most or all of your money. With insurance, the cash-out value is far less, often only half of what you paid in premiums. Funeral homes that want you to convert your trust to insurance are making a commission from the insurance company. They're not likely to tell you the downside, and neither are the insurance companies.

FCA received a leaked copy of a letter sent by a Connecticut funeral director to his colleagues just days before a law took effect requiring funeral homes to get the customer's permission before an insurance conversion (grammatical mistakes as in the original):

That whole line about "making lemonade from lemons" is *apres poi* as I write this message to my Connecticut friends. Laws were created so that come October 1 funeral homes doing trust conversions to insurance would have to inform their families. I quickly offered folks an incentive to "take action now"—and so they did! And for that, I am grateful. What a response! In addition, a thorough review of the law by our attorneys tells us that a CT funeral home has right

up until Friday, September 29, 2006, to avoid the notification letters. So my offer continues to stand: **9% versus 7%** for any portfolio transfer from a trust to ACA Assurance. A \$500,000 transfer would yield you a check in the amount of \$45,000 . . . So when comparing preneed Trusts to preneed Insurance, it's only fitting that I quote the Burger King and say, "Have it your way."

ACA was put in "rehabilitation" again in 2008 by the New Hampshire Insurance Department for poor financial management. Policies lost 25 percent of face value, gained no interest, and a moratorium was put on cash-outs. Because it was a nonprofit fraternal corporation, the typical guarantee fund for the insurance industry could not be used.

Guaranteed Confusion

Beating inflation by locking in today's prices on a funeral is the major selling point for prepaid arrangements. But there's never a free lunch, and most people don't understand the downside of these contracts. Some states require funeral homes to refund to your estate any excess money in your trust account or insurance policy left over after the prepaid funeral has been performed. But many don't. In those cases, consumers sign away the right to any growth on their account in exchange for a price guarantee.

Unfortunately, in today's financial world, the investments—trust or insurance—won't keep up with funeral inflation. Funeral directors are cautioned by advisors and accountants not to guarantee prepaid funerals, as they can get more from walk-in arrangements at the time of death. In practice, funeral homes that have been stuck with less money than expected in prepaid funds have often pulled less-than-ethical maneuvers to make up the difference. Examples include switching a lower-cost casket for the "model that is no longer available" or billing survivors for the difference.

In addition, most people don't understand that cash advance items—things the funeral home buys for you from other retailers—can't be price-guaranteed. Flowers, grave-digging, fees for musicians or clergy—are out of the funeral homes' control and your survivors will have to pick up the tab for any rise in prices. This is a nasty surprise for adult children, who often call FCA complaining bitterly.

In our experience, people who prepay for their funerals usually leave their children *less prepared* to deal with death than those who don't prepay—especially compared to families that make funeral planning an open discussion where survivors are *empowered* to navigate the funeral transaction. Most people who buy prepaid funerals don't understand the contracts themselves, so they can't explain them to their children. The father of one of Slocum's close friends refused to discuss his prepaid contract with his son. He sealed it in an envelope labeled "to be opened only upon my death." This is worse

than doing nothing; it's ensuring your survivors will go through the confusion and heartache you thought you were preventing.

It Always Pays to Plan Ahead; It Rarely Pays to Pay Ahead

The goal of this book is to empower you to plan funerals wisely. That means giving some thought to what you want and what your family wants—and maybe what they don't want. It's important to know your rights and to feel confident to pick a funeral that fits your taste and budget. Most of all, we want to help you help your survivors. You can't "take care of everything" for them. But you can give them the know-how and self-confidence they need to carry out your wishes and theirs in an affordable and meaningful way.

It's not as hard as you might think. We've spoken to thousands of people over the phone who were terrified to even use the word "funeral." "I'm calling you to find out what to do *if ever I should* pass away" is surprisingly common. We've always tried to be kind, but we don't soft-peddle tough questions. It's very satisfying for us when a caller says, "I was so scared to even think about this, but after talking to you, that's lifted. You're the first person I've spoken to about my funeral plans that didn't run away or change the subject. Thanks for talking to me like an adult who can handle it." Don't underestimate your survivors. They can handle it too, and they'll be grateful you insisted. They'll also appreciate it if you do it before things become dire or "immediate" and can be discussed casually—perhaps even with occasional humor, which has proven healing capabilities.

There is *one situation* in which it may be a good idea to prepay. If you're applying for Medicaid, all states allow you to prepay for a funeral in order to shelter some money from consideration for Medicaid eligibility. This is known as a "spend-down." You have to exhaust your own money (to a certain degree) before Medicaid will kick in to pay for various medical expenses. But the amounts you can shelter in a prepaid funeral vary by state, so be sure to ask Medicaid what the limits are.

To shelter your funeral or burial money in order to qualify for Medicaid, you have to put it in an *irrevocable* account or plan. That means you can't cash out the insurance policy or trust fund and use it for something other than your funeral. But beware—unscrupulous funeral homes may tell you that *irrevocable* means "You can never change your mind about funeral homes and you're locked in to using my mortuary." That's not true, except in Pennsylvania. Medicaid doesn't care which funeral home you use, and it doesn't care if you change to a different funeral home. It cares only that the money you set aside be used only for your funeral or burial expenses.

Don't be tempted by a funeral home or cemetery into prepaying into an irrevocable plan "just in case you should ever go on Medicaid." Once you've deposited money into an irrevocable account or insurance policy, it can be

much harder to get a refund if you ever change your mind and decide on a less-expensive funeral.

Only purchase an irrevocable plan when you absolutely need to qualify for Medicaid in the here and now. Unethical funeral homes have used this ploy to convince consumers they're making a wise choice for the future, knowing full well that many consumers will falsely believe they're locked in forever to using that funeral home, even if circumstances change.

The best option if you're not applying for Medicaid is to deposit your funeral money in a Pay on Death (POD) account at your bank or credit union. You name a beneficiary—your child, a trusted friend, anyone—and the money is released to that person on your death without having to go through probate. The money stays in your name, the interest is yours, and the account is portable. If your roof springs a leak and you need a dry house more than you need an eventual cremation, you can cash it out and replenish it later. For the pros and cons of each kind of funeral funding for your state, check the brochures at <www.funeralethics.org/preneed> or your state chapter.



Body Parts

Big business, little regulation

7

WHEN SUE SEDGWICK EXPRESSED CONCERN about her mother's poor hospital care (which may have contributed to Florence's death), the funeral director suggested a private autopsy, which he could arrange. He took Sue's payment of \$2,000. Two days later, Sue received the expected cremated remains in the urn she had picked out but no autopsy report.

Weeks later and after many phone calls, Sue received a report: for a woman with gray hair instead of red, a woman 50 pounds heavier than her mother and five inches shorter. This was not her mother's autopsy.

A visit to John C. Lincoln Hospital in Phoenix, where the body had been taken, turned up the unhappy discovery of Florence Sedgwick's name in a log book of organ and tissue donors. At that point, Sue didn't know what or who was in the urn she had. Not only had Sue not given permission for any organ or tissue donation, there is a strong possibility that Florence died of septicemia, making her tissues totally unsuitable even for most research studies, given the risk to handlers.

This is hardly the first scandal involving body parts. For a chilling read, try the story of David Sconce and Lamb Funeral Home in *Chop Shop* by Kathy Braidhill (1993). Or check out the misdeeds at UCLA med school, Tulane University, National Anatomical Services, and Biomedical Tissue Services among others, in *Body Brokers* by Annie Cheney (2006). A 2005 scandal involving stolen bones and tissue received worldwide publicity because one of the bodies was that of *Masterpiece Theatre* host Alistair Cooke. Cooke's daughter, Reverend Susan Kittredge, says her father never would have agreed to body donation given the kind of person he was and, of course, Kittredge was concerned that the body parts were fraudulently obtained from a funeral home. But she also points out that if enough people were to donate, there would be no need to steal body parts.

Little or No Regulation

Organ and tissue donation for *transplant* is regulated by the FDA and the Uniform Anatomical Gift Act (UAGA) which has been adopted in every

state, but the UAGA's authors did not anticipate the other needs for cadaver tissue and bones. The rapid growth of the bio-tech industry in the past 20 years has brought many advances in medical treatments. Bone paste from cadavers has been used for spine repair. Doctors need real knees to practice the latest orthoscopic surgery. But the lack of regulation, especially of non-transplant tissue, has permitted a black market to thrive and has spawned dozens of for-profit entrepreneurs like ScienceCare in Arizona and Colorado and BioGift in Oregon.

The most logical way to address these problems would have been to amend the UAGA. Carlson, on behalf of the Funeral Ethics Organization, and Slocum, on behalf of Funeral Consumers Alliance, each sent thick binders of documentation to the Vermont lawyer on the UAGA update committee in 2003. But the window of opportunity for meaningful reform was squandered. When the revised UAGA came out a couple of years later, none of the changes addressed the needs for regulating the body parts business.

Troubling Questions

Has the donor family given informed consent? Troubles arise when body parts are stolen or the family does not clearly understand the actual intended use. Is it okay to blow up a body to test protective gear against the damage done by land mines if all the family was told was that such a donation is "advancing science"? Does a family understand that when a body is "segmented," it will be cut up in various parts for various different uses and sent, perhaps, all over the country, all over the world? As Brent Bardsley of the nonprofit Anatomy Gift Registry points out, the nonacademic companies generally do a better job of stating clearly what will happen to the body. Most people donating a body to a medical school think they'll be the center of attention in an anatomy lab prior to cremation. But most academic institutions also support research, and some share cadavers with other institutions. What if a few brains are needed for Alzheimer studies? Or a few hands for carpal tunnel studies? Would the donor have minded if they ended up there instead? Doesn't a family have a right to know?

Has the donated tissue been tested for disease? Some companies use tissue and bone for research as well as transplant purposes. Such crossover use is not uncommon within the same company. The criteria for transplant should clearly protect a recipient from harmful infections, yet by 2003 the Centers for Disease Control (CDC) had documented 62 such cases of infected patients. There may be hazards to researchers working with donated tissues, too. Tracking the tissue during all travels is imperative to the public safety but is not always being done, even though the technology exists. Read the excellent article by Scott Brubaker on the website of the

American Association of Tissue Banks: "Tissue Tracking Failures and Lessons Learned: Hope for the Future." (www.aatb.org)

Is the use and final disposition of each body part respectful and accounted for? One company's report lists the sale of "vagina with clitoris—\$375." Who is buying this and for what purpose? (There may be legitimate uses, but the casual trade in such body parts with no accountability seems disrespectful.) Seven knees were shipped to the Miami Sheraton for a doctors' conference, with no record of what happened to them afterward. In Arizona, LifeLegacy sent bodies and body parts to a cemetery's crematory, and later, a cemetery visitor called police after spotting bones and skulls heaped in a pit. These were recognizable bone fragments that had not been pulverized per the industry standard for all crematories.

Does the state limit profiteering by monitoring fees? What is a "reasonable" fee to cover the costs associated with harvesting tissue? Some "non-profit" companies like the Musculoskeletal Transplant Foundation (MTF) are paying six-figure salaries to high-level executives, with the CEO's salary over \$600,000 in 2008. Carlson discovered that MTF is the tissue bank for most hospitals in Vermont and is called any time there is a death of a potential tissue donor. Other tissue banks are openly for-profit. And profit motive has surely fueled unsafe and less-than-ethical practices.

Is there a system for setting priority use, especially for the living? When there is greater revenue generated by the "sale" of skin to plastic surgeons, then skin for burn victims may be diverted. Will the competition for body donors short-change the needs of medical schools? Should there be a priority allocation of donor resources? The demand still exceeds the supply, according to some in the business.

A Patchwork Quilt of State Regulation

While federal regulators have neglected their oversight duties, a few states have picked up the ball. The District of Columbia, Ohio, Oklahoma, and Virginia require a tissue bank to be licensed by the state and accredited by the American Association of Tissue Banks (AATB). New Jersey law has elements similar to the new AATB standards for testing, tracking, and disposition but also requires that all tissue banks be nonprofit. Oregon requires tissue banks to be registered with the state, but there are no statutory standards.

New York would appear to have excellent rules, but unfortunately their enforcement is lacking. Companies must document that informed consent is obtained. A company must disclose to the state on request its income and expenses. It must disclose the body parts it harvests, the prices charged for each, and to whom it's selling. Prices must be "reasonable." Body parts must be tracked and the form of disposition noted. Unfortunately, staffers in Albany told Carlson they had no model for informed consent and no

criteria by which to assess a company's consent procedure. "It's a process, not a piece of paper," she was told. Lawyers hired by donor families might not agree. New York is not asking companies for financial information or the charge for body parts, even though 17 of the 73 licensed entities appear to be for-profit companies.

Statutes and regulations will be of little use if the regulatory agencies do not have adequate funding and staff to do the job. In 2009, Carlson wrote to the Health Commissioner in Vermont to get her support for regulating tissue bank activity in that state. She got no response, probably because the Health Department already feels overworked. The Food and Drug Administration adopted the AATB standards for transplant. Perhaps every state should require nontransplant tissue banks to be accredited by AATB, as well. That might be easier legislation to pass, with no fiscal or staff implications for an overworked state health department.

Given the strong new standards at AATB, why would anyone start another accrediting agency? In September 2009, Arizona funeral home owner Garland Shreves incorporated the for-profit Research for Life, a company that accepts whole body donations. Seven months later, he incorporated American Medical Education and Research Association (AMERA) to accredit nontransplant companies such as his. The organization, which touts itself as "nationally recognized," held its first meeting in October 2010. Functionaries with AMERA include Bryan Avery and his wife Lucy Lessard who own the nonprofit Gifts for Life in Hawaii. According the AMERA website <www.ameraus.org>, two of the four pending accreditations are Gifts for Life and Research for Life. The AMERA standards are not on their website and won't be, Carlson was told.

Michael Meyer, a medical ethicist and professor at Santa Clara University in California, says, "National standards are the first step toward transparency. There can't be a patchwork quilt." Perhaps Arizona and Hawaii will be among the next states to require AATB accreditation for all tissue banks, and suspect outfits like AMERA will quietly go away.

We support the idea of donating one's body for medical science. We would all like to know that our surgeon practiced on a cadaver before performing surgery on us. And for-profit companies have a role to play in developing innovative medical technologies. But the body parts business today is little better than the Wild West, and it will stay that way until regulators take the issue seriously. Already, we've heard from people who have cancelled their bequests to an anatomical gift program out of disgust with the scandals and theft. Legitimate medical schools are almost always short of cadavers, and the "see no evil" attitude of regulators, sadly, will contribute to making the problem worse.



Federal Trade Commission

A fickle consumer ally

8

STAFF AT THE FEDERAL TRADE Commission are fond of saying that FTC stands for "For The Consumer." A few critics have suggested a more colorful phrase.

The fact is, the FTC is given the job of helping consumers, and it has some dedicated staffers who do their best to fulfill that role. But over the years, with some exceptions, the Commission has done little to enforce the Funeral Rule—the first and only federal regulation giving grieving consumers specific rights.

Funeral Consumers Alliance has been reporting funeral home violations of the Rule since 1996, and the agency has done nothing to address these problems aside from sporadic undercover "sweeps" that ding funeral homes for failing to give out itemized price lists to shoppers at the appropriate time. That's all well and good, but does it matter *when* the customer gets a price list if it's full of misrepresentations and illegal charges?

The Funeral Rule

The Funeral Rule regulates how funeral homes present their goods and services to their customers, and, in the process, gives significant rights to consumers. The Rule was proposed by the Federal Trade Commission in 1974, and given "final" FTC approval in 1982. Because of strong opposition from the funeral industry, congressional review stretched the process out for another two years. FCA and its member societies, along with other consumer groups, actively supported and promoted the Rule at every step and celebrated final implementation in 1986. The Rule:

- Gives you the right to **pick and choose** only what you want—funeral homes can't force you to buy a complete package and they may not condition the sale of one item on the purchase of another.
- Gives you the right to a **printed, itemized price list** at the very beginning of any discussion about arrangements.
- Gives you the right to obtain **price quotes over the phone**.

- Gives you the right to see a **casket price list** before being taken into the showroom or shown any caskets by catalog or computer.
- Bars funeral homes from **lying about nonexistent laws** in order to sell you embalming, caskets, vaults, or anything else you may not want or need.
- Bars funeral homes from **refusing to serve you if you build the casket or buy one from an outside source.**
- Bars funeral homes from **charging you a handling fee** if you bring in your own casket. (Prior to the Rule, many charged a casket “corking fee” to discourage outside coffins)

Before the Rule was adopted, funeral homes routinely forced consumers to buy a full package. The price of the casket included embalming, viewing, a funeral ceremony, etc., whether you wanted all that or not. Consumer advocates hailed the Rule as a grieving consumer’s bill of rights. We assumed (naively, in retrospect) that the days of mortuaries lying to consumers to jack up the funeral bill would come to a close.

When Carlson began as FCA Executive Director in 1996, she started grading thousands of General Price Lists (GPLs) from funeral homes coast to coast. At least 50 percent had major Funeral Rule violations—missing consumer disclosures, no simple cremation or burials available without all the trimmings, illegal “handling fees” for families who brought their own caskets. When Slocum took over at FCA in 2003, he continued the practice, forwarding his findings to the FTC, which never offered any comment on them.

PR Trumps Enforcement

When the FTC announced its first-ever Funeral Rule compliance conference in Dallas in April 2006 (22 years after the Rule went into effect), it seemed like a good time to show the feds what was really going on. Slocum tabulated the violations he found in 272 GPLs from six states. **Eighty-six percent** had at least one Rule violation, and most had many more. Meanwhile, the FTC was pumping out press releases crowing about how well Texas funeral directors were doing:

The Federal Trade Commission announced today that it found a high level of compliance in East Texas with the FTC’s Funeral Rule, which protects consumers from abusive practices in the funeral industry. In a recent sweep of funeral homes in the Tyler, Texas area, nine of the 10 funeral homes shopped were found to be in compliance with the rule. —November, 2005

Intriguing, since Slocum found the exact opposite: nine out of the ten Tyler funeral homes had violations on their GPLs when he examined them. Thinking the FTC might want to know this before Slocum made it public at the Dallas meeting, he left messages and e-mails for Commission staff. What was the response? A concerted effort by the FTC to exclude any messengers of unpleasant information.

One lawyer from the Southwest Regional Office tipped his hand by accidentally copying to Slocum the following e-mail he wrote to an FTC colleague:

I will defer to you regarding contact with Josh Slocum. However, we don't have caller ID here, so I could possibly answer his call without knowing . . . given the apparent sensitivity of his issues, I'd rather he be dealt with "officially." I sincerely hope we don't have a "scene" on Thursday when he arrives or during the meeting. We have worked so hard down here to plan a wonderful conference, and I am disappointed with the controversy he has stirred up. What do you think we should do?

The only scene that took place in Dallas was the FTC's attempt to eject a national FCA board member when he and Slocum arrived for the meeting. At 8:30 that morning, FTC attorney Janette Gosha told Jim Bates that he didn't register early enough and would have to leave. Bates reminded her that this was a public meeting paid for with taxpayer dollars. Well, there aren't enough chairs, Gosha said. So Bates offered to stand in the corner. There wasn't enough food, Gosha countered. She relented only after Bates produced a receipt for the \$20 he had paid for the day's lunch buffet.

From the start, it was obvious the FTC was more interested in silencing consumers than in regulating the funeral industry. Thomas Carter, Senior Staff Attorney for the Southwest Regional Office, opened the morning with, "The good news is Texas funeral homes are doing a great job following the Funeral Rule, based on our investigations." Carter then described the "partnership" between the FTC and National Funeral Directors Association.

"The old 'gotcha' system wasn't working," he said. "So we put on our thinking caps and came up with the Funeral Rule Offenders Program. FROP is one of the most successful public/private partnerships in history."

FROP: Foxes Guarding the Henhouse

Back in 1996, the National Funeral Directors Association struck a deal with the FTC to create FROP. Under the deal, Funeral Rule violators can enroll in the program, which is administered by NFDA. In exchange for fees paid to NFDA and a "voluntary" payment to the US Treasury—instead of

the \$11,000 fine the FTC was empowered by law to levy at that time (since raised to \$16,000)—errant funeral homes undergo three years of remedial training and testing by NFDA.

Keep in mind that the NFDA is a trade association, whose main job is to promote the funeral industry, boosting its image and its profits. As a special bonus, the FTC agreed to keep the names of Funeral Rule violators out of its press releases. So the job of guarding the henhouse goes to the fox, who operates in total secrecy, with guarantees that any mischief will be hidden from the public.

When Slocum wrote up the Dallas incident in the Spring 2006 FCA Newsletter, a casket retail store owner sent this e-mail:

I am a casket retailer located in Tyler and have been in business since 1996. During this period I have witnessed or been told of many violations of the Funeral Rule. I firmly believe the Funeral Rule is not worth the paper it is printed on. My wife and I opened our casket store after a personal experience with a funeral home. The long and short is that my family decided that we were not going to put up with the FH's tactics and we buried my uncle ourselves—built the box, dug the grave . . . Only after this experience did I find out about the Funeral Rule.

. . . Some FH's in Tyler flat out tell families that they don't accept caskets from an outside source, use various methods to discourage and hamper those who do attempt to buy a casket from an outside source, and have artificially inflated prices so that there will be an illusion of a discount on package funerals.

Contrary to the sunny pronouncements in Dallas, Rule enforcement has been so weak that mortuaries feel free to get away with violating its core requirements. A suspiciously high number of complaints come from families who patronize funeral homes owned by Service Corporation International (SCI), what one lawyer calls the "largest funeral home chain in the galaxy." SCI prefers, of course, to be referred to by its consumer brand name, Dignity Memorial. One consumer, Brooke Horne, wrote to FCA about her dignified experience:

My mother passed away this week. She specifically wanted a 'no frills' direct cremation. We asked for nothing more than the cardboard box for cremation, the cardboard box for the remains. We were charged a package price with lots of things included which we did not want. They told us it was one price: \$2,950. This can't be correct. What can I do?

Horne said Houston's Calvary Hill Funeral home told her that a Dignity Memorial package was the cheapest option. The package included many items—an "aftercare planner" and flowers, for example—that she didn't want. FCA advised her how many rules Calvary Hill broke and called the funeral home to let them know we expected them to lower the bill and start following federal regulations. Armed with knowledge of her rights, Horne returned to find them singing a very different tune. She wrote back to us:

I cannot tell you how pleased my mother would be knowing that we had busted their "chops" a little. I can't thank you enough. By the time I got back to the funeral home the director was falling all over himself to be agreeable. We settled on \$850, taxes included. I said I wanted to pay the fair price and I was very happy with that. He said he would like to send flowers to her memorial and I asked that he send a donation to the Sierra Club. He said he would send \$100 out of his own pocket. What did you say to these folks? They are giving us all the stuff that comes with the "package" and I said fine, we would donate it all to the senior center including the flower arrangement.

SCI has a huge financial incentive to break the rules. The company's 2003 annual report noted, "On a burial funeral, Dignity packaged sales generate on average approximately \$2,800 more than non-Dignity sales. On a cremation service, Dignity packaged sales generate approximately \$1,700 more than non-Dignity sales."

Speaking to Slocum under the promise of anonymity, a California SCI employee offered another explanation:

We are specifically directed by SCI to tell our customers that they are not allowed to make changes to the prepackaged plans because of an FTC rule of some kind. They browbeat the people that work for them into believing this is some kind of FTC regulation. Nobody bothers to look it up. You have to sell these packages and if anybody wants to make a substitution, then you have to tell them, "The FTC does not allow us to make a change to the package."

Despite a 2006 letter from FCA pleading with the FTC to investigate SCI's everyday sales practices, the Commission continues "sweeping" funeral homes with a toothbrush. Meanwhile, complaints pour into the FCA office from consumers reporting the kind of trickery the Rule was meant to end. Here is another example:

I called Eden Memorial Park Cemetery in Los Angeles today to discuss the cost of burial plots for my mother, who is still alive. Among the many charges [the salesman] listed was for a burial container. I asked if that was the 3-sided container (top and sides)

or a complete vault. He sounded appalled at the question, and said that, of course, it was the complete, sealed enclosure, "which is required by law." I said, "Um, actually, the FTC website states 'Outer burial containers are not required by state law anywhere in the US, but many cemeteries require them'." He feigned surprise and said he'd always been under the impression they were required by law. I offered to give him the URL of the FTC web page stating this, but he said, "Oh, no—I'll take your word for it." Right! As if he wouldn't be fully aware of the laws regarding this! The sleazebag!

The salesman called her back a minute later to say he'd forgotten they were having a sale on graves—wouldn't she like to save \$1,000 by purchasing today?

Unlike this woman, most consumers don't even know the Funeral Rule exists, leaving one to wonder how many uninformed families are duped by these expensive lies. People write and call FCA from around the country reporting they never received a price list, that the funeral director simply filled out the family's itemized receipt during the arrangements conference with "everything you'll need" (usually a one-of-everything funeral), and misrepresented legal requirements.

When Slocum joined FCA in 2002, the Funeral Rule had been law for 18 years. He assumed that was long enough for morticians to understand what it required and what it prohibited. Yet after years on the job, he found many undertakers are still ignorant about the Rule. Linda McLemore, a fiery FCA volunteer from Georgia, forwarded an e-mail exchange with a funeral director at Williams Funeral Home in Columbus. She wrote Spencer Williams a polite letter asking him to amend the false claims on the consumer FAQ page on his website because the statements were untrue and in violation of the Rule. The worst was Williams' claim that embalming was required *by the FTC* for an open-casket viewing. His response (with unusual capitalization and sentence structure preserved from the original) is sadly typical:

Mrs. McLemore,

I am completely unaware of anything on my Q&A page that is not accurate for my Georgia customers. These are not State Laws that were quoted on this page. I actually quoted those laws as part of the Federal Trade Commission's FTC Funeral Rule.

(1.) Actually, as far as the open casket and embalming,
 . . . Aside from this being part of the Federal Trade Commission's FTC Funeral Rule, when we take our oath as Funeral Directors and Embalmers, we take on a responsibility as "Guardians of the Public Health." Whereas most people are under the false assumption that

the only purpose for embalming is for preservation, the truth is that embalming is multi-purpose. Some of the main purposes for Embalming include: **Sanitation** (the embalming fluid is actually a strong disinfectant), restoration & preservation.

(2.) Again, this is not a State Law, it is Federal Law. That Law is known as the Federal Trade Commission's FTC Funeral Rule.

(3.) Once more, this is part of the FTC Funeral Rule that states, "Embalming is required if burial will not take place within 72 hours, unless refrigeration is available." and unfortunately, refrigeration is not available within our area.

I do appreciate your inquiry, however, I am striving to keep our webpage accurate. I do not wish to misinform anyone or misrepresent to any family that comes to us for information. My concern is that you are under the belief that my page is wrong. My page is true, complete, and accurate.

Of course, the Funeral Rule has no such requirements, nor does Georgia law. Since misrepresenting the law is banned by the Funeral Rule, it seems particularly alarming when funeral directors cite the Rule itself as the source of this misinformation.

These examples are a tiny sample from a file box in Slocum's office labeled, in red marker, **FTC FUNERAL RULE EVIDENCE**, set aside for the next hearings on reforming the Rule. That day may be far off—the FTC astonished consumer advocates by voting to close the Rule review in 2008 with no amendments.

FTC Guts Its Own Rule

Nothing has kept the cost of funerals artificially high as much as the so-called "Basic Services Fee." Originally conceived as a modest charge funeral homes would assess for the administration common to any funeral—the initial conference with the family, writing up the contract—the "basic" fee has ballooned to the single most expensive item at most mortuaries. Much of the time it beats out caskets, which were historically the most hyper-inflated item on the menu. And it's the one "service" you *can't* decline to pay for.

From 1982 to 1988, the average Basic Services Fee increased by 73 percent, according to FTC studies. And yet, the FTC's commentary in its 1988 report wondered why the cost of funerals was rising faster than inflation in the years immediately after the Rule went into effect. When a single item (the one item for which there was no accountability at all) had risen from 11 percent to almost 20 percent of the total funeral cost, one has a hard time imagining how the FTC staff missed it.

Consumer groups testified against the basic services fee during a Rule review in the late 1980s, showing how any cost-savings that itemization might have brought were being gobbled up by the anything-goes “basic” fee. Perversely, the FTC’s amended definition of the fee in 1994 loosened it even further, making a joke of the Rule’s promise to help consumers control costs by declining optional services. The following is from the FTC publication *Complying With the Funeral Rule*:

The basic services fee also may include overhead from various aspects of your business operation, such as the parking lot, reception and arrangements rooms, and other common areas. It also may include insurance, staff salaries, taxes, and fees that you must pay. Alternatively, instead of including all overhead in your basic services fee, you can spread the overhead charges across the various individual goods and services you offer. . . .

Mortuaries typically charge \$1,500 to \$3,000 just to get in the door, then low-ball the prices of the *actual goods and services you choose*. Someone arranging a direct cremation over the telephone or planning all services at a church is not filling the parking lot or using the reception rooms and should not be forced to pay for such. What other industry is given government permission to charge a non-declinable fee that is unrelated to the goods and services selected?

By keeping funeral prices artificially high, the Basic Services Fee has helped to prop up thousands of mortuaries that would likely have gone out of business due to normal market forces. Unlike in almost every other sphere of commerce, the higher the number of businesses selling funerals, the higher prices tend to be. Since a funeral home can sell only one funeral per person, if there are “too many” funeral homes for the population, the demand is spread thin. The only way to make up for this is to charge ever-higher prices to each customer. The bloated basic fee helps keep three funeral homes going in a town that can really support only one. What other business is so completely insulated from the forces of supply and demand?

The abuse of this fee continues, and once a mortuary has been purchased by a corporate funeral chain, it tends to rise with alarming regularity. Lamar Hankins, past President of Funeral Consumers Alliance, wrote in the Spring, 2007 newsletter of the Austin Memorial and Burial Information Society (AMBIS):

The results from the last two AMBIS funeral price surveys reveal the clear marketing strategy of Service Corporation International (SCI) for getting families to pay more for funerals. It is a five-prong strategy, involving decreases in prices for caskets and increases in prices for embalming, the non-declinable fee (the cost that is added

to all arrangements for the services of staff and overhead costs supposedly common to all arrangements), and refrigeration, along with high-pressure sales tactics.

In 2005, SCI was hit with a massive lawsuit filed by Funeral Consumers Alliance (FCA) and some individual consumers alleging price-fixing in the sale of caskets. Shortly thereafter, SCI lowered its charges for caskets. Simultaneously, it raised the price of embalming to the astronomical price of \$1,395 locally, a price nearly 2½ times more than the local non-SCI average. Likewise, it raised its non-declinable fee in its four Austin funeral homes to more than \$1,100 above the average for all 40 Austin-area funeral homes included in our survey. At \$2,995, the four Cook-Walden funeral homes in Austin and Pflugerville are the highest in the survey. Only eight other funeral homes in the survey have non-declinable fees above \$2,000, and two of them are also owned by SCI.

The National Funeral Directors Association cited the average charge for the non-declinable fee in 2006 at \$1,595. In 2010, they cited the *median* price of the non-declinable fee at \$1,817. The median is the price right in the middle, where half the survey respondents charged less than \$1,817, and half the respondents charged more. Since NFDA has always used the *average* price in their past surveys, switching to the use of the *median* price in 2010 is likely to confuse and mislead. For example, the 2006 NFDA survey showed the *average* price of a full-service funeral at \$7,323. Yet in 2010, they used the *median* price of \$6,560—an attempt to suggest funeral prices have gone down in four years?

When it comes to the non-declinable fee, consumer groups often find it's much higher than the averages or medians reported by trade groups:

- The Funeral Consumers Alliance in Raleigh, North Carolina, found fees as high as \$3,000 in 2003.
- The FCA of South Carolina found a range from \$500 to \$3,000 in the city of Columbia in 2007.
- In a 2010 survey in Connecticut, a least half the funeral homes had a Basic Fee of over \$2,000.
- Slocum found one funeral home charging \$5,000 for the basic services fee, then only \$125 each for the actual visitation, funeral ceremony, and graveside service.

Also, in areas where there are retail casket sellers, funeral homes follow the advice of trade journals and lower their casket prices to compete, then raise their service prices. In other words, competition and market forces

sometimes lower the price of the casket itself, but this does no good to the consumer who must make up the difference in the non-declinable fee. This is an excellent reason for consumers to shop around for reasonable prices on service fees as well as caskets.

Failed Efforts to Reform the Rule

In 1999, the FTC generated a list of questions to be answered during its mandatory five-year review of the Funeral Rule. FCA testified, backing that testimony with five cartons of documentation. These included price surveys and general price lists from over 2,000 funeral establishments that had been collected by volunteer members of local affiliates around the country, articles from trade journals that Carlson had been monitoring over the years, and a compilation of funeral and cemetery complaints received in the FCA office. When the actual hearings were scheduled, FCA was seated front and center. Our organization's goals:

- Abolish any non-declinable fee. (Replace current charges with an optional per-hour fee).
- Add an option for private viewing without embalming, with a per-hour charge permitted.
- List the cost for body donation to a medical school.
- List the cost of the cremation process. (The current listing implies that one may pick an immediate cremation only.)
- Include the cost of cremation in package pricing for all cremation options. (How can one have a direct cremation without cremation, as is now permitted by the FTC in the price listings? A consumer shopping for prices would have no way of knowing how much will be added for the cremation itself.)
- Standardize the description of the immediate burial option, so that consumers can compare prices charged by different funeral establishments.
- Require disclosure of any service charge or mark-up on cash-advance items purchased by the funeral director. This would apply to things like placement of the obituary, ordering flowers, or any other third-party item that the consumer could purchase independently.
- Expand the Rule to also cover cemeteries, casket vendors, and monument dealers. They, too, should be required to disclose the prices

they are charging consumers and should be forbidden from committing deceptive practices or restraint of trade.

- Require disclosure of all conditions and cancellation risks on preneed contracts: trusting, "constructive delivery," interest income, fees and commissions, penalties, and substitution of merchandise.

On the whole, casket sellers and monument dealers were eager to see the Rule expanded and were unafraid of regulation. The National Funeral Directors Association has expressed support for expanding the Rule to cemeteries. However, the International Cemetery and Funeral Association (now the International Cemetery, Cremation, and Funeral Association—they have mission-creep) sent a letter to the FTC objecting to FCA's claims, stating that there was no evidence of cemetery consumer abuse. Hardly a credible source when one considers that almost all the officers of the organization at that time came from corporate-owned funeral and cemetery chains.

And what happened after the 1999 hearings? Absolutely nothing. Why? It's not hard to guess. George W. Bush was elected president in 2000. Robert Waltrip, founder of SCI, was a close friend of the Bush family and a donor to the George H. W. Bush Library as well as various political campaigns. When he was governor of Texas, Bush had fired the executive director of the Texas Funeral Service Commission when she fined SCI for using unlicensed embalmers there in Texas. SCI—and most of the rest of the industry players—certainly didn't want to see the non-declinable fee eliminated or its for-profit cemeteries regulated.

This was, of course, a period in which many industries were, essentially, deregulated. In some instances there may have been benefits, but this trend was at least partially responsible for America's economic meltdown and the massive oil spill in the Gulf of Mexico, among other large-scale problems. Consistent with this trend, the FTC became much friendlier to business interests and less concerned with its mandate to foster competition in the interest of consumers.

There was a glimmer of hope for Funeral Rule reform in 2002, when Senator Christopher Dodd introduced a bill that would have made the FTC's Funeral Rule into a more enforceable federal law and would have expanded it to cover cemeteries and other death-care businesses. Public interest in funeral regulation was running high that year with the Tri-State Crematory disaster (more than 300 rotting bodies on the property) fresh in everyone's minds. At the time, Carlson was head of Funeral Consumers Alliance and worked closely with congressional staff to improve the bill. After the bill went nowhere, Dodd reintroduced it in 2005. Again, it went nowhere.

The Kibosh

Considering the boxes of evidence detailing Funeral Rule abuses provided by FCA over the years, nothing could have been more shocking than the Commission's March 10, 2008 press release. The Commission voted to keep the Rule in its current form. No expansion to cover all players in the death business, no modification of the much-abused basic services fee, no changes to address the financial disaster prepaid funerals have become for families across the country. The Commission's 57-page report contained one jaw-dropper after another. From page 1:

Because of insufficient support in the record, the Commission declines to propose amendments that some commenters have advocated, namely to: (1) expand the scope of the Rule; (2) to eliminate the basic services fee of the funeral director; (3) allow funeral providers to charge casket handling fees; (4) prohibit discount funeral packages; (5) require additional price information disclosures on the various disclosure documents; and (6) adopt additional regulations focused on contracts for funeral arrangements made on a pre-need basis.

"Insufficient evidence" is the mantra throughout the report. The FTC spends page after tortuous page claiming the record doesn't support reforming the Rule without ever explaining *why* the evidence isn't enough. As Carlson wrote to the Commission, "If the FTC was depending on consumer groups [to provide evidence], it would seem that staff failed to look at the five cartons of documentation and price surveys Funeral Consumers Alliance submitted for review. But that information can readily be updated. How many thousands of new price lists (GPLs) would you like to see, from how many funeral homes, in how many states?" From page 16 of the report:

[S]everal commenters proposed changing the Rule to cover entities selling funeral goods or funeral services. However, the record evidence did not establish that these sellers, particularly cemeteries and crematories, engaged in the types of abuses addressed by the Rule (e.g., lack of price disclosure, forced bundling of goods and services, and misrepresentations of funeral goods and services).

It takeschutzpah to claim that, since there's "no evidence" cemeteries are withholding price information, the Rule shouldn't require them to disclose what they charge! While the report later acknowledges some cemeteries operate in a way that makes them subject to the Funeral Rule (so far, so good), failing to explicitly address them gives the bad apples enough leeway to argue their way out of complying. So they can get away with all manner of bad behavior the FTC has long recognized as abusive if done by funeral home staff.

The report's treatment of the non-declinable fee is especially galling. It's a mystery how educated people in the nation's fair trade office could accept and endorse self-serving industry defenses. From page 29:

One commenter surmised that if the basic services fee were eliminated, funeral providers would have to spread their costs over other items, which, he believed would lead to higher prices. Commenter Charles Graham, a licensed funeral director and embalmer, also contended that prohibiting the non-declineable [sic] fee would require costs to once again be spread over other services and merchandise.

Yes, that's precisely the point. Consumers should pay their fair share of overhead for the goods and services they buy, but *only* their fair share. The non-declinable fee perverts the Rule's intent by allowing undertakers to charge exorbitant fees for "basic services," even for customers who choose limited arrangements. Cost-conscious families are forced to subsidize the mortuary's full overhead, even though they're not using it. Yet the FTC pretends it cannot understand why this is a problem.

The award for Best Doublespeak goes to the Commission's approach to casket-handling fees. The report acknowledges that charging a fee to consumers who buy a casket outside the funeral home is harmful, but then it states that "discount packages" are totally different and "confer benefits" on consumers. To evade the Rule's ban on handling fees, many funeral homes have constructed "discount packages" available only if the consumer buys a coffin from the funeral home. Those who buy a coffin elsewhere have to pay *higher itemized prices*, exactly the same financial penalty as the handling fees banned by the Rule. But that's not the same, according to the Commission. From page 35 of the report:

While this practice could raise concerns if the discount effectively swallows any cost savings associated with purchasing a less expensive casket from a competitor, there is insufficient evidence [despite the report's own acknowledgement that 14 percent of NFDA members tie "discounts" to the purchase of a casket] to show a prevalent practice of funeral providers offering discount packages in a manner that unfairly interferes with consumers' ability to provide their own caskets.

If the reader is wondering why it's OK for some businesses to engage in abusive practices as long as not too many of them do so, we're wondering too. If the Commission recognizes that certain practices are harmful to consumers, why does it have to wait for a majority of funeral homes to use them in order to declare the practice illegal?

In 2009, consumer advocates got another chance to reform the Rule. Once again, a scandal provoked a bill. After investigators discovered that workers at Chicago's famous historically black Burr Oak cemetery were digging up old graves and reselling them, US Representative Bobby Rush convened a hearing before the House Subcommittee on Consumer Protection. Rush asked Slocum to testify about the problems families experience at cemeteries, particularly the abuses that don't make the headlines.

Following the hearing, Rush introduced HR3655, the Bereaved Consumers Bill of Rights Act of 2009. (See the Cemeteries chapter for a full description.) At the time of this writing, the bill has passed the full House Energy and Commerce Committee, though it was amended to exempt most "religious" cemeteries. However, it did not make its way through the legislative process by the end of the 2010 session. Will our lawmakers ever have the stomach to do the right thing by grieving consumers?

Funeral Rule Advisory Opinions

Interested parties can request FTC staff to make a ruling on whether certain practices are allowed or barred by the Funeral Rule in its current form, and FCA has submitted several. While not all requests have been answered, some of these give consumers ammunition to fight back against predatory practices:

Opinion 08-1—Freestanding crematories that serve the public are subject to the Funeral Rule.

Opinion 07-1—Funeral homes can't charge an additional fee for "service vehicles" used to file and retrieve permits; that has to be included in the Basic Services Fee. (Unfortunately, this opinion also states funeral homes are allowed to charge families extra for refrigerating unembalmed bodies, despite FCA's contention that this is just a double charge for "sheltering of remains" which is already billed in the Basic Services Fee.)

Opinion 07-3—Funeral homes can't require families to be present at the funeral home to "inspect and accept" third-party caskets, a tactic used by some mortuaries to make buying a third-party casket onerous.

Opinion 07-4—Funeral homes may not charge families for storing a third-party casket immediately prior to the funeral, and they can't charge families for throwing away the packaging in which outside caskets arrive.

Opinion 07-10—Funeral homes must offer direct cremation, the simplest kind of disposition, if they offer cremation at all. (Amazingly a funeral home owner wrote the FTC to ask if he could offer only more elaborate cremation packages.)


Opinion 04-1—Funeral homes can't require consumers to sign for the delivery of third-party caskets.

Opinion 97-4—Funeral homes can't require families to pay for "identification viewing" and any associated preparation of the body, unless required by state law (which is almost never the case).

Working with the FTC

In criticizing the Commission so bluntly, we know we run the risk of alienating an agency we need to work with. And we don't want to give the impression that no one at the FTC cares. The Commission has taken action recently against a state funeral board that tried to outlaw direct-to-consumer casket sales and has supported lawsuits that would open up competition in funeral sales. We've also gotten to know several staffers over the years who do yeoman's work trying to keep up with an extraordinary workload. Some of them have confided their disappointment at watching the Commission degenerate from a bold watchdog organization into a politically motivated bureaucracy whose lumbering pace lets industry off easy at the public's expense.

We appreciate these dedicated public servants, but the fact remains that the FTC as a whole has failed the funeral-buying public. Consumers and taxpayers have a right to expect the government to work for them not as an enabler to an industry well-known for its willingness to abuse the bereaved.



Filing an Effective Complaint 9 And what NOT to do

WHAT SHOULD YOU DO IF you are treated in a dishonest, unethical, and/or illegal way in your dealings with the funeral industry?

First, write down everything from the minute you feel you might have a complaint, to make sure you record details while they're fresh in your mind. If another person is with you and shares your concerns, ask that person to write down what happened, too. Sometimes that person will remember additional helpful information. Be sure to date all of your notes. Write down the names of everyone you deal with, even if it is just a first name or a description of what the person looked like. Keep a log of all phone conversations.

Try to settle your concerns with those involved first. That's how you would want to be treated if it were your business. Write a letter to the funeral home or cemetery outlining your concerns. Explain what went wrong and what remedy you would find acceptable. Send it by certified mail, return receipt requested. A telephone call may be helpful, as well, if you feel there is a good chance of working things out. But with a serious dispute, telephone calls are not sufficient, as there's no paper record. E-mail is not sufficient either, as there's no easy way to prove the business received it.

If you can't get satisfaction from the business, you may want to file a complaint with the state regulatory authorities. All states except Hawaii have an agency or a regulatory board that oversees funeral homes although oversight in Colorado is limited. Cemeteries are not as well-regulated, however, and you may have difficulty finding out which entity oversees them. Call the FCA national office if you have trouble finding the agency to which you should send your complaint. This will also help FCA's efforts to record and track complaints. The staff can also help you research your state laws, which may affect how your complaint is treated.

If your complaint involves a violation of the Funeral Rule, you should also send a copy to the FTC's Consumer Protection Bureau at 600 Pennsylvania Ave. NW, Washington, DC, 20580. The FTC *does not* investigate individual consumer complaints, but building a file helps the Commission and consumer advocates identify patterns of abuse that should be investigated.

Categories of Complaints

Funeral home and cemetery complaints generally fall into the following general categories or a combination of them.

- **Unreasonable or unexpected cost**—e.g., the price list shows that the least expensive casket available is \$595, but the funeral director claims there is nothing available less than the \$2,000 casket on display.
- **Unethical or unprofessional conduct**—e.g., you were told that embalming was required even for private family viewing or that the handles will fall off the casket you purchased from a retailer.
- **Negligence**—e.g., the funeral home failed to send the obituary to the newspaper and, as a result, no one showed up for the funeral.
- **Breach of contract**—e.g., the cemetery or monument dealer failed to deliver the marker you ordered, even after six months.
- **Funeral Rule violations**—e.g., you weren't given a price list to examine at the beginning of the arrangements conference.

Guidelines for Writing

When writing your complaint, follow these guidelines:

1. Identify yourself, the names of the businesses and staff involved, and the nature of the complaint at the top. Regulatory offices are chronically understaffed. Save them time by getting to the specifics right away. Remember that you're writing to someone who doesn't know you and probably doesn't know any of the parties involved.

2. Give enough detail so that the reader can understand the problem without being overwhelmed by irrelevancies. Begin at the beginning, and end at the end. Don't include a running travelogue of the times each relative arrived for the funeral-gone-wrong and on what airline. This doesn't matter, and it encourages the reader to put your complaint at the bottom of the pile.

Your choice of words is important. "It was a terrible funeral" or "It cost too much" are not valid complaints. You will be more effective in getting results when you can be specific or identify a law or regulation that was broken.

3. Try to keep emotional content to a minimum. Everyone's mom is the best mom who ever lived. Every parent who loses a child has lost the most important person in their world. But belaboring the emotional aspect of the death, and playing up the noble qualities of the deceased runs the risk of making you appear melodramatic even though your pain is genuine.

4. Consider the remedy that would satisfy you and ask for it but not for more than that. Most of us have internalized the idea that the only right and proper remedies to seek when a business lets us down are a full refund of our

money or a lawsuit seeking damages. Make no mistake, we've seen plenty of instances where funeral or cemetery businesses engage in willful patterns of consumer abuse that cry out for a public trial and hefty damages.

But we also know funeral directors and cemetery staff make mistakes they regret. Sometimes funeral home or cemetery workers are desensitized to things that seem normal to them but bizarre or offensive to ordinary consumers. Before you decide to file a lawsuit or call for the state to shut down a funeral business, consider whether a more creative remedy would give you more satisfaction and contribute to better service for other families in the future. For example, if the wrong information is called in for the obituary, the best practical solution may be a corrected obituary, a partial refund, and a promise to institute safeguards against the same error happening with other families, rather than a lawsuit to try to shut down the business.

What to Expect

In some states, members of the funeral board themselves investigate. Many have a consumer representative on their boards, ideally one who would be a member of the investigating team. Some boards have investigators on their staffs. In other states, the complaint will be turned over to an enforcement department responsible for a number of agencies. Or sometimes the Attorney General's office is responsible for investigating consumer complaints.

Usually, a funeral board or the state agency has a number of options. Most (though this varies) can order a refund or reduction in the funeral bill, impose a fine, order an apology, or require additional education. The board might issue a warning, place the offender on probation, or even revoke a license. Taking a funeral director's license is generally done only for the most outrageous misconduct, such as embezzling preneed funeral money. If the only remedy available to the funeral board is revoking a license, you may be disappointed with the results of your complaint, as this is rarely done.

Unfortunately, most state funeral boards are dominated by members of the funeral industry. This conflict of interest results in many legitimate complaints being swept under the rug. You may find the process frustrating, and you may have to communicate in writing several times with the board or staff to get an adequate explanation of why your complaint was handled as it was. Sometimes, you just won't get an answer. But don't let this discourage you from filing. Some consumer complaints are handled fairly, and, when they're not, some consumers have been able to convince their elected representatives to tighten the laws or put pressure on the boards to do a more thorough job. If you're having a hard time being taken seriously, call or write the FCA office.

Remember, your complaint may prevent a similar thing from happening to someone else. Improvements for consumers occur most often when

regulatory bodies know about problems. Filing a complaint may not only help you, but it may help *all* consumers.

Unreasonable Complaints

We're a nation of consumers, and we complain when we've been cheated or mistreated. But some people undercut their claim to the moral high ground by making demands for recompense out of proportion to the crime.

The majority of disgruntled consumers really do have a point: the funeral home charged them for things they didn't need or want or swapped out a cheaper casket than what they had paid for, or the cemetery slapped on a fee when the family wanted to buy a less expensive marker from an outside dealer. But some complaints are sparked by misunderstanding on the consumer's part. A simple lack of knowledge can spark a consumer's anger, which is sometimes misdirected toward a funeral or cemetery businesses that hasn't done anything wrong.

You might have an unreasonable complaint if . . .

- **You think funeral directors are probate court judges.** Too often, families fight over dead bodies. A common dispute involves who has the legal right to arrange and carry out the funeral. Who prevails if the kids are at war over whether dad wanted a viewing or whether he wanted burial or cremation? Families who can't come to agreement often expect the funeral director to adjudicate. Each person thinks the undertaker should side with him, of course. In reality, each state has laws setting out the order of legal priority. If the decedent left no written instructions, the common-law devolution of next-of-kin prevails: spouse, then adult children, then parents, then siblings, etc. Some state laws require a majority of any particular "class" (like a majority of kids) to sign off on the funeral. Other state laws allow just one member of that class to sign off, and still others, unhelpfully, leave it vague.

In many situations it's not clear who should have the final word. What if Bob has five kids who can't agree on burial versus cremation, and state law says all the children must agree? Should one child out of five be able to override the other four? What if the one hold-out is demanding a funeral that he can't OR won't pay for?

A New England funeral director tells of an unfortunate episode following the death of a young girl in a car crash:

Her parents were divorced and remarried, and the girl had been raised by the grandparents. There were about a dozen folks making arrangements, split into two camps around each parent. When we got to deciding where she was to be buried, an argument ensued. Everyone looked at me to sort it out, and I told

them they needed to work it out among themselves. Then the name-calling began. One side accused the parent on the other side of having nothing to do with the kid, which of course got a similar response from the other side. Then a teenager on one side of the room pointed at a boy on the other and yelled, "Oh yeah, well you abused your sister," which caused the accused kid to run out of the room crying. I then stood up and told everyone we were through for the day. It was a Sunday afternoon, and I'd make an appointment for them with the probate judge Monday morning to decide where she would be buried and told them they needed to go home. As they were leaving, a young man looked at me with a scowl and said "Thanks a lot!"

If your family can't reach agreement, you'll need to petition the probate court (you don't need a lawyer in probate court, however you may if jurisdiction is in a district or circuit court) to resolve the situation.

We urge you to do everything possible to avoid this—it's painful and often ugly. Though it might not seem so at the moment, it's usually better to grit your teeth and hash it out with the family members you just can't stand than it is to drag the affair into court. But do not blame the funeral director, who has no control over the situation.

- **You think funeral directors are psychic.** A typical example is the woman who called FCA furious that a funeral home carried out a burial for her father without notifying her or asking permission. It turns out that dad had a girlfriend who'd lived with him for many years. When he died, the girlfriend arranged the funeral and didn't tell the funeral home that there were living children. The daughter called FCA on a mission to sue the funeral home. "Didn't the funeral director have to check to make sure she really had the legal right? Shouldn't the funeral home have contacted me?"

There isn't any comprehensive next-of-kin database to consult. A funeral director has no way to know that the person who shows up in the arrangements office is or isn't the decedent's wife. There's no way for the undertaker to know whether there are six children scattered around the country. "Well, shouldn't she have had to produce a marriage certificate?" the woman asked. Well, no, funeral directors aren't obligated to "card" their customers, and it's easy to see how offensive this would be to many families. Carlson isn't even sure where hers is.

Most states require funeral directors to make a good-faith effort to find out who has the legal right to make funeral arrangements. So long as they do so, these laws usually indemnify the funeral director from lawsuits. If someone who didn't have the legal authority to do so

arranged a funeral for one of your family members, remember that your complaint is against that person, *not* the funeral director. Put yourself in the funeral director's shoes: Can you imagine any way that *you* would have been able to figure out if some person you met for the first time had a living sister six states away?

- **You think of the funeral home as a credit agency.** Many families mistakenly believe funeral homes are obliged to serve up an expensive, top-of-the-line funeral with no money down and then take payments of \$100 a month for five years. In years past, many funeral homes offered payment plans, but few do so today, having learned a hard lesson from the number of customers who have skipped out on the bill. Funeral homes have to pay their staff salaries, their mortgages, taxes, and utility bills. If your boss suggested paying you over five years for the work you are doing now, you'd say no. Don't expect the funeral home to take a deal that wouldn't work for you.

If you can't pay today for the funeral you want, then you can't afford it. Hundreds of consumers have called us over the years, upset that the funeral home won't set up a payment plan or that no charitable organization will pay for the final send-off "my mother deserved." A fancy funeral isn't an entitlement, and funeral homes have no obligation to take installment payments.

If you can't afford the funeral you want, you can be creative. Choose a simple burial or cremation and put together a loving, personal memorial service. Have a potluck dinner at the family home, where everyone brings a dish and a story about the deceased. Call your clergy person to arrange a religious remembrance at your house of worship. Ask your intimate friends and family to work with you to put together a gathering for everyone. In all but eight states, a family can handle the entire affair, including preparing the body, without a funeral home.

Note—Some funeral homes will refer you to loan agencies that do a quick turn-around, but these are almost always a bad deal. Such financing companies may charge ridiculous interest rates, draining your wallet for years after the burial.

- **You think funeral directors are security guards.** "Why can't we instruct the funeral home not to let Cousin George into the viewing? He never visited grandpa, he's awful to the rest of the family. . . ." It's surprising how many of these people have placed an obituary in the newspaper, *announcing calling hours*. A viewing or visitation announced in the paper is, by definition, a *public* event. If you don't want certain people showing up, don't tell the world about the event.

If you suspect that a troublemaking family member may show up anyway, be sure to alert the funeral home staff. There have been cases where the police had to be called because of an out-of-control attendee. If you suspect that will occur, talk to the staff and remember that it's the job of the police, not the funeral home, to handle the problem.

Another solution is to allow feuding sides of the family to have goodbye time with the deceased separately. A Vermont funeral director explains his method:

It has been our policy not to accept responsibility for sorting out guests, as most of the time we wouldn't recognize the unwelcome person anyway. In situations like this, we ask that a family member (the bigger the better) be assigned to take care of watching for and warding off the unwelcome. That has worked really well. These families are often overflowing with contentious personalities, and finding someone for this duty is not usually very hard. It takes us completely out of it. We let them know that we can call the police for assistance if needed, but we stay out of it. My college bouncer days are well behind me.

The separate visitation times has also worked well with feuding families. The unwelcome folks in question usually value some time alone with the deceased, more than being at the funeral with relatives they don't like, and it works out well for all.

When making arrangements, we tell folks who want a private funeral that no matter who calls us for service info, they will be told the service is private, and no service time will be given out—even if they say they are family, because we have no idea who will consider themselves to be family. We refer them to the person in charge from the family for service details. In this way, the family is completely responsible for anyone who shows up.

- **You think Aunt Jane will look like Sleeping Beauty.** As Jessica Mitford wrote in *The American Way of Death*, "Few people die in the full bloom of health, unravaged by illness and unmarked by some disfigurement." Yet many families have complained about the appearance of the deceased. Some of these complaints are well-founded: failing to put in the dentures, obvious sutures leaking embalming fluid, eyes not fully closed. Even, in some extreme cases, maggots.

That said, many factors affect how well an embalmer can present a body. Was the person emaciated or morbidly obese? What medications did he have in his system? Was the death physically traumatic? A sensitive funeral director will explain candidly what the family can expect and make recommendations.

We've seen some complaints, though, that are unrealistic. One woman wrote to FCA that the presentation of her "mother's body was less than perfect, which is unacceptable" and therefore "a sacrilege." Another family sent us color photos of their father's body, complaining that he looked awful. Of course, we didn't know what the gentleman looked like in life, but—as far as embalmed dead people go—he looked well-dressed and well-groomed. If the hairstyle is wrong, it can be fixed. But there's not much that can be done to avoid the distinctly funereal look of lying permanently on one's back.

- **You demand a pound of flesh for an ounce of sin.** Death is emotional, and funerals are deeply symbolic and important rituals for many people. But when funeral homes make mistakes—or even when they do wrong intentionally—customers should be sure the punishment they ask for fits the crime. One woman wrote to FCA with a complaint that contained what seemed to be some legitimate grievances. It looked as though the funeral home may have illegally substituted a cheaper casket and vault than the models the deceased had prepaid for. If true, that's plain old fraud, and the funeral home should be investigated by the state and fined sufficiently to deter that behavior.

But the complainant went too far. The woman sought a full refund, criminal and civil charges against the funeral home, reimbursement to her and her four sisters for the time they spent compiling paperwork, the state stripping *every employee* of their licenses, and permanent closure of the funeral home. We think the funeral home (if guilty) should pay a hefty fine for the casket swap-out and should be placed on tight probation under the supervision of state regulators. But to call for every employee of the business to be de-licensed, and to have the whole enterprise closed by the state is unreasonable.

Most of the advice in this chapter is simple common sense, but worth emphasizing because funeral misdeeds can be so frustrating to deal with. A person you love has died, you are in a stressful situation dealing with friends and relatives, and you feel cheated by a professional to whom you are paying a lot of money. Then if you complain, government agencies may try to white-wash the misdeeds instead of helping you as a consumer. It's human nature to either give up (and perhaps stew about it for the rest of your life) or else go into a rage that can become less than completely rational.

At a time like that, try to stand back, take a deep breath, and act in a cool, methodical manner. That will give you the best chance of righting the wrong and of protecting other consumers from similar problems in the future.



Mortuary Education

A dead end

10

SO YOU WANT TO BE a funeral director? Most states require that you pass the “National Board Exam” (NBE) first. To see what you will have to know, let’s take a look at the study guide. It’s put out by the International Conference of Funeral Service Examining Boards (ICFSEB). These are folks from around the country who sit on state funeral boards and are practicing funeral directors.

Study Guide for the Exam

We should mention first that some of the excerpts quoted in this chapter were earlier quoted in an article by Carlson in the FEO newsletter, and at that time a lawyer for ICFSEB wrote to complain that the quotations violated the Conference’s copyright on the material. Carlson responded by noting that only very small portions of the material were quoted and that this was consistent with “Fair Use” because the context is criticism, which would be impossible without being able to quote the original source. If you are interested in that controversy, the exchange is posted at <<http://www.funeralethics.org/newsletter>>.

The purpose of the exam, according to the study guide, is to determine who meets the “MINIMUM qualifications to function as an entry level funeral director and/or embalmer.” Here is a sampling from the Sociology section. The “correct” answers are in bold.

1. A funeral rite that in essence is devoid of religious connotation is known as:
 - A. adaptive
 - B. traditional
 - C. **humanistic**
 - D. memorial service
10. In a nuclear family, when the spouse dies, the surviving spouse:
 - A. never marries

- B. raises the children alone
 - C. depends on relatives to raise the children
 - D. returns to his or her family to let them raise the children.
11. A joint family would most likely be found in which of the following settings?
- A. metropolitan
 - B. urban
 - C. suburban
 - D. rural
15. Which of the family types traditionally practices patriarchal governance?
- A. joint
 - B. nuclear
 - C. blended
 - D. egalitarian

The first four questions in the history section are:

1. The first secular funeral director in the western world was:
 - A. Praecio
 - B. Libitina
 - C. Kher-heb
 - D. Litibinarius [sic] (apparent misspelling of Libitinarius)
2. Cremation first gained widespread acceptance and practice in:
 - A. ancient Rome
 - B. Hebrew lands
 - C. ancient Greece
 - D. Scandinavian countries
3. The Roman funeral was typically carried out by:
 - A. the family
 - B. the church
 - C. Military legions
 - D. public officials and paid secular functionaries
4. To keep down the cost of funerals in the Middle Ages, people often formed:
 - A. Burial Clubs
 - B. Church groups
 - C. Memorial Societies
 - D. Insurance Associations.

Now peek at the "Psychology and Counseling" section:

2. A person who expresses anxiety and discomfort while attending a visitation at a funeral home is most likely experiencing a/an:
 - A. inborn response
 - B. reaction displacement
 - C. **conditioned response**
 - D. delayed response
3. Which of the following is a determinant of grief?
 - A. feelings
 - B. **concurrent stresses**
 - C. behaviors
 - D. hostile reactions
6. According to Bowlby, attachments come from a need for:
 - A. sex
 - B. love
 - C. food and protection
 - D. **safety and security**
11. Psychology is defined as the study of:
 - A. emotion
 - B. **human behavior**
 - C. social groups
 - D. the mind
19. Which of the following acts of mourning is to experience the pain of loss?
 - A. First
 - B. **Second**
 - C. Third
 - D. Fourth

Would you feel reassured that a person is competent to handle a funeral of a loved family member based on ability to answer these questions? We'll stop quoting here, but the list goes on and on with questions that are equally useless, vague, badly worded, and/or irrelevant.

What's missing is coverage of the issues that really do matter. Only two superficial questions in the Funeral Law section mention the Federal Trade Commission's Funeral Rule, yet a violation of the Rule could result in a \$16,000 fine. Knowledge of religious and cultural diversity? That might be handy, but it's not covered if your family is, say, Native American or from the continents of Asia or Africa. No ethics questions at all. No questions on

who, other than next-of-kin, might have the legal authority to arrange a funeral, even though 40 states now have a designated-agent law. No questions on prepaid funerals. No contemporary cremation questions at a time when the cremation rate in some states is 50 percent or more.

Origins Veiled in Secrecy

How was the exam developed? On one page, the study guide refers to an organization with which it has had a somewhat rocky history: "All the questions . . . are linked . . . to the curriculum outline of the American Board of Funeral Service Education . . ." ABFSE is a group that is made up of mortuary school educators who nudged the Conference out of the business of accrediting schools in the middle of the last century. ABFSE seems willing to let the Conference continue the testing, however.

On a subsequent page of the Study Guide, ICFSEB has lurched out in a totally different direction. "In order to determine what tasks the entry level funeral director and/or embalmer should be able to perform, a geographically diverse group of funeral directors and embalmers drew up an initial list of tasks which funeral directors and embalmers performed in the field.[1985]" The list was up-dated in 1991, 1998 and 2004, we are told. But who was in the group doing the drawing up and updating? When Michael LuBrant, director of the four-year mortuary program at the University of Minnesota asked ICFSEB to see the data in the process of his Ph.D. work on criteria for mortuary education, they declined to share their information. What legitimate educational organization would operate in such secrecy or be so fearful of academic scrutiny?

The other group, ABFSE, hides behind the same curtains. When Carlson was working on a cremation article for the FEO newsletter, "Lighting a Fire Under Mortuary Education" (see <<http://www.funeralethics.org/spring05.pdf>>), she asked to get a copy of the mortuary school curriculum. She was refused. Fortunately, in the process of surveying all the mortuary schools to see what they were teaching—or not—about cremation, one brave soul agreed to leak an extra copy. Out of over four hundred pages, only two cover cremation and cremation merchandise. Several schools gladly shared that they went way beyond what was required in the curriculum guide, and one provided an excellent outline of the course work covering cremation. Other schools simply acknowledged that they "teach to the exam."

Bad Reviews from Funeral Directors

What does go on in mortuary schools? When Carlson asked on a funeral directors' Internet discussion group, "How relevant was your mortuary education," she was not surprised to get answers like these: "Not relevant at all" . . . "Little to none. All they were good for was to pass the boards." . . .

"The focus was to get us prepared for the board exams. Since the school was owned by a chemical company the underlying focus was to feature their chemicals in classroom settings." . . . "The word 'cremation' rarely came up in classes."

A woman who later became a nurse described her mortuary education this way:

Besides doing my own personal research into the development of the funeral industry in the United States, I attended courses in the Mortuary Science Department at San Antonio College in San Antonio, Texas. It was there that I got a behind-the-scenes look of the industry and what individuals wishing to become funeral directors were taught. It was during one of the first class meetings that the instructor stated, and I quote, "This is about making money off the dead, and if that is not what you are here for, you are in the wrong program." I was struck by his honesty but also tremendously shocked, disheartened and dismayed by the coldness of this statement. This was something that I had suspected but hoped against hope that I was wrong. As in the case of all industries in this country, the almighty dollar is the driving force of this one. In all of the courses I took, this remained quite apparent.

Another offered this commentary:

The problem for me was that, for all of the time devoted to sales and marketing, not to mention discussions of ancient peoples' burial practices, the intricacies of tort law, and the utter dissection of Mitch Albom's *Tuesdays With Morrie*, there also was almost no mention of any non-traditional family relationships. The typical "client" always seemed to be middle to upper-middle class, loved by all family members, straight, religious and "traditional" in that they wanted a conventional funeral service. Never mind the rest of us.

The embalming instructor often stepped up on her soap box to proclaim that we were doing the most sacred work known to man and that respect for the deceased was the utmost responsibility of the embalmer. I wonder how she missed the idea that some people's idea of sacred and respectful did not include plunging a trocar into their heart and lungs? By not teaching, or even allowing the idea of natural death care into the classroom, and even worse, by coyly implying that unembalmed bodies were potentially menaces to society, she sends class after class of mortuary practitioners out into the field with no foundation or inclination to provide assistance in caring for an unembalmed body. This perpetuates the idea that it is illegal, because no funeral director wants to experiment or learn on

the job how this type of work should be done, so they say that it can not be done.

The one part of my mortuary education that bothers me the most is the fact that I had to go to those outside of the industry, to those who often oppose the practices of the industry, to learn how to care for families who come to me for help. There is no reason that the entire mortuary program, while it does a nice little dance around Judaism, Islam and Hinduism (all religions that specifically forbid embalming) in the religion course, could not include instruction on how to care for a body without embalming. The fact that the use of dry ice was a totally new concept to me when I saw it in the video "A Family Undertaking," as I was about to graduate from mortuary school, is deeply disconcerting to me.

Slocum has received similar reports at the FCA office. Several mortuary school students, apparently sensing something wasn't right, have contacted FCA to verify that what their instructors were telling them was true. One Texas student wrote asking for all the materials pertaining to the Federal Trade Commission's Funeral Rule. He said he was learning precious little about it in his mortuary law class and felt a duty to understand it before he went into business. Would that his instructors felt the same. Another student claimed the mortuary law teacher (are you detecting a pattern?) stated that *failing to embalm* a body was considered "abuse of a corpse" and grounds for a lawsuit against the funeral home. Baffled, the student asked, "Shouldn't it be the other way around, with the family's permission required before embalming?" Well, yes.

Mortuary education today seems a little like incest with unwilling partners, partners who have no idea how to talk to each other, and both of whom seem stuck in practices and ideas that are 40 years out of date. Mortuary schools have little choice but to teach the prescribed material, no matter how irrelevant it may be. In order to be accredited by ABFSE, 60 percent of a mortuary school's students must pass the ICFSEB exam on the first try. It's no wonder schools are teaching to the exam, and—in some cases—ignoring any other curriculum requirements that might improve their graduates' ability to perform well in the field.

In addition to the National Board Exam, the ICFSEB website states, "The Conference provides administrative support for some state examinations." Vermont is among the 16 states listed, and Carlson was eager to see what kind of state exam the Conference was giving to Vermonters. So she asked the Funeral Board administrator to request a copy of the exam. The Conference refused. One suspects it is the same exam that is given under the NBE title, as that is the only study guide suggested to students.

In other words, Vermont's Board of Funeral Service requires new funeral director applicants to pass a test it has never seen in order to be licensed in the state of Vermont. What sense does that make? (Other states for which ICFSEB says it has state exams are Alabama, Alaska, Arizona, Hawaii, Idaho, Louisiana, Mississippi, North Carolina, Nevada, Ohio, Oregon, South Carolina, Tennessee, Texas, and Washington.)

Recommendations

Ideas on how to improve mortuary education, at least in any detail, would be beyond the scope of this book. But it clearly serves no public purpose to just require a little jargon and sales techniques to convince families in grief to part with more of their money. States should be encouraged to eliminate mortuary school, at least in its present form, and the NBE as licensing requirements. A good liberal arts education, a one-year internship, and a real state-generated exam make far more sense. At the very least, any trade school purporting to prepare students for the contemporary, real-world funeral business should focus much more attention on the Funeral Rule, cremation procedures, the legal rights of consumers and their designated agents, preparation and presentation of bodies without chemical embalming, and the growing interest in natural burials.

A black and white photograph of a grassy field, used as a background for the title section.

Home Funerals

A returning tradition

11

ALTHOUGH FIRM STATISTICS ARE HARD to come by, home funerals, once the standard practice in America, are making a comeback.

This is a recent phenomenon. When Carlson's first book, *Caring For Your Own Dead*, was published in 1987, her mission to alert the public that they had a right to take funerals back into the family was met with near-universal shock and derision. She recalls appearing on the Phil Donahue show (the most-watched talk show at that time) just after the book was published:

Donahue had not read the book, and his staffers had equated my ideas with the funeral kooks. I mean, I was on his show with the mummification people [Summum, a "religious" nonprofit in Utah that will mummify you for \$67,000]. The poor funeral director from the National Funeral Directors Association, sent to represent the industry, sat there ramrod straight and wide-eyed, not sure what to say. The audience took Donahue's lead—he clearly thought he had a bunch of weirdos on his hands, including me, because he sneered about "schlepping dead bodies around in pickup trucks."

Carlson managed to soften Donahue a little after he learned that she knew one of his heroes, Jessica Mitford, and after she discussed the historical traditions of caring for the dead. In fact, Donahue later invited Carlson back for a second appearance to discuss how families can save money by taking on some of the aspects of funeral care themselves. But the initial reaction was telling.

"Back in those days, we couldn't give the book away to hospice. We thought that was a perfectly logical extension of the hospice ideal and a logical audience for the book," Carlson recalled. "But the national hospice organization wanted nothing to do with it. A minister, chairman of my local hospice's education committee, refused to accept a gift copy of the book, claiming 'nobody would be interested in that'."

John Blake, executive director of the Continental Association of Funeral and Memorial Societies (CAFMS, the organization that later became

Funeral Consumers Alliance) approved of the idea of giving consumers an inexpensive way to bypass dealings with the commercial funeral industry, but many local funeral consumer organizations around the country were wary of or indifferent to the idea of families caring for their own dead.

"John liked it, but I quickly found I was considered a freak," Carlson said. "I simply soft-pedaled it in my relationship with the funeral societies. But many of them came to appreciate the legal information on a wide variety of funeral issues. Once I got involved in funeral consumer advocacy, I became interested in the rights of *all* consumers, not just the do-it-yourselfers. And because of that, the legal research for the 1998 version of the book was much broader. I figured that even some home funerals will involve working with the industry to a degree, and you damned well better know what your rights are when you do."

Progress in helping people to understand the home death-care movement has been substantial. The "green funeral" movement, discussed later in this book, has worked its way into American culture, aided by such events as a moving natural-burial scene in the television series "Six Feet Under."

Yet as recently as December of 2005, a major television pundit, Keith Olbermann, decided that Carlson was that day's "Worst Person in the World." Olbermann's verdict was based on an inaccurate four-paragraph news story describing her goal of establishing a memorial park that would include opportunities for green burial by families caring for their own dead. Olbermann's off-the-wall description went like this:

That's right: families could go dig their own graves, for their own loved ones. No fuss, no muss, no caskets, no embalming. Just bring your own shovels, and fill 'er up.

There was some obvious intent of humor in Olbermann's comments on a slow news day when he couldn't think of anything more horrible than letting families care for their dead in an environmentally sound manner, and, of course, Carlson took it in that spirit. But clearly we had, and still have, a long way to go in getting the message across that there is nothing the least bit bizarre about families wanting to say goodbye to loved ones in a more personal way than just writing a big check to a funeral director.

The authors of this book strongly advocate the right of families to care for their own dead and we are pleased to see the resurgence of interest and acceptance of this tradition. But because our modern society has lost the common knowledge of how to care for the dead, it may be particularly difficult for many people to go through that learning curve at a time of immense grief. It is, therefore, encouraging to see the emergence of a new group of helping professionals and volunteers serving as home funeral guides.

The practical details of caring for the dead—filing death certificates, moving the body, etc.—are discussed in Part 2 of this book, beginning with the necessary general information followed by the specifics for each state.

Home Funeral Guides

Most funeral directors say they entered the field to help people manage one of the most difficult times of their lives, and we think most of them mean that sincerely. Home funeral guides say much the same thing, but they have a very different idea of how to help the grieving. These women (almost all of the ones we know about are women) universally express a desire to *empower* families to make their own decisions. They don't want to *direct* the funeral; they want to ensure that the family has the practical knowledge they need to direct it themselves. In contrast to the conventional funeral industry, much of which is still reluctant to give consumers truthful information, home funeral guides are among the best sources of accurate information on funeral options and families' legal rights.

We refer to these women as home funeral guides, although not all of them go by that title. Some call themselves death midwives, some consultants, and some have not adopted a title of any kind, but "home funeral guides" seems like the best generic description.

Jerrigrace Lyons of northern California is the *grande dame* of the home funeral guides. One of the first people in the country to put herself in the public eye as a death midwife and home funeral educator in the 1990s, Lyons has conducted workshops around the country training people on everything from the practicalities to the (in her view) spiritual aspects of home funerals. She founded *Final Passages* in 1995 after her friend Carolyn Whiting died. While Carolyn's death was unexpected, she'd thought about her funeral in advance and left detailed instructions to her friends requesting a mortuary-free funeral at home. Since then, Final Passages has helped more than 150 families bury their dead privately, and the group offers seminars for health-care workers, complete with state-required continuing education credits.

Beth Knox of Maryland founded *Crossings* after her daughter was killed by an airbag in a low-speed car wreck. She describes it as follows:

She left suddenly twelve years ago at the age of seven. When the life support at the hospital was about to be removed, I was told that the hospital could only release her to a funeral home. I had given birth to her. She had lived with me every day of her life. I had carefully chosen what she was exposed to, what she ate, where she went to school. I was required by law to care well for her. But now that her heart had stopped beating, I was being told that her care was no longer my concern.

As it turns out, the hospital was wrong. I had the legal right to care for my daughter, but I didn't find that out until later. In the meantime, I found a funeral home that was willing to "pick her up" but then bring her directly to our home. (I later found out that I had the right to transport her in the van in which I had driven her to school each day. I was not required by law to call a funeral home at all.) I cared for her at home for three days, bathing her, watching her, taking in slowly the painful reality that she has passed from this life, and sharing my grief with her classmates and brothers and grandparents and our wonderful community of friends, before finally letting go of her body.

Now an educator and advocate, Knox teaches the things she didn't know until it was too late. According to her website, at <www.crossings.net>:

We are a home funeral and green burial resource center—particularly educating the family to act as funeral director—which is legal in almost all 50 States. We do this through:

Education—letting families know that they are THE decision-makers in after-death care and can exercise choices that will bring about greater healing.

Information—making information available on the exact choices available to you in creating a better experience in after-death care whether working with or without a funeral director.

Support from Enlightened Funeral Directors

Until the early 2000s, Lyons and Knox were the only prominent names in this new field. As of 2011, <homefuneraldirectory.com> lists more than 60 individual consultants, support groups, and organizations nationwide that give advice on home funerals. To our great pleasure, a few brave funeral directors are among them. It's not easy for an undertaker to rebel against the industry climate of fear and territorialism, but if home funerals are to become anything more than a secretive "fringe" option, forward-thinking funeral directors need to take up the banner.

Char Barrett is one such pioneer. A relentlessly upbeat businesswoman in Seattle, Barrett runs a funeral business specializing in home funerals. She came to the field in a roundabout way. Interested in hospice work after her father's death, Barrett was surprised by a friend's suggestion that she become a funeral director.

"I resisted at first, then I researched it. I didn't want to leave Seattle to get a degree, but I did get my associate's degree in mortuary science," said Barrett. The worst part, she said, was the requirement to practice embalming:

I had to, which was absolutely traumatic to me. I had to do so to meet degree requirements. Literally in a 2-year degree, I spent a whole year learning about embalming. And the rest of the classes—understanding grief and loss—anything about the role of a funeral director was a *quarter* of the classes. It's ridiculous how weighted the curriculum is to embalming. But I have to say, having gone through that, I can stand toe to toe with the rest of these guys. I can say "Hey, I've been through this, I know what embalming's about."

While Barrett will do a conventional funeral for anyone who requests it, most of her clients don't want a "one-of-everything" affair. Whether a family hires her for consultation and paperwork only, or whether they ask her to help put back together a disfigured victim of a car accident, Barrett says her place is to do just what—and no more than—a family wants and needs.

Some Funeral Directors Find It Good for Business

Some more conventional funeral directors, too, are sensitive to the needs of home-funeral families and will work with them to provide as much, or as little, service as they want. Indeed, it's good for business. Peter Stefan of Worcester, Massachusetts, relates that he got several full-service, quite profitable funerals from one extended family after helping one of them perform a home funeral for a minimal cost.

Randy Garner placed the following on his funeral home's website:

We realize that in Vermont, there is no requirement that you use a funeral director or funeral home provided merchandise or that you conform to a set of pre-determined packages or options. We recognize the value of family involvement in any portion of the death care and funeral process and will do our best to make sure that our charges are an accurate reflection of the duties you specifically ask us to perform.

Interest in home funerals has hit critical mass: The first national conference for home-funeral guides took place in Boulder, Colorado in October, 2009. Organized by Karen van Vuuren of Natural Transitions, a 501(c)(3) educational nonprofit, the meeting attracted 40 participants from around the country. She described the meeting as a first step toward building a national alliance of home funeral advocates.

There was consensus on one thing: Well-meaning people have to stand up more assertively for the right to choose a home funeral if advocates are to prevent the commercial industry from using state legislatures to shut the movement down.

"It's not just about protecting a family's rights, but protecting their rights to *choose the resources that support that choice*," said van Vuuren.

Van Vuuren and funeral director Char Barrett (with help from many others) launched the National Home Funeral Alliance in 2010, the first non-profit group specifically devoted to protecting the rights of families to keep the funeral in their hands. One of NHFA's first projects will be a position paper, co-written with Funeral Consumers Alliance, laying out model state laws and guidelines. NHFA debuted at the 2010 home funeral conference in Boulder, which saw double the attendance over the year before. A code of ethics is on their website at <<http://homefuneralalliance.org>>.

Unlike conventional funeral homes, home funeral guides have no overpriced coffins to sell. They don't embalm, and they repudiate mortuary mythology. Home funeral guides charge various prices, but they're substantially lower than the average "get in the door" basic services fee at most funeral homes (\$1,500 or more is typical at the mortuary). Beth Knox's Crossings is a nonprofit that works on donations and promises to help anyone in need. Home funeral guide Mary Kateada offers a free consultation, then asks for \$25 to \$35 an hour depending on how involved the family wants her to be. Holly Stevens, cofounder of the Funeral Consumers Alliance in Greensboro, NC, put together an amazingly comprehensive website and a free downloadable book at <www.undertakenwithlove.org>.

The Industry Fights Back

How much of a threat to consumers is a middle-aged woman giving a public talk at the library, telling people how to file a death certificate, how to wash and diaper the dead for a home wake, and the best way to put the body in a homemade coffin without straining your back? To Oregon State Senator Vicki Walker, such a woman is a menace indeed. In 2009, Walker drafted a bill that contained a provision requiring "death care consultants" to get a state license:

Regardless of any title used by the individual, an individual practices as a death care consultant if the individual offers, for payment, consultations or workshops to individuals or groups regarding funeral or final disposition services.

In plain English, anyone who takes even a dollar in exchange for explaining how to arrange a memorial service, how to navigate a funeral home's price list, or the cremation process, would need a state license. One can immediately see how clergy, secular celebrants, or officiants-for-hire, even consumer advocacy groups, could run afoul of the law. One estate-planning lawyer called Slocum in shock at the idea that his law degree and specialization in end-of-life planning would be considered insufficient.

Given the widespread lack of knowledge about the funeral industry and its effect on the public—not to mention the knee-jerk response provoked

whenever anyone utters the dreaded words “dead body” or “funeral”—lawmakers easily passed it and the governor signed it.

The bill included no guidance on how death care consultants (DCCs) should be licensed or even what criteria the state should use. It simply gave the Oregon Mortuary and Cemetery Board—the agency that regulates the conventional high-cost death industry—the power to set its own standards without even giving those to be regulated any representation on the board.

Sen. Walker never responded to a detailed letter of concern Slocum sent on behalf of Funeral Consumers Alliance. FCA pointed out the obvious constitutional issues that arise when a state requires a license in order for a citizen to engage in free speech. Slocum also noted how strange it was to want to crack down on private citizens whose entire mission was to empower and educate grieving consumers and to demystify the funeral process so families might protect themselves from commercial abuse.

The state board’s executive director put together an advisory committee that included two home funeral guides. But the rules drafted by the committee were ignored, and the executive director submitted her own to the board. No education was required for these new licensees, there was no description of the exam they would have to pass, no professional standards spelled out. But authors and those who gave workshops were excluded. Several home funeral guides quickly decided to offer their services for free, payment being the primary trigger for licensing. (Read the Oregon chapter for the adventures Carlson had flying to Oregon to take the DCC exam.)

A Close Call in Colorado

Things almost went very badly in Colorado, too. Karen van Vuuren, a soft-spoken English expatriate, feared she’d be barred by law from helping families when state representative Nancy Todd, a former schoolteacher, introduced House Bill 1202. Todd claimed she was alarmed that Colorado was the only state that didn’t regulate the funeral industry, a legitimate concern. But she consulted exclusively with the Colorado Funeral Directors Association and ignored letters from Funeral Consumers Alliance urging her to amend the bill’s overly broad language. The original version appeared to bar anyone from offering advice on arranging a funeral unless that person had thousands of hours of experience in the conventional funeral industry—an inappropriate requirement for people like van Vuuren, whose mission is to help families *avoid* formaldehyde.

“We are being brought under the auspices of controlling bodies who don’t really understand who we are and are trying to regulate us like we’re mortuaries,” van Vuuren said.

Representative Todd fell for scare tactics too. She told a television news reporter she was alarmed that home funerals were legal, because, she mused,

what was to stop someone from killing grandma and burying her quietly in the backyard? (A total non-sequitur, as funeral directors have no role to play in deterring murder coverups. That's why we have death certificates, burial transit permits, and autopsy requirements for suspicious deaths.)

Fortunately, the final version of the bill that passed exempted nonprofit organizations from the requirements imposed on commercial mortuaries, but it still appears to prevent people like van Vuuren from so much as touching a body to help a private family lift it into a casket. Though the amended bill was better than the original, she said it was far from perfect.

"I think it remains to be seen [how the new law will affect groups like ours]," said van Vuuren. "The amendment that went in, I didn't want it to just refer to nonprofits [but] it was a total last minute thing."

In Pennsylvania, Reverend Lynn Acquafondata, who serves as an "end-of-life guide" offering grief support, was paid a visit by the investigator for the State Funeral Board. Afterward she wrote:

I was able to get a *pro bono* lawyer who is doing an excellent job. She met with me when I talked to the state investigator. Some of his questions were friendly, some hostile. He does not make the decision, only presents the facts to the board of funeral directors. At the end he mentioned that he is a funeral director himself.

Acquafondata's focus is on the spiritual aspects at a time of death. Although she does have information about biodegradable caskets and shrouds on her website, the website states clearly that she does not do the things that funeral directors do such as washing and transporting bodies. She notes that families can do those things for themselves.

When Phyllis Ingold and her sister had a home funeral for their mom, a policeman arrived at their door, "because I hear there's a dead person here." Two weeks later, Phyllis received a letter from the lawyer for the Pennsylvania Funeral Board, accusing her of behavior for which she had to be licensed as a funeral director, citing occupational code. He stated that, while the investigation was closed without action, any "future complaints of this nature" would result in a \$10,000 fine. Phyllis, of course, had no intention of going into the funeral business. Neither did Rabbi Wasserman in the Pittsburgh area, when he helped members of his congregation with funerals as part of Jewish tradition. He, too, has been paid a visit by the Board's inspector.

It seems most likely that these complaints have come from those in the industry. When Carlson sent an e-mail to John Eirkson, president of PFDA, offering to set up a continuing ed course on home funerals and what PA law permitted, she got no response. It certainly paints the Pennsylvania undertakers as mean-spirited and lacking the traits typically cultivated—compassion and understanding.

Cracks in the Dam

We worry that the events in Oregon and Colorado—and maybe Pennsylvania—are the cracks in the dam that will unleash a flood of misguided state laws that could stifle the growing home-funeral movement.

We've certainly seen no evidence of harm to consumers from home funeral guides. And it's unclear what harm such laws would seek to prevent anyway. The philosophy underlying the Federal Trade Commission's Funeral Rule is the recognition that the real harm to consumers comes in the form of emotional manipulation that costs grieving people a great deal of money. Over and over again, we've seen instances of funeral directors who make up non-existent laws about the necessity for embalming or sealing caskets, who pressure the grieving into believing that the more money they spend, the more effective "grief-therapy" they will receive. State regulation, however, is still mired in the outmoded propaganda that undertakers are a vital part of "protecting the public health" and that only those with a degree in mortuary "science" could be trusted to handle the dead.

Pros and Cons of Regulation

The question of regulation—whether home funeral guides should be licensed or whether there should be required training—remains more divisive. We e-mailed or called several home funeral guides to ask their opinions. The women who responded made valid points for and against the idea of regulation. Here's a sampling (we've condensed some responses):

I myself am torn on the issue of regulation. There is no problem, of course, as long as money is not involved in the relationship between guide and client. *Undertaken With Love* is squeaky clean in this regard as nobody is earning anything from our project; any small donations we get go right back in to our education efforts. . . . I'm not saying home funeral guides ought not to charge for their services, but once money enters the picture, two areas of concern arise. Home funeral educators become vulnerable to funeral industry assertions that they are practicing funeral service without a license because of the vague and broad definitions of funeral service in most states' statutes. Also, the practice of home funeral guiding itself, if it ever is seen to be lucrative, will lure those who are motivated primarily by greed rather than by service. . . .

— Holly Stevens, FCA of the Piedmont (North Carolina), author of *Undertaken With Love*

I know that in Oregon, the idea of licensing was not well received by all of the women. I believe only three women were supportive and that was because they thought they could be a part of creating the licensing test or regulations. I highly doubt that they would be allowed much input on this.

—Jerrigrace Lyons, *Final Passages*

Do we need regulating? I haven't explored this fully, but my gut says yes we do. I feel it would bring recognition, credibility, legitimacy, but I would only want it if it would not curtail family rights. I just have to compare it to, for example, the home birth movement. In Colorado, they were underground, but they were serving a need. Then they bit the bullet and became registered with the state. [Regulation or licensure] is protectionist to a degree, but it is protectionist toward the consumer. . . . It's definitely a hard thing, regulation. It's not as if it's clear it's absolutely the right thing to do. . . .

—Karen van Vuuren, *Natural Transitions*

The authors are undecided on the question of regulating home funeral guides. The traditional legal trigger for licensure has been whether someone takes money in exchange for hands-on services such as moving or washing the body. Recognizing the vulnerability and lack of knowledge most families have when it comes to buying funeral services, there's an argument to be made for seeing that as a reasonable "bright line" test.

By comparison, most states require licensing of electricians and plumbers. You can wire your own outlets and snake your own drain—the licensing requirement kicks in if you charge money to do these things for others. After all, as a botched wiring job could set a house on fire and an incompetent plumber could leave a basement swimming in sewage. An "incompetent" home funeral guide can't make Grandpa any more dead than he already is. And nearly every state requires unnecessary training in embalming, casket-merchandising, and the trappings of the costly "traditional funeral," in order to be licensed. Neither consumers nor home funeral guides would be well-served by these sales-oriented "educational" rules.

Funeral directors, of course, have complained about death midwives, asking "Why don't they have to get a license before they haul bodies and perform wakes, just like I do?" Well, death midwives don't belong to an industry that has taken massive economic advantage of the bereaved, they don't lie about the legal or health necessity of embalming, and they don't manipulate the legislative system to shut down consumer choice.

It's also true that building professional organizations of home funeral guides, and perhaps creating a separate licensing or registration system,

could increase public awareness of and confidence in home funeral care as a legitimate option. But the analogy with actual midwifery goes only so far; there are real potential medical dangers to mothers and infants during birth. There is no such danger when the client is already dead. Moreover, nearly every trade that organizes and strives for legal recognition as a profession ends up using its clout to raise prices and shut out competition through bogus legal restrictions. No one doubts the good intentions of the pioneering women in this project, but neither is anyone immune to the seductions of exclusivity and prestige.

Entrepreneurs in the home-funeral field who haven't done their homework could also spark a regulatory backlash that could endanger the rights of ordinary citizens to care for their own dead. One woman from Georgia wrote to Carlson to say she "quickly" needed to know the laws in her state, as she was setting up a home funeral business—not exactly confidence-inspiring. A Vermont man set up a website selling "green" funeral services with no apparent knowledge that he needed a funeral director's license to sell his services in transporting bodies and filing legal paperwork for customers. While the "educational" requirements for an undertaker's license are questionable, it's no good to flout the law and provoke a crackdown.

Given the momentum behind the home funeral movement, it seems inevitable these issues will be debated by regulators and legislatures around the country. We have every reason to worry that funeral trade groups will do everything in their power to marginalize or shut down those who offer home funeral services. It will be crucial for home funeral guides, consumer advocates, and interested citizens to be on guard against such attacks.

Home Funerals without Guides

We've focused much of this chapter on home funeral guides because they play an increasingly important role and because of the controversies about state regulation. In closing, it's appropriate to remind readers that in the past, most families handled most deaths themselves without funeral directors or guides.

Although managing death is no longer part of the common knowledge of our culture, families still have the right to do so in most states, and most are more than capable of handling all requirements themselves. But for some, at a time of intense grief, an experienced guide can help with the process, and we find that movement to be constructive and encouraging.



Green Burial

What they used to just call “burial”

12

IT'S AMUSING HOW OFTEN JOURNALISTS call the Funeral Consumers Alliance wanting hear about “that new kind of burial.” What's become known as “green burial” is what people throughout history have called, simply, burial. It involves laying the body in the earth without chemical embalming, a metal casket, or a vault. Our ancestors from the late 19th century and further back would recognize it; devout Jews and Muslims still practice it.

But the full-service formaldehyde funeral has been the new “normal” for more than a century, so getting society to think outside the box isn't easy. Consumers and reporters often ask “Is green burial allowed in my state?” This question presumes that one needs the law's permission to skip embalming, steel caskets, and burial vaults. In fact, no state laws require embalming or the use of a coffin or outer burial container as a condition of burial (though many cemeteries have policies that require vaults).

Interest in green burial is growing, and so is the number of cemeteries that allow it. Anyone considering green burial, however, will have to contend with the growing pains of this “new” idea that's beginning to make headway into the staid burial business. While the funeral industry as a whole seems more welcoming to green burial than it was to cremation 30 years ago, undertakers and cemeteries in many areas know little about it—or write it off as an affectation confined to “liberal tree-huggers” on the coasts.

And while green burial would seem intuitively to be cheaper than a conventional funeral, some green cemeteries charge premium prices, as their primary goal is to conserve virgin land, and that takes money. The American entrepreneurial impulse is having its effect too, with manufacturers and vendors hawking all manner of “sustainably sourced” wood coffins and the like at *boutique* prices. If you're not careful, your low-carbon-footprint, back-to-nature burial might cost as much as a conventional funeral.

Everything Old is New Again

As it was with cremation, the United Kingdom is ahead of the US when it comes to green burial. As of this writing, there are more than 200 “woodland

bural grounds" in the UK. No agency keeps track of all so-called green cemeteries in the US; we found about 30 in our research. That number may be out of date by the time you read this. A good place to look for information is the Green Bural Council's website, <www.greenburalcouncil.org>.

Green bural grounds can be quite different from each other. Some are parcels of virgin land operated so as to ensure indigenous plants and wildlife are not disturbed; think of them as nature preserves. Others are a bit less strict, and still others are conventional cemeteries that have set aside parcels where coffin-less bural is permitted. What they have in common is that they don't permit embalming, a vault, or a non-degradable coffin.

Billy Campbell a small-town doctor in Westminster, South Carolina, and his wife, Kimberly, a British expatriate, are pioneers in the green bural movement. Billy first wrote about the idea in a local environmentalist magazine in 1988. That germ of an idea grew into the opening of Ramsey Creek Preserve in 1998, the first natural bural ground in the US. See <www.memorialecosystems.com>. By all accounts, the rural land with a creek running through it is breathtakingly beautiful and peaceful.

Billy first started thinking about the connection between death and environmentalism in college. By the early 1990s, he said, "If you got more than three drinks in me at a party I'd go on and on about it Kimberly told me I should stop talking about it and do it." While intensely interested in conserving open land, Billy is quick to point out that that doesn't mean keeping people out—quite the opposite.

"I think we have this idea that land is just something we use, that it's just a backdrop for recreation," he said. "I think there was something really missing when we urbanized in the last century. There [were, historically,] families who really loved their land and felt connected to it. I think we lost that." Marrying bural with protection of the natural landscape seemed like a sensible way to restore some of that connection. Interestingly, this is a contemporary extension of what was known as the rural cemetery movement in the 19th century, a time when cemeteries were moved to the suburbs and designed to include rolling hills, trees, and *charm*. Proponents hoped families would enjoy the landscape and see the bural grounds as a place to stroll and to picnic, not merely as an overcrowded repository for the dead.

Obstacles to Green Bural

Those ideas had lost currency by the 1990s, and there was a great deal of suspicion when the Campbells first opened Ramsey Creek. "Some people went so far as to say we were actually throwing bodies in Ramsey Creek or feeding them to the buzzards," Billy said, laughing as he recalled it. "But it's no longer cool to make fun of Ramsey Creek around here, since you might know someone who's buried here!"

The idea has met with even more suspicion elsewhere. In what we hope will remain a unique example of hysteria, Bibb County Georgia became the first municipality in the country to ban simple, cost-effective, environmentally friendly burials. The supreme irony of Bibb County's 2008 ordinance was that it was enacted, supporters claimed, to *protect the environment*. Misinformation and fear ran amok when residents Beth Collins and Jim Wood announced plans to open a green cemetery on a 58-acre parcel they owned. Despite having already given Collins and Wood a permit for this use, county commissioners back-pedaled and enacted an ordinance that:

- Requires all bodies to be inside “leak-proof” caskets and vaults, though no such products exist. In fact, it’s a violation of the Funeral Rule for undertakers to make such claims about their products.
- Requires all burials to be 1,000 feet from water, which is also impossible, as one will almost certainly hit water if drilling straight down that far.
- Requires all new cemeteries to be walled off to keep out “wild animals.” How a wall will stop birds and groundhogs from getting in—or why anyone would want to—is unclear.
- Requires families to buy an “appropriate” and “permanent” grave marker, a bizarre reaction to the practice of using indigenous stones (or no marker at all) at green burial sites.
- Bans private burial on family land, and requires a funeral director to oversee all deaths from “communicable disease.” (The flu is communicable, yet we don’t require families to hire a registered nurse whenever little Johnny comes down with it).

What was Bibb County so afraid of? We can’t be sure, since county officials never responded to a seven-page letter from Funeral Consumers Alliance outlining the logical and legal problems with the new green burial ban. But it’s a safe bet that misplaced fears and myths about the “contagion” from dead bodies overtook common sense.

A surprising number of people treat dead bodies as if they were one-person Superfund sites, ready to leak dreaded contaminants into the ground water. Until 2010, the Vermont Veterans’ Memorial Cemetery actually required all bodies to be embalmed, out of concern for groundwater quality. That’s right—the state supposed that burying carcinogenic formaldehyde close to the town wells was a safer idea than letting people decay naturally.

This becomes even more puzzling when you take a drive out to the (quite beautiful) cemetery itself; dairy cows are pastured directly across the street, but no one seems worried about water “contaminated” with cow flops.

But the unembalmed and uncoffined dead pose no danger to the living. Disease-causing organisms die with the person. As a writer for the Pan-American Health Organization noted, "The microorganisms that are involved in decomposition are not the kind that cause disease."

Cost, Conscience, and Greenwashing

In our capitalist nation, vendors like nothing better than coming up with something "new and improved"—with a suitably upgraded price. This is a particular concern when it comes to green burial and the stodgy conventional funeral industry.

To give credit where it's due, funeral directors as a whole have been much more welcoming of green burial than they were of cremation when it started gaining popularity. For 30 years undertakers fought cremation with every weapon at their disposal (some going so far as to show families gruesome pictures of actual bodies on fire). By comparison, today, the funeral trade magazines talk about green burial regularly and invite experts to their trade conferences, despite continued skepticism in many areas.

But consumers need to be wary. Funeral homes realize that green burial could threaten their cash flow if they don't handle it carefully. After all, green burial is about what you *don't* buy. Cross off the metal casket and go for a shroud, skip the embalming and use dry ice instead, and forget that bronze-lined burial vault. A boon for your wallet, but not for the mortician's wallet. Expect that some funeral homes will start marketing green burial as a premium service with a premium price, perhaps by appealing to your sense of doing right by the environment. It makes sense to ask, "Why am I paying you more money for fewer products and services?"

There's a hint of fear, perhaps bordering on desperation, lurking behind some of the more fanciful ads in the funeral trade magazines—green burial isn't a welcome development for companies that make their living selling boxes for burning and burial. Matthews International, maker of crematory equipment and monuments, took out a full-color ad featuring a wooded glade and the improbable assertion that "Taking Care of the Environment Is In Our Nature." The ad copy goes on, "Our latest advancement in technology, the M-pyre system, lowers fuel consumption, reduces emissions and increases performance of cremation equipment." Which is all well and good but not likely to win over those who object on principle to the energy and emissions associated with cremation.

Wilbert, one of the largest vault-makers, is straining even harder with an ad that reads, "Concrete Burial Vaults—a Natural Choice?"

You may not think of a traditional ground burial as being green. But there are steps you can take—beginning with the use of a lined

concrete burial vault—to make ground burial more environmentally friendly. . . . A lined concrete vault also protects the environment by preventing chemicals from escaping the vault's interior and seeping into the earth.

The *piece de resistance* comes at the end:

At the same time, it helps protect a family's loved one nestled inside by helping resist the entry of outside elements. Isn't it nice to know families can protect their loved one *and* the environment? Now **that's something to think about.**

Indeed it is.

You can't consume your way to conservation, and you shouldn't have to spend more in order to waste less. When author Mark Harris called Slocum during the research phase for his book *Grave Matters*, he wanted advice for his chapter on caskets. "What's the greenest casket you can buy?" he asked. Slocum replied, "The greenest casket you can buy is the one you *don't* buy."

There are all manner of "green" coffins coming on the market—made of recycled paper, sustainably harvested woven willow, etc.—but some of them are imported from overseas. How "green" is it to have something flown in for your funeral on a jet? And the cost? The "Ecopod"—which looks like a cross between a willow seed and a science fiction hibernation chamber—retails for several thousand dollars. A homemade box from local scrap lumber might be more appealing to both environmentalists and the budget-minded.

If the funeral home you're considering offers green burial, a quick way to gauge whether the price is reasonable is to compare it to the charge for immediate burial (which is, after all, basically a green burial). We see no reason why a green burial package ought to cost any more than an immediate burial unless you request extra services or merchandise.

Joe Sehee, Executive Director of the Green Burial Council, says he is concerned about "greenwashing"—tarting up products and services as environmentally sound when they aren't. He formed the GBC in 2005 to set standards for green cemeteries, and quickly found a need to make inroads with funeral homes, too. "The original idea was to set standards just for burial grounds, but we realized this wasn't going to get any traction if the funeral service industry wasn't on board," he said. "If you didn't have people willing to handle un-embalmed bodies, how were you going to do green burial?"

The GBC began recruiting funeral homes to build a network of "approved providers," but many mortuaries turned out to be green in name only. Carlson investigated some of them for her FEO newsletter in the fall of 2008, and found funeral homes requiring embalming after 24 hours, listing steel caskets as "protective" (implicitly discouraging green burial), and charging far more for green burial than for comparable simple options.

Sehee argued that the GBC didn't want to "set the bar too high" at first, considering how skittish funeral homes are about anything unconventional. Better to get a foot in the door and raise the standards in increments, he said. He was, however, alarmed at what Carlson found.

"That was a real opportunity for a teachable moment, and I appreciate Lisa for that, even though I wish it was a little less public and painful," he chuckled to Slocum afterward. "That actually had a huge impact on how we're evaluating funeral homes now."

But Carlson still found vetting problems in January 2011, two years later. A quick check of three states found that in Virginia, two of the three "approved" funeral homes have nothing "green" on their websites. No prices are listed on the one "green" funeral home site, but prices are sky high at the others. One has a "Basic Burial Package" starting at \$7,060.

Twelve were "approved" in Pennsylvania. Two had green information but no prices. Another had green packages—for burial at \$4,725 and for cremation (hardly green) for \$4,520. Eight had no green information at all, but five of those posted the GBC logo, and one had a bad web link.

New Jersey had eleven "approved" funeral homes. Fertig and Prout Funeral Homes did a fairly nice job of describing green options but disclosed no prices. Another offered a natural burial package at \$5,685, with embalming, although that may be with one of the new formaldehyde-free chemicals. The web links were broken for two funeral homes, and another had no web presence. The other five mention nothing about green burials.

In short, consumers need to do their own green rating. FEO has a checklist for this at <http://www.funeralethics.org/green.htm>.

Once you find green options, how much do they cost? All cemeteries—green or not—charge different prices. Whole-body burial at Ramsey Creek will cost \$2,500, comparable to the charge at many commercial cemeteries but higher than some. Billy Campbell points out, however, that families are free to act as their own funeral directors and dig the graves themselves, avoiding a bill from the funeral home that could otherwise add thousands to the bill. Burial at Greensprings Natural Cemetery in upstate New York will run you \$1,450 for a whole-body burial. If shopping around, don't forget to check your local rural or municipal cemeteries. Some of them, especially in small communities, will gladly let you bury without a coffin or vault, and may charge less than \$1,000 for a grave. In addition, we're seeing more municipal cemeteries setting aside sections for natural burial, and we expect this mainstreaming of green burial will continue.

Green Alternatives to Cremation

Two new methods of body disposition, described as gentler on the environment than cremation, are making headlines: *Promession* and *alkaline*

hydrolysis. It's unclear whether either one will catch on, though Slocum thinks alkaline hydrolysis has a better chance. Carlson disagrees and thinks people will find Promession less offensive than dissolving a body in a lye bath.

Promession, patented by a Swedish company, is the posthumous version of the popular high school science class demonstration of dipping a rose or a rubber ball in super-cold liquid nitrogen then shattering it like glass. The body is chilled to brittle fragility, then mechanically shaken until it's reduced to a fine powder. Emissions-free, certainly, but the process does seem like a Rube Goldberg approach to burial—why go to such much trouble when nature will do the same job underground (if more slowly)? Carlson has been in contact with a British company that is starting up to do this, but the process is not yet available anywhere in the US as of this writing.

Alkaline hydrolysis is a fancy term for dissolving the body in lye. It's sometimes called *resomation*, a word coined by the Scottish company that makes the equipment for the process. The corpse is immersed in a solution of water and potassium hydroxide, then heated under pressure for a few hours. What's left is an inert liquid and bone fragments, which are then pulverized much like cremated remains. While this may conjure up gruesome images of Mafiosos taking care of customers who didn't pay for protection, is it really any "worse" than putting the body in a flaming oven? After all, people fussed and fumed over cremation when it was first introduced to the US in the 1870s, calling it a violent desecration of the body.

Matthews International, a crematory manufacturer which distributes the Scottish-made machines in the US, calls the process "Bio Cremation," which strikes us as misleading (and a little precious—what makes it any more "bio" than burial or cremation?). It's not cremation at all, of course. On the other hand, the company may be trying to avoid legal tangles in states where the law specifically permits only earth burial, cremation, or anatomical donation as methods of body disposition.

Unless researchers or lawmakers have evidence that the liquid remaining after the process is in any way harmful to the sewer system or environment (and we know of no such evidence), it would be unreasonable to restrict the process. Feelings of "ickiness" about certain methods of disposition are understandable, but they're not a basis on which to form public policy. Unfortunately, one New York State lawmaker feels otherwise, and helped defeat a 2008 bill that would have made the process legal. He called it the "Hannibal Lecter bill," an offensive reference to the infamous fictional serial killer from *The Silence of the Lambs*.

Meanwhile, the Mayo Clinic has been using alkaline hydrolysis since 2002 to dispose of the remains of donor bodies, and many veterinary clinics also use the process. Funeral homes in Florida and Maine have committed to offering this service, but it remains to be seen how popular it will become.

The NFD's Position

The National Funeral Directors Association's response to green burial has been . . . interesting. In the August, 2008 edition of its magazine, General Counsel Scott Gilligan printed a green burial indemnification form for funeral directors to get customers to sign. The primary purpose seemed to be scaring them out of their wits with misinformation:

The FUNERAL HOME can provide no assurances regarding the appearance or the condition of DECEDENT's remains. . . that there can be substantial risks of physical injury to pallbearers from holding, carrying, and transporting a body in a container that may not be designed to hold the weight or to be safely lifted and carried. . . it may be difficult or impossible to locate the grave due to the lack of a permanent marker or monument. . .

Slocum wrote Gilligan an open letter taking the form apart point by point, and received a lawyerly, evasive response by mail. Interesting, the form seems to have disappeared from NFD's website. Perhaps it's because they've changed their tune? As of this writing, the website says member funeral homes who want to be certified as green must, among other things:

[O]ffer one or more temporary preservation options such as refrigeration, dry ice, conventional ice or other non-formaldehyde chemical products for open casket viewing, as allowed by state law.

The Future of Green Burial

It is probably apparent that we expect green burial will become much more commonplace very quickly, for excellent reasons. In its simplest form, green burial is by far the most environmentally sound method of disposition. It is also conducive to family participation, which can have great therapeutic value. If your family owns appropriate land in a rural location, green burial is also a logical way to care for your own dead. For some, the idea of planting a tree over the grave site, perpetuating the cycle of life, is especially attractive. Changes in death-care customs tend to occur gradually, as it is natural for people to think in terms of the traditions they grew up with, and for many, the traditions are intertwined with religious or cultural beliefs. But public acceptance of the dignity of natural burial is spreading quickly. If somebody picks up a copy of this book 20 years after publication, he or she may be surprised by our use of the word "new" to describe a process that was, after all, predominant for the millennia leading up to the last century, and for very good reasons due for a comeback.



Caring for the Dead

Necessary Information for Family Involvement

THIS CHAPTER SUMMARIZES THE MAIN issues to consider in caring for the dead, but be sure to also read the subsequent chapter for the specific state where the death occurred.

Many people over the years have asked for a checklist for performing a family-directed funeral. Would that it 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 to 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, 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. While out or other corrections are not usually permitted. If an error is made, you may have to start over again with a new certificate. Most states have implemented an Electronic Death Registration (EDR) system, which doctors and funeral directors can log into rather than writing on a piece of paper. Private individuals will not be allowed to use the on-line system, but vital statistics departments should have a paper alternative for families who perform their own funerals. Check your state chapter and your local vital statistics office ahead of time for the proper procedure.

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

If complicated laboratory work is needed to accurately determine the exact cause of death, the physician or medical examiner may write "pending" or a similar phrase for the cause of death and release the body for disposition. In those few cases, a delayed or corrected death certificate will be sent to the state registrar by the physician when the cause of death is known. In addition to the medical portion, facts such as "mother's maiden name" must be provided by the family. Unless the signature of a licensed funeral director is required by state statute, the family or church member who is handling the arrangements must sign the death certificate (or paper alternative in states with EDR) in the space marked "funeral director," followed by his or her relationship to the deceased, immediately after the signature. States vary in the time required for filing the death certificate with the local registrar, but this must usually be accomplished before other permits are granted and before final disposition.

Fetal Deaths and Miscarriages

A special death certificate or fetal death report is required in all but two states for fetal deaths. Eleven states seem to require registration of all fetal deaths. In a majority of states, a fetal death must be registered if it occurs after 20 weeks of pregnancy. In Hawaii, the requirement goes into effect after 24 weeks.

Some states gauge pregnancy duration by fetal weight, e.g., 350 grams (12½ oz.), and because any unattended death—including fetal death—could require a coroner's investigation, a physician should be called.

Even if there is uncertainty as to whether reporting requirements are applicable, reporting a fetal death may be helpful in obtaining insurance benefits in some situations.

Autopsies: Dealing with a Coroner/Medical Examiner's Office

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

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

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

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

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

The term *medical examiner* is usually reserved for those with medical training, and the person in such a position is often appointed by the department of health. In a few states, the word *coroner* is used interchangeably with medical examiner. Generally, however, the term coroner implies an

elected position. In California, a medical degree is required for a candidate to run for coroner. In many other states, however, anyone may run for the office, with or without medical training.

A coroner may be a practicing funeral director or have a direct relationship with a funeral home. In Pennsylvania, more than half the coroners' offices have a funeral director on the staff. To avoid any appearance of impropriety, a coroner or medical examiner may rotate pick-up calls among all funeral homes within the jurisdiction, but this is not always the case. Funeral directors from various states have complained that a local coroner-funeral director ends up getting more business when he's on duty as the coroner. This is unethical, and consumers have no obligation to use the funeral home whose director is acting for the state as a coroner.

Home Death, Home Visitation

With hospice support, many people are able to die at home in familiar surroundings, near familiar faces. In some states, an "expected" death can be certified by an attending nurse.

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

For some, there is therapeutic value in keeping the body at home for at least a brief period, allowing the family a chance to congregate and deal with the death, as often occurred in the front parlor two or three generations ago.

Nursing Home Death

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

When Carlson's Uncle Henry died at a care facility, she didn't have a dignified way to move the body out. She called a friendly funeral director to

pick up and bring the body to her home where it was placed in a cremation box. She and her husband drove it from there to the crematory.

Hospital Death

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

Some hospitals may be reluctant to release a body directly to a family without the use of a funeral director. If the death is expected, you should alert the hospital staff of your intentions ahead of time. If hospital personnel are confused or believe incorrectly that they can refuse to release the body to the family, a telephone call from your lawyer (or Funeral Consumers Alliance) may be in order.

It is also important for families to recognize the legitimate needs of hospitals. Some hospitals may have no storage facilities for dead bodies while permits are obtained and may insist on calling a funeral director for immediate removal after death if there is to be any significant delay.

Body and Organ Donation

Donation of eyes and other organs must be done under sterile conditions and usually within a short time after death. Because organ-donor cards may not be immediately available to hospital personnel, next-of-kin should make the decision to donate known to attending staff at the earliest time possible.

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

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

only then should their bodies be considered for body donation to a medical school. If their bodies are not accepted, they want a plain pine box send-off.

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

<www.finalrights.org>

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. (See Chapter 4 and your state chapter.)

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 knock-down 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. Check your state chapter for details.

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.



Part 2
Funeral Law and Related
Information for Consumers

A black and white photograph of a field of tall grass, which serves as a background for the title.

Caring for the Dead In New York

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

In New York 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. Until there is a court challenge or other change in the laws, families and church groups in New York will be limited in caring for their own dead. Some statutes seem contradictory or defy logic; others are restrictive and intrusive.

Article 41 Vital Statistics Sec. 4140. Deaths; registration 2. . . . the registrar of the district in which the death occurred shall then issue a burial or removal permit to the funeral director or undertaker.

Parents may file a birth certificate if no doctor is involved. What's the big deal about a death certificate?

In addition, the Sanitary Code—"Practice of Funeral Directing" states:

77.7 (b)(1) In no case shall a dead human body be released from any hospital, institution or other place where the death occurred or from the place where the body is held by legal authority to any person not a duly licensed and registered funeral director or undertaker.

Later in the same code, however, is found:

77.7(f) Nothing contained in this section shall be deemed to require that a mere transporter, to whom or to which a dead human body has been duly released for the sole purpose of transportation or transfer, shall be a duly licensed and registered funeral director or undertaker.

So the State has determined that there is no health problem with someone other than a funeral director transporting bodies. What, then, is the rationale that would require a licensee to pick up the accompanying paperwork

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

Miscellaneous Information

- Educational requirements for funeral director: two years of college (60 semester hours) plus mortuary school, a written exam including state law, a practical exam, and one year of apprenticeship.
- Direct disposers are licensed by the Board of Thanatopractice and do not have to be funeral directors or embalmers. They may not conduct funerals (which seems like an illegitimate, anti-competitive restriction). New Mexico has excellent statutory provisions for this low-cost option for body disposition. However, there have been an increasing number of complaints filed against the existing direct disposers (not by consumers, mind you, but by competitors)—complaints that appear to be frivolous. Consumer vigilance will be necessary to keep this affordable option available in the future.
- Crematories are licensed by the Board of Thanatopractice. They do not need to be operated by a funeral director.
- Medical investigators are licensed physicians and are appointed.
- There is a statutory duty to comply with the written wishes of the decedent. Any adult may authorize his own cremation and disposition of cremated remains. In situations where you are estranged or distant from next-of-kin, you may wish to also indicate a personal representative in your will to act as an agent for body disposition.
- General Assistance will pay \$200 toward the burial or cremation of indigents.
- A disinterment permit will be issued to a funeral service practitioner or direct disposer by the state registrar or state medical examiner.



This chapter was sent for review to the Board of Thanatopractice, Superintendent of Insurance, and the Registrar of Vital Records. Helpful information was received from the Insurance Department. Vital Records information was verified over the telephone. No response was received from the Board of Thanatopractice.

and add his/her signature? The doctor fills out the medical portion; the family supplies the personal data. But the undertaker's signature might cost the family a nondeclinable basic service fee of maybe \$2,000. Just for a signature!

But back to the statutes in 77.7 to see more promotions of the industry:

(a)(2) A licensed funeral director or undertaker shall be present and personally supervise the conduct of each funeral service.

(a)(3) Nothing herein shall be construed as prohibiting religious supervision of the funeral service by a member or members of the clergy designated by the family of the deceased person.

What about the Orthodox Jewish groups such as the Chevra Kadisha or the Muslims or Amish who wish to bathe and shroud their dead? They aren't "clergy." It takes a stunning amount of arrogance to write a law—we're certain it was penned by industry—noting that clergy are not prohibited from supervising funerals. There will, of course, be an attending charge for the funeral director's services, regardless of whether or not the presence of a funeral director is wanted.

Apparently, New York funeral directors—with a mere two years of mortuary school (that most likely did not include any training on religious funeral rituals and services other than some cursory Christian components)—have now become pseudo-clergy, usurping a role that traditionally was religious in nature. From an e-mail to Carlson: "I am a Catholic priest. About three years ago, while still a seminarian, I was doing a feature story on the most prominent mortician in the diocese, a Catholic active in just about everything. In the interview, I asked him if the curriculum at mortuary school included courses about religious practices. I was floored when he said 'No'."

And an undertaker can keep the meter running with another statute:

77.7(a)(4) A licensed funeral director or undertaker shall be present and personally supervise the interment or cremation

The undertaker, though not needed to transport the body, must be at a crematory when that method of disposition has been chosen. Rather strange. Crematory operation is not included in most mortuary curricula or even mentioned in the study guide for the national exam for funeral directors. What kind of supervision is the undertaker qualified to do at the crematory?

If you are planning home burial as permitted in New York, you'll have to pay a funeral director to hang around under the apple tree. A Bruderhof Christian community in New York handles all aspects of the funeral for a member—the preparation and bathing of the body, as well as conducting the service and burial. "Oh, yes, the funeral director comes out and spends the

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day with us, has lunch with us, and sort of hangs around," one member told Carlson, but she had no idea what the charge was, if any.

A movement is afoot to get the limiting statutes changed—through legislation or court action. 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 York State is not yet using electronic death registration although New York City is. The doctor last in attendance, county coroner, or medical examiner will supply and sign the death certificate, stating the cause of death. The remaining information must be supplied, typewritten or in black ink. The death certificate must be filed with the local registrar within 72 hours and before final disposition.

Fetal Death

A fetal death report is required for each fetal death and must be filed as above. If there is no family physician involved, the local medical examiner must sign the fetal death certificate. If gestation is more than 20 weeks, a disposition permit and the involvement of a funeral director will be needed.

Transporting and Disposition Permit

The local registrar will issue the burial and removal permit to a licensed funeral director only (until the statute has been successfully challenged). New York City charges \$40. This authorization must be obtained within 72 hours of death and prior to final disposition. Once this permit has been obtained, a family may handle the moving of a body, although you will need a mortician at the other end to oversee disposition if burial or cremation will occur in New York. Make sure that the undertaker you initially use will be willing to relinquish custody, however; more than one family has had difficulty when the undertaker did not understand the law. During transportation, the body must be obscured from public view.

Burial

Any person may dedicate land to be used as a family cemetery provided that it is less than three acres and not closer than 100 rods (1,650 feet) to a

dwelling. Such land must be registered with the county clerk. Check with the county or town for local zoning laws regarding home burial. There are no state burial statutes or regulations with regard to depth. A sensible guideline is 250 feet from a water supply and at least two feet of earth on top. (Two towns do have the 250-foot distance from a water supply written into law.)

When a person is buried in a cemetery or other burial place where no person is in charge, the undertaker will sign the permit and write across the face of the permit, "No person in charge." The permit must be filed within three days with the registrar of the district in which burial took place.

Cremation

No additional permit is needed for cremation. Authorization by next-of-kin or designated agent is required, and a pacemaker must be removed. One may not be cremated with a radioactive implant or battery. The crematory will file the disposition permit with the local registrar. If there is no licensed funeral director on the crematory staff, the family must arrange for a funeral director to be present at the time of delivery, a totally unnecessary and burdensome requirement. There are no laws regarding the disposition of cremated remains. You may do as you wish.

Other Requirements

New York has no embalming requirements. A body must be buried or cremated within a "reasonable time after death." Weather and reasonable planning should be considered.

If the person died of a contagious 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 New York at <www.finalrights.org>.

State Governance

The Funeral Directing Advisory Board, under the Department of Health, has ten members. There are three consumer representatives, one cemetery operator, and six undertakers.

The Bureau of Funeral Directing has two helpful web pages on preneed and funeral planning as well as the form for naming an agent for disposition of remains:

<www.nyhealth.gov/professionals/patients/patient_rights/>

Cemeteries are governed by the Cemetery Board and the Division of Cemeteries. The board is made up of the Secretary of State, the Attorney General, and the Commissioner of Health or their designees. There is also a citizens advisory council composed of a member designated by the secretary of state, a member designated by the attorney general, a member designated by the commissioner of health, a member designated by the comptroller and a member designated by the commissioner of taxation and finance.

Cemetery Customer's Bill of Rights

The Cemetery Board has been working with FCA of Long Island to establish a Bill of Rights for consumers making cemetery purchases. The current draft, as of this writing, could serve as a model for other states as well:

All New York Cemeteries are not-for-profit. This cemetery (name, address, telephone) is regulated by the NYS Division of Cemeteries. The nearest office is located at: (address, telephone number, e-mail address).

When you buy cemetery property, you are buying the right to interment, not an actual piece of land. When you sell cemetery property, it must first be offered back to the cemetery. The minimum price the cemetery must pay to buy back the property is set by law. You can also give your right to interment if you are the lot owner.

You can be denied the right to interment only for non-payment of the total purchase price, non-payment of interment price or non-payment of a tax authorized by the Cemetery Board.

Though New York law DOES require that a container or wrappings used for cremation be non-metal, it does NOT require embalming for interment (burial, entombment or placement of cremains in a niche or grave). New York law does NOT limit the number of cremation urns that can be placed in a grave. New York law also does NOT require any particular type of casket or external wrappings for burial or placement in a mausoleum crypt. Nor does it restrict the type of container used to place ashes in a niche or grave.

New York law requires that rules and regulations of a cemetery be reasonable and that they have written Cemetery Board approval. [Any restrictions by the cemetery must be disclosed to the consumer prior to any sale.]

[<http://www.dos.state.ny.us/cmty/cemetery.html>](http://www.dos.state.ny.us/cmty/cemetery.html)

Crematories are regulated by the Cemetery Board. One does not need to be a funeral director to run a crematory, but a funeral director must be present for cremation. Why?

Prior to 1998, a few funeral homes were permitted by the Cemetery Board to construct what are supposed to be not-for-profit crematories. That practice is no longer allowed.

Prepaid Cemetery and Funeral Funds

Cemeteries must be run not-for-profit and may not have any business ties with a funeral home. In the 1990s, both Service Corporation International (SCI) and Loewen (a now bankrupt chain bought up later by SCI) tried to get into the cemetery business in New York by purchasing cemetery mortgage certificates for which they have paid wildly-inflated sums compared to the face value. The Cemetery Board found that financial practices at these cemeteries had not always stayed within the law. Thanks to tight regulations and vigilant oversight, those practices were quickly corrected, and the corporations were finally booted out.

If a lot-owner wishes to sell a lot, it must first be offered back to the cemetery at the original sale price plus 4% per year.

Cemeteries may not sell monuments or vaults; they may sell grave-liners. If there is a religious objection to the use of a liner or vault, the cemetery may not require one but it may impose a "reasonable" maintenance fee for refilling a settling grave. The cemetery's schedule of fees must be approved by the Cemetery Board. Cemeteries must be available for interments six days a week and must now perform burials in winter according to state law. Cemeteries may charge you the actual costs of snow removal or penetration of frozen ground.

100% of all prepaid *funeral and cemetery* purchases must be placed in trust, with the interest to accrue. The purchaser must be notified within 30 days of the institution where the funds have been deposited.

The seller must report annually to the purchaser where the funds are held, along with the current total. Administrative fees may not exceed .75 of 1%. Although there is no guarantee fund to protect funeral consumers against default, the annual reporting should go far in enforcing the trusting requirement.

Prepaid funds are considered the property of the purchaser and may be withdrawn at any time for a full refund if it is a revocable contract. An irrevocable agreement may be transferred. The only time when the contract can be made irrevocable is for Medicaid eligibility.

If a funeral home changes ownership, the owner of a preneed agreement must be notified. With the mad scramble of chains to purchase funeral homes, it would be interesting to see if they are obliging. The Bureau of Funeral Directing should be able to tell you who owns the one where you pre-paid for your funeral: 518-402-0785. Be sure to file a complaint if you were not notified.

A preneed contract must specify whether or not it is a guaranteed-price agreement. It must "fully describe" the services and merchandise selected, but there is no clear provision for how detailed that should be. There might be a \$1,000 difference between the least expensive "20-gauge steel" and the highest. There is no statutory directive for substitution when selected merchandise is no longer available. If it is not a guaranteed-price arrangement excess funds must be returned to the estate or the purchaser.

A funeral home may not sell or be the beneficiary of funeral insurance. However, some funeral homes may ask you to sign over such a policy to cover the deceased's funeral expenses at a time of need. It's better not to let the funeral home even know how much the policy is worth. Otherwise, if there is a surplus of funds, you may not get a refund. The cost of the funeral has a strange way of rising to the amount of insurance available. Get the bill from the funeral home and then have the insurance company mail any check to you so you can pay the funeral bill from that.

Consumer Concerns

- The death rate in New York can support approximately 629 full-time mortuaries; there are, however, 1,850. Funeral prices tend to be higher in areas where there are "too many" funeral homes.
- Until the laws are changed, families and church groups may not care for their own dead without the use of a funeral director.
- There is no provision for an adequate description of funeral goods selected on a guaranteed-price agreement nor for a substitution of equal quality if the selected item is no longer available at the time of death. Substitutions should meet the approval of survivors.
- There is no requirement that low-cost caskets be included in any display.
- The format for pricing is in conflict with FTC requirements. New York requires a separate charge for *supervision* and another for *facilities* for viewing, for example. The FTC requires a single fee—*facilities and staff for viewing*. Consequently, many funeral homes list prices both ways in order to be in compliance with both state

and federal requirements. This clutters the General Price List (GPL) and is definitely confusing to consumers. New York may *certainly* require that additional options be offered on the price list—as does Vermont—but the standard pricing format of the FTC should be adopted.

- The New York GPLs are now required to include a statement, “The direct cremation prices do not include the crematory charge,” probably because most crematories are on the grounds of cemeteries and are not owned by funeral homes. This should be changed to require the inclusion of the crematory fee. How can you have a “direct cremation” without cremation? Who would think to ask if it were extra? For someone shopping over the phone, the disclosure will never be seen. If a funeral home uses more than one area crematory, and prices differ from one to the next, an appropriate disclosure would be, “There will be an additional \$50 charge if the crematory at Mt. Such-and-Such is used.”
- There is no requirement to identify and tag the body at the place of death before removal.
- Complaint procedures are unclear and inadequate.
- New York has some excellent laws for governing the body parts business but is not enforcing them for lack of staff and money. Companies are not being asked for prices or financial statements. A form for informed consent has not been developed.
- A New York State legislator helped defeat a 2008 bill that would have made alkaline hydrolysis—dissolving the body in an alkaline solution—a legal option for final disposition by branding it the “Hannibal Lecter Bill,” a reference to the serial killer from the popular book and movie, *The Silence of the Lambs*. Alkaline hydrolysis is touted as a more environmentally friendly option than cremation, as it produces no gaseous emissions. This kind of irrational sensationalism is just a modern re-enactment of the hysterical protests and legal bans that occurred when cremation was first introduced in the US in the 1870s.

Miscellaneous Information

- Educational requirements for becoming a funeral director or embalmer: mortuary college (60 semester credits) and one year of apprenticeship plus an exam on state laws.

- The law states, "Upon receipt of satisfactory evidence that a license or certificate has been lost, mutilated or destroyed, the department may issue a duplicate license. . . ." How does one prove something is lost?
- Cash advance items must be billed at the actual cost to the funeral director.
- Misconduct in funeral directing is defined in a fairly comprehensive listing, although additional factors will be found in the Appendix of this book.
- It is a misdemeanor to hold a body for debt.
- Although the Funeral Rule was not adopted by reference, statutes include almost identical requirements.
- Medical examiners are physicians who are appointed. Coroners are elected.
- You may name an agent for body disposition, helpful if you are estranged from next-of-kin.
- A disinterment permit must be obtained from the local registrar.



This chapter was sent for review to the New York Division of Cemeteries and the Bureau of Funeral Directing. Both provided helpful corrections or information.