

## PLEASE DON'T BURY ME DOWN IN THAT COLD COLD GROUND:<sup>1</sup> THE NEED FOR UNIFORM LAWS ON THE DISPOSITION OF HUMAN REMAINS

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*The disposition of a decedent's remains is a largely unregulated area. While there are federal regulations concerning the funeral industry, there are none dealing with the disposition of remains in particular. The lack of federal regulation, limited state authority on the ownership of remains, and wishes of the decedent often result in conflict. Such conflicts are often left to be resolved by courts and funeral homes. The lack of uniformity in this type of law increases in importance as the baby boom generation ages and demands creative options concerning their final resting place. In this Article, Professor Murphy explores the increasing need for certainty in this area and proposes the adoption of a uniform law patterned on one of the existing state statutory schemes.*

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1. JOHN PRINE, PLEASE DON'T BURY ME (Atlantic Records 1973); John Prine Official Fan Site, Lyrics to Sweet Revenge for Please Don't Bury Me, <http://www.jpshrine.org/lyrics/songs/srpleasedontburyme.html> (last visited Oct. 26, 2007).

## I. Introduction

Anna Nicole Smith, who loved the limelight, probably never imagined her most public presentation to the world would be her death.<sup>2</sup> Ms. Smith's bodily remains were the focus of the world's attention for three weeks during the early part of 2007.<sup>3</sup> The Florida Fourth District Court of Appeals ruled against Smith's mother on February 28, 2007, and affirmed the Broward Circuit Court Order that the court-appointed guardian of Smith's daughter, Dannielynn, had the right to determine where to bury Smith.<sup>4</sup> She was then buried in the Bahamas on March 3, 2007, rather than in Texas as her mother wished, after a "three-week battle over her corpse."<sup>5</sup> The circumstances were made all the more exigent due to the "potential deterioration of the body's condition."<sup>6</sup>

It is also likely Kirby Puckett,<sup>7</sup> a professional baseball player who was inducted into the Baseball Hall of Fame in 2001<sup>8</sup> and who died on March 6, 2006,<sup>9</sup> would have been stunned that a court battle would ensue over his cremated remains. Yet on October 23, 2006, the Honorable Benjamin E. Vatz of the Superior Court of Arizona, Maricopa County, issued a ruling that Mr. Puckett's children were entitled to his remains rather than his fiancée, Ms. Jodi Olson.<sup>10</sup> Ms. Olson had

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2. Jessica Kerwin, *America's Most Wanton; Trashy Divas Continue to Rock and Shock*, ST. LOUIS POST-DISPATCH, July 19, 1996, at E1. Anna Nicole Smith (1967–2007) came to the attention of the media when she married J. Howard Marshall II in 1994 when he was eighty-nine-years-old and she was twenty-six-years-old. Abby Goodnough & Margalit Fox, *Anna Nicole Is Found Dead at a Florida Hotel*, N.Y. TIMES, Feb. 9, 2007, at A12.

3. *Court: Bury Anna Nicole Smith in the Bahamas*, CNN.COM, Mar. 1, 2007, <http://www.cnn.com/2007/LAW/02/28/smith.case/index.html>.

4. *Arthur v. Milstein*, 949 So. 2d 1163 (Fla. Dist. Ct. App. 2007); *In re Marshall*, No. 07-00824(61) (Fla. Cir. Ct. Prob. Div. Broward County Feb. 22, 2007), available at <http://i.a.cnn.net/cnn/2007/images/02/22/finalorder07824.pdf>.

5. *Anna Nicole Smith Buried in the Bahamas*, ABC NEWS ONLINE, Mar. 3, 2007, <http://www.abc.net.au/news/newsitems/200703/s1862002.htm>.

6. *In re Marshall*, No. 07-00824(61).

7. Kirby Puckett, born on March 14, 1960, played center field for the Minnesota Twins baseball team from 1984 to 1995. See National Baseball Hall of Fame, The Hall of Famers—Kirby Puckett, <http://www.baseballhalloffame.org/hofers/detail.jsp?playerId=120790> (last visited Oct. 26, 2007).

8. *Id.*

9. *In re Estate of Puckett*, PB 2006-000799, at 1 (Ariz. Super. Ct. Maricopa County Oct. 23, 2006), available at <http://www.courtminutes.maricopa.gov/docs/Probate/102006/m2423197.pdf>.

10. *Id.*; *Fiancée Says Puckett Wanted Ashes Spread on Field*, ESPN, May 9, 2006, <http://sports.espn.go.com/mlb/news/story?id=2438371> [hereinafter *Puckett Fiancée*].

claimed that Mr. Puckett “often told her he wanted his ashes spread over an inner-city baseball diamond.”<sup>11</sup> His children, through their mother, Mr. Puckett’s ex-wife, wanted his ashes delivered to them in Minnesota.<sup>12</sup> The children brought a Petition to Compel Release of Decedent’s Remains to enforce these wishes.<sup>13</sup> The court was forced to resolve the conflict and awarded the ashes to Mr. Kirby’s ex-wife on behalf of his children.<sup>14</sup> Three other highly publicized disputes involved Gram Parsons, James Brown, and the Reverend Billy Graham.<sup>15</sup>

As these illustrations show, conflicts often occur over the disposition of a decedent’s body.<sup>16</sup> There is limited state authority on the ownership of remains and respecting the wishes of the decedent over the disposition of his or her body.<sup>17</sup> More commonly, courts, and even funeral homes, continue to resolve the conflicts.<sup>18</sup> There is a need for uniformity because states vary in their laws on the disposition of remains, provided they even have such laws. A uniform law patterned after the Uniform Anatomical Gift Act or existing state law would provide much-needed certainty in this area. In the interim, attorneys

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11. *Puckett Fiancée*, *supra* note 10.

12. *In re Estate of Puckett*, PB 2006-00799, at 3.

13. *Id.* at 1.

14. *Id.* at 2.

15. Gram Parsons was a member of the bands The Fallen Angels and The Byrds and died in 1973. See Byrd Watcher, *The Strange Death of Gram Parsons: 1973*, <http://ebni.com/byrds/memgrp6.html> (last visited Oct. 26, 2007). James Brown, a legendary rhythm and blues singer and songwriter known as the “Godfather of Soul,” died on December 25, 2006. See James Brown, the Godfather of Soul, Dies at 73, CNN.COM, Dec. 25, 2006, <http://www.cnn.com/2006/SHOWBIZ/Music/12/25/obit.brown/index.html>. The Reverend Billy Graham is a well-known evangelist who at the time of this writing was in frail health and suffering from Parkinson’s disease. See Tim Whitmire, *Graham Family at Odds over Burial Site*, WASHINGTONPOST.COM, Dec. 13, 2006, <http://www.washingtonpost.com/wp-dyn/content/article/2006/12/13/AR2006121301757.html>.

16. See, e.g., Tanya K. Hernandez, *The Property of Death*, 60 U. PITT. L. REV. 971, 972–73 (1999) (citing *Brannam v. Edward Robeson Funeral Home*, No. 43141/96 (N.Y. Sup. Ct. Nov. 14, 1996)); *Divorced Father Wins Case over Son’s Remains*, N.Y. TIMES, Nov. 2, 2005, at A18; *Ted Williams Frozen in Two Pieces*, CBS NEWS, Aug. 12, 2003, <http://www.cbsnews.com/stories/2002/12/20/national/printable533849.shtml>.

17. See, e.g., *In re Estate of Puckett*, PB 2006-000799, at 3–4; Hernandez, *supra* note 16, 971–72 app. A. Some states have passed specific and very detailed legislation in an attempt to avoid such conflicts in the first place. See, e.g., *Disposition of Remains Act*, 755 ILL. COMP. STAT. 65/5 (Supp. 2005); OR. REV. STAT. § 97.130 (2005); TEX. HEALTH & SAFETY CODE ANN. § 711.002(a) (Vernon 2006).

18. See Hernandez, *supra* note 16, at 983.

need to become involved and treat the disposition of the body similar to provisions in wills and anatomical gift provisions.<sup>19</sup>

The need for instructions concerning the disposition of the body will only become more pressing as the baby boom generation ages. The number of baby boomers aged sixty-six to eighty-four is predicted to reach 57.8 million by 2030.<sup>20</sup> This generation wants creative options concerning their final resting place.<sup>21</sup> “As members of the baby boom generation plan final services for their parents or themselves, they bring new consumer expectations and fewer attachments to churches, traditions or organ music.”<sup>22</sup> It is therefore imperative lawyers instruct their clients to have final disposition provisions and the laws about the disposition of remains become uniform.

## II. History of Disposition of Remains

### A. Historic Practices

From Paleolithic<sup>23</sup> times until the present, societies have developed many different ways to dispose of their dead.<sup>24</sup> In some societies the body is eaten, in others it is burned, and in still others it is buried.<sup>25</sup> It is believed that the concept of burying the dead dates back to Neanderthal man, in 70,000 B.C.E.<sup>26</sup> Burning of the body as a form of disposition of remains apparently began in the early Stone Age, in ap-

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19. See UNIFORM ANATOMICAL GIFT ACT (1987).

20. Press Release, U.S. Census Bureau, Facts for Features: Special Edition, Oldest Baby Boomers Turn 60! (Jan. 3, 2006), available at [http://www.census.gov/Press-Release/www/releases/archives/facts\\_for\\_features\\_special\\_editions/006105.html](http://www.census.gov/Press-Release/www/releases/archives/facts_for_features_special_editions/006105.html).

21. *Choose a Final Resting Place—Burial—Cremation—Space—Sea—Others*, ABOUT.COM, Dec. 28, 2006, [http://dying.about.com/od/finalrestingplace/p/resting\\_place.htm](http://dying.about.com/od/finalrestingplace/p/resting_place.htm).

22. John Leland, *It's My Funeral and I'll Serve Ice Cream If I Want To*, N.Y. TIMES, July 20, 2006, at G2.

23. The Paleolithic era, or The Stone Age, lasted from 1,500,000 to 20,000 years ago. K. Kris Hirst, *Stone Age or Paleolithic*, ABOUT.COM, <http://archaeology.about.com/od/pathroughpd/g/paleolithic.htm> (last visited Oct. 26, 2007).

24. GARY LADERMAN, REST IN PEACE, A CULTURAL HISTORY OF DEATH AND THE FUNERAL HOME IN TWENTIETH-CENTURY AMERICA xvi (2003) [hereinafter LADERMAN, REST IN PEACE].

25. *Id.*

26. Encyclopedia of the Unusual and Unexplained, Mankind's History of Burial Practices Timeline, <http://www.unexplainedstuff.com/Afterlife-Mysteries/Mankind-s-History-of-Burial-Practices-Timeline.html> (last visited Oct. 26, 2007).

proximately 3000 B.C.E.<sup>27</sup> During the Roman Empire, 27 B.C.E. to 395 C.E., cremated remains were stored in elaborate urns.<sup>28</sup> During the reign of Constantine, a Christian convert, burial became the most widely accepted mode of disposition in Europe.<sup>29</sup>

Initially, the practice of disposing remains was driven by the need to remove a dead relative's decaying body from the homestead to prevent "scavengers from consuming the body."<sup>30</sup> Rituals and cultural practices developed later, approximately 50,000 to 100,000 years ago.<sup>31</sup> In "ancient Egypt it was commonplace to embalm and bury sacred animals, tools, food, jewelry, and other items with the deceased."<sup>32</sup> King Ptolemy I of Egypt was the first leader to approve of dissection.<sup>33</sup> He issued "a royal decree encouraging physicians to dissect executed criminals."<sup>34</sup> It is believed the process of embalming began in Egypt as a step prior to the body being wrapped for mummification.<sup>35</sup> The ancient Egyptians had different processes for disposition depending on the stature of the decedent.<sup>36</sup> They believed the body must be preserved and protected because the spirit would eventually return to the body.<sup>37</sup>

The Greeks, on the other hand, burned the body as they believed flame would set the soul free.<sup>38</sup> Cremation first appeared in the late Stone Age,<sup>39</sup> and during the Roman Empire, cremation was practiced

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27. Cremation Association of North America, *History of Cremation*, <http://www.cremationassociation.org/html/history.html> (last visited Oct. 26, 2007) [hereinafter *History of Cremation*].

28. *Id.*

29. *Id.*; NationalGeographic.com, *Constantine the Great Rules*, [http://www.nationalgeographic.com/lostgospel/timeline\\_10.html](http://www.nationalgeographic.com/lostgospel/timeline_10.html) (last visited Oct. 26, 2007).

30. Phillip L. Walker, *Bioarchaeological Ethics: A Historical Perspective on the Value of Human Remains*, in *BIOLOGICAL ANTHROPOLOGY OF THE HUMAN SKELETON* 3, 4 (M. Anne Katzenberg & Shelley R. Saunders eds., 1998).

31. *Id.*

32. Abigail J. Sykas, *Waste Not, Want Not: Can the Public Policy Doctrine Prohibit the Destruction of Property by Testamentary Direction?*, 25 VT. L. REV. 911, 917 (2001).

33. MARY ROACH, *STIFF: THE CURIOUS LIVES OF HUMAN CADAVERS* 39-40 (2003).

34. *Id.* at 40.

35. British Inst. of Embalmers, *The History of Embalming*, <http://www.bioe.co.uk/history.asp> (last visited Oct. 26, 2007).

36. *Id.*

37. JESSICA MITFORD, *THE AMERICAN WAY OF DEATH REVISITED* 143 (Robert Gottlieb ed., 1998).

38. *Id.*

39. Marsha A. Goetting & Claire DelGuerra, *Cremation: History, Process and Regulations*, 8 FORUM FOR FAM. & CONSUMER ISSUES 1, 2 (2003).

widely.<sup>40</sup> The Roman Empire forbade burial within its geographic limits.<sup>41</sup> As a result, Christians created catacombs to house their dead, and it is thought the Jews did so as well.<sup>42</sup> By 400 C.E., burial became the accepted mode of disposition of remains throughout Europe.<sup>43</sup> However, Jews and early Christians did not practice embalming as they believed it was a pagan practice.<sup>44</sup> Thus, the practices of dealing with the dead varied greatly over time and with geography.<sup>45</sup>

### B. Early American Practices

During the first half of the nineteenth century, there were two alternatives in North America for the disposition of remains: interment and entombment.<sup>46</sup> Interment was burial in the earth, and “most individuals in the rural communities of the North were buried in the ground.”<sup>47</sup> Those with more wealth chose above-ground individual or family tombs.<sup>48</sup> In rural communities, the dead were buried on the family farm.<sup>49</sup> Family and friends gathered beside the grave and sometimes threw a branch, straw, or dirt onto the burial site.<sup>50</sup> The orderly disposal of the dead was more evident in urban areas,<sup>51</sup> undoubtedly due to health issues.<sup>52</sup>

The concept of modern embalming took hold during the Civil War.<sup>53</sup> Prior to this time, it had been used rather secretly to preserve cadavers for medical school instruction.<sup>54</sup> Embalming was used during the Civil War because Northern families wanted the bodies of sol-

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40. *History of Cremation*, *supra* note 27.

41. *Id.*

42. James Owen, *Catacomb Find Boosts Early Christian-Jewish Tie*, *Study Says*, NAT'L GEOGRAPHIC NEWS, July 20, 2005, [http://news.nationalgeographic.com/news/2005/07/0720\\_050720\\_christianity.html](http://news.nationalgeographic.com/news/2005/07/0720_050720_christianity.html).

43. *History of Cremation*, *supra* note 27.

44. MITFORD, *supra* note 37, at 143.

45. Phillip L. Walker, *A Historical Perspective on the Value of Human Remains*, in BIOLOGICAL ANTHROPOLOGY OF THE HUMAN SKELETON, *supra* note 30, at 3, 13.

46. GARY LADERMAN, *THE SACRED REMAINS, AMERICAN ATTITUDES TOWARD DEATH, 1799–1883*, at 36 (1996) [hereinafter LADERMAN, *THE SACRED REMAINS*].

47. *Id.*

48. *Id.*

49. *Id.* at 37.

50. *Id.*

51. *Id.* at 48.

52. *See id.* at 47. In Boston, rules and regulations were disseminated in 1810 “regulating the burial of the dead.” *Id.*

53. British Inst. of Embalmers, *supra* note 35.

54. *See* LADERMAN, *REST IN PEACE*, *supra* note 24, at 6.

diers who had died on the battlefield sent back home.<sup>55</sup> Embalming gained popularity when the nation watched as Abraham Lincoln's body was transported from Washington, D.C., to Springfield, Illinois, in line with this new practice.<sup>56</sup> The process of preparing a body for burial, which had been primarily a female family member's duty, now became the work of a paid professional.<sup>57</sup> During this period, embalming occurred in the home of the deceased.<sup>58</sup> After death, the body was laid out in the family parlor and later buried in the family graveyard.<sup>59</sup>

### C. The Modern Funeral Industry

It was not until the 1880s that a funeral industry emerged.<sup>60</sup> In 1900, W. Hohenschuh, a funeral director, published *The Modern Funeral*.<sup>61</sup> Around this time, undertakers became known as funeral directors.<sup>62</sup> Also at the turn of the twentieth century, there was a sea change in the care of the sick. Doctors came to patients in the 1870s, but by the 1920s patients came to doctors.<sup>63</sup> Between the years 1873 and 1923, the number of hospitals in the United States increased 3,800%.<sup>64</sup> Family members were now dying at hospitals, not out in the field or at home.<sup>65</sup> Professionals, rather than family members, were now available to care for the deceased.<sup>66</sup> Individuals still wished to see their loved ones before burial, but modern homes often no longer had parlors.<sup>67</sup> These changes gave rise to the funeral industry.<sup>68</sup>

The extension of services provided by the undertaker, for example the transportation and presentation of the body, coincided with

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55. *Id.*

56. *Id.*

57. LADERMAN, THE SACRED REMAINS, *supra* note 46, at 152, 157.

58. LADERMAN, REST IN PEACE, *supra* note 24, at 7.

59. MITFORD, *supra* note 37, at 148.

60. LADERMAN, THE SACRED REMAINS, *supra* note 46, at 9.

61. MITFORD, *supra* note 37, at 148.

62. LADERMAN, REST IN PEACE, *supra* note 24, at 5.

63. *Id.* at 3.

64. *Id.*

65. *Id.*

66. *Id.* at 4.

67. *Id.* at 5; LADERMAN, THE SACRED REMAINS, *supra* note 46, at 174.

68. See Nancy Rommelmann, *Crying and Digging: Reclaiming the Realities and Rituals of Death*, L.A. TIMES, Feb. 6, 2005, Magazine, at I10. See PBS.org, *Dying in America: A Chronology*, [http://www.pbs.org/pov/pov2004/afamilyundertaking/special\\_dying.html](http://www.pbs.org/pov/pov2004/afamilyundertaking/special_dying.html) (last visited Oct. 26, 2007) (providing an interactive look at the evolution of the funeral).

World War I.<sup>69</sup> In the period of approximately fifty years, the care of and responsibility for the dead moved from the family to the funeral industry.<sup>70</sup> By the year 2002, every state except Colorado licensed funeral directors, and most states licensed funeral homes.<sup>71</sup> By that same year, “the Big Three” funeral corporations owned one-fifth of the nation’s funeral homes.<sup>72</sup>

Almost from its inception, the funeral industry has been the target of criticism. Most of the criticism has targeted the high cost of funerals.<sup>73</sup> In 1921, Reverend Quincy L. Dowd spoke of “foolish consumer impulses” and “instances of overcharging, deception, and pure greed rampant in the industry.”<sup>74</sup> In 1934, F.A. Manaugh wrote a book detailing the “long dark shadows of moral corruption and commercial devilry.”<sup>75</sup> These authors emphasized the “exploitation of the vulnerable mourner.”<sup>76</sup> Two articles that “caused particular consternation and alarm” were *The High Cost of Dying*, which appeared in *Collier’s* magazine in 1951, and *Can You Afford to Die*, published in the *Saturday Evening Post* in 1961.<sup>77</sup>

If these articles could be described as missiles, Jessica Mitford’s 1963 book, *The American Way of Death*, could be likened to an atomic bomb. Her book had “just the right mixture of social criticism, witty satire, and scandalous exposure to make it a bona fide cultural sensation.”<sup>78</sup> Her obituary describes her writing on the funeral industry in the following way:

She explored the changing lexicon of death, in which undertakers had come to call themselves “funeral directors” and “morticians,” coffins had become “caskets,” and hearses had become “profes-

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69. DEATH AND IDENTITY 19 (Robert Fulton & Robert Bendiksen eds., 3d. ed. 1994) (1965).

70. *Id.* at 20.

71. David E. Harrington & Kathy J. Krynski, *The Effect of State Funeral Regulations on Cremation Rates: Testing for Demand Inducement in Funeral Markets*, 45 J.L. & ECON. 199, 203 (2002).

72. Ashley Hunt, Note, *There Is a New Trend of Corporate “Death Care:” Let the Buyer Beware*, 27 NOVA L. REV. 449, 451 (2003).

73. LADERMAN, REST IN PEACE, *supra* note 24, at 53 (“[T]he majority of popular press reports and articles expos[ed] the business of death as a sham.”).

74. *Id.* at 54–55.

75. *Id.* at 59.

76. *Id.* at 60.

77. MITFORD, *supra* note 37, at 237.

78. LADERMAN, REST IN PEACE, *supra* note 24, 83. *The American Way of Death* was originally published by Simon and Schuster in 1963, MITFORD, *supra* note 37, at i, and it was revised in 1978. *Id.* In 1998, two years after her death, *The American Way of Death Revisited* was published by Vintage Books. *Id.*



sional cars.” In the new order, she said, flowers were “floral tributes” and corpses were always called “loved ones.” One of the results of all this, she said, was that the cost of dying was rising faster than was the cost of living.<sup>79</sup>

Ms. Mitford’s book “permanently changed the public face of death in America.”<sup>80</sup> Even Robert Kennedy, in arranging the funeral for his brother President John F. Kennedy, was mindful of the book.<sup>81</sup> Ms. Mitford was the catalyst for the Federal Trade Commission’s (FTC) passage of a regulation entitled Funeral Industry Practices, commonly known today as the Funeral Rule.<sup>82</sup> The Funeral Rule, effective as of 1984, requires a funeral provider to give a written general price list to every customer and to refrain from engaging in deceptive practices.<sup>83</sup>

### III. Funeral and Disposition of Remains Regulation

#### A. The Federal Trade Commission Regulations

In response to public outcry caused in large part by the Mitford book, the FTC passed regulations (the Funeral Rule) concerning disclosures and pricing practices affecting the funeral industry.<sup>84</sup> The FTC reports that an average funeral costs \$6,000 and many funerals “run well over \$10,000.”<sup>85</sup> Family members, caught at a particularly emotional time, were paying exorbitant prices out of feelings of guilt toward the deceased.<sup>86</sup> Owing to the exigencies of time, they were hardly able to shop around to procure the best deal.<sup>87</sup> Mitford’s book was “a damning portrayal” of this experience, and the funeral director was described as “driven by profit and dependent on the fine art of deceit.”<sup>88</sup>

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79. Richard Severo, *Jessica Mitford—Incisive Critic of American Ways and a British Upbringing—Dies at 78*, N.Y. TIMES, July 24, 1996, at D21. Ms. Mitford (1917–1996) died at the age of seventy-eight.

80. LADERMAN, REST IN PEACE, *supra* note 24, at xxiv.

81. *Id.* at xxxii.

82. FTC Funeral Rule, 16 C.F.R. § 453 (2007).

83. *Id.* § 453.2(a)–(b); Federal Trade Commission, FTC Reviews Funeral Rule, <http://www.ftc.gov/opa/1999/04/fun-rule.rev.shtm> (last visited Oct. 26, 2007).

84. LADERMAN, REST IN PEACE, *supra* note 24, at 133–35.

85. Federal Trade Commission, Facts for Consumers, Funerals: A Consumer Guide, <http://www.ftc.gov/bcp/conline/pubs/services/funeral.htm> (last visited Oct. 26, 2007).

86. *See id.*

87. MITFORD, *supra* note 37, at 25.

88. LADERMAN, REST IN PEACE, *supra* note 24, at 85.

According to the Funeral Rule, a funeral provider must give potential customers full, accurate, and itemized price information about its goods and services.<sup>89</sup> Additionally, the Funeral Rule outlines “unfair or deceptive acts or practices” including the following:

- misrepresenting legal, crematory, and cemetery requirements
- embalming for a fee without permission
- requiring the purchase of a casket for direct cremation
- requiring consumers to buy certain funeral goods or services as a condition for furnishing other funeral goods or services
- engaging in other deceptive or unfair practices<sup>90</sup>

The FTC’s concerns are evident in the definitions section of the rule. The term “alternative container” is defined as “an unfinished wood box or other non-metal receptacle or enclosure, without ornamentation or a fixed interior lining” made of “fiberboard, pressed-wood, composition materials (with or without an outside covering) or like materials.”<sup>91</sup>

The Funeral Rule provides that the funeral provider must furnish accurate price information, which includes the prices of all goods and services available, including the prices charged for embalming, the transportation of remains, caskets, outer burial containers, and cremation.<sup>92</sup> If individuals visit the funeral provider’s place of business, the price list must be written and is referred to as a “general price list” (GPL).<sup>93</sup> The list must contain, at a minimum, the following information:

- The name, address, and telephone number of the funeral provider’s place of business
- A caption describing the list as a “general price list”
- The effective date for the price list<sup>94</sup>

Retail prices must be given for a host of specific goods and services, such as the price of cremation and burial, as well as the price differential when customers themselves provide the receptacle or the casket.<sup>95</sup>

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89. Federal Trade Commission, Facts for Business, Complying with the Funeral Rule, <http://www.ftc.gov/bcp/conline/pubs/buspubs/funeral.htm> (last visited Oct. 26, 2007).

90. *Id.*

91. FTC Funeral Rule, 16 C.F.R. § 453.1(a) (2007).

92. *Id.* § 453.2(a).

93. *Id.* § 453.2(b)(4)(C).

94. *Id.* § 453.2(b)(4)(C).

95. *Id.* § 453.2(b)(4)(C)(3)(ii)(A)–(M).

Once a customer has made a selection of goods and services, the funeral provider must provide a written statement of all the information regarding the consumer's selection.<sup>96</sup>

The FTC sets forth specific misrepresentations that will be defined as deceptive acts or practices if made by the funeral provider.<sup>97</sup> The funeral provider may not make false representations that a particular state law requires embalming of the deceased, or requires a casket for direct cremations (one in which no casket is used).<sup>98</sup> Embalming is not required in any state under ordinary circumstances;<sup>99</sup> however, some states require the body to be either refrigerated or embalmed if it is not quickly buried or cremated.<sup>100</sup> Some states require embalming in the event the body crosses state lines.<sup>101</sup> Thus, representation that any goods or services are required by state or local law or particular cemeteries is a deceptive practice if the state, locality, or cemetery has no such requirement.<sup>102</sup>

The FTC investigated the funeral industry for ten years prior to passing the Funeral Rule.<sup>103</sup> According to one FTC economist, no systematic studies of the funeral industry were done prior to the promulgation of the Funeral Rule;<sup>104</sup> rather, the FTC relied on testimonial evidence.<sup>105</sup> Arthur Angel, an FTC lawyer and the main author of the Funeral Rule, indicated the FTC's mission changed greatly around 1970 due to a Ralph Nader report critical of the agency.<sup>106</sup> The FTC went from an agency with "hack lawyers" and "cronies recommended by politicians" to an active agency with "lots of new lawyers, activists from the top law schools in the country."<sup>107</sup> After these lawyers read Mitford's book, "Ruth Mulvey Harmer's *The High Cost of Dying*, trade

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96. *Id.* § 453.2(b)(5).

97. *Id.* § 453.3.

98. *Id.* §§ 453.3(a)(i), (b)(i).

99. Federal Trade Commission, Facts for Consumers, Paying Final Respects: Your Rights when Buying Funeral Goods and Services, <http://www.ftc.gov/bcp/edu/pubs/consumer/products/pro26.htm> (last visited Oct. 26, 2007).

100. *Id.*; see also Mark E. Wojcik, *Discrimination After Death*, 53 OKLA. L. REV. 389, 396 (2000).

101. Greensprings Natural Cemetery, When a Loved One Dies, [http://naturalburial.org/index.php?option=com\\_content&task=view&id=31&Itemid=45](http://naturalburial.org/index.php?option=com_content&task=view&id=31&Itemid=45) (last visited Oct. 26, 2007).

102. *Id.*

103. Harrington & Krynski, *supra* note 71, at 200.

104. *Id.*

105. *Id.*

106. MITFORD, *supra* note 37, at 177.

107. *Id.*

journals, and the like,” the agency proposed the Funeral Rule and set it for public hearings.<sup>108</sup>

The funeral industry came out in force to protest and set about contacting Representatives and Senators.<sup>109</sup> Under attack, the FTC dropped two provisions of the proposed rule; namely, that funeral directors must display the cheapest caskets with all of the others, and a prohibition against trying to influence the buyer’s choice of funeral.<sup>110</sup> Although the FTC lawyers began investigating the funeral industry in 1973, the final adoption of the Funeral Rule did not occur until 1984.<sup>111</sup> The FTC’s enforcement of the Funeral Rule since then has been sporadic.<sup>112</sup>

In 1996, the FTC also adopted a Funeral Rule Offenders Program in which funeral industry education and certification is administered by the National Funeral Directors Association (NFDA).<sup>113</sup> This self-policing program is actually beneficial to the funeral industry because under the agreement the FTC no longer publishes the names of those who have violated the Funeral Rule.<sup>114</sup>

## B. Cremation Regulations

The Funeral Rule does apply to cremation, but only in a limited way, and there appears to be few other regulations regarding cremation.<sup>115</sup> EPA regulations provide that cremated remains (cremains) scattered at sea should be scattered no closer than three nautical miles from land.<sup>116</sup> In 2005, Representative Diane Watson of California introduced a bill in Congress entitled the Mercury in Dental Fillings Disclosure and Prohibition Act.<sup>117</sup> The Bill identified cremation as one method of introducing mercury into the environment.<sup>118</sup> Paragraph 12 of the Bill cites a joint study by the EPA and the Cremation Associa-

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108. *Id.*

109. *Id.* at 178–79.

110. *Id.* at 179, 180.

111. *Id.*

112. *Id.* at 184–87.

113. About.com, Enforcing the Federal Funeral Rule, <http://usgovinfo.about.com/library/weekly/aa050102a.htm> (last visited Oct. 26, 2007).

114. MITFORD, *supra* note 37, at 187.

115. Keith E. Horton, *Who’s Watching the Cryptkeeper?: The Need for Regulation and Oversight in the Crematory Industry*, 11 *ELDER L.J.* 425, 433–38 (2003).

116. 40 C.F.R. § 229.1(a)(3) (2006); Horton, *supra* note 115, at 458 n.11.

117. Mercury in Dental Fillings Disclosure and Prohibition Act, H.R. 4011, 109th Cong. (2005).

118. *Id.* § (b)(7).

tion of North America (CANA) stating “238 pounds of mercury, mostly from dental amalgam fillings, were released from crematoria nationally in 1999.”<sup>119</sup> The Bill was referred to the Subcommittee on Health, but no further action was taken.<sup>120</sup>

Senator Christopher Dodd of Connecticut and former Representative Mark Foley of Florida introduced bills in both 2002 and 2004 to provide more direct regulation of the cremation industry;<sup>121</sup> these bills never made it out of Committee.<sup>122</sup> Senator Dodd indicated in his floor statement that the bills were introduced in response to scandals in the cremation industry,<sup>123</sup> particularly the scandal in Noble, Georgia, where over two hundred bodies were found “strewn in the woods near a crematorium.”<sup>124</sup> The only other federal recommendations come from the Transportation Security Administration concerning how remains should be transported by aircraft.<sup>125</sup>

There are also far fewer cremation regulations at the state level than there are for burial.<sup>126</sup> Approximately one-half of the states regulate the cremation industry with “comprehensive” cremation laws.<sup>127</sup> California and Florida have the most stringent rules regarding cremation affecting waste water and smokestack emissions from crematoriums.<sup>128</sup>

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119. *Id.* § (b)(12).

120. *Id.*; Bill Summary & Status, <http://thomas.loc.gov/bss/109search.html> (click Bill Number; enter “hr 4011”).

121. Federal Death Care Inspection and Disclosure Act, S.3023, 108th Cong. (2004); H.R. 4112, 108th Cong. (2004); S.3168, 107th Cong. (2002); H.R. 5743, 107th Cong. (2002).

122. Bill Summary & Status, <http://thomas.loc.gov/bss/108search.html> (click Bill Number; enter “S3023”); Bill Summary & Status, <http://thomas.loc.gov/bss/108search.html> (click Bill Number; enter “hr 4112”); Bill summary & Status, <http://thomas.loc.gov/bss/107search.html> (click Bill Number; enter “S3168”); Bill Summary & Status, <http://thomas.loc.gov/107search.html> (click Bill Number; enter “hr 5743”).

123. 148 CONG. REC. S11084 (2002) (statement of Sen. Dodd).

124. *Id.*; see also *Corpses Scandal at U.S. Crematorium*, BBC NEWS, Feb. 17, 2002, <http://news.bbc.co.uk/2/hi/americas/1825248.stm>.

125. Transportation Safety Administration, *Transporting the Deceased*, [http://www.tsa.gov/travelers/airtravel/specialneeds/editorial\\_1296.shtm](http://www.tsa.gov/travelers/airtravel/specialneeds/editorial_1296.shtm) (last visited Oct. 26, 2007).

126. See MITFORD *supra* note 37, at 89, 114; Horton, *supra* note 115, at 426.

127. See Horton, *supra* note 115, at 443; Al Karr, *Crematoriums Under Close Scrutiny as States Seek Tougher Regulations*, AARP BULL. (Am. Ass’n Retired Pers., Washington, D.C.), May 2002, available at <http://www.aarp.org/bulletin/consumer/a2003-07-01-crem.html>.

128. See, e.g., Florida Funeral, Cemetery, and Consumer Services Act, Fla. Stat. §§ 497.001–.6008 (2006); Warren E. Leary, *Not Even Death Ends Anti-Pollution Crusade*, N.Y. TIMES, Aug. 27, 1991, at C4.

The International Cemetery and Funeral Association (ICFA), in partnership with CANA, did issue guidelines for cremation; however, they are simply guidelines, not mandatory requirements.<sup>129</sup> The Associations published the guidelines for states to use in model rules.<sup>130</sup> The Associations, in conjunction with NFDA, also issued a due diligence standard to be used by funeral homes which use third-party crematories.<sup>131</sup>

The cost of cremation is approximately one-third the cost of burial,<sup>132</sup> which is one of the reasons for its growing popularity.<sup>133</sup> By the beginning of the twenty-first century, 26% of body dispositions were the result of cremation.<sup>134</sup> By the year 2025, CANA projects that one-half of decedents' bodies in the United States will be cremated.<sup>135</sup>

### C. Other Regulations

Individual states have their own rules and regulations concerning the funeral industry.<sup>136</sup> Some states even limit who may sell a casket, which can preclude a family from purchasing a casket through entities such as Costco.<sup>137</sup> The federal Department of Labor's Occupational Safety and Health Administration (OSHA) regulates the use of

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129. International Cemetery, Cremation, and Funeral Association, *Handling of Human Remains in Conjunction with Final Disposition*, [http://www.icfa.org/cremation\\_guidelines2.htm](http://www.icfa.org/cremation_guidelines2.htm) [hereinafter *Final Disposition Guidelines*] (last visited Oct. 26, 2007); International Cemetery, Cremation, and Funeral Association, *Handling of Human Remains in Conjunction with the Cremation Process*, [http://www.icfa.org/cremation\\_guidelines1.htm](http://www.icfa.org/cremation_guidelines1.htm) [hereinafter *Cremation Process Guidelines*] (last visited Oct. 26, 2007).

130. *Cremation Process Guidelines*, *supra* note 129; *Final Disposition Guidelines*, *supra* note 129.

131. INT'L CEMETERY, CREMATION & FUNERAL ASS'N, *DUE DILIGENCE FOR FUNERAL HOMES UTILIZING THIRD PARTY CREMATORIES* (2007), available at [http://www.icfa.org/cremation\\_guides.htm](http://www.icfa.org/cremation_guides.htm) (under "Due Diligence for Funeral Homes Utilizing Third-Party Crematories", follow "Introduction", "Internal Due Diligence for Funeral Homes", "Crematory Records Request", "Crematory Interview", and "Crematory Inspection" hyperlinks).

132. Harrington & Krynski, *supra* note 71, at 202.

133. Horton, *supra* note 115, at 430.

134. *Id.* at 429-30; MITFORD, *supra* note 37, at 121.

135. CREMATION ASS'N OF N. AM., *PROJECTED VERSUS ACTUAL DEATH AND CREMATION NUMBERS 1-2* (2005), <http://www.cremationassociation.org/docs/crem-data-predict.pdf>.

136. See, e.g., LADERMAN, *REST IN PEACE*, *supra* note 24, at 70; MITFORD, *supra* note 37, at 114.

137. Asheesh Agarwal & Jerry Ellig, *Buried Online: State Laws that Limit E-Commerce in Caskets*, 14 *ELDER L.J.* 283, 284 (2006) (discussing variations in state casket sales laws); Costco.com, *Costco Casket Sales*, <http://www.costco.com> (search for "caskets") (last visited Oct. 26, 2007).

formaldehyde or formaldehyde-releasing products that may affect employees who embalm.<sup>138</sup> Additionally, the federal Environmental Protection Agency (EPA) regulates the disposal of embalming wastewater.<sup>139</sup>

There are few, if any, regulations affecting less traditional dispositions of human remains. There are virtually no regulations with respect to green burials or home burials,<sup>140</sup> and there is very little regulation of cryonic preservation.<sup>141</sup> Arizona legislators proposed a bill to regulate the cryonic industry as a result of the outrage over the discovery that only the head of baseball great Ted Williams, and not his complete body, had been preserved through cryonics.<sup>142</sup> Alcor Life Extension Foundation, the entity at which Mr. Williams' head is housed, reached a compromise with the Arizona legislature and House Bill 2637 was subsequently withdrawn.<sup>143</sup> In Michigan, a dispute over licensing arose between the Michigan Department of Labor and Economic Growth and the nonprofit organization, Cryonics Institute.<sup>144</sup>

A growing number of states have passed recent legislation allowing the decedent to make his or her wishes known, and/or to appoint a proxy who may dictate the disposition of remains.<sup>145</sup> This new area is referred to as the law of personal preference.<sup>146</sup> Although offering greater predeath autonomy with respect to decision making, this

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138. 29 C.F.R. § 1910.1048 (2006).

139. See U.S. Environmental Protection Agency, Funeral Home Waste Disposal, <http://www.epa.gov/region02/water/compliance/more.html> (last visited Oct. 26, 2007).

140. David Benson, *Green Burials Become Option Elsewhere*, PRESS OF ATLANTIC CITY, Aug. 9, 2004 at C1; Nancy Smith, *Green Burials & Home Funerals*, MOTHER EARTH NEWS, Apr.–May 2003, at 28, 29, available at [http://www.glendalenaturepreserve.org/home\\_funeral.pdf](http://www.glendalenaturepreserve.org/home_funeral.pdf).

141. David M. Baker, *Cryonic Preservation of Human Bodies—A Call for Legislative Action*, 98 DICK. L. REV. 677, 678 (1994) (discussing a lack of regulation in cryonics).

142. Peter Corbett, *Bill Urges State Oversight of Cryonics*, ARIZ. REPUBLIC, Feb. 7, 2004, at 1B.

143. See ALCOR, Chronology of Attempted 2004 Cryonics legislation in Arizona, <http://www.alcor.org/Library/html/legislation.html> (last visited Oct. 26, 2007).

144. *State Licenses Cryonics Lab Allows Freezing of Corpses to Continue*, MICH. DAILY, Jan. 8, 2004, available at <http://media.www.michigandaily.com/media/storage/paper851/news/2004/01/08/News/State.Licenses.Cryonics.Lab.Allows.Freezing.Of.Corpse.To.Continue-1421247.shtml>.

145. See, e.g., TEX. HEALTH & SAFETY CODE ANN. § 711.002 (Vernon 2007).

146. See Funeral Consumers Alliance, Personal Preference Laws and Designated Agent, <http://www.funerals.org/pref.htm> (last visited Oct. 26, 2007).

legislation must be supplemented with additional legislative protocols in the absence of expressed personal preferences.

#### IV. The Human Body as Property

Whether the human body may be classified as property under the law has long been a subject of debate, in part because characterizing a body as property has moral implications.<sup>147</sup> In *Of Property*, a treatise written around 1690 by John Locke,<sup>148</sup> the theory was first advanced that the human body is the property of its owner.<sup>149</sup> English common law, on the other hand, held no property rights attached to a dead body.<sup>150</sup> This may have developed because in the English court system of the time, common-law courts had jurisdiction over property matters while the ecclesiastical courts had jurisdiction over the human body.<sup>151</sup> As stated by an early twentieth century New Jersey court:

The ecclesiastical courts had jurisdiction of the dead; and, in consonance with the doctrines of that jurisdiction, the common law early rejected the concept of property in the corpse and the ashes, and treated them as subjects largely of church superintendency.<sup>152</sup>

Under English common law, a decedent could not control the disposition of his or her remains by will.<sup>153</sup> Initially, the American courts followed suit.<sup>154</sup> In *Enos v. Snyder*, John Enos, who died in California, was survived by his wife, Susie, and daughter, Gertrude.<sup>155</sup> At the time of his death, he was no longer living with his wife and was instead living with Rachel Snyder.<sup>156</sup> In his will, Mr. Enos left instructions that the manner of his burial should be as directed by Rachel.<sup>157</sup>

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147. See Michael H. Scarmon, Note, *Brotherton v. Cleveland: Property Rights in the Human Body—Are the Goods Oft Interred with Their Bones?*, 37 S.D. L. REV. 429, 436 (1991–1992).

148. John Locke (1632–1704) was a British philosopher. See *John Locke*, in THE STANFORD ENCYCLOPEDIA OF PHILOSOPHY (2007), available at <http://plato.stanford.edu/entries/locke/>.

149. Radhika Rao, *Property, Privacy, and the Human Body*, 80 B.U. L. REV. 359, 367 (2000).

150. Gregory Gelfand & Toby R. Levin, *Fetal Tissue Research: Legal Regulation of Human Fetal Tissue Transplantation*, 50 WASH. & LEE L. REV. 647, 683 (1993).

151. Scarmon, *supra* note 147, at 437.

152. *Spiegel v. Evergreen Cemetery Co.*, 186 A. 585, 586 (N.J. 1936).

153. Roy Hardiman, Comment, *Toward the Right of Commerciality: Recognizing Property Rights in the Commercial Value of Human Tissue*, 34 UCLA L. REV. 207, 225 (1986).

154. Scarmon, *supra* note 147, at 437.

155. 63 P. 170, 171 (Cal. 1900).

156. *Id.*

157. *Id.*



His wife and daughter demanded Mr. Enos' body from Rachel, but she refused.<sup>158</sup> Mrs. Enos and Gertrude then instituted a suit for possession of the body.<sup>159</sup> The Supreme Court of California held that the right to custody and possession of the body belonged to the next of kin, his wife and daughter.<sup>160</sup> The court stated,

in the absence of statutory provisions, there is no property in a dead body, that it is not part of the estate of the deceased person, and that a man cannot by will dispose of that which after his death will be his corpse.<sup>161</sup>

The California Supreme Court cited *Williams v. Williams*,<sup>162</sup> an 1882 English case, as precedent; a case involving rather interesting facts. The decedent indicated in his will that his body should be given to his friend Eliza Williams "to be dealt with by her in such manner as he had directed to be done in a private letter to her."<sup>163</sup> Apparently Ms. Williams had been his mistress and he had asked her to see that he was cremated.<sup>164</sup> Instead, the decedent's widow and son had him buried in a cemetery.<sup>165</sup> Undeterred, Ms. Williams "succeeded in removing it from the cemetery" and filed suit to recover her expenses for the ultimate cremation.<sup>166</sup> The English Court denied her claim and found the decedent's will provision invalid because a human body was not property.<sup>167</sup>

The California Supreme Court in *Enos* cited verbatim the reasoning of *Williams*.<sup>168</sup> As further support for its position that the next of kin and not the deceased controlled disposition, the court observed that under the law of California the next of kin was legally required to bury the body of a related decedent.<sup>169</sup> In fact, if the next of kin did not bury the body, he or she was guilty of a misdemeanor.<sup>170</sup>

With the end of ecclesiastical courts and the "assumption of exclusive jurisdiction by the temporal courts," the theory of the body as property changed radically, both in England and in the United

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158. *Id.*

159. *Id.*

160. *Id.* at 172.

161. *Id.* at 171.

162. *Id.* (citing *Williams v. Williams*, L.R. 20 Ch. Div. 659 (1882)).

163. *Id.*

164. Hardiman, *supra* note 153, at 226.

165. *Enos*, 63 P. at 171 (citing *Williams v. Williams*, L.R. 20 Ch. Div. 659 (1882)).

166. *Id.*

167. *Id.*

168. *Id.* at 172.

169. *Id.*

170. *Id.*

States.<sup>171</sup> The prevailing rule evolved giving individuals a quasi property right in a dead body.<sup>172</sup> In the context of decedent remains, it “gives a right to determine the time, place and manner of burial and to have the deceased delivered to the next of kin in the same way as it was when life left it.”<sup>173</sup> This change was largely due to two developments. First, many states had laws that imposed legal duties on relatives to dispose of a body.<sup>174</sup> Second, courts needed a legal theory in order to award damages in the event some harm was done to a corpse.<sup>175</sup> In a 1912 West Virginia case, the court concluded:

The real question is not of the disposable, marketable value of a corpse or its remains, as an article of traffic, but it is of the sacred and inherent right to its custody, in order to decently bury it and secure its undisturbed repose. The dogma of the English ecclesiastical law, that a child has no such claim, no such exclusive power, no peculiar interest in the dead body of its parent, is so utterly inconsistent with every enlightened perception of personal right, so inexpressibly repulsive to every proper moral sense, that its adoption would be an eternal disgrace to American jurisprudence.<sup>176</sup>

When organ transplantation became a reality, the law needed to evolve once again. In 1965, the National Conference of Commissioners on Uniform Laws began to draft the Uniform Anatomical Gift Act (UAGA),<sup>177</sup> and by 1972 all of the states adopted a form of the UAGA.<sup>178</sup> By adopting this law, state legislatures implicitly accepted that one may devise his or her body, or parts of his or her body, at death.<sup>179</sup> The UAGA provides that family members have a statutory right to a deceased relative’s body parts if the deceased leaves no instructions concerning organ donation.<sup>180</sup> Courts as well have recog-

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171. *Spiegel v. Evergreen Cemetery Co.*, 186 A. 585, 586 (N.J. 1936).

172. *Id.* A quasi property right is a legal fiction created by courts to aid deserving plaintiffs. Remigius N. Nwabueze, *Biotechnology and the New Property Regime in Human Bodies and Body Parts*, 24 LOY. L.A. INT’L & COMP. L. REV. 19, 31 (2002).

173. Nwabueze, *supra* note 172.

174. *See id.* at 30.

175. *Id.* at 28–30.

176. *Ritter v. Couch*, 76 S.E. 428, 430 (W. Va. 1912); *see Nwabueze, supra* note 172, at 28.

177. Theodore Silver, *The Case for a Post-Mortem Organ Draft and a Proposed Model Organ Draft Act*, 68 B.U. L. REV. 681, 693 (1988).

178. Michelle Bourianoff Bray, *Personalizing Personalty: Toward a Property Right in Human Bodies*, 69 TEX. L. REV. 209, 222 (1990); Silver, *supra* note 177, at 693.

179. Hardiman, *supra* note 153, at 226.

180. Philippe Ducor, *The Legal Status of Human Materials*, 44 DRAKE L. REV. 195, 230 (1996).

nized a decedent's right to dictate the disposition of his or her remains.<sup>181</sup>

There are, however, limits on this right. In *Estate of Moyer*, the Supreme Court of Utah stated:

a person has some interest in his body, and the organs thereof, of such a nature that he should be able to make a disposition thereof, which should be recognized and held to be binding after his death, so long as that is done within the limits of reason and decency, as related to the accepted customs of mankind.<sup>182</sup>

In *Moyer*, Thomas Moyer, a citizen of Arizona, was visiting his mother in Salt Lake City and died on Christmas day.<sup>183</sup> His mother was informed of his will, which contained a provision that he wished to be cremated.<sup>184</sup> She instead had him buried in a cemetery in Salt Lake City.<sup>185</sup> The executor of the estate then filed suit.<sup>186</sup> The trial court ordered Mr. Moyer's body exhumed for subsequent cremation per his request.<sup>187</sup> The Utah Supreme Court reversed this order because "a person, once buried, should not be exhumed except for the most compelling of reasons."<sup>188</sup> The justices found that the property right was of a special nature, but subject to limits, such as the following:

we do not desire to be understood as saying that this right should be regarded as an absolute property right by which a person could give absurd or preposterous directions that would require extravagant waste of useful property or resources, or be offensive to the normal sensibilities of society in respect for the dead.<sup>189</sup>

It is not entirely clear in every jurisdiction that the decedent's wishes prevail over the wishes of his or her family. For example, there is the New York State Appellate Division case, *Booth v. Huff*.<sup>190</sup> In *Booth*, the decedent, Ronald Booth, was in the process of obtaining a divorce from his wife.<sup>191</sup> The executor of his estate was his live-in girlfriend.<sup>192</sup> After he was cremated, the decedent's two daughters asked for some of his remains, and his girlfriend apparently refused their

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181. See, e.g., *Estate of Moyer*, 577 P.2d 108, 108–11 (Utah 1978); see also *In re Kaufman's Estate*, 158 N.Y.S.2d 376, 378 (1956).

182. *Estate of Moyer*, 577 P.2d at 110.

183. *Id.* at 109.

184. *Id.*

185. *Id.*

186. *Id.*

187. *Id.*

188. *Id.* at 110–11.

189. *Id.* at 110.

190. 708 N.Y.S.2d 757 (N.Y. App. Div. 2000).

191. *Id.* at 758.

192. *Id.*

request and instead scattered his ashes in the Hudson River pursuant to his alleged wishes.<sup>193</sup> The daughters sued his girlfriend for damages.<sup>194</sup> The court held “a decedent’s wishes will be taken into account when a dispute erupts over the ultimate disposition of remains *and, in some cases, given effect over the objections of family members.*”<sup>195</sup>

## V. Common Law, Priority of Decision Laws, and Personal Preference Laws

“The obsession with burial and what to do with bodies when life has fled is a defining human trait,”<sup>196</sup> and has ancient historical roots. In earlier times, the law was not usually used as a tool to resolve disposition dilemmas. In the *Iliad*, Priam, the King of Troy and Hector’s father, begged Achilles to return Hector’s body to him for a proper burial.<sup>197</sup> Achilles relented and both he and Priam wept for their respective losses.<sup>198</sup> Currently, some states use the common law to settle disputes concerning the disposition of the remains of the deceased.<sup>199</sup> Other states have laws that designate which family members, and in what priority, determine the treatment of remains.<sup>200</sup> I will refer to these statutes as the Priority of Decision laws. In these states, the statutes generally provide first and foremost that the decedent has the right to determine the disposition of his or her remains.<sup>201</sup> If there is no decedent declaration, then the statutes provide a list of persons with the authority to determine the disposition.<sup>202</sup>

Fifteen states have statutes that designate the persons, in order, who are entitled to control the remains of the deceased person.<sup>203</sup> In

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193. *Id.* at 758–59.

194. *Id.* at 759.

195. *Id.* (emphasis added).

196. Adam Gopnik, *Remains of the Days*, NEW YORKER, Mar. 12, 2007, at 25.

197. James Hunter, *Achilles*, ENCYCLOPEDIA MYTHICA, Mar. 3, 1997, <http://www.pantheon.org/articles/a/achilles.html>.

198. HOMER, THE ILLIAD, Book XXIV (Andrew Lang, Walter Leaf & Ernest Myers trans.). Alexander Ivanov, in 1824, painted oil on canvas of the meeting, “Priam Asking Achilles to Return Hector’s Body.” The painting hangs in the Tretyakov Gallery in Moscow, Russia. See Olga’s Gallery, Alexander Ivanov, <http://www.abcgallery.com/I/ivanov/ivanov1.html> (last visited Oct. 26, 2007).

199. See, e.g., *Arthur v. Milstein*, 949 So. 2d 1163, 1166 (Fla. Dist. Ct. App. 2007).

200. See, e.g., CO. REV. STAT. § 15-19-106 (2005); DEL. CODE ANN. tit. 12, § 264 (2006); 755 ILL. COMP. STAT. 65/5 (2004); OR. REV. STAT. § 97.130 (2005).

201. See statutes cited *supra* note 200.

202. See statutes cited *supra* note 200.

203. Those states are: Alabama, Arizona, California, Colorado, Connecticut, Delaware, The District of Columbia, Illinois, Kansas, Minnesota, North Carolina,

approximately twenty-four states, there are some provisions about the disposition of remains.<sup>204</sup> In nearly every other state, courts have settled disputes, and their opinions have set forth the order of persons entitled to the remains.<sup>205</sup> “Giving close relatives authority to make decisions about the disposition of the remains of the recent dead appears to be a cultural universal.”<sup>206</sup> A survey of state cases reflects that in almost every jurisdiction, courts first look to the wishes, if any, of the deceased.<sup>207</sup> If the deceased has left no clear instructions, the courts generally next look to the surviving spouse, and then to the next of kin.<sup>208</sup>

#### A. Common Law

Circuit Judge Seidlin, in his February 22, 2007 Order in the Vickie Lynn Marshall (Anna Nicole Smith) disposition of the body case, applied common law as well as Florida statutory authority.<sup>209</sup> He first cited to *Cohen v. Guardianship of Cohen*, a Florida Fourth Circuit case, and observed,

It is a sorrowful matter to have relatives disputing in court over the remains of the deceased. In this case in particular, there is no solution that will bring peace to all parties. We express our sympathies to both sides in their loss, which must be magnified by these proceedings. Cases such as these require the most sensitive exercise of the equitable powers of the trial courts.<sup>210</sup>

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New York, Oregon, Rhode Island, and Texas. See *infra* App. A (listing states that have such provisions).

204. See *infra* App. A.

205. See *infra* App. A.

206. Walker, *supra* note 30, at 21.

207. For examples, see Alabama—*Cottingham v. McKee ex rel. Estate of Cunningham*, 821 So. 2d 169 (Ala. 2001); Florida—*Cohen v. Guardianship of Cohen*, 898 So. 2d 950 (Fla. Dist. Ct. App. 2005); New Jersey—*Sherman v. Sherman*, 750 A.2d 229 (N.J. Super. Ct. Ch. Div. 1999); New York—*Booth v. Huff*, 708 N.Y.S.2d 757 (N.Y. App. Div. 2000); Tennessee—*Estes v. Woodlawn Mem'l Park*, 780 S.W.2d 759 (Tenn. Ct. App. 1989).

208. For examples, see Alabama—*McRae v. Booth*, 938 So. 2d 432 (Ala. Civ. App. 2006); Alaska—*Edwards v. Franke*, 364 P.2d 60 (Alaska 1961); Florida—*Andrews v. McGowan*, 739 So. 2d 132 (Fla. Dist. Ct. App. 1999); Georgia—*Welch v. Welch*, 505 S.E.2d 470 (Ga. 1998); New York—*Finn v. City of New York*, 335 N.Y.S.2d 516 (N.Y. Civ. Ct. 1972), *rev'd on other grounds*, 350 N.Y.S.2d 552 (N.Y. App. Div. 1973).

209. See *In re Marshall*, No. 07-00824(61) (Fla. Cir. Ct. Prob. Div. Broward County Feb. 22, 2007), available at <http://i.a.cnn.net/cnn/2007/images/02/22/finalorder07824.pdf>.

210. *Id.* at 1 (citing *Cohen v. Guardianship of Cohen*, 896 So. 2d 950, 955 (Fla. Dist. Ct. App. 2005)).

Under Florida common law, the rights to a deceased's remains lie with the next of kin.<sup>211</sup> Although Ms. Arthur, Anna Nicole Smith's mother, claimed to be the next of kin, the court found that Ms. Smith's daughter Dannielynn, who at the time of the hearing was five and one-half months old, was the actual next of kin.<sup>212</sup>

Judge Seidlin first looked to the statute controlling the interment of a body held by the medical examiner, Florida Statute section 406.50(4), then to the Florida intestacy statute, Florida Statute section 732.102, in order to prioritize the next of kin.<sup>213</sup> The intestacy statute provides in part:

The part of the intestate estate not passing to the surviving spouse under s. 732.102, or the entire intestate estate if there is no surviving spouse, descends as follows:

- (1) To the lineal descendants of the decedent.
- (2) If there is no lineal descendant, to the decedent's father and mother equally, or to the survivor of them.<sup>214</sup>

Applying the statute, the court awarded the body to Attorney Richard C. Milstein,<sup>215</sup> who had previously been appointed by the court as guardian ad litem for Dannielynn.<sup>216</sup> Milstein determined it was in the best interests of Dannielynn to bury her mother, Anna Nicole Smith, in the Bahamas next to Smith's deceased son and Dannielynn's half-brother.<sup>217</sup>

On appeal by Arthur, the Florida Fourth District Court of Appeals determined that Judge Seidlin applied the incorrect law, but reached the right result.<sup>218</sup> The appellate court used the Topsy Coachman Doctrine and affirmed Judge Seidlin's Order.<sup>219</sup> The court dis-

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211. *Id.* at 12.

212. *Id.*

213. *Id.* at 15.

214. FLA. STAT. § 732.103 (2005).

215. *In re Marshall*, at 16.

216. *Id.* at 4.

217. Emanuella Grinberg, *Lawyer: Anna Nicole Smith to Be Buried in Bahamas Alongside Dead Son*, COURT TV NEWS, Feb. 22, 2007, [http://www.courttv.com/people/anna-nicole-smith/022207\\_ctv.html](http://www.courttv.com/people/anna-nicole-smith/022207_ctv.html).

218. *Arthur v. Milstein*, 949 So. 2d 1163, 1166 (Fla. Dist. Ct. App. 2007).

219. The Topsy Coachman Doctrine originates from *Lee v. Porter*, 63 Ga. 345 (1879), and was adopted by the Florida Supreme Court in *Carraway v. Armour & Co.*, 156 So. 2d 494 (Fla. 1963). The quote that goes with the tipsy coachman is:

The pupil of impulse, it fore'd him along,  
His conduct still right, with his argument wrong;  
Still aiming at honour, yet fearing to roam,  
The coachman was tipsy, the chariot drove home.

agreed with the trial judge because it found that the cited statutes concerned whether a funeral home or the medical examiner could be held liable for its decision disposing of a body.<sup>220</sup> The appellate court looked to Florida common law for the answer of who was the rightful next of kin.<sup>221</sup>

The court examined the wishes of Anna Nicole Smith herself to determine where her remains should be buried.<sup>222</sup> Citing to the *Kirksey*, *Cohen*, and *Leadingham* cases, the Court stated,

Generally, in the absence of a testamentary disposition, the spouse of the deceased or the next of kin has the right to the possession of the body for burial or other lawful disposition. *Kirksey*. In *Cohen*, we held that a written testamentary disposition is not conclusive of the decedent's intent if it can be shown by clear and convincing evidence that he intended another disposition for his body . . . herein, the trial court found that "Anna Nicole Smith's last ascertainable wish with respect to the disposition of her remains was that she be buried in the Bahamas next to her son Daniel Wayne Smith."<sup>223</sup>

Trial Judge Seidlin had concluded that Florida statutes provided the priority of decision. The appellate court, on the other hand, found the statutes inapplicable and applied Florida common law to determine priority.

## B. Priority of Decision Laws

Priority of Decision statutes initially set forth whether an individual may specify his or her wishes concerning the disposition of his or her remains.<sup>224</sup> Then, the laws list the order of individuals who may next determine the ultimate disposition.<sup>225</sup> These state provisions vary widely, however.<sup>226</sup> It appears that some of these statutes may have evolved from the laws setting forth which relative had the duty to pay the costs of burial or other disposition of the body.<sup>227</sup>

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The theory is that as long as a court reaches a correct result, the incorrect analysis to reach that result may be ignored. *Caraway*, 156 So. 2d at 497.

220. *Arthur v. Milstein*, 949 So. 2d 1163, 1166 (Fla. Dist. Ct. App. 2007).

221. *Id.* at 1165–66.

222. *Id.*

223. *Id.* at 1166.

224. See statutes cited *supra* note 200 and accompanying text.

225. See *infra* App. A.

226. See W. Brad Jarman, *Resting in Peace: An Analysis of Disposition of Remains Laws*, GAY MEN'S HEALTH CRISIS, July 2004, at 1, 1, available at [http://www.gmhc.org/policy/nys/dispos\\_remains\\_0804.pdf](http://www.gmhc.org/policy/nys/dispos_remains_0804.pdf).

227. See *infra* App. A.

The law of Washington provides a typical example. In the Revised Code of Washington section 68.50.160, the Washington legislature wrote “a person has the right to control the disposition of his or her own remains without the predeath or postdeath consent of another person.”<sup>228</sup> Though not required, if the document is written and signed by the decedent in the presence of a witness, it is deemed “sufficient legal authorization.”<sup>229</sup> If a decedent made “prearrangements that are prepaid or filed with a licensed funeral establishment or cemetery authority,” then survivors may not cancel or make “substantial revisions” to the arrangement.<sup>230</sup> In the event a decedent has not made prearrangement, as set forth in subsection 2 of the statute, or if the costs of executing the wishes of the decedent exceed a “reasonable amount,” then the disposition of the remains

devolves upon the following in the order named:

- (a) The surviving spouse.
- (b) The surviving adult children of the decedent.
- (c) The surviving parents of the decedent.
- (d) The surviving siblings of the decedent;
- (e) A person acting as a representative of the decedent under the signed authorization of the decedent.<sup>231</sup>

There are two potential problems with this statute. First, the order of persons is a default rule followed only if the decedent did not execute a prearrangement agreement as defined in the second paragraph of the statute. Apparently, the prearrangements referred to are only those paid for by the decedent and offered by a funeral provider. In the event the decedent simply indicates his or her wishes in writing under the first section of the statute, the list of decision makers is presumably not applicable. Second, there is no provision in the event there is an even number of surviving adult children, siblings or parents of the decedent and they disagree in equal numbers as to the disposition. In other words, there is no standard to operate as a tie breaker. This statute evolved from an earlier statute, formerly Washington Revised Code section 68.08.160, entitled Liability for Cost of Disposing of Remains, which had an entirely different focus than the statute as it now reads.<sup>232</sup> The former Washington statute was similar

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228. WASH. REV. CODE § 68.50.160 (2007).

229. *Id.* § 68.50.160(1).

230. *Id.* § 68.50.160(2).

231. *Id.* § 68.50.160(3).

232. *Id.* § 68.08.160 (1987).



to the Florida statutes analyzed in *Arthur v. Milstein*, the Anna Nicole Smith appeal.<sup>233</sup> The current Washington statute is certainly much clearer than the Florida statute because its wording clarifies that it relates to the disposition of remains, not simply the cost of the disposition.

Some state statutes treat a domestic partner and a spouse equally for Priority of Decision laws while others do not.<sup>234</sup> Some states refer to a preneed agreement in their Priority of Decision laws, while others do not.<sup>235</sup> Many states allow a decedent to designate an agent for the disposition of his or her remains.<sup>236</sup> The statutes, however, vary in how this relationship must be established. In Idaho, for example, the agent must be designated in a “written document executed by the decedent and acknowledged in the same manner as required for instruments conveying real property,”<sup>237</sup> whereas in Alabama the person must be “acting on the decedent’s signed written instructions regarding final disposition contained in a preneed funeral contract.”<sup>238</sup> In some states, the agent is tied to the Power of Attorney for Health Care.<sup>239</sup> In general, the order of persons entitled to choose the disposition is similar to a typical intestacy statute, with the exception that the agent of the decedent is prominently figured in most disposition statutes, but not under intestacy statutes.<sup>240</sup>

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233. 949 So. 2d 1163 (Fla. Dist. Ct. App. 2007).

234. For example, the District of Columbia and New York include domestic partners. D.C. CODE § 3-413(a)(1) (2003); N.Y. PUB. HEALTH LAW § 4201 (McKinney Supp. 2007). Colorado and Texas are among the states that do not. COLO. REV. STAT. § 15-19-106 (2005); TEX. HEALTH & SAFETY CODE ANN. § 711.002 (Vernon 2006).

235. For example, Delaware and Oregon refer to a preneed agreement. DEL. CODE ANN. tit. 12, § 260 (Supp. 2006); OR. REV. STAT. § 97.130 (2005). Colorado and Kansas, for example, do not. COLO. REV. STAT. § 15-19-104 (2005 & Supp. 2006); KAN. STAT. ANN. § 65-1734 (2006).

236. See, e.g., ALA. CODE § 34-13-11 (2002); CAL. HEALTH & SAFETY CODE § 7100 (West 1970 & Supp. 2007); CONN. GEN. STAT. § 45a-318 (2004 & Supp. 2007); IDAHO CODE ANN. § 54-1142 (2003 & Supp. 2006).

237. IDAHO CODE ANN. § 54-1142.

238. ALA. CODE § 34-13-11.

239. See, e.g., CAL. HEALTH & SAFETY CODE § 7100. A Power of Attorney for Health Care is a proxy “which designate[s] an agent to make health care decisions for the patient (the power of the agent does not expire with the principal’s incompetency).” JESSE DUKEMINIER ET AL., WILLS, TRUSTS AND ESTATES 350 (7th ed. 2005).

240. See, e.g., KAN. STAT. ANN. § 65-1734 (2006); MINN. STAT. § 149A.80 (1997); N.Y. PUB. HEALTH LAW § 4201(2)(a)(i) (McKinney 2007).

### C. Personal Preference Laws

A relatively new phenomenon is the concept of Personal Preference laws. A jurisdiction with a particularly workable type of Personal Preference law is Illinois. The Illinois legislature passed the Illinois Disposition of Remains Act effective January 1, 2006.<sup>241</sup> The Act states the decedent may provide written directions for the disposition of his or her remains by any of the following:

a will, a prepaid funeral or burial contract, a power of attorney that satisfies the provisions of Article IV—Powers of Attorney for Health Care of the Illinois Power of Attorney Act and contains a power to direct the disposition of remains, a cremation authorization form that complies with the Crematory Regulation Act, or in a written instrument that satisfies the provisions of Sections 10 and 15 and that is signed by the person and notarized.<sup>242</sup>

In the event the decedent left no instructions, the Act provides the order of decision priority as:

1. The designated agent “To Control Disposition of Remains” under § 10 of the Act;
2. The executor or representative, acting according to instructions as to disposition in the decedent’s will;
3. The surviving spouse;
4. The adult children of the decedent;
5. The surviving parents of the decedent;
6. The surviving adults in the next degree of kinship to the decedent;
7. In the case of an indigent, the public official charged with arranging the disposition of the decedent;
8. In the case of an individual who has donated his or her body to science, or who has died in a nursing home or other private institution and who has executed a cremation authorization form, a representative of the institution; and
9. Any other person willing to assume legal and financial responsibility.<sup>243</sup>

In section 10 of the Act, the legislature included a statutory form for the “written instrument authorizing the disposition of remains.”<sup>244</sup>

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241. 755 ILL. COMP. STAT. 65/1 (Supp. 2007).

242. *Id.* 65/40.

243. *Id.* 65/5.

244. *Id.* 65/10. The form is attached as *infra* App. B.

One section of the form permits the decedent to either allow or disallow his or her survivors to cancel the requested cremation if they deem the cremation inappropriate.<sup>245</sup> Oregon, Rhode Island, and Texas have similar agency forms.<sup>246</sup> The Delaware legislature has a unique Declaration of Disposition of Last Remains that is quite detailed.<sup>247</sup> The Personal Preference laws differ from the Priority of Decision laws because their provisions are much more specific, giving family members and agents more certainty.

When a decedent's wishes are known, the choices are far easier for the agent or family member. Justice Hugo L. Black, who died in 1971, gave his children three directives.<sup>248</sup> He wanted his funeral to be: simple, cheap, and have no open casket.<sup>249</sup> His children purchased a pink casket for \$165 and ripped the cloth entirely off of it.<sup>250</sup> Justice Black's funeral service was at the National Cathedral in Washington, D.C. and his casket bore no United States flag or any flowers.<sup>251</sup> Justice Black's children were able to carry out his last wishes because they were aware of his preferences.

#### D. Other Private Provisions/Suggestions

Nongovernmental private organizations have also influenced the area of body disposition and the appointment of an agent for the disposition. The Austin Memorial and Burial Information Society (AMBIS) has created both a Body Disposition Authorization Affidavit and an Appointment of Agent to Control Disposition of Remains form.<sup>252</sup> The Funeral Consumer's Alliance is a nonprofit federation of

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245. *Id.* 65/10.

246. OR. REV. STAT. § 97.130 (2005); R.I. GEN. LAWS § 5-33.3-4 (2006); TEX. HEALTH & SAFETY CODE ANN. § 711.002 (Vernon 2006).

247. DEL. CODE ANN. tit. 12, § 265 (Supp. 2006). This declaration is attached as *infra* App. C.

248. Josephine Black Pesaresi, *Yes, Virginia, There Is a Coffin!*, FUNERAL CONSUMER ALLIANCE CONN. NEWSL. (Funeral Consumer Alliance of Conn., Bridgewater, Conn.) Fall 1988, [http://members.aol.com/fcaofct/cheap\\_coffin.htm](http://members.aol.com/fcaofct/cheap_coffin.htm).

249. *Id.*

250. *Id.*

251. *Id.*

252. Funeral Consumers Alliance of San Antonio, Texas, Body Disposition Authorization Affidavit, <http://www.funerals.org/affiliate/dispositionagent.pdf> (last visited Oct. 26, 2007); Funeral Consumers Alliance of San Antonio, Texas, Appointment of Agent to Control Disposition of Remains, [http://www.fcastx.org/images/stories/documents/disposition\\_of\\_remains\\_ambis.pdf](http://www.fcastx.org/images/stories/documents/disposition_of_remains_ambis.pdf) (last visited Oct. 26, 2007). AMBIS is a nonprofit consumer funeral alliance. Austin Memorial

funeral information/death care societies located across the United States.<sup>253</sup> It has a state-by-state guide to Personal Preference laws.<sup>254</sup> A number of funeral providers have appointment of agent forms.<sup>255</sup> In some instances, churches provide the forms.<sup>256</sup> The Lance Armstrong Foundation has extensive information on planning a funeral or memorial service.<sup>257</sup> There is also information available through bar associations and academic journals.<sup>258</sup>

## VI. The Need for Uniform Laws on the Disposition of Bodily Remains

### A. Family Disputes

Family disputes over bodily remains are common. Some of these disputes are highly publicized because of the deceased's identity. The families of Kirby Puckett, Ted Williams, Anna Nicole Smith, James Brown, Gram Parsons, and the Reverend Billy Graham have all had very bitter and very public disputes.<sup>259</sup>

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& Burial Information Society: AMBIS, <http://www.funerals.org> (last visited Oct. 26, 2007).

253. Funeral Consumers Alliance, <http://www.funerals.org> (last visited Sept. 17, 2007).

254. Funeral Consumers Alliance, Personal Preference Laws for Body Disposition, <http://www.funerals.org/pref.htm> (last visited Oct. 26, 2007); *see also Personal Preference Laws Define Cremation Decisions*, DEATH CARE BUS. ADVISOR (LRP Publications, Boston, Mass.), Sept. 5, 2002, at 5.

255. *See, e.g.*, New York Cremation, Appointment of Agent to Control Disposition of Remains, [http://www.nycremation.com/pdf/Agent\\_Form.pdf](http://www.nycremation.com/pdf/Agent_Form.pdf) (last visited Oct. 26, 2007).

256. *See, e.g.*, Bel Air Presbyterian Church, Vital Information, <http://www.belairpres.org/resources/memorial.html> (last visited Oct. 26, 2007).

257. Livestrong: Lance Armstrong Foundation, Funeral and Memorial Pre-planning: Detailed Information, [http://www.livestrong.org/site/c.jvKZLbMRIsG/b.2229575/k.5FA4/Detailed\\_Information.htm](http://www.livestrong.org/site/c.jvKZLbMRIsG/b.2229575/k.5FA4/Detailed_Information.htm) (last visited Oct. 26, 2007).

258. *See, e.g.*, Daniel G. Fish, *To Avoid Burial Disputes, New Statutory Form Is Available*, 235 N.Y.L.J. (ELDER L.) 1 (2006); Russell E. Haddleton, *What to Do with the Body? The Trouble with Postmortem Disposition*, 20 A.B.A. PROB. & PROP. 55 (2006).

259. *See In re Estate of Puckett*, PB 2006-000799 (Ariz. Super. Ct. Maricopa County Oct. 23, 2006); *Arthur v. Milstein*, 949 So. 2d 1163, 1166 (Fla. Dist. Ct. App. 2007); *James Brown's Burial Place Agreed*, BBC NEWS, Feb. 21, 2007, <http://news.bbc.co.uk/2/hi/entertainment/6381495.stm>; J.R. Jones, *Poor Little Rich Boy*, THE GRAM PARSONS HOMEPAGE, Mar. 28, 1997, [http://www.gramparsons.com/review/review\\_css.php?review=album/album\\_live04](http://www.gramparsons.com/review/review_css.php?review=album/album_live04); Whitmire, *supra* note 15 (the Reverend Billy Graham is still alive as of the writing of this article); *Ted Williams Frozen in Two Pieces*, *supra* note 15.

Gram Parson's body was moved by his friends in a borrowed hearse filled with Jack Daniels and beer and driven out to the desert.<sup>260</sup> One of these friends had made a pact with Parsons that "the survivor would take the other guy's body out to Joshua Tree, have a few drinks and burn it."<sup>261</sup> These two friends did just that and were later charged with a misdemeanor theft of a coffin.<sup>262</sup> Parson's father had wanted his son buried in New Orleans and they had taken the body from Los Angeles International Airport where it was on its way to his father's home.<sup>263</sup>

The dispute over James Brown's body was between his partner, Tomi Rae Hynie and Brown's adult children.<sup>264</sup> His body was kept at his home awaiting resolution of the dispute for eleven weeks.<sup>265</sup> The dispute in the case of the Reverend Billy Graham is between his two sons.<sup>266</sup> One son would like his father buried at The Cove, a Bible training center, and the other would like him buried at the museum and library being built by the Billy Graham Evangelistic Association.<sup>267</sup>

There are many reported cases of contests involving lesser-known individuals.<sup>268</sup> The parties in these cases are understandably emotional, and the results of the litigation are not uniform across states and jurisdictions. Some courts do not allow the exhumation of remains, as in the case of Mr. Moyer,<sup>269</sup> while in some cases the rules appear arbitrary, such as the cases concerning the remains of Lance Corporal Nicholas H. Anderson and Staff Sergeant Jason Hendrix, two soldiers who died in military action in Iraq.<sup>270</sup> In both later cases, the mother and the father of the soldier wanted the soldier buried in

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260. Byrdwatcher, *The Strange Death of Gram Parsons: 1973*, <http://ebni.com/byrds/memgrp6.html> (last visited Oct. 26, 2007).

261. *Id.*

262. *Id.*

263. *Id.*

264. *James Brown Laid to Rest, for Now*, BBC NEWS, Mar. 11, 2007, <http://news.bbc.co.uk/2/hi/entertainment/6439549.stm>.

265. *Id.*

266. Whitmire, *supra* note 15.

267. *Id.*

268. See, e.g., Frank D. Wagner, Annotation, *Enforcement of Preference Expressed by Decedent as to Disposition of His Body After Death*, 54 A.L.R. 1037 (1973).

269. See *supra* notes 184–90 and accompanying text.

270. See Christina Almeida, *Dispute over Burial of Soldier Divides Parents*, SANTA MONICA DAILY PRESS, Jan. 31, 2005, at 12; *Divorced Father Wins Case over Son's Remains*, *supra* note 15.

the state in which they respectively lived.<sup>271</sup> The military rule in such cases is to award the remains to whichever parent is older.<sup>272</sup> In Lance Corporal Anderson's case, his body was awarded to his father, and he was buried in Ventura, California, 266 miles from his mother's place of residence.<sup>273</sup> In Staff Sergeant Hendrix's case, the dispute went to court in San Francisco.<sup>274</sup> His father, who lived in Oklahoma, was forty-eight years old, and his mother, who lived in California, was forty-five years-of-age.<sup>275</sup> The court ruled the body should remain buried in Oklahoma.<sup>276</sup>

A particularly ugly dispute was evident in *Brannam v. Edward Robeson Funeral Home*.<sup>277</sup> The decedent left instructions in his will that he was to be cremated and that his ashes were to be controlled by his executor, his long-time companion and the mother of three of his children.<sup>278</sup> The funeral home, which had been contacted by his estranged wife, would not turn the body over to the executor.<sup>279</sup> The estranged wife refused to allow the executor or the decedent's three children access to the wake ceremony.<sup>280</sup> The executor was ultimately forced to sue the funeral home to recover the body.<sup>281</sup>

There is a historic tension between the requests of decedents and the wishes of their family.<sup>282</sup> This is reflected in the underlying doctrinal tension existing between the law concerning the rights of the decedent and the rights of the remaining family members.<sup>283</sup> The law of wills focuses on the wishes of the decedent.<sup>284</sup> On the other hand, the probate courts have acceded to requests of the families when it comes to the "disposal of mortal remains."<sup>285</sup>

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271. Almeida, *supra* note 270; *Divorced Father Wins Case over Son's Remains*, *supra* note 15.

272. Almeida, *supra* note 270; *Divorced Father Wins Case over Son's Remains*, *supra* note 15.

273. Almeida, *supra* note 270.

274. *Divorced Father Wins Case over Son's Remains*, *supra* note 15.

275. *Id.*

276. *Id.*

277. Hernandez, *supra* note 16, at 971.

278. *Id.*

279. *Id.*

280. *Id.*

281. *Id.*

282. *Id.*

283. *Id.*

284. *Id.* at 976.

285. *Id.* at 983.

Some of these contests result in very strange circumstances, such as the case of former Boston Red Sox player Ted Williams.<sup>286</sup> Williams' son, John Henry, insisted his father wanted to be cryogenically preserved, while his daughter, Claudia, maintained that her father wished to be cremated and have his ashes scattered off the Florida coast.<sup>287</sup> The parties settled, but later it was discovered that in the cryogenic lab, Williams' head had been detached from his body and some samples of his DNA were missing.<sup>288</sup> In another legal battle in South Florida, University of Florida physics professors were asked to analyze the contents of an urn in a cremains dispute.<sup>289</sup> One family member gave the urn which allegedly contained the ashes of a loved one to another family member.<sup>290</sup> The physicists found the urn contained "a mixture of sandy soil with a little lime rock," not the ashes of the loved one.<sup>291</sup>

These conflicts could have been avoided if the decedent had either named an agent for the purpose of the disposition of his or her remains, or had executed a personal preference request. Lawyers who draft wills or estate plans need to assist their clients in executing these legal documents. A recent post in a North Carolina Estate Planning blog suggests including the instructions in wills and Health Care Power of Attorney forms.<sup>292</sup>

## B. Baby Boom Generation and Creative Funerals/Ceremonies

The United States Department of Census defines baby boomers in the following way:

A term used to refer to the period of relatively high fertility after World War II, commonly considered as the period from 1946 to 1964. People born during this period are often referred to as

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286. *Ted Williams Frozen in Two Pieces*, *supra* note 15.

287. *Id.*

288. *Id.*

289. Christopher Davis, *To Answer Cremation Questions, Forensics Finds Unlikely Ally in Physics*, UNIV. FLA. NEWS, Nov. 1, 2000, at 30.

290. *Id.*

291. *Id.*

292. See Posting of Greg-Herman Giddens to North Carolina Estate Planning Blog, <http://www.ncstateplanningblog.com/2007/02/articles/estate-planning/health-care/put-cremation-and-or-burial-wishes-in-will/> (Feb. 22, 2007).

“baby boomers,” the baby-boom generation, or the babyboom cohort.<sup>293</sup>

Currently, the baby-boom generation is aging and inching closer and closer to the inevitable, death. This generation has been at the forefront of many societal changes.<sup>294</sup> They have rejected conformity and possess an enormous amount of economic power.<sup>295</sup> Boomers over the years have set new trends and have affected attitude changes.<sup>296</sup> By the year 2040, it is predicted that the “number of [baby boomer] deaths will double.”<sup>297</sup> This group will expect and demand more from the funeral industry.<sup>298</sup> These individuals will want control of their services and expect a personal touch.<sup>299</sup> The funeral industry is already preparing for this change.<sup>300</sup>

The available options for the disposition of remains are already increasing in anticipation of this demographic shift. The options available for the baby-boom generation and beyond are varied and targeted to specific markets.<sup>301</sup> Traditional burial is still available, as is the increasingly popular cremation. However, there are now a host of nontraditional dispositions currently available to consumers, such as green burials, cryonic preservation, do-it-yourself burials, burials at sea, freeze-drying, reef balls, space shots, and life gem created diamonds.<sup>302</sup>

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293. FRANK HOBBS & NICOLE STOOPS, U.S. CENSUS BUREAU, DEMOGRAPHIC TRENDS IN THE 20TH CENTURY: CENSUS 2000 SPECIAL REPORTS 208 (2002), available at <http://www.census.gov/prod/2002pubs/censr-4.pdf>.

294. *Baby Boom Proves Economic Power*, BBC NEWS, Aug. 14, 2006, <http://news.bbc.co.uk/2/hi/business/5241346.stm>.

295. *Id.*

296. *U.S. Baby Boomers: Landmark Generation*, BBC NEWS, Aug. 18, 2006, <http://news.bbc.co.uk/2/hi/americas/4797243.stm>.

297. LISA TAKEUCHI CULLEN, REMEMBER ME, A LIVELY TOUR OF THE NEW AMERICAN WAY OF DEATH xii (2006).

298. Leland, *supra* note 22.

299. *Id.*

300. U.S. Funerals On-Line, Funeral Consumer Survey, <http://www.us-funerals.com/funeral-consumers1.html> (last visited Oct. 26, 2007).

301. CULLEN, *supra* note 297, at xii.

302. See Barbara Basler, *Green Graveyards—A Natural Way to Go: Back-to-Nature Burials in Biodegradable Caskets Conserve Land*, AARP BULL. (Am. Ass’n Retired Pers., Washington, D.C.), July–Aug. 2004, available at [http://www.aarp.org/bulletin/yourlife/a2004-06-30-green\\_graveyards.html](http://www.aarp.org/bulletin/yourlife/a2004-06-30-green_graveyards.html); Cryonics: Alcor Life Extension Foundation, <http://www.alcor.org/> (last visited Oct. 26, 2007); Eternal Reefs, A Cremation Memorial Option, <http://www.eternalreefs.com/> (last visited Oct. 26, 2007); LifeGem, Created Diamonds, <http://www.lifegem.com> (last visited Oct. 26, 2007); Lori Valigra, “Green” Burials Offer Unique, Less Costly Goodbyes, NAT’L GEOGRAPHIC NEWS, Sept. 9, 2005, <http://news.nationalgeographic.com/news/>



Green burial has become increasingly popular, particularly with environmentally minded individuals.<sup>303</sup> Billy Campbell is credited with making green burials a reality<sup>304</sup> with the creation of Memorial Ecosystems in 1998.<sup>305</sup> There are currently a number of green burial sites, but at this time the locations are limited.<sup>306</sup> There are green burial grounds located in Fernwood, California, Ramsey Creek Preserve, in South Carolina, Greensprings in New York, and Glendale Memorial Nature Preserve in Florida.<sup>307</sup> In a green burial, the deceased is put in a biodegradable container (one company offers an Eco-pod), and no mark is left of burial.<sup>308</sup> Relatives may then walk the foot paths in the pristine field or forest in which their loved one is buried. When the American Association of Retired Persons (AARP) asked its members, a stunning 70% indicated an interest in green burial.<sup>309</sup> In this same survey, only 8% chose the option of a traditional burial.<sup>310</sup>

The Life Gems company offers an individual the opportunity to have his or her cremains pulverized into a ring.<sup>311</sup> The Alcor Life Extension Foundation offers consumers the same cryogenic treatment Ted Williams received.<sup>312</sup> Burial at home is also an option, if one is so inclined.<sup>313</sup> For baby boomers and others who prefer to really make their mark, they may be launched by a rocket into space by Space Services, Inc.<sup>314</sup> A reef ball may also be procured for the deceased.<sup>315</sup> One company advertises the following:

From placing your handprint in the damp concrete during the casting, making a rubbing of the bronze plaque during the viewing ceremony or placing a flag on your loved ones [sic] memorial

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2005/09/0909\_050909\_greenburial.html. See generally CULLEN, *supra* note 297, at xii (discussing the variety of nontraditional dispositions available).

303. Rommelmann, *supra* note 68.

304. *Id.*

305. See ACF Newsource, Green Burial, [http://www.acfnewsource.org/environment/green\\_burial.html](http://www.acfnewsource.org/environment/green_burial.html) (last visited Oct. 26, 2007).

306. Rommelmann, *supra* note 68.

307. ACF Newsource, *supra* note 305; Funeral Consumers Alliance, Links to Other Death-related Sites of Interest, <http://www.funerals.org/links.htm> (last visited Oct. 26, 2007).

308. Patricia Leigh Brown, *Eco-Friendly Burial Sites Give a Chance to Be Green Forever*, N.Y. TIMES, Aug. 13, 2005, at A1.

309. Rommelmann, *supra* note 68.

310. *Id.*

311. See LifeGem, *supra* note 302.

312. See Cryonics: Alcor Life Extension Foundation, *supra* note 302.

313. Smith, *supra* note 140.

314. Josh Belzman, *It's Your Funeral*, MSNBC NEWS, June 8, 2005, <http://www.msnbc.msn.com/id/7982823>.

315. See Eternal Reefs, *supra* note 302.

reef during our military honors ceremony, all Eternal Reefs activities provide peace of mind for everyone involved.<sup>316</sup>

The baby-boom-created increase in necessary dispositions combined with creative options makes it imperative lawyers and legislatures plan ahead so funeral homes and courts will not be forced to navigate these waters alone. Given the wide range of options available, attorneys need to become aware of their clients' wishes and must take steps to ensure these wishes are carried out.

### C. Suggested Uniform Laws and Options for Lawyers

Currently, state laws on the disposition of remains vary to a great degree.<sup>317</sup> More uniformity is needed. The Illinois Appointment of Agent statutory form for the disposition of remains is an excellent starting point for a uniform law.<sup>318</sup> It is clear yet comprehensive. The statutory form indicates who will take over the agency duties should the primary agent become disabled, die, or otherwise be unable to fulfill those duties.<sup>319</sup> The form leaves the individual free to set forth any special directions for disposition and allows the person to specify whether his or her relatives may cancel the cremation, if they deem a change to be appropriate.<sup>320</sup> The appointment form must be signed by the individual and notarized.<sup>321</sup>

The Delaware Declaration of Disposition is an excellent example for setting forth an individual's choices with respect to the disposition of his or her remains.<sup>322</sup> It is quite comprehensive and addresses the type of disposition as well as the requested ceremonial arrangements.<sup>323</sup> It is very specific, yet allows an individual to be creative.

Both the Illinois and the Delaware forms could be advanced as suggested uniform laws. The National Conference of Commissioners on Uniform State Laws (NCCUSL)<sup>324</sup> solicits proposals for projects twice a year and this would be a worthy and necessary project.

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316. *Id.*

317. *See infra* App. A.

318. *See infra* App. B.

319. *See infra* App. B.

320. *See infra* App. B.

321. *See infra* App. B.

322. *See infra* App. C.

323. *See infra* App. C (form shows multiple options for disposition as well as preferences for ceremonial arrangements).

324. *See* Uniform Law Commissioners, The National Conference of Commissioners of Uniform State Laws, <http://www.nccusl.com/Update/> (last visited Oct. 26, 2007).

NCCUSL is a 116-year-old organization that “provides states with non-partisan, well-conceived and well-drafted legislation that brings clarity and stability to critical areas of the law.”<sup>325</sup> This proposed legislation is necessary because of the combination of vastly differing state laws and a large demand for choice in the disposition of remains in the years ahead.

Lawyers should not wait for uniform laws and should immediately assist their clients with plans for the disposition of remains. The Illinois and Delaware forms could be used, or the lawyer may simply designate the wishes either in the person’s will or in their Health Care Directive. As with Advance Directives, Living Wills or Health Care Directive Proxies, a client’s documented, clear wishes are always preferable to a court or family member’s attempts to determine a loved one’s wishes.

## VII. Conclusion

There have been a large number of cases in which family members, in a time of great emotional distress, have been forced to seek the aid of courts for a determination of which family member has the right to possession of a decedent’s remains. The Anna Nicole Smith case was the most recent and more public than most, but each case must be decided by a court based upon common law, or if available, a state statute. Lawyers are failing their clients by neglecting to inquire about the disposition of remains and by failing to take steps to ensure a decedent’s wishes in this area will be followed. The dependence on court dispute resolution will only increase in the years ahead with the large number of deaths expected by the year 2025. There are a plethora of available options for the disposition of remains, and individuals are increasingly seeking a unique experience. The time for uniform state laws on the disposition of remains has come. As Judge Seidlin stated in the Anna Nicole Smith case, had her “affairs been settled” by “her putting in writing how (and by whom) she wished her funeral to be conducted,” it is “quite possible” the case never would have come to be litigated.<sup>326</sup> With careful planning, a lawyer’s client’s remains need never be the subject of a family dispute.

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325. *Id.*

326. *In re* Marshall, No. 07-00824(61) (Fla. Cir. Ct. Prob. Div. Broward County Feb. 22, 2007).

## **Appendix A**

### **State Laws Concerning Disposition of a Body**

#### **1) Alabama**

**ALA. CODE § 22-9A-1 (2007).**

Definitions.

**§ 22-9A-16.**

Disposition of Dead Bodies.

**§ 22-19-5.**

Identification System for Dead Bodies

**§ 22-19-47.**

Rights of Donee.

“The donee may accept or reject the gift. If the donee accepts a gift of the entire body, he may, subject to the terms of the gift, authorize embalming and the use of the body in funeral services.”

**§ 27-17A-2.**

Office of Vital Statistics.

**§ 34-13-12.**

Liability.

Liability of funeral director or establishment.

**§ 34-13-122.**

Disposition of Remains.

#### **2) Alaska**

**ALASKA STAT. .§ 18.50.230 (2006).**

Death Registration; Disclosure for Child Support Purposes.

**§ 18.50.950.**

Definitions.

### 3) Arizona

**ARIZ. REV. STAT. ANN. § 32-1364 (2007).**

Crimes Against the Dead.

It is a felony to “obtain or convert property that is located with or affixed to a dead human body or any part of a dead human body with the intent to deprive the decedent or the decedent’s estate of the property.”

**ARIZ. REV. STAT. ANN. § 36-831 (2003).**

Burial Duties; Notification Requirements; Failure to Perform Duty; Definitions.

**ARIZ. REV. STAT. ANN. § 32-1365.01 (2002).**

Cremation or Other Lawful Disposition of a Dead Human Body; Authorization Document; Immunity.

**§ 36-332.**

Notification of Death to Responsible Person and Release of Human Remains.

**§ 36-831.01.**

Disposition of Remains; Duty to Comply with Decedent’s Wishes; Exemption from Liability.

If the person with the duty of burial “is aware of the decedent’s wishes regarding the disposition of his remains, that person shall comply with those wishes if they are reasonable and do not impose an economic or emotional hardship.”

### 4) Arkansas

**ARK. CODE. ANN. § 17-29-311(a)(12) (2001).**

Violations-Prohibitions.

“Refusing to properly release a dead human body to the custody of the person or entity having the legal right to effect such a release.”

**§ 20-17-102.**

Death and Disposition of the Dead; Arkansas Final Disposition Rights Act.

Declaration of final disposition must be “signed by the declarant or another at the declarant’s direction and shall be witnessed by two (2) individuals.”

**§ 20-17-102(c).**

“No person having possession, charge, or control of the declarant’s human remains following the death of a person who has executed a declaration of final disposition shall knowingly dispose of the body in a manner inconsistent with the declaration.”

**§ 20-17-102(e).**

“If a decedent did not execute a declaration of final disposition, the person having lawful possession, charge, or control of the decedent’s human remains has the right to dispose of the remains.”

**§ 20-17-701.**

Rights of Coroner, Justice of the Peace, or Courts Unaffected.

**§ 20-17-703.**

Notice to Department of Anatomy of the University of Arkansas for Medical Sciences.

The right of any relative, next of kin, friend, any representative of a fraternal society of which the deceased was a member, or a representative of any charitable or religious group to claim the body for burial purposes is recognized.

**§ 20-17-708.**

Disposition After Use.

## **5) California**

**CAL. HEALTH & SAFETY CODE § 7100 (Deering 2007).**

Right to Control Disposition of Remains of Deceased Person.

Duty and liability for interment; devolution; prior directions of decedent.

**§ 7100(a).**

Right to Control Disposition of Remains of Deceased Person.

If the decedent does not give direction regarding the disposition, the right to control disposition vests in the following order: agent under a

power of attorney, spouse, adult child(ren), parent(s), adult sibling(s), “the surviving competent adult person or persons respectively in the next degrees of kinship,” or public administrator.

**§ 7105.**

Action to Compel Interment; Petition for Order Controlling Disposition of Decedent’s Remains.

Failure to act by persons with rights to control disposition of the remains or to arrange for funeral goods and services; relinquishment of right to control; right to control to pass to person in next degree of kinship; petition for control of disposition of decedent’s remains

**23 CAL. JUR. 3D *Dead Bodies* § 8 (Deering 2007).**

Directions of Decedent.

Directions of a decedent may not be altered, changed, or amended in any material way except as may be required by law.

**6) Colorado**

**COLO. REV. STAT. § 12-54-108 (Supp. 2007).**

Exceptions-Safe Harbor.

**COLO. REV. STAT. § 15-12-701 (2005).**

Time of Accrual of Duties and Powers.

**§ 15-19-101.**

Short Title.

This article shall be known and may be cited as the “Disposition of Last Remains Act”.

**§ 15-19-102.**

Legislative Declaration.

A competent adult has the right to direct disposition of remains but such wishes cannot be contrary to any law or public policy. The wish cannot “modify the standards, ethics, or protocols of the practice of medicine.”

**§ 15-19-104.**

Declaration of Disposition of Last Remains.

**§ 15-19-105(1)(a).**

Reliance-Declarations.

“A third party who provides for the lawful disposition of a declarant’s remains in reliance on a declaration that appears to be legally executed shall not be subject to civil liability or administrative discipline for such reliance.”

**§ 15-19-106.**

Right to Dispose of Remains.

**§ 15-19-107.**

Declaration of Disposition of Last Remains.  
Form.

**7) Connecticut****CONN. GEN. STAT. § 7-47b (Supp. 2007).**

Record Keeping of Personal Data by Institutions. Release or Disposal of Dead Body or Dead Fetus.

**§ 7-64.**

Disposal of Bodies.

**§ 45a-318.**

Document directing or designating individual to have custody and control of disposition of deceased person’s body; Funeral director’s reliance on document; Individuals entitled to custody and control of disposition; Revocation; Form; Petition to court of probate.

**CONN. GEN. STAT. § 19a-408 (2003).**

Disposition of Body After Proceedings.

**8) Delaware****DEL. CODE ANN. tit. 12, § 260 (2007).**

Definitions.

**§ 262.**

Declaration of Disposition of Last Remains.



**§ 264.**

Right to Dispose of Remains.

If the decedent does not give direction in regards to the disposition through a declaration instrument, then right to control disposition vests in the following order: a representative appointed under the will, spouse, adult child(ren), parent(s), adult sibling(s), or public administrator.

**§ 265.**

Declaration of Disposition of Last Remains; Form.

**§ 266.**

Declaration; Other Points of Form.

**§ 268.**

Declaration; Revocation by Divorce.

“Unless otherwise expressly provided in a declaration instrument, a subsequent divorce, dissolution of marriage, annulment of marriage, or legal separation between the declarant and spouse automatically revokes a delegation to the declarant’s spouse to direct the disposition of the declarant’s last remains or ceremonies after the declarant’s death. This section shall not be construed to revoke the remaining provisions of the declaration instrument.”

**tit. 16, § 2716.**

Rights and Duties at Death.

**tit. 29, § 4711.**

Disposition of Unclaimed Body or Remains of Indigent Person.

**9) Florida****FLA. STAT. § 406.50 (Supp. 2007).**

Unclaimed Dead Bodies or Human Remains; Disposition, Procedure.

**§ 406.51.**

Disposition of Unclaimed Deceased Veterans; Contract Requirements.

**§ 406.52.**

Retention of Bodies Before Use; Unfit or Excess Number of Bodies, Disposition Procedure.

**§ 406.53.**

Death of Indigents; Notice; Delivery to the Anatomical Board When Unclaimed; Exceptions; Assessment of Fees.

**§ 406.56.**

Acceptance of Bodies Under Will.

**FLA. STAT. § 732.804 (2005).**

Provisions Relating to Disposition of the Body.

**10) Georgia****GA. CODE ANN. § 31-21-4 (2002).**

Burial at Sea of Cremated Remains.

In order to bury cremated remains at sea, the remains must be taken by boat or air no less than three miles from the nearest shoreline. Burial must be carried out within fifty days from the reduction of the body and must be filed with local registrar.

**§ 31-21-21.**

Delivery to Board of Certain Unclaimed Bodies.

“No such notice shall be given nor shall any such body be delivered if any person, claiming to be and satisfying the authorities in charge of the body that he or she is of any degree of kin, or is related by marriage to, or socially or otherwise connected with and interested in the deceased, shall claim the body for burial, cremation, or other proper disposition; but it shall be at once surrendered to such person or shall be buried at public expense at the request of such claimant if a relative by blood or a connection by marriage and financially unable to provide burial, cremation, or other proper disposition.”

**§ 45-16-44.**

Disposition of Body After Medical Examiner's Inquiry and Inquest.

**11) Hawaii****HAW. REV. STAT. § 327-34 (2004).**

Claimants; Surrender.

“Any person may claim a body held by a university, hospital, or institution, as provided in this part, upon payment of the expenses incurred in obtaining, preparing, and handling the body. Upon receipt of such claim and payment, the university, hospital, or institution shall surrender the body to the claimant.”

**§ 327-36.**

Final Disposition of Bodies Retained for Medical Education and Research Purposes.

**§ 338-1.**

Definitions of Terms.

**§ 841-8.**

Duty to Forward Copy of Reports to Any County or Prosecuting Attorney and to Person in Charge of Disposition of Body.

**12) Idaho****IDAHO CODE ANN. § 54-1101 (2003).**

Public Interest and Concern in Disposition of Human Bodies.

**§ 54-1139.**

Instructions for Disposition of Person's Remains.

**§ 54-1142.**

Authority in Absence of Prearranged Funeral Plan.

**§ 54-1143.**

Right to Rely.

Of funeral, cemetery, or crematory establishment.

**§ 54-1144.**

Unclaimed Remains of Veterans.

**13) Illinois****755 ILL. COMP. STAT. 5/2-1 (2007).**

Rules of Descent and Distribution.

**45/4-3.**

General Principles.

A Health Care Power of Attorney authorizes the attorney in fact to make plans for the disposition of the principal's body.

**50/5-45.**

Rights and Duties at Death.

**755 ILL. COMP. STAT. 65/1 (Supp. 2005).**

Short Title.

"This Act may be cited as the Disposition of Remains Act."

**65/5.**

Right to Control Disposition; Priority.

**65/10.**

Form.

The written instrument authorizing the disposition of remains.

**65/15.**

Requirements for Written Instrument Under Paragraph (1) of Section 5 of This Act.

**65/20.**

Duties of Authorized Agent.

**65/25.**

Body Parts.

## NUMBER 2 LAWS ON THE DISPOSITION OF HUMAN REMAINS 425

“In the case of body parts, a representative of the institution that has arranged with a funeral home, cemetery, or crematory authority to cremate or make other appropriate disposition of the body parts may serve as the authorizing agent.”

**65/30.**

Prohibition of Cremation; Written Instructions.

**65/35.**

Misrepresentation; Liability.

“A person who represents that he or she knows the identity of a decedent and, in order to procure the disposition, including cremation, of the decedent’s remains, signs an order or statement, other than a death certificate, warrants the identity of the decedent and is liable for all damages that result directly, or indirectly, from that warrant.”

**65/40.**

Directions by Decedent.

A person may provide written directions that may be modified or revoked only by a subsequent writing signed by the person. The person otherwise entitled to control the disposition of a decedent’s remains under this Act shall faithfully carry out the directions of the decedent to the extent that they are financially able to do so.

**65/45.**

Liability.

“There shall be no liability for a cemetery organization.”

**65/50.**

Disputes.

Any dispute among any of the persons listed in section 5 shall be resolved by a court of competent jurisdiction.

**410 ILL. COMP. STAT. 18/15 (2000).**

Authorizing Agent.

Priority to serve as the authorizing agent for cremation is in the same priority as provided for in Section 5 of the Disposition of Remains Act.

**55 ILL. COMP. STAT. 5/3-3034 (1998).**

Disposition of Body.

**755 ILL. COMP. STAT. 45/4-7 (1998).**

Duties of Health Care Providers and Others in Relation to Health Care Agencies.

“The decision by an authorized agent as to anatomical gift, autopsy approval, or remains disposition shall be deemed the act of the principal and shall control over the decision of other persons.”

**14) Indiana****IND. CODE § 30-5-7-6 (2000).**

Disposition of Principal's Remains.

“The anatomical gift, autopsy, or remains disposition shall be considered the act of the principal or the person who has priority under law to make the necessary decisions.”

**IND. CODE § 23-14-31-26 (1999).**

Authorizing agent.

**§ 23-14-54-1.**

Deposit of Dead Human Bodies in Cemetery.

**§ 23-14-55-2.**

Authorization for Disposition of Crematal Remains; Liability of Cemetery Owner.

**§ 23-14-57-5.**

Autopsy or Removal to Another Cemetery.

**15) Iowa****IOWA CODE § 142.3 (2005).**

Notification of Department.

“[A]s soon as any dead body shall come into the person's custody which may be used for scientific purposes as provided in §§ 142.1 and 142.2, shall at once notify the nearest relative or friend of the deceased, if known, and the Iowa department of public health by telegram[.]”

NUMBER 2                      LAWS ON THE DISPOSITION OF HUMAN REMAINS    427

**§ 142.5.**

Disposition After Dissection.

**§ 144.34.**

Disinterment; Permit.

“The state registrar, without a court order, shall not issue a permit without the consent of the surviving spouse or in case of such spouse’s absence, death, or incapacity, the next of kin.”

**IOWA CODE § 331.804 (2000).**

Disposition of Body and Other Property.

**§ 331.805.**

Prohibited Actions; Cremation Permit; Penalties.

**16) Kansas**

**KAN. STAT. ANN. § 22a-215 (2006).**

District Coroner; Disposition of Body of Deceased; Burial, When; Expenses, How Paid; Penalties.

**§ 65-904.**

When Bodies Not to Be Delivered to Medical School; Burial by Relatives or Friends; Unclaimed Body of Deceased Inmate.

**§ 65-1732.**

Disposal of Unclaimed Cremated Remains; Rules and Regulations.

**§ 65-1734.**

Order of Priority of Persons Authorized to Dispose of Decedents’ Remains; Immunity of Funeral Directors, Funeral Establishments and Crematories.

**§ 65-1760.**

Definitions.

**§ 65-1764.**

Effect of Authorizing Agent’s Representations; Liability Regarding the Refusal to Accept a Dead Human Body; to Cremate a Dead Human Body or the Authorized Cremation of a Dead Human Body.

**17) Kentucky**

**KY. REV. STAT. ANN. § 67.97524 (LexisNexis 2002).**

Cremation Authorization Form Required; Disposal or Delivery of Cremated Remains.

**§ 367.97501.**

Definitions.

“‘Authorizing agent’ means the person legally entitled to order the cremation of the human remains.”

**18) Louisiana**

**LA. REV. STAT. ANN. § 37:880 (2007).**

Disposition of Cremated Human Remains; Refusal to Release Cremated Human Remains; Prohibited Activities.

**LA. REV. STAT. ANN. § 8:655 (2005).**

Right of Disposing of Remains.

**19) Maine**

**ME. REV. STAT. ANN. tit. 13, § 1032 (2005).**

Disposal of Bodies.

The remains of any body after dissection therein shall be decently buried, entombed or cremated within a reasonable time. Cremated remains must be disposed of in any manner not contrary to law.

**ME. REV. STAT. ANN. tit. 22, § 2843 (2004).**

Permits for Final Disposition of Dead Human Bodies.

**§ 2843-A.**

Custody of Remains of Deceased Persons.

**§ 2846.**

Authorized Person.

**§ 2907.**

Rights and Duties at Death.



**§ 2911.**

Honor Intent of Organ Donors.

The intention of a person to make a donation of that person's own body organ or tissue after death must be honored.

**20) Maryland**

**MD. CODE ANN. CORR. SERVS. § 3-909 (LexisNexis 2007).**

Disposition of Body.

**HEALTH-GEN. § 5-406.**

Unclaimed Bodies.

**§ 5-408.**

Buying, Selling, or Transporting Bodies.

**§ 5-408.1.**

Disposition of Body by Will.

"Except as provided in § 5-408(a)(2) of this subtitle, this subtitle does not deny the right of a donor to provide by last will and testament or by contract for the ultimate disposition and repose of the donor's last remains."

**§ 5-502.**

Cremation; Required Identification and Authorization.

**§ 5-508.**

Definitions.

**§ 5-509.**

Disposition of Body Other than by Will.

**§ 5-510.**

Failure to Agree on Disposition.

**§ 5-511.**

Reliance on Authorizing Agent's Representations; Duty to Investigate; Filing to Become Authorizing Agent.

**§ 5-512.**

Authorizing Agent as Personal Representative not Required; Documents Negating Cremation.

**HEALTH OCC. § 7-410.**

Decisions Concerning Disposition of Body.

**21) Massachusetts****MASS. GEN. LAWS ch. 38, § 13 (2002).**

Release of Body; Pronouncement of Death.

“After investigation or examination by the office, the body shall be released to the person with the proper legal authority to receive it, including the surviving spouse, the next of kin, or any friend of the deceased, who shall have priority in the order named.”

**ch. 113, § 13.**

Acceptance or Rejection of Gift by Donee; Procedure upon Acceptance; Determination of Time of Death; Persons Acting in Good Faith Not to Be Liable.

“The donee may accept or reject the gift. If the donee accepts a gift of the entire body, he may, subject to the terms of the gift, authorize embalming and the use of the body in funeral services. If the gift is of a part of the body, the donee, upon the death of the donor and prior to embalming, shall cause the part to be removed without unnecessary mutilation. After removal of the part, custody of the remainder of the body vests in the surviving spouse, next of kin or other persons under obligation to dispose of the body. If the donee is responsible for the disposition of the body, he shall dispose of it in accordance with the terms specified by the donor, or if no such terms are specified, he shall have said body decently buried or cremated.”

**ch. 114, § 29.**

Lots and Tombs Indivisible; Vesting of Title on Death; Limitations and Conditions.

**ch. 114, § 43M.**

Permanent Disposition of Dead Bodies or Remains.

Disposition of remains “shall be by interment in the earth or deposit in a chamber, vault or tomb of a cemetery owned, maintained and op-

erated in accordance with the laws of this commonwealth, by deposit in a crypt of a mausoleum, or by cremation.” Cremated remains may be “disposed of in any manner not contrary to law.”

## **22) Michigan**

### **MICH. COMP. LAWS § 333.2851 (Supp. 2007).**

Permit Request for Disinterment of Dead Human Body.

### **§ 333.2653.**

“Unclaimed Body” Defined; Notice to Persons with Authority to Control Disposition of Unclaimed Body.

### **§ 333.2855.**

Autopsy; Physician to Perform; Consent.

### **§ 333.10108.**

Uniform Anatomical Gift Law.

### **§ 700.3206.**

Person with Right and Power to Make Decisions Regarding Funeral Arrangements and Disposition of Decedent’s Body; Presumption, Priorities, and Designation; Shared Rights and Powers; Personal Representative or Nominative Personal Representative; Guardian; Special Personal Representative; Additional Persons; Reasonable Attempt to Locate Person.

### **§ 700.3207.**

Petition; Venue; Hearing Date; Notice of Hearing; Funeral Establishment as Petitioner; Facts to be Considered in Court Decision.

### **§ 700.3208.**

Filing in Circuit Court to Challenge Presumption; Venue.  
Action to challenge presumption to be determined person with rights and powers under § 700.3206.

### **§ 700.3209.**

Funeral Establishment Not Civilly Liable.  
Reliance by funeral establishment upon determinations under § 7003.207.

**§ 700.3614(c).**

Appointment of Special Representative to Supervise Disposition of Decedent's Body.

**MICH. COMP. LAWS § 339.1810 (2002).**

Violations; Penalties; Medical Waste.

Offenses by funeral establishments involving persons with authority over disposal of remains of decedents.

**§ 700.2103.**

Share of Heirs Other Than Surviving Spouse.

**§ 700.3614.**

Special Personal Representative; Appointment.

**§ 700.3701**

Time of Accrual of Duties and Powers.

Carrying out written instructions relating to decedent's body, funeral and burial arrangements by personal representative named in will.

**23) Minnesota****MINN. STAT. § 149A.80(1) (2006).**

Death; Right to Control and Duty of Disposition.

"A person may direct the preparation for, type, or place of that person's final disposition, either by oral or written instructions . . . [t]he reasonable and lawful instructions of the decedent or the person entitled to control the final disposition shall be faithfully and promptly performed."

**§ 149A.80(2).**

Determination of Right to Control and Duty of Disposition.

If the decedent does not give direction regarding the disposition through a declaration instrument, then right to control disposition vests in the following order: a representative appointed under the will, spouse, adult child(ren), parent(s), adult sibling(s), person(s) in next degree of kinship, or public administrator.

**§ 149A.80(5).**

## Disputes.

“When a dispute exists regarding the right to control or duty of disposition, the parties in dispute or the mortician or funeral director may file a petition in the district court in the county of residence of the decedent requesting that the court make a determination in the matter.”

**§ 149A.81.**

## Anatomical Gifts.

**§ 149A.95.**

## Crematories and Cremation.

**§ 149A.96.**

## Disinterment and Reinterment.

“A district court in the district where the body or remains are interred shall consider the following factors when deciding whether reasonable cause for disinterment exists: (1) the degree of relationship that the party seeking disinterment bears to the body or remains; (2) the degree of relationship that the party seeking to prevent disinterment bears to the body or remains.”

**§ 390.21.**

## Disposition; Burial.

**§ 525.9212.**

## Making, Revoking, and Objecting to Anatomical Gifts, By Others.

“Any member of the following classes of persons, in the order of priority listed, may make an anatomical gift of all or a part of the decedent’s body for an authorized purpose, unless the decedent has made a refusal to make that anatomical gift that is unrevoked at the time of death.”

**§ 525.9213.**

## Authorization by Coroner or Medical Examiner or Local Public Health Official.

**24) Mississippi****MISS. CODE ANN. § 41-39-1 (2007).**

Disposition of Tissue or External Member of Human Body and Dead Fetus.

**§ 41-39-5.**

Disposition of Unclaimed Dead Bodies.

**§ 41-39-7.**

Bodies of Deceased Hospital Patients to be Turned Over to Educational Institutions in Certain Cases.

**§ 41-39-31.**

Title.

“Sections 41-39-31 through 41-39-51 may be cited as the Anatomical Gift Law.”

**§ 41-39-43.**

Acceptance or Rejection of Gift; Determination of Time of Death.

**§ 73-11-41.**

Definitions.

**§ 73-11-58.**

List of Persons Who May Authorize Type, Method, or Place of Disposition of Decedent's Body Where No Written Instructions Have Been Left.

**25) Missouri****MO. REV. STAT. § 58.460 (2007).**

Disposition of Body a Duty of Coroner; When.

**§ 193.175.**

Person in Charge of Final Disposition of Dead Body to File Notification of Death.

**§ 194.119.**

Right of Sepulcher, the Right to Choose and Control Final Disposition of a Dead Human Body.

In order to determine who has the right to choose and control the burial, cremation, or other final disposition of a dead human body, the right to control disposition vests in the following order: spouse, adult child(ren), parent(s), adult sibling(s), person(s) in next degree of kinship, friend who assumes financial burden, or county coroner/medical examiner.

**§ 194.350.**

Disposition of Cremated Remains; If No Directions Are Given; Procedure; Notice.

**26) Montana**

**MONT. CODE ANN. § 35-21-810 (2005).**

Disposition of Remains.

The decedent has the right to dictate disposal of remains. The following have the duty to cover reasonable cost of disposal: spouse, majority of adult children, parent, close relative, or personal representative. Liability for reasonable cost of interment devolves jointly and severally upon all kin of the decedent listed in the same degree of kindred and upon the estate of the decedent.

**§ 37-19-706.**

Disposition of Cremated Remains.

**§ 50-15-101.**

Definitions.

Final disposition means burial, interment, cremation, removal from the state, or other authorized disposition of a dead body or fetus.

**27) Nebraska**

**NEB. REV. STAT. § 71-1339 (2007).**

Deceased Person; Control of Remains; Interment; Liability.

Any person directed by the decedent: spouse, adult children, parents, next degree of kinship, and if there is more than one person, than any person of that degree, may direct disposition, guardian, personal representative, embalmer/funeral director/cremationist.

**§ 71-1340.**

Final Disposition.

Decedent may direct final disposition of his body by written instructions. If such instructions are in a will, the decedent may direct his remains to science. Person entitled to control the disposition shall faithfully carry out directions of decedent. Disposal directions shall be carried out regardless of the validity of the will.

**§ 71-1377.**

Cremation Authorization Form; Required; Contents.

**§ 71-20,121.**

Disposition of Remains of Child Born Dead; Hospital; Duties.

**28) Nevada****NEV. REV. STAT. § 440.500 (2005).**

Burial Removal Permits.

**§ 451.024.**

Authority to Order Burial of Human Remains; Execution of Affidavit.

**§ 451.650.**

Authority to Order Cremation of Human Remains; Execution of Affidavit.

**§ 451.655.**

Order of Person for Cremation and Disposition of His Own Remains.

**§ 451.660.**

Requirements for Death Certificate and Written Authorization; Delegation of Authority of Authorized Agent.

**§ 642.014.**

Disposition Defined.

“Disposition means the immediate disposing of a dead human body or the immediate transporting of a dead human body to the care of a funeral establishment, responsible third party, or immediate family for direct cremation or burial.”



**§ 642.017.**

Immediate Burial Defined.

“Immediate burial means disposition by burial without formal viewing, visitation, or a ceremony with the body present, except for a graveside service.”

**29) New Hampshire**

**N.H. REV. STAT. ANN. § 290:5 (2006).**

Burial Permit Required.

**§ 290:11.**

Release; Transfer of Body; Liability Limited.

**§ 290:16.**

Definitions.

Defines next of kin, custody, and control.

**§ 290:17.**

Custody and Control Generally.

**§ 290:18.**

Estranged Spouse.

Denied custody and control of remains.

**§ 290:19.**

Court Determination.

**§ 290:20.**

Wishes of Subject.

“If the subject has left written and signed instructions regarding funeral arrangements and disposal of the subject’s remains, the person having custody shall abide by those wishes to the extent that the subject paid for those arrangements or left resources for the purposes of carrying out those wishes.”

**§ 290:22.**

Authority of Personal Representative.

Person who paid for the arrangements has no more power because of those positions.

**§ 291-A.**

Anatomical Gift Act Adopted.

**§ 325-A:1.**

Definitions.

“‘Authorizing agent’ means a person vested with the right to control the disposition of human remains pursuant to § 290.”

**§ 325-A:17.**

Right to Authorize Cremation.

**30) New Jersey****N.J. STAT. ANN. § 3B:5-3 (West 2007).**

Intestate Share of Decedent’s Surviving Spouse or Domestic Partner.

**§ 3B:10-21.1.**

Appointment of Person to Control Funeral; Disposition of Remains.

**§ 26:6-5.1.**

Necessity of Death Certificate and Burial or Removal Permit.

**§ 26:6-57.**

Definitions Relative to Human Body Part Donations.

**§ 26:7-18.**

Permit to Use Lands for Interment of Cremated Remains.

Any person may use any lands adjacent to a crematorium for the interment of cremated remains upon obtaining a permit so to do from the local board of health of the municipality in which such lands are sitting.

**§ 45:7-95.**

Funeral, Disinterment, Disposition of Remains; Written Authorization.

**§ 45:27-22.**

Control of Funeral; Disposition of Remains.

If a decedent in a will appoints a person to control the funeral and disposition of the human remains then it shall be according to dece-

dent's written instructions. If the decedent has not left instructions the rights are in the following order: spouse, adult children, parents, majority of siblings, other next of kin, any other person acting on behalf of the decedent. It is impermissible to bury more than one person in one plot unless directions to the contrary from each decedent have been issued.

### **31) New Mexico**

#### **N.M. STAT. § 24-12A-1 (1998).**

Right to Authorize Cremation; Definitions.

#### **§ 24-13-1.**

Burial or Cremation of Unclaimed Decedents and of Indigents.

“A dead person whose body has not been claimed by a friend, relative or other interested person assuming the responsibility for and expense of disposition shall be considered an unclaimed decedent.”

#### **§ 24-14-2.**

Definitions.

“Final Disposition means burial, interment, cremation, entombment, pulverization or other authorized disposition of a dead body or fetus.”

#### **§ 24-14-20.**

Death Registration.

#### **§ 24-14-23.**

Permits; Authorization for Final Disposition.

#### **§ 61-32-19.**

Cremation; Requirements; Right to Authorize Cremation; Disposition of Cremains.

Any adult can state his desire to be cremated in a written statement that is signed by the individual and notarized or witnessed by two persons; or by including an express statement in his will indicating that the testator desired that his remains be cremated upon death. If no written instructions the following have priority: spouse, majority of surviving adult children, parents, majority of siblings, adult who has exhibited special care and concern, next of kin.

**§ 61-32-20.**

Embalming.

“When embalming is not required under the provisions of this section, a dead human body shall not be embalmed without express authorization by the:

- (1) surviving spouse or next of kin;
- (2) legal agent or personal representative of the deceased; or
- (3) person assuming responsibility for final disposition.”

**32) New York****N.Y. NOT-FOR-PROFIT CORP. LAW § 1502 (McKinney 2007).**

Cemetery Also Means Mausoleum, Crematory or Columbarium.

**N.Y. PUB. HEALTH § 4141 (McKinney 2007).**

Death Certificate; Form and Content.

**§ 4144.**

Deaths; Burial and Removal Permits; Transportation of Remains.

**§ 4145.**

Deaths; Burial and Removal Permits; Disposition of Remains.

**§ 4200.**

Cadavers; Duty of Burial.

**§ 4201.**

Disposition of Remains; Responsibility Therefor.

Descending Priority of Persons with Right to Control Disposition of Remains.

**§ 4202.**

Cremated Remains; Disposition.

**§ 4211.**

Cadavers; Unclaimed; Delivery to Schools for Study.

“A body of a deceased person shall not be delivered or released to, or received by a university, college, school or institute, if within twenty-four hours after notice of death by the person having lawful possession, charge, custody or control to the next of kin, or in the counties of

## NUMBER 2 LAWS ON THE DISPOSITION OF HUMAN REMAINS 441

Oneida, Onondaga, Oswego, Madison and Cortland to the next of kin, or friend of the deceased person such next of kin or friend shall claim such body for interment or other lawful disposition.”

**§ 4213.**

Cadavers; Delivery to Relatives or Friends.

**§ 4300.**

Adoption of Anatomical Gift Act.

**§ 4306.**

Rights and Duties at Death.

**33) North Carolina****N.C. GEN. STAT. § 28A-13-1 (2003).**

Time of Accrual of Duties and Powers.

Personal Representative may carry out written instructions of the decedent relating to his body, funeral, and burial arrangements.

**§ 32A-25.**

Statutory Form Health Care Power of Attorney.

**§ 90-210.121.**

Definitions.

“Final deposition” means cremation and the ultimate interment, entombment, inurnment, or scattering of the cremated remains. “Scattering” means area permitted by the state includes but not limited to area designated by cemetery.

**§ 90-210.124.**

Authorizing Agent.

Must be at least eighteen and can authorize cremation and disposition of individual’s own dead body in a written will pursuant to Health Care Power of Attorney, must be signed by individual and witnessed by two persons at least eighteen years-old. Without instructions the following have priority: spouse, majority of surviving children who are eighteen or older, surviving parents, majority of siblings, next degree of kin, person who has exhibited special care/concern, any other

individual whose final disposition is a duty of the state, any person willing.

**§ 130A-113.**

Permits Required for Burial.

**§ 130A-388.**

Medical Examiner's Permission Necessary Before Embalming, Burial and Cremation.

Permits cremation or burial at sea only with medical examiner certification.

**§ 130A-420.**

Authorization to Dispose of Body Parts.

"An individual at least 18 years old may authorize the disposition of the individual's own dead body in a written will, pursuant to a health care Power of Attorney." If decedent leaves no written instructions then the following persons have priority in decision making: spouse, majority of children, parents, majority of siblings, majority next of kin, person who has exhibited special care and concern for the decedent.

### **34) North Dakota**

**N.D. CENT. CODE § 11-19.1-15 (2007).**

Notice of Next of Kin; Disposition of Personal Belongings; Disposition of Body When Next of Kin Cannot Be Found.

**§ 23-02.1-01.**

Definitions.

Final disposition means burial, interment, cremation, removal from the state, or other disposition.

**§ 23-02.1-19.**

Death Registration.

Death certificates required.

**§ 23-06-01 (repealed 1969).**

Right to Dispose of One's Own Body.

This statute was supplanted by preneed contracts and duty of living to bury.

**§ 23-06-03.**

Duty of Burial.

Spouse has first duty to bury then kindred of same degree of adult age, nearest kin.

**§ 23-06-07.**

Regulation of Burial; Issuance of Burial; Transit Permit Regulated.

**§ 23-06-20.**

Where Body May Be Buried.

Burial only in specified places as determined by the department of health.

**§ 23-21-01.**

Definitions.

Cemetery includes burial park, mausoleum, crypt, crematory or a crematory and columbarium.

**35) Ohio****OHIO REV. CODE ANN. § 2108.70 (LexisNexis 2007).**

Definitions; Declaration Assigning Right of Disposition to Representative.

**§ 2108.71.**

Vesting of Right in Representative or Successor.

**§ 2108.72.**

Contents of Declaration; Form.

**§ 2108.73.**

Execution of Declaration.

**§ 2108.74.**

Declarant Warrants Truthfulness.

**§ 2108.75.**

Disqualification Generally from Serving as a Representative or Having Right of Disposition.

**§ 2108.76.**

Disqualification of Former Spouse.

**§ 2108.77.**

Disqualification Based on Homicide, Domestic Violence, Pending Action for Termination of Marriage, or Estrangement of Spouses.

**§ 2108.78.**

Effect of Anatomical Gifts.

Assignment of right of disposition relating to anatomical gifts.

**§ 2108.79.**

Disagreement Among Group Representatives or Class with Right of Disposition.

Majority vote prevails when representative or successor representative is group or class of persons; probate court is to decide when no majority.

**§ 2108.80.**

Revocation of Declaration.

**§ 2108.81.**

Statutory Right of Disposition in Absence of Valid Declaration or Qualified Representative.

**§ 2108.82.**

Authority of Probate Court to Assign Right of Disposition.

**§ 2108.83.**

Rights and Immunities of Funeral Home or Other Person Assisting Disposition in Cases of Disputed Disposition.

**§ 2108.84.**

Embalming, Refrigeration, and Sheltering of Remains While Dispute Is Pending.

**§ 2108.85.**

Right of Funeral Home or Other Person Bringing Legal Action to Reimbursement for Fees and Costs.



**§ 2108.86.**

Right of Funeral Home or Other Person to Rely on Written Declaration and Instructions of Person Believed to Have Right of Disposition.

**§ 2108.87.**

Independent Investigation by Funeral Home or Other Person.

**§ 2108.88.**

Resignation or Refusal to Serve as Representative.

**§ 2108.89.**

Liability of Representative for Cost of Goods and Services.

**§ 3705.01.**

Definitions.

“‘Final disposition’ means interment, crypt, cremation, removal from the state, donation, or other authorized disposition of a body.”

**§ 3705.17.**

Disposition of Body Without Burial Permit Prohibited; Records to Be Kept.

Burial permit required for bodies that are interred, deposited in a vault or tomb, cremated, or otherwise disposed of.

**§ 4717.21.**

Antemortem Cremation Authorization Form.

Any person may serve as their own authorizing agent to specify the arrangements for the final disposition of cremated remains by executing an antemortem authorization form.

**§ 4717.22.**

Authorizing Agent for Cremation.

Authorizing agents for cremation in the following order: spouse, person acting on the instructions of a decedent who authorized the decedent's own cremation by the execution of an antemortem cremation authorization under § 4717.21.

**36) Oklahoma**

**OKLA. STAT. tit. 8, § 162 Supp. 2007).**

Definitions.

“‘Burial space’ means grave space, mausoleum, crypt or niche used or intended to be used for the interment of human remains.”

**tit. 21, § 1151.**

Disposal of One’s Own Body.

**§ 1160.**

Persons Entitled to Custody of Body.

**tit. 59, § 396.29.**

Cremation; Intermingling; Liability for Final Disposition or Cremation; Identification System; Disposition of Unclaimed Remains.

**tit. 63, § 1-301.**

Definitions.

“‘Final disposition’ means burial, interment, cremation or other disposition of a dead body or fetus.”

**§ 1-319.**

Burial Permit.

**§ 1-329.1.**

Cremation-Burial at Sea; Bodies for Pathological Study; Disposal Permits.

**§ 91.**

State Anatomical Board.

Makes rules and regulations.

**§ 95.**

Surrender of Body When Claimed.

“If a body is claimed for burial or cremation, whether by a private person, organization or a county, and the body was embalmed at the expense of the agent, the claimant shall reimburse the agent for the cost of embalming and transportation.”

**§ 101.**

Shipment of Dead Body.

No shipment of dead body without permit and proper labeling.

**37) Oregon****OR. REV. STAT. § 97.010 (2005).**

Definitions.

Cemetery, mausoleum, crematory, columbarium, interment, entombment, crypt, vault are defined.

**§ 97.020.**

Exemptions of Certain Organizations and Cemeteries from Certain Sections of Chapter.

**§ 97.040.**

Private Family Burial Grounds.

Permits private burials on private property.

**§ 97.110.**

Human Remains Not to Be Attached.

Claims cannot be exercised against human remains.

**§ 97.130.**

Right to Control Disposition of Remains; Delegation.

Any individual of sound mind who is eighteen years of age or older by completion of a written signed instrument or by preparing or prearranging with any funeral service may direct any lawful manner of disposition of the individual's remains. Devolving priority: spouse, adult son or daughter, either parent, either adult sibling, guardian, next of kin, personal representative, the person nominated as personal representative, public health officer. Donation of anatomical gifts shall take priority over directions for the disposition of the decedent's remains only if the person making the donation has priority the same or higher than the person directing an opposite disposition of the remains. Signature of the individual shall be required for the completion of written instrument.

**§ 97.145.**

Liability for Failure to Conform to Written Instrument Directing Control of Remains.

**§ 97.150.**

Disposition of Cremated Remains; Procedures; Notice; Causes Actions Against Cemetery or Funeral Service Providers.

**§ 97.200.**

Disposition of Remains After Educational Use Thereof.

“The remains of any corpse used for the purposes authorized by § 97.170 shall, upon completion of such use, be decently buried or cremated and the ashes, in case of cremation, shall be delivered to any relative who claims them, after establishing relationship.”

**§ 97.220.**

Disinterment.

Required procedures and consents before disinterment is allowed.

**§ 97.570.**

Spouse Has Vested Right of Interment.

“The spouse of an owner of any plot containing more than one interment space has a vested right of interment of the remains of the spouse in the plot, and any person thereafter becoming the spouse of the owner has a vested right of interment of the remains of the person in the plot if more than one interment space is unoccupied at the time the person becomes the spouse of the owner.”

**§ 125.315.**

General Powers and Duties of Guardian.

The guardian may, subject to the provisions of § 97.130, control the disposition of the remains of the protected person; and subject to the provisions of § 97.954 (1), make an anatomical gift of all or any part of the body of the protected person.

**§ 432.005.**

Definitions.

“Final disposition’ means the burial, interment, cremation, removal from the state or other authorized disposition of a dead body or fetus.”

### **38) Pennsylvania**

**35 PA. CONS. STAT. tit. 9, § 11 (Supp. 2007).**

Burial Permit.

Permit must be obtained for burial.

**tit. 20, § 305.**

Right to Dispose of a Decedent’s Remains.

**§ 8611.**

Persons Who May Execute Anatomical Gift.

**tit. 35, § 1091.**

Humanity Gifts Registry for Distribution of Dead Bodies.

Gift registry established for the disposition of bodies to be comprised of academics and Secretary of Health.

**§ 1093.**

Distribution of Bodies Regulated.

Distribution of bodies regulated between medical and dental schools.

**§ 1121.**

Permit Must Be Obtained.

Permit must be obtained in order to cremate.

### **39) Rhode Island**

**R.I. GEN. LAWS § 5-33.2-24 (2006).**

Proper Authority for Funeral Arrangements and Disposition of Human Remains.

Funeral contract will control the nature of the funeral goods. When the contract is executed by the principal and specifies cremation as the chosen disposition, the contract is considered sufficient legal authorization for cremation. No person or business may cancel it even if requested to do so by a family member. If no disposition decisions had been expressed by the decedent the person’s survivors have the fol-

lowing priority: spouse, adult children, parents, siblings, grandchildren, adult nieces or nephews, guardian.

**§ 5-33.3-1.**

Title.

“This act may be known as the ‘Funeral Planning Agent Designation Act.’”

**§ 5-33.3-2.**

Definitions.

“‘Funeral planning agent’ means a person who is at least eighteen (18) years of age, who has been duly and lawfully designated, and who has accepted the designation, to act for the principal, and who has authority and responsibility to make all arrangements, regarding funeral preparation, planning, the nature of the funeral goods and services to be provided, the manner in which funeral services are to be conducted, burial, and/or the disposition of the principal’s remains, including cremation, upon the death of the principal. The funeral planning agent may be a relative or a non-relative of the principal, except as otherwise provided for in § 5-33.3-3(d).”

**§ 5-33.3-3.**

Designation of Funeral Planning Agent.

**§ 5-33.3-4.**

Form of Designation.

**§ 23-3-1.**

Definitions.

“‘Final Disposition’ means the burial, interment, cremation or other disposition of a dead body or fetus.”

**§ 23-4-10.**

Disposition of Deceased Bodies.

Medical Examiner should release body to relatives or personal representative.

**§ 23-3-16.**

Death Registration.

Death registration must be done within seven days.

**§ 23-3-18.**

Permits.

Transport permit required.

**40) South Carolina**

**S.C. CODE ANN. § 24-3-570 (2007).**

Disposition of Body.

Executed prisoner's body should be given to relatives.

**§ 32-7-10.**

Definitions.

Pre-need Funeral Contracts defined.

**§ 32-8-305.**

Definitions.

Final disposition means burial, cremation, entombment or other disposition of a dead human body or cremated remains. Scattering of ashes permitted in designated cemetery with ashes removed from container.

**§ 32-8-305(2).**

Definitions.

“‘Agent’ or ‘decedent’s agent’ means a person legally entitled under this chapter to order the cremation and final disposition of specific human remains.”

**§ 32-8-315.**

Execution of a Cremation Authorization Form.

“A person may authorize his or her own cremation and final disposition of his cremated remains by executing a cremation authorization form.”

**§ 32-8-320.**

Persons Who May Serve as a Decedent’s Agent; Authorize Cremation.

**§ 32-8-325.**

Prerequisites; Authority; Receipt of Instructions for Cremation.

**S.C. CODE ANN. § 40-19-20 (2006).**

Definitions.

Disposition means earth interment, aboveground burial, cremation, burial at sea, or delivery to a medical institution for lawful dissection and experimentation or removal from the state pursuant to obtaining a burial transit permit.

**§ 40-19-280.**

Removal or Embalming of Body Where Information Discloses Death Caused by Crime or Violence; Notice to Next-of-Kin Before Body Sent to Funeral Establishment; Contract to Pay Insurance or Benefits to Funeral Establishment; Interference with Public Freedom of Choice.

**S.C. CODE ANN. § 17-5-590 (2005).**

Disposition of Remains of Unidentified Bodies.

Must wait thirty days before burial or interment.

**S.C. CODE ANN. § 17-5-600 (2003).**

Permit Required for Cremation.

Public health and safety would be a major factor in any consideration regarding the disposition of a dead human body.

**41) South Dakota****S.D. CODIFIED LAWS § 34-25-33 (1994).**

Burial or Removal Permits.

**§ 34-25-34.**

Burial Transit Permits.

**§ 34-26-1.**

Custody and Disposition.

“Every person has the right to direct the manner in which his body shall be disposed of after his death, and to direct the manner in which any part of his body which becomes separated therefrom during his lifetime shall be disposed of.”

**§ 34-26-4.**

Dissection Authorized by Spouse or Next of Kin.

Exists whenever any spouse or next of kin authorizes it.



**§ 34-26-14.**

Custody and Disposition.

Right to custody of dead body is in person charged by law with duty to bury.

**§ 34-26-16.**

Persons Charged with Duty of Burial; Grave Marker.

The duty of burying the body of a deceased person and providing the grave with a permanent concrete, metal anchored in concrete, or stone marker devolves upon the persons hereinafter specified.

**§ 34-26A-2.**

Authorizing Agent Defined; Public Official or Institutional Representative as Authorizing Agent.

**§ 34-26A-6.**

Documentation Required for Cremation; Cremation Authorization Form; Burial Permit; Other Local Documentation.

**§ 34-26A-23.**

Responsibility of Authorizing Agent for Disposition; Disposal of Unclaimed Remains; Reimbursement; Record; Discharge from Liability.

**§ 34-26A-27.**

Scattering of Remains.

Allows scattering over public waterway or sea, or private property. A person may utilize a plane or boat. Remains should be removed from their closed containers first. An agent or relative must register plan to scatter in nearest county where ashes will be scattered.

**§ 34-26A-37.**

Pre-need Contract to Specify Ultimate Disposition of Cremated Remains; Compliance with Contract Absent Different Instructions at Time of Death; Release from Liability.

**§ 34-27-1.**

Cemeteries and Burial Records.

Department of Health approval required for mausoleum construction plans.

**§ 34-27-2.**

Cemeteries and Burial Records.

Crypts and catacombs constructed according to permit and require hermetical sealing.

**42) Tennessee****TENN. CODE ANN. § 38-5-118 (2006).**

Disposition of Body of Decedent.

After inquisition the coroner may deliver the body to the deceased's friends and if no friends then decently bury the body.

**§ 39-17-312.**

Abuse of Corpse.

Unlawful to abuse a corpse.

**§ 62-5-101.**

Definitions

“‘Authorizing agent or agents’ means a person or persons legally entitled to authorize the cremation of a dead human body or body parts. This term shall not include a funeral director or funeral establishment.”

**§ 62-5-102.**

Persons Exempt from Chapter.

Nothing shall prevent or interfere with ceremonies, customs, religious rites, or religion.

**§ 62-5-104.**

Description of Funeral Merchandise.

“All containers used for burial, entombment, or other final disposition shall bear conspicuous location on outside, concise wording describing the material, such as but not limited to 20 gauge steel, 32 oz. copper, solid oak, 12 gauge steel, reinforced concrete, pre-formed concrete, soft wood, etc.”

**§ 62-5-508.**

Final Disposition of Remains.

## NUMBER 2 LAWS ON THE DISPOSITION OF HUMAN REMAINS 455

Person may scatter remains at sea or by air or in dedicated area at the cemetery. Commingling is permitted if decedent left written instructions.

**§ 62-5-511.**

Crematory Facility Operator Liability.

“Having performed the cremation of the decedent or body parts removed from the decedent or living person or having released or disposed of the cremated remains in accordance with the instructions set forth by the decedent or an heir or personal representative of the decedent.”

**§ 68-3-102.**

Definitions.

“‘Final disposition’ means burial, interment, cremation, removal of the state or other authorized disposition of a dead body or fetus.”

**§ 68-4-101.**

Notice of Death Occurring While Receiving Medical Attention or in Institution.

Notification of relatives required.

**§ 68-4-104.**

Disposition of Bodies Among Medical, Dental, and Anthropologic Institutions.

Medical Examiner shall distribute bodies among medical, dental, and anthropologic institutions and shall not give, sell, or deliver any body to any other person, firm, association or corporation.

**§ 68-4-105.**

Bodies to be Used Only for Promotion of Science; Surrender to Relative Upon Demand.

“If, at any time before or after such use of the body, it is claimed for burial by any relatives of the deceased person, at their expense, or in the case of a veteran’s body, the commissioner of veteran’s affairs, then the institution shall surrender the body.”

**§ 68-4-110.**

Regulations Governing Disinterment.

“The department of health is empowered to prepare regulations governing the disinterment of dead bodies for the protection of public health.”

**§ 68-4-112.**

Rigid Containers Not Mandatory for Remains of Certain Children.

“A rigid receptacle or container shall not be mandatory requirement for the burial, entombment, or other final disposition of the remains of a person who was not more than twelve years old at the time of death.”

**43) Texas**

**TEX. HEALTH & SAFETY CODE ANN. § 692.001 (Vernon 2006).**

Short Title.

“This chapter may be cited as the Texas Anatomical Gift Act.”

**§ 711.002.**

Disposition of Remains; Duty to Inter.

Unless decedent has left directions in writing for the disposition of the decedent’s remains the following persons have priority: person designated in writing, surviving spouse, one of decedent’s surviving adult children, either one of surviving parents, either one of surviving adult siblings, next degree of kinship. Form of the written instrument is provided. Instrument is sufficient if it is in proper form, signed by decedent, the agent, and each successor. Person may provide written directions for disposition including cremation, prepaid funeral, this may also include directions for inscription on grave marker and which plot. Any dispute among the control of the parties shall be resolved by court of competent jurisdiction.

**§ 716.301.**

Transport of Cremated Remains.

No permit needed.

**§ 716.302.**

Disposition of Cremated Remains.

Cremated remains may only be disposed in a crypt, niche, grave, or scattering area of dedicated cemetery.

**§ 716.303.**

Commingling of Remains.

Commingling of remains is not permitted.

**§ 716.304.**

Scattering Remains.

Remains may be scattered over uninhabited public land, sea, or other public waterway with permission or on private property with written consent of the property owner.

**44) Utah****UTAH CODE ANN. § 26-2-16 (Supp. 2007).**

Certificate of Death.

Requirement of death certificate.

**§ 58-9-102.**

Definitions.

Disposition means earth interment, above ground burial, cremation, calcinations, burial at sea, delivery to medical institution or other lawful means.

**§ 58-9-601.**

Advance Directions.

A person may provide written directions meeting the requirements to direct the preparation, type, and place of the person's disposition, including: funeral establishment, burial arrangements, and directions for cremation. Written directions shall contain: name/address of decedent, directions regarding disposition, signature of decedent, signature of at least two unrelated individuals each signing within a reasonable time after witnessing the signing of the form by the decedent, and dated. Directions must be carried out to the extent they are lawful and decedent has provided resources to carry out. Directions shall be carried out regardless of validity of other aspects of the will or fact the will may not be offered or admitted to probate. Provisions to change written directions also given.

**§ 58-9-602.**

Determination of Control of Disposition.

“The right and duty to control the disposition of a deceased person, including the location and conditions of the disposition, vest in the following degrees of relationship in the order named.”

**§ 58-9-603.**

Loss of Right of Disposition.

If a person declines to act on the right and duty to control the disposition as established in this part, the right and duty to control the disposition shall pass.

**§ 58-9-604.**

Control by Funeral Service Director.

A funeral service director may control the disposition of the decedent and recover reasonable charges if: the funeral service director has actual knowledge that none of the persons described in § 58-9-602 exist or after reasonable efforts the funeral service director is not able to contact any of the persons described in § 58-9-602.

**45) Vermont**

**VT. STAT. ANN. tit. 18, § 9700 (Supp. 2007).**

Purpose and Policy.

Advance directives for health care and disposition of remains.

**VT. STAT. ANN. tit. 18, § 510 (2002).**

Removal and Retention of Pituitary Glands.

Pituitary glands shall not be removed without the authority of the person having the right to control disposition.

**§ 5201.**

Permits; Removal of Bodies; Cremation.

A dead body shall not be buried, entombed or otherwise disposed of except with proper permits and certificates.

**§ 5212.**

Permit to Remove Dead Bodies.

Spouse, child, parent, or sibling are given equal weight in deciding removal or transportation of deceased.

**§ 5220.**

Decision Making Regarding Remains; Reciprocal Beneficiary.

Decedent's beneficiary has same rights as spouse with respect to deaths, burials, and autopsies.

**§ 5224.**

Disposition of Remains; Permits.

"Fetal remains shall be disposed of by burial or cremation unless released to an educational institution for scientific purposes or disposed of by the hospital or as directed by the attending physician in a manner which will not create a public health hazard. Permission shall be obtained from one of the parents, if competent, for disposition in all cases where a funeral director is not involved."

**§ 5238.**

Definitions.

Adoption of Uniform Anatomical Gift Act.

**§ 5306.**

Perpetual Care Funds.

**§ 5319.**

Disposition of Remains of Dead.

Shall be by interment in the earth or deposit in a chamber, vault, or tomb formed wholly or partly above the surface of the ground of a cemetery, crypt of mausoleum, or by cremation. A private individual may set aside a portion of his premises owned in fee by him and use it as burial space for the members of his immediate family. No interment of any human body in the earth shall be made unless distance shall be at least five feet. No deposit of remains of the human dead shall be made in a single chamber, vault or tomb unless the part be permanent, waterproof, airtight, and sealed properly. Remains after cremation may be deposited in a niche of a columbarium in a crypt of a mausoleum or disposed of in any manner not contrary to law.

**46) Virginia**

VA. CODE ANN. § 32.1-263 (2005).

Filing Death Certificates.

Death certificates and out-of-state transfers.

**§ 32.1-284.**

Cremations and Burials at Sea.

No dead human body whose death occurred in Virginia shall be cremated or buried at sea unless a Medical Examiner shall determine there is no further need for medical legal inquiry into the death.

**§ 32.1-290.1.**

Consent to Anatomical Gifts by Agents and Others.  
Authorization of Anatomical Gift Act.

**§ 32.1-298.**

Notification of Commissioner and Delivery of Bodies.  
Notification to Commissioner for unclaimed bodies that are the responsibility of the state to bury.

**§ 54.1-2800.**

Definitions.  
Funeral Services Regulations include Board of Funeral Directors and Embalmers.

**47) Washington****WASH. REV. CODE § 68.50.160 (Supp. 2007).**

Right to Control Disposition of Remains; Liability of Funeral Establishment or Cemetery Authority; Liability for Cost.

“A person has the right to control the disposition of her own remains without the pre-death or post-death consent of another person. A valid written document expressing the decedent’s wishes regarding the place or method of disposition of her remains, signed by the decedent in the presence of a witness, is sufficient legal authorization for the procedures to be accomplished.” Priority of right to control the disposition of the remains of a deceased devolves in the following order: spouse, surviving adult child, surviving parents, surviving siblings, personal representative.

**§ 68.50.170.**

Effect of Authorization.

**§ 68.50.200.**

Permission to Remove Human Remains.



## NUMBER 2 LAWS ON THE DISPOSITION OF HUMAN REMAINS 461

“Human remains may be removed from a plot in a cemetery with the consent of the cemetery authority and the written consent of one of the following in the order named.”

**§ 68.50.230.**

Undisposed Human Remains.

“Whenever any human remains shall have been in the lawful possession of any person, firm, corporation, or association for a period of ninety days or more, and the relatives of, or persons interested in, the deceased person shall fail, neglect, or refuse to direct the disposition, the human remains may be disposed of by the person, firm, corporation, or association having such lawful possession thereof.”

**WASH. REV. CODE §§ 18.39.010–.091 (2005).**

Regulation of Embalmers.

**§ 18.39.215.**

Embalmers; Authorization to Embalm; Information Required; Immediate Care of Body; Waiver; Penalty.

**§ 36.24.155.**

Undisposed of Remains; Entrusting to Funeral Homes or Mortuaries.

**§ 36.39.030.**

Disposal of Remains of Indigent Persons.

**§ 68.50.035.**

Unlawful to Refuse Burial to Non-Caucasian.

**§ 68.56.040.**

Nonconforming Cemetery a Nuisance; Penalty.

**§ 68.50.130.**

Unlawful Disposal of Remains.

Disposition of human remains may occur on private property with the consent of the owner. Disposition permitted on public or government lands or waters with government agency approval.

**§ 68.50.185.**

Individual Cremation.  
Cremate only one body at a time.

**§ 68.50.230.**

Undisposed Human Remains.  
If human remains are not claimed by family or interested person then whoever has lawful possession (person, firm, company, association) may direct the disposition.

**§ 68.50.540.**

Anatomical Gifts; Authorized Procedures; Changes; Refusal.

**§ 68.50.550.**

Anatomical Gifts; By Person Other Than Decedent.

**§ 70.58.160.**

Certificate of Death or Fetal Death Required.  
Certificate of death must be filed within three days after occurrence is known.

**§ 70.58.240.**

Duties of Funeral Directors.

**§ 73.08.070.**

County Burial of Indigent Deceased Veterans.

**48) West Virginia****W. VA. CODE § 9-5-18 (2007).**

Funeral Services for Indigent Persons.  
Burial services for the indigent up to \$1250.

**§ 16-5-23.**

Authorization for Disposition and Disinterment and Reinterment Permits.

**§ 16-19-1.**

Adopted the Uniform Anatomical Gift Act.

**§ 16-19-8.**

Rights and Duties at Death.

**§ 18B-4-8.**

West Virginia Anatomical Board; Powers and Duties Relating to Anatomical Gifts; Requisition of Bodies; Autopsies; Transportation of Bodies; Expenses of Preservation; Bond Required; Offenses and Penalties.

**§ 30-6-22.**

Disposing of Body of Deceased Person; Penalty.

**§ 35-5B-1.**

Preneed Cemetery Company Property, Goods, and Services.

**§ 37-13-1.**

Jurisdiction to Permit and Order Removal.  
Private land court has jurisdiction.

**§ 47-14-1.**

Preneed Contracts; Policy.

**49) Wisconsin****WIS. STAT. § 68.18 (2006).**

Death Records.

Authorization required for disinterment or reinterment. The dead must be registered and only those included in statute are authorized to move corpse (funeral director, member of decedent's immediate family). Still born deaths are distinguished.

**§ 157.01.**

Disposition of Human Remains; Rules for Preparation, Transportation, and Disposition.

**§ 157.02.**

Disposal of Unclaimed Corpses.

**§ 157.03.**

Restrictions on Use of Bodies for Anatomical Purposes; Embalming Such Bodies; Delivery of Bodies to Relatives.

“Upon receipt of the corpse by a university or school pursuant to § 157.02(3) it shall be properly embalmed and retained for 3 months before being used or dismembered and shall be delivered to any relative claiming it upon satisfactory proof of relationship.”

**§ 157.06.**

Uniform Anatomical Gift Act.

**§ 157.12.**

Mausoleums and Crematoriums.

**§ 157.70.**

Burial Sites Preservation.

**§ 979.09.**

Burial of Body.

**50) Wyoming**

**WYO. STAT. ANN. § 6-4-501 (2007).**

Opening Graves and Removing Bodies; Penalty; Exceptions.

**§ 6-4-502.**

Mutilation of Dead Human Bodies; Penalties; Exceptions.

**§ 7-4-207.**

Disposition of Body and Effects of Deceased.

**§ 35-1-401.**

Definitions.

**§ 35-1-418.**

Death Registration.

Death registration is required prior to removal from state. Still born deaths are distinguished.

**§ 35-1-420.**

Permits.

Burial transit certificates required.

**§ 35-5-102.**

Anatomical Donors Generally; When Donee Not to Accept Gift; When Gift to Be Made; Examination of Body; Rights of Donee.

Anatomical gift authorized.

**§ 35-5-107.**

Acceptance or Rejection of Gift; Determination of Time of Death; Liability; State Autopsy Laws.

“The donee may accept or reject the gift. If the donee accepts a gift of the entire body, he may, subject to the terms of the gift, authorize embalming and the use of the body in funeral services.”

**§ 35-8-405.**

Removal of Body from Vault Constituting Menace to Public Health.

**§ 33-16-310.**

Funeral Directors and Undertakers; Rules and Regulations; Inspection.

Right to bury may be revoked if: swearing in front of the dead; recycling caskets; or accepting commission/bonus/rebates in connection with burial or interment.

**Appendix B**

**The Illinois Disposition of Remains Act (755 ILL. COMP. STAT. 65/10 (Supp. 2004))**

**Right to Control Disposition**

**Appointment of Agent to Control Disposition of Remains**

§ 10 **Form.** The written instrument authorizing the disposition of remains shall be in substantially the following form:

“APPOINTMENT OF AGENT TO CONTROL DISPOSITION OF REMAINS

I,....., being of sound mind, willfully and voluntarily make known my desire that, upon my death, the disposition of my remains shall be controlled by ..... (name of agent) and, with respect to that subject only, I hereby appoint such person as my agent (attorney-in-fact). All decisions made by my agent with respect to the disposition of my remains, including cremation, shall be binding.

**SPECIAL DIRECTIONS:**

Set forth below are any special directions limiting the power granted to my agent: .....

.....  
.....

If the disposition of my remains is by cremation, then:

( ) I do not wish to allow any of my survivors the option of canceling my cremation and selecting alternative arrangements, regardless of whether my survivors deem a change to be appropriate.

( ) I wish to allow only the survivors I have designated below the option of canceling my cremation and selecting alternative arrangements, if they deem a change to be appropriate:

**AGENT:**

Name: .....

Address: .....

Telephone Number: .....

Acceptance of Appointment: .....

Signature of Agent: .....

Date of Signature: .....

SUCCESSORS:

If my agent dies, becomes legally disabled, resigns, or refuses to act, I hereby appoint the following persons (each to act alone and successively, in the order named) to serve as my agent (attorney-in-fact) to control the disposition of my remains as authorized by this document:

1. First Successor

Name: .....
Address: .....
Telephone Number: .....
Signature Indicating Acceptance of Appointment: .....
Date of Signature: .....

2. Second Successor

Name: .....
Address: .....
Telephone Number: .....
Signature Indicating Acceptance of Appointment: .....
Date of Signature: .....

DURATION:

This appointment becomes effective upon my death.

PRIOR APPOINTMENTS REVOKED:

I hereby revoke any prior appointment of any person to control the disposition of my remains.

RELIANCE:

I hereby agree that any cemetery organization, business operating a crematory or columbarium or both, funeral director or embalmer, or funeral establishment who receives a copy of this document may act under it. Any modification or revocation of this document is not effective as to any such party until that party receives actual notice of the modification or revocation. No such party shall be liable because of reliance on a copy of this document.

ASSUMPTION:

THE AGENT, AND EACH SUCCESSOR AGENT, BY ACCEPTING THIS APPOINTMENT, AGREES TO AND ASSUMES THE OBLIGATIONS PROVIDED HEREIN.

Signed this ..... day of .....
STATE OF .....
COUNTY OF .....

BEFORE ME, the undersigned, a Notary Public, on this day personally appeared . . . . ., proved to me on the basis of satisfactory evidence to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that he/she executed the same for the purposes and consideration therein expressed.

GIVEN UNDER MY HAND AND SEAL OF OFFICE this . . . . . day

of . . . . ., 2 . . . . .

Printed Name: . . . . .

Notary Public, State of . . . . .

My Commission Expires:

. . . . .”



### Appendix C

#### Delaware Disposition of a Person's Last Remains (DEL. CODE ANN. Tit. 12, §265 (Supp. 2006))

##### Declaration of Disposition of Last Remains; Form

The following declaration of disposition of last remains must be substantially in the following form:

##### DECLARATION OF DISPOSITION OF LAST REMAINS

I, \_\_\_\_\_ (Name of Declarant), being of sound mind and lawful age, hereby revoke all prior declarations, wills, codicils, trusts, powers of appointment, and powers of attorney regarding the disposition of my last remains, and I declare and direct that after my death the following provisions be taken:

1. If permitted by law, my body shall be (Initial ONE choice):

\_\_\_ Buried. I direct that my body be buried at \_\_\_\_\_.

\_\_\_ Cremated. I direct that my cremated remains be disposed of as follows: \_\_\_\_\_.

\_\_\_ Entombed. I direct that my body be entombed at \_\_\_\_\_.

\_\_\_ Other. I direct that my body be disposed of as follows: \_\_\_\_\_.

\_\_\_ Disposed of as \_\_\_\_\_ (Name of Designee) shall decide in writing. If \_\_\_\_\_ is unwilling or unable to act, I nominate \_\_\_\_\_ as my alternate designee.

2. I request that the following ceremonial arrangements be made (initial desired choice or choices):

\_\_\_ I request \_\_\_\_\_ (Name of designee) make all arrangements for any ceremonies, consistent with my directions set forth in this declaration. If \_\_\_\_\_ is unwilling or unable to act, I nominate \_\_\_\_\_ as my alternate designee.

\_\_\_ Funeral. I request the following arrangements for my funeral: \_\_\_\_\_.

\_\_\_\_ Memorial Service. I request the following arrangements for my memorial service: \_\_\_\_\_

3. Special Instructions. In addition to the instructions above, I request (on the following lines you may make special requests regarding ceremonies or lack of ceremonies):

Note: Those persons or entities asked to carry out a declarant's intent regarding disposition of last remains and ceremonial arrangements need do so only if the declarant's intent is reasonable under the circumstances.

"Reasonable under the Circumstances" may take into consideration factors such as a known prepaid funeral, burial, or cremation plan of the declarant, the size of the declarant's estate, cultural or family customs, the declarant's religious or spiritual beliefs, the known or reasonably ascertainable creditors of the declarant, and the declarant's financial situation prior to death.

I may revoke or amend this declaration in writing at any time. I agree that a third party who receives a copy of this declaration may act according to it.

Revocation of this declaration is not effective as to a third party until the third party learns of my revocation. My estate shall indemnify any third party for costs incurred as a result of claims that arise against the third party because of good-faith reliance on this declaration.

I execute this declaration as my free and voluntary act, on \_\_\_\_\_

(Declarant) \_\_\_\_\_

The following section regarding organ and tissue donation is optional. To make a donation, initial the option you select and sign below.

In the hope that I might help others, I hereby make an anatomical gift, to be effective upon my death, of:

- A. \_\_\_\_ Any needed organs/tissues
- B. \_\_\_\_ The following organs/tissues \_\_\_\_\_

Donor signature: \_\_\_\_\_

NUMBER 2                      LAWS ON THE DISPOSITION OF HUMAN REMAINS    *471*

Notarization Optional:

State of Delaware

County of \_\_\_\_\_ :

Acknowledged before me by \_\_\_\_\_,

Declarant, on \_\_\_\_\_, \_\_\_\_\_. My commission expires:

\*(Seal) Notary Public \_\_\_\_\_.