

Restoring Families' Right to Choose

The call for funeral legislation change in America

Including a guide for

What to Do When Home Funeral Rights Are Challenged



About the Funeral Consumers Alliance

The Funeral Consumers Alliance is a nonprofit dedicated to protecting funeral consumers' rights nationwide through education and advocacy. Members nationwide believe in freedom of choice in funeral matters, and in protecting the rights of Americans to choose not to be consumers at all and to avoid both cultural and commercial pressures to conform to the "new normal" of completing a business transaction with the funeral industry, which many are hard pressed to afford.

Funeral Consumers Alliance

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About the National Home Funeral Alliance

The National Home Funeral Alliance is a group of educators and advocates whose mission is to support and educate the public to the innate rights of families and communities to choose to have a non-commercial, family-directed funeral. Members also share knowledge of the funeral process with individuals and groups, and are active in their communities promoting environmentally and culturally sensitive methods of caring for the dead. They have witnessed hundreds of home funerals and can attest to the value to families and society that this choice provides.

National Home Funeral Alliance

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Source: Final Rights: Reclaiming the American Way of Death by Lisa Carlson, Funeral Ethics Network, and Josh Slocum, Funeral Consumers Alliance



Restoring Families' Right to Choose: *the call for funeral legislation change in America*

The Call for Change in Funeral Law

The Funeral Consumers Alliance (FCA) and the National Home Funeral Alliance (NHFA) stand together in the call for revision of all state laws and regulations that unreasonably impede a family's ability to care for their loved ones after death.

We believe in clarifying and restoring the rights of Americans regarding after death care, while providing for the necessary medical and public health safeguards. Together, the NHFA and the FCA are united in calling for all states to clearly articulate the rights of families to perform their own funeral rites without government required commercial businesses involved.

We ask all lawmakers and public officials to include a statement in their funeral, burial, and vital statistics laws that clearly states the rights of families to care for their own. We ask lawmakers and public officials in Alabama, Connecticut, Illinois, Iowa, Indiana, Louisiana, Michigan, Nebraska, New York, and New Jersey, states where these rights have been compromised, to join us in restoring the rights of Americans to self-determination in funeral processes and practices.

"This is a fundamentally American idea – that individuals, families, and households are best equipped to decide for themselves how to carry out the duties, joyous and sad, that we all will experience..."

This is not a partisan matter: Democrats, Republicans, Independents and those of every political creed deserve the right to choose. Neither is it a sectarian issue: Christians, Jews, Muslims, Buddhists, atheists, and adherents of all faiths or none deserve this right. This is a fundamentally American idea – that individuals, families, and households are best equipped to decide for themselves how to carry out the duties, joyous and sad, that we all will experience when a loved one dies.

Restoring Family Rights in Ten States

Most states do not impose a legal requirement that compels citizens to patronize a commercial funeral home, but ten do. The ways in which state laws and regulations entangle families in forced commercial transactions are varied and inconsistent. The effect of these laws goes unnoticed until a family wants to take care of their loved one after death and meets resistance.

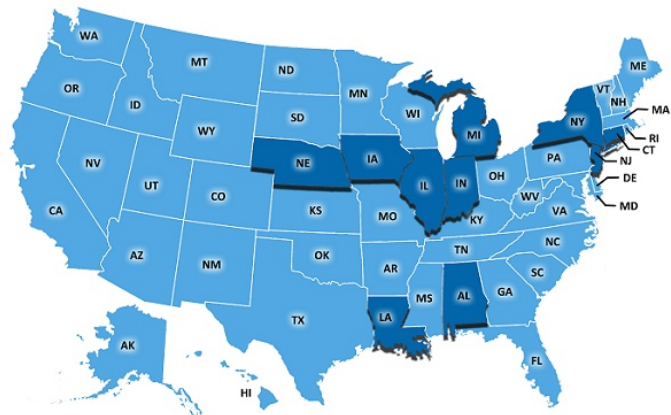
Alabama—requires that every funeral service, memorial, and interment, “or part thereof” be in the actual charge of and under the supervision of a licensed funeral director.

Connecticut—requires a funeral director’s signature on the death certificate and bars anyone but a funeral director or embalmer from removing a body or transporting it.

Illinois—defines “funeral director or person acting as such” to include only funeral directors and their employees, according to Illinois Administrative code.

Iowa—recently changed its law to disallow local registrars from being able to supply burial transit permits, thus forcing families to hire funeral directors or engage medical examiners to file for them.

Indiana—says burial permits can only be given to funeral directors, though other statutes clearly refer broadly to the “person in charge” of the disposition (e.g., the next-of-kin).



Louisiana—mandates funeral director involvement in obtaining all necessary permits and funeral director presence at the final disposition of the body. In plain terms, the state literally requires families to hire an undertaker to supervise them.

New York—has requirements similar to Louisiana’s.

Michigan—requires that death certificates be “certified” by a funeral director —though the statute doesn’t define what that means. Additionally, the wills and probate section of the law requires all body dispositions be conducted by a licensed funeral director.

Nebraska—law requires a funeral director to supervise all dispositions and gives funeral directors the right and authority to issue “transit permits” to move the body out of state.

New Jersey—requires a funeral director’s signature on the death certificate and mandates funeral director presence at the final disposition of the body.

In the ten states listed above, families lose the right to independent, private control of their affairs when a loved one dies. Few occasions are as trying or intimate for any family as a death; it’s especially unfortunate that families should be compelled to engage in an expensive and unnecessary commercial transaction when death occurs. While it is true that a minority of Americans will choose a home funeral, and most will gladly rely on funeral directors, it is the *right to choose* that must be protected.

“While it is true that a minority of Americans will choose a home funeral ... it is the right to choose that must be protected.”

It is more than unfortunate when the state compels a citizen to hire a private business—at considerable cost—to perform something he can do for himself. Consider this: In all states, expectant mothers may have their babies at home; fathers may cut their children’s hair to avoid the expense of a barber; engaged couples may plan and carry out their own wedding without hiring professional planners or caterers; homeowners may snake their clogged drains to save on professional plumbing fees. And all Americans have the right to be cared for at home by their family as they near the end of life, where most people will agree they prefer to die. ¹

How Did We Get Here?

From colonial days until the nineteenth century, the American funeral was almost exclusively a family affair, in the sense that family and close friends performed most of the duties in connection with the dead body itself. It was they who washed and laid out the body, draped it in a winding sheet, and ordered the coffin from the local carpenter. It was they who carried the coffin on foot from the home to the church and then to the graveyard, and who frequently...dug the grave.

—from *The American Way of Death*, pp. 190, 199²

It wasn’t until the Civil War and the ensuing trend toward professionalization in all spheres that families began to relinquish the care of their dead. In time, the emerging funeral industry’s practices and recommendations were accepted as the norm, and families lost touch with traditional methods and values, though many less affluent throughout the country continued to lay out their own in the parlor as late as the 1950s. With the exception of the ten states that deliberately block families, the ability to care for

one's own after death has continued. Unfortunately, most people do not know this is an option, including, at times, those in critical positions who should know, such as medical examiners, vital statistics staff, hospital personnel and others.

In recent years, a growing number of Americans have sought to return to these earlier customs, customs our great-grandparents would instantly recognize and consider a normal part of family life. Beth Knox, a home funeral advocate from Maryland, illustrates this through the telling of her daughter's tragic death in a car accident:

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

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

"...it is the role of government to assist citizens by passing fair legislation that enables them to fulfill these responsibilities with relative ease while ensuring compliance with vital statistics and recording laws."

Knox's story also illustrates an important point regarding legal requirements that did not exist in America's infancy. All deaths require filing of death certificates with each state's version of Vital Statistics. In order to move a body, a burial or transit permit is required. Some states have mandatory waiting periods prior to cremation. Crematories and cemeteries have policies that make carrying out family-led funeral plans difficult.

Both the FCA and the NHFA seek to promote compliance with reasonable laws and regulations. However, we also contend that it is the role of government to assist citizens by passing fair legislation that enables them to fulfill these responsibilities with relative

ease while ensuring compliance with vital statistics and recording laws.

The Costs Involved

Whether a death was expected or not, vulnerable families face enough grief without the potential pressure of making financial or other decisions quickly. Home funeral proponents advocate for family involvement with their loved ones' physical care at home as a matter of spiritual and emotional healing.

In practical terms, taking time with their loved one allows family and community to gather and experience their loss together, which may result in clearer thinking, particularly when faced with expensive funeral arrangements. A funeral has the potential to be one of the most expensive purchases a family ever makes aside from a house, a car, or a college education. A full-service conventional funeral costs more than \$7,000, not counting cemetery or other fees which often raise the price tag to well over \$10,000.³ Even a lower-priced direct cremation at \$1,500 is out of the reach of many Americans.

By contrast, a household willing to file the correct paperwork and transport the deceased to the crematory themselves can spend less than \$400 including cremation. With historically high levels of poverty and unemployment, Americans willing to be self-sufficient when a death occurs should not be prevented from doing so by laws that compel them to spend money they don't have.

"Americans willing to be self-sufficient when a death occurs should not be prevented from doing so by laws that compel them to spend money they don't have."

Safeguards Already Exist

While we don't believe medical staff or state employees such as vital statistics staff deliberately set out to thwart families' wishes at a time of death, their resistance or outright refusal to allow families a home funeral may result in undue suffering. No parent—no grieving person—should face bureaucratic resistance, legal hurdles, or a self-interested commercial industry when carrying out this sad final duty.

The basic legal requirements for the certification and recording of deaths are similar nationwide. They are designed to ensure that deaths are certified by medical professionals, both for the detection of foul play and for accurate health and disease information, and to ensure that the body is buried, cremated, or donated to anatomical science within a reasonable period. While the particulars vary (e.g., some states require

disposition of the body within a certain number of days, some don't), these basics are universal.

In most cases, the only things that are required at death are a properly completed and filed death certificate, a permit for disposition, and the body's actual disposition. Ceremonies, caskets, obituaries and, in most cases, embalming, are options left to the consumer's discretion, not requirements of the law.

Once the doctor or medical examiner has signed the certificate, the state's medico-legal interest in the death has been satisfied. It is the doctor or medical examiner, not a funeral director, who determines cause of death and who investigates if there is suspicion of crime or public health risk.

The myth of alleged public health risks from dead or unembalmed bodies is at the heart of a studied and disingenuous effort to influence legislation that backhandedly disempowers families. According to Dr. Michael Osterholm of the Center for Infectious Disease Policy and Research:

"...there simply is no measurable risk of that body transmitting an infectious disease agent. The use of embalming is of no consequence in reducing this risk..."

*"...the mere presence of a dead body without regard to its embalmed status and one that is not leaking blood from an open wound or perforation, does not pose any increased risk of infectious disease transmission for the person who might handle that body or review it in a private setting. Once a human dies, infectious agents that would be of any concern, including those on the individual's skin or internal organs, is greatly diminished... there simply is no measurable risk of that body transmitting an infectious disease agent. The use of embalming is of no consequence in reducing this risk..."*⁴

"Funeral directors have no forensic legal role in any death."

Funeral directors have no forensic legal role in any death. Their function, when hired by families, is to complete the non-medical portion of the death certificate and to file it with the municipal registrar. It is important to note that it is the family who supplies the biographical information on the decedent; the funeral director merely transcribes the data.

Once the death certificate is filed, the registrar will issue a burial/transit or cremation permit in most states. Completing this paperwork requires no special skills or

knowledge, and there is no legitimate legal or practical reason why the next-of-kin cannot do so. Mothers who give birth at home, for example, may in every state complete and file a birth certificate.

Yet nine of ten restrictive states permit only funeral directors to complete some or all of these tasks, establishing a *de facto* legal obligation to hire a funeral home. Even if the law does not explicitly state this, such wording is routinely interpreted by officials to prevent anyone but licensed commercial funeral directors from engaging in necessary tasks.

A reasonable interpretation of legislative intent was that lawmakers wished to make it clear that commercial funeral businesses have certain responsibilities to the state's recordkeeping and to consumers, and that anyone offering funeral services for sale to the public must be properly licensed. It is highly unlikely that lawmakers intended to compel families to hire funeral homes or to make necessary administrative activities regarding death off-limits, but that is indeed how such laws are interpreted.

Clarifying Rights in All States

We believe it is time to clarify that families have the right to care for their loved ones after death, to secure these rights in all states, and to restore these rights in the ten states that deny them.

Each of the 40 states that allow families the right to care for their own dead have found their way to retaining citizens' fundamental rights and responsibilities while ensuring compliance with standard medical and statistical recording of deaths. However, without explicit protection, these rights could be at risk from small changes in legal definitions.

“Each of the 40 states that allow families the right to care for their own dead have found their way to retaining citizens’ fundamental rights and responsibilities regarding care and custody while safeguarding necessary reporting, health regulations, and disposition requirements.”

And so we offer the following language for adoption or adaptation by all states:

Nothing contained in this section/title shall be construed to prohibit the next-of-kin or designee(s) from carrying out the disposition and funeral services of the decedent privately and without hiring a funeral establishment. Such kin and designees shall not be required to be licensed funeral directors in order to carry out the tasks associated with the disposition, including but not limited to, preparing, filing and obtaining necessary

certifications and permits, preparation of the body (not including embalming), transport of the body to the place of final disposition, and any desired ceremonies. No agency or department may promulgate any regulation that interferes with these rights and abilities except in cases of demonstrated and immediate threats to public health or safety. No agency or department shall refuse to furnish necessary authorizations to the next-of-kin or designee(s) provided those designees correctly supply information and/or paperwork that satisfies the laws of this state. Nor shall any agency or department require the family to hire or otherwise engage a commercial funeral establishment to accomplish such tasks.

Some examples of appropriate language currently used by forward-thinking states include: families *acting as their own funeral director*, families having the ability to *appoint designated agents*, to allow arrangements to be carried out by *any duly authorized representative*, or by *the person in charge*, and *the funeral director or person acting as such*.

How We Can Help

Elected legislators cannot be experts in all the subjects with which they must deal, and they understandably turn to the purported professionals for advice in crafting laws. Without a countervailing opinion from outside the commercial funeral industry, lawmakers are often misled by funeral trade groups about the “necessity” of enacting anti-consumer restrictions. These are not presented as such, naturally; they are cloaked in the language of “protecting the public health”, a misleading and unfounded argument.^{4,5}

A varied base of interested and informed sources should inform all good legislation in order to see the issues through different lenses. We ask that you seek the involvement of members of the FCA and NHFA in drafting amendments to laws and regulations that obstruct the right to home funerals.

Funeral Consumers Alliance Director Joshua Slocum and Funeral Ethics Organization Director Lisa Carlson are co-authors of the only book on funeral law for consumers state-by-state, *Final Rights: Reclaiming the American Way of Death*.⁶ Both are intimately familiar with such laws and can offer states amendments that would clarify these rights and put conflicting statutes in harmony.

The National Home Funeral Alliance counts members from all over the country with years of practical experience helping educate and support home funeral families who can offer lawmakers valuable testimony and advice.

In Conclusion

It is our fervent wish that legislators and policymakers across the country broaden their frame of reference and work to create funeral laws that empower families to make informed choices regarding compassionate and reasonable care of their deceased, without compelling commercial transactions, and without legal prejudice.

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¹Guengerich, Terri, "Caregiving and End of Life Issues: A Survey of AARP Members in Florida," AARP Knowledge Management, February, 2009, assets.aarp.org/rgcenter/il/fl_eol_08.pdf

²Mitford, Jessica, *The American Way of Death*. Cutchogue NY: Buccaneer Books, 1963.

³National Funeral Directors Association 2007 General Price List Survey: nfda.org/news-events/all-press-releases/1219.html. Accessed 8.31.2001.

⁴Dr. Osterholm's complete testimony can be accessed at funerals.org/faq/pdf-pamphlets/doc_download/217-dr-osterholm-letter-on-embalming-and-public-health-2009. Additional scientific information on the lack of health risk from the dead is collected in Funeral Consumers Alliance's white paper, "Dead Bodies and Disease: The Danger That Does Not Exist" at funerals.org/faq/142-embalming-myths-facts.

⁵For more information on funeral-related health risks, go to funerals.org/faq/pdf-pamphlets/doc_download/217-dr-osterholm-letter-on-embalming-and-public-health-2009 and "Dead Bodies and Disease: The Danger That Does Not Exist" at funerals.org/faq/142-embalming-myths-facts.

⁶Joshua Slocum and Lisa Carlson, *Final Rights: Reclaiming the American Way of Death*. Hinesburg VT: Upper Access, Inc., 2011.

Testimonials

The following are brief descriptions compiled by NHFA home funeral educators across the US illustrating the benefits of family and community led after-death care:

“A woman in her early 60s was cared for by her circle of friends. She was part of an all-woman community and although she had no family, her friends cared for her. After an at-home vigil she was covered in her grandmother’s quilt and strapped to a carrying board with long pieces of sheet to a local green cemetery where the women lowered her body into the grave. The caring and completion of the intimate process was powerful for all involved.” —DB, Texas

“A dedicated group of friends cared for A during her brief illness and were present at her death. She was clear that she wanted to remain in her home for three days after her death. Her family members were supportive of her desire to have a home vigil and deeply grateful to her friends for their guidance in washing, dressing and blessing her body, preparing the house for the vigil, moving her from the bed to the casket and using Techni-ice to keep the body cold. A vigil was kept round the clock by close friends and family members. During certain hours of the day the home was open for friends and associates to view her body, sign a guest book and offer condolences. On the morning of the third day, mementos were added to the casket and the cover put into place. As her body was being carried to a waiting van, several community members who had gathered outside the house were singing hymns. A’s father and two of her friends accompanied the body to the crematory. I can’t imagine doing this any other way.” —KD, Wisconsin

“Hal passed away in the hospital, and with the help of a funeral arranger we took his body back to Kathy’s house. Kathy gently bathed and dressed him in clothes that his grandson Ryan picked out. We laid him on a massage table and covered him with the family quilt that his grandmother had made, the one he took on his overnight fishing trips. Ryan put his grandfather’s favorite hat, lures and fishing poles beside him and made a sign, “Gone Fishin’”. We lit candles, played his favorite song, “So Long, It’s Been Good to Know Ya” and people began arriving to pay tribute and to decorate the cremation box. For the next two days, the house was filled with Hal’s neighbors, fishing buddies and friends. His grandson Ryan never left his side. In a very unique, and special way, they had their last fishing trip together. Ryan thought it would be really hard to see his Grandpa dead, but he surprised himself. He loved taking care of him. It was like his final gift to the man who meant so much to him. He got to give back. It was really healing for him. He’s okay now. He feels he did everything he could, and now he can say goodbye.” —OB, California

“I received a call from a woman in the northern part of the state looking for information about how to bury her father on his own property after holding a home vigil. Fortunately, it is legal to do both here in New Hampshire, and the process, though eye-opening for many local officials, worked perfectly. Friends, relatives, neighbors, the people in the town office, and even the visiting hospice nurses all reacted with a combination of shock, worry, and skepticism upon first hearing that she planned to bury her father on his own land, in a pine box, without involving a funeral home, but they gradually came to embrace the idea. Her father was well-known in the community, and the support was undoubtedly gratifying for the family.” —LW, New Hampshire

When PBS aired a groundbreaking documentary on home funerals in 2004, e-mails and phone calls flooded in to the Funeral Consumers Alliance. *A Family Undertaking* awoke viewers around the country to a different way of doing funerals that many Americans incorrectly believe is illegal or “weird.” The following are excerpts from letters typical of what arrived at the FCA office:

“No one knows that they have a right to care for their own dead. This woman in the film said the nurses approached her after her daughter died and suggested they call the funeral home. I cannot imagine having the strength to argue with the medical profession about whether or not I can or cannot take my deceased child home or not at a time of extreme emotional upheaval. Where did the [hospital] get the idea to refuse to let her take her daughter? God bless her for speaking so candidly about her experience and being such an advocate.”

“I was so moved by this documentary. I wasn’t aware we had this option and I just wish my friends who lost their 19-year-old son last year after an auto crash had seen this program. The young man’s funeral was very difficult and his little brother, only age 10, had a very hard time accepting the death, even with the body on display in the funeral home all night as hundreds of teens walked by for the viewing. If his older brother’s body could have been at home for a few days, maybe the younger boy would have understood that his brother was not going to wake up again.”

“I was comforted by this program since my father just passed away this past Sunday, at 9 p.m. We were allowed to remain with him as other family members arrived to say goodbye. We spent about two hours sitting with him, giving him our last kisses and holding his hand. It was odd at first because this was the first time I had ever seen a deceased person outside of a casket. But, the program said it best. You are able to cope and realize that yes, he has gone from his body and my belief is that he is now with Christ in heaven. He was a great man, one of the best dads you could possibly have. I was able to say goodbye many times before we left. And I am at peace knowing he is now at peace.”

“My one-and-a-half year-old son died less than one year ago. When I asked to help clean him up at the hospital, they said no. When I asked to see him at the funeral home before he was dressed, they said no. I would have loved to have his viewing at home instead of at the funeral home, but I didn’t know I could. The biggest problem I face in my grief today is that I didn’t get enough time to say goodbye. I still look for him. His death was so sudden. Thank you for showing this film. If I had only seen it a year ago, my son’s funeral would have been very different.”

What to Do When Families'



Home Funeral Rights Are Challenged

Having the law on your side is sometimes only half the battle when it comes to carrying out after-death care without hiring a professional. Chances are good that a person obstructing you is operating out of fear or ignorance, not willfulness. Even authorities such as police and municipal or state office workers are often skeptical or uninformed about the rights to families to care for their own dead.

Policies in place in institutions such as hospitals or care facilities sometimes conflict with your legal rights to care for the dead. Along with pointing out the difference between law and policy, you may need to explain firmly and with persuasion and compassion why their policy is not in the best interests of the family or their agency.

Hospitals and care facilities sometimes claim they cannot release a body to the family because of "liability." Reframing this may be useful in helping staff understand why this is not a valid concern. A suggested response:

"There is no liability to your hospital for releasing the body to the next of kin, just as you would release the patient to the family when discharging a living patient such as a child or an elder being cared for by their relatives. However, you may be creating liability for the hospital by refusing to recognize the family's legal, custodial rights and insisting on releasing the body only to an anonymous commercial firm over the family's objections."

If necessary, insist on speaking to the hospital's legal department and patient advocate immediately.

Here are some suggestions for what you can do:

- 1) Obtain the obstructive person's name, title, and contact information.
- 2) Ask for the pertinent policy in writing.
- 3) Ask for contact information for any other personnel who are obstructing along the chain of command (*e.g., head of nursing, legal department, patient advocate, etc.*).

- 4) Be prepared to provide in writing any state laws that prove the rights of next-of-kin to custody and control (these can be found on line by going to your Secretary of State's office, or to funerals.org, or by purchasing *Final Rights*). **Note**—State laws will not necessarily state your rights in explicit terms. Don't expect to find a sentence that says, "Families in this state may care for their own dead without a funeral director." That doesn't mean that you have to use a funeral director. State laws don't say "citizens may repair their own sink without hiring a licensed plumber," but that does not mean it's illegal to perform your own home maintenance. If someone challenges the family's rights, ask *them* to show in writing the law that they believe makes a home funeral illegal.
- 5) Contact any of the following to be on hand in person or by phone to provide back-up:
 - Your NHFA Regional Coordinator
 - The local NHFA board member nearest you
 - The chair of the NHFA Legislative Committee
 - The home funeral guide nearest you
 - A home funeral-friendly funeral director nearest you
 - The local FCA affiliate nearest you
 - A law enforcement officer who understands your state's funeral law
 - A clergy member in the know
 - Your local Town or City Clerk
 - Your State's Attorney General's office
- 6) If the family wants or needs definitive authorities to intervene or support the effort, contact the heads of the NHFA and/or FCA to help with calls or letters.
- 7) Approach the original contact person calmly and suggest that you meet to share paperwork. Bring a witness/advocate from the list above if possible.
- 8) If this isn't successful, ask for the next person in the chain of command and do the same.
- 9) If the person in charge of decision-making is not readily available, contact an authority (or authorities) from the list above and ask for their direct intervention. It's important that your supporters initiate contact on your behalf rather than asking an obstructive person to make calls.

Above all, keep the family in charge! You can help best by providing this blueprint for resolving difficult situations. While solving very real problems is paramount, empowering families to meet the challenges of family-directed after death care on their own is vital.

Resources

National Home Funeral Alliance

NHFA Board of Directors contact info

homefuneralalliance.org/about/board-of-directors/

Home Page of the NHFA website

homefuneralalliance.org

NHFA Legislative Committee legal info

homefuneralalliance.org/the-law/

NHFA Home Funeral Guides

homefuneralalliance.org/assistance/find-a-home-funeral-guide/

NHFA Friendly Funeral Directors

homefuneralalliance.org/get-assistance/find-a-home-friendly-funeral-director/

Funeral Consumers Alliance

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Home Page of the FCA

funerals.org

Final Rights purchase by state shopping cart

funerals.org/bookstore/

FCA affiliates by state contact info

funerals.org/affiliates-directory

Funeral Ethics Organization

Lisa Carlson, Executive Director, Funeral Ethics Organization

info@funeralethics.org 802-482-6021

Consumer Rights for Your State

funeralethics.org/rights.htm

2016 Quick Guide to Legal Requirements for Home Funerals in Your State



Keeping or bringing a loved one home after death is legal in every state for bathing, dressing, private viewing, and ceremony as the family chooses. Every state recognizes the next-of-kin's custody and control of the body that allows the opportunity to hold a home vigil. Religious observations, family gatherings, memorials, and private events are not under the jurisdiction of the State or professionals in the funeral industry, who have no medico-legal authority unless it is transferred to them when they are paid for service.

This guide is intended to let home funeral families know what legal requirements are on the books in each state—either *statutes* that are applicable to all or *regulations* that fall under the state Mortuary Board's set of procedures applicable for licensed funeral directors only.

Both the **National Home Funeral Alliance** and the **Funeral Consumers Alliance** support families wishing to care for their own after death. We offer this **Quick Guide** as a glimpse into each state's particular legal culture. We also agree that while it is critical to know what requirements there are, it is equally important to weigh them against practical realities.

Keep this in mind: there are no funeral police. And there are exceptions to every rule, many of which happen when someone dies in the middle of an ice storm or a weekend or a holiday or a multitude of other unpredictable circumstances. Even under perfect conditions or professional care, many of these requirements are not logistically or practically enforceable.

The reason we want you to have easy access to your state's rules and regulations is simple. We want you to have the information at your fingertips should you ever be asked to explain them. We want you to be empowered by what you **can** do, not what someone who doesn't know any better might believe. Knowing the law allows you to

move forward with confidence. No one knows better than the family what's truly necessary or needed when caring for their own after death. When in doubt, call us for additional information, but know that you already have the most important piece of this puzzle: your own best judgment.

State	Preservation time requirements by statute:	According to state law, a funeral director must be hired to:	Requirements /Regulations of note:	Mandatory waiting period for cremation:
Alabama	None for home funeral families Reporting of contagious or communicable disease to attending physician is recommended	Supervise the funeral or memorial	Embalming is required in order to leave the state unless the body is going to be used for medical research	24 hours
Alaska	None for home funeral families Check statute for specific communicable diseases that require a physician's advice			
Arizona	Body must be embalmed OR refrigerated after 24 hours; Reporting of contagious or communicable disease to attending physician is recommended			
Arkansas	Body must be embalmed OR refrigerated at <45° after 24 hours unless cremating; neither are required for 48 hours if planning to cremate; Reporting of contagious or communicable disease to attending physician is recommended		Embalming is required in order to leave the state Embalming is required when shipping by common carrier	
California	None for home funeral families Reporting of contagious or communicable disease to attending physician is recommended		Required to be embalmed OR shipped in airtight container by common carrier and when forwarding Funeral homes must embalm or refrigerate with 24 hours by regulation, not statute – <i>applies to FDs only</i>	
Colorado	Body must be embalmed OR refrigerated after 24 hours; contagious or communicable diseases		Required to be embalmed OR shipped in airtight container by common carrier	

	must be reported to local or state health officers by person acting as funeral director			
Connecticut	None for home funeral families If the person dies of a communicable disease, disposition must be handled by a licensed embalmer; disposition must occur within a reasonable time	Body removal File the death certificate Disposition of bodies with communicable disease		48 hours
Delaware	Body must be embalmed OR refrigerated after 24 hours; disposition must occur within 5 days		Embalming is prohibited for select diseases	
DC	None for home funeral families Disposition must occur within one week	<i>Disposition of contagious or infectious diseased bodies must be handled by a licensed FD</i>		
Florida	Must be embalmed OR refrigerated after 24 hours; Reporting of contagious or communicable disease to attending physician is recommended			48 hours
Georgia	None for home funeral families Reporting of contagious or communicable disease to attending physician is recommended			
Hawaii	Body must be embalmed OR refrigerated (preferably in a facility) after 30 hours		Embalming is prohibited for select infectious diseases	
Idaho	None for home funeral families Physician should be consulted for death by contagious or communicable disease		Embalming is required with use of common carrier Funeral homes must embalm or refrigerate with 24 hours by regulation, not statute – <i>applies to FDs only</i>	
Illinois	None for home funeral families	File the death certificate		24 hours
Indiana	None for home funeral families Disposition must occur within a reasonable time Reporting of infectious disease to	Handle disposition permit, which requires that they file the death certificate to receive it		48 hours

	attending physician is recommended	Receive cremated remains (cemeteries may receive as well)		
Iowa	Body can be held without preservation up to 72 hours; then refrigerated at between 38 and 42 degrees for 72 more; Communicable disease must be reported to attending physician	Handle arrangements with crematories Embalm bodies with infectious disease	Embalming is required for bodies with communicable diseases	
Kansas	Body must be embalmed OR refrigerated after 24 hours; extensions possible Check statutes for specific infectious or contagious diseases that must be handled by a licensed FD unless disposition occurs within 24 hours		Embalming required for specific diseases if disposal not complete within 24 hours A sealed metal casket for immediate burial may substitute for embalming of bodies with communicable disease Required to be embalmed OR shipped in airtight container by common carrier	
Kentucky	None for home funeral families Reporting of contagious or communicable disease to attending physician is recommended			
Louisiana	Body must be embalmed OR refrigerated at below 45° after 30 hours; consult with physician if contagious or communicable disease is involved	Sweeping powers for all aspects of after death care "...any service whatsoever connected with the management of funerals..."		
Maine	None for home funeral families Report diseases to attending physician to see if medical examiner needs to be involved		Required to be embalmed OR shipped in sealed airtight container by common carrier	48 hours
Maryland	None for home funeral families Report contagious disease to attending physician			12 hours
Massachusetts	None for home funeral families Reporting of contagious or communicable disease to attending physician is recommended			48 hours
Michigan	None for home funeral	File the death	Embalming is required for	

	families Reporting of contagious or communicable disease to attending physician is recommended	certificate, oversee disposition	bodies with rare infectious or communicable diseases Refrigeration is NOT accepted as a preservation replacement; Must be embalmed after 48 hours if body has not reached final destination – <i>applies to FDs only</i>	
Minnesota	Body must be embalmed OR refrigerated after 72 hours; refrigeration limited to 6 days; dry ice use limited to 4 days; disposition must occur within a reasonable time		Embalming for contagious diseases may be ordered by the Commissioner of Health Bodies must be embalmed for shipping by common carrier	
Mississippi	Body must be embalmed OR refrigerated after 24 hours if destination cannot be reached and does not take place within 48 hours; contagious disease that endangers public health must be reported to a Medical Examiner			
Missouri	None for home funeral families Reporting of communicable disease to attending physician is recommended		Embalming is required for bodies with infectious or communicable diseases if not buried or cremated within 24 hours Embalming OR wrapping in disinfectant-soaked sheet and shipped in a sealed airtight container by common carrier is required for bodies with specific communicable diseases Funeral homes must embalm or refrigerate within 24 hours by regulation, not statute – <i>applies to FDs only</i>	
Montana	A body that died of infectious disease must be disposed of as soon as reasonably possible and with minimal handling		Body must be embalmed OR refrigerated if not expected to reach its destination within 48 hours	24 hours
Nebraska	None for home funeral families Reporting of contagious or communicable disease to attending physician is recommended	File the death certificate, sign transit permits, supervise interments	Embalming is required with use of common carrier	

Nevada	Bodies held for cremation must be refrigerated after 24 hours; report contagious or communicable disease to attending physician to consult state guidelines		Bodies with infectious disease may be embalmed by order of the Board of Health Bodies must be embalmed for shipping by common carrier Funeral homes may not require embalming 72 hours unless ordered by the Board of Health	
New Hampshire	None for home funeral families Reporting of contagious or communicable disease to attending physician is recommended		Dead bodies may not be exposed to the public for a period in excess of 24 hours without embalming	48 hours
New Jersey	None for home funeral families	File the death certificate, supervise disposition	Bodies must be embalmed to be shipped through common carrier if destination will not be reached within 24 hours	
New Mexico	Body must be embalmed OR refrigerated at below 40° if not disposed of within 24 hours; report contagious or communicable disease to the Office of Medical Investigation		Bodies must be embalmed OR sealed in an airtight container for shipping by common carrier	
New York	None for home funeral families Reporting of contagious disease to attending physician is recommended	File the death certificate; receive body from a hospital, institution or other place; personally supervise the funeral services; personally supervise the interment or cremation		
North Carolina	None for home funeral families Reporting of contagious disease to attending physician or medical examiner is recommended		Embalming is not allowed when death is due to specific diseases; bodies that died of contagious diseases must be encased in a sealed casket	24 hours
North Dakota	Requires immediate disposition under specific conditions; any body must be embalmed if it will not reach its destination within 24 hours, or if disposition is not accomplished within 48; all dispositions must occur within 8 days		Embalming is required for bodies with specific communicable disease Refrigeration is NOT accepted as a preservation replacement	

Ohio	Bodies with communicable diseases must be buried or cremated within 24 hours			24 hours
Oklahoma	None for home funeral families Reporting of contagious or communicable disease to attending physician is recommended		Funeral homes must embalm or refrigerate with 24 hours by regulation, not statute – <i>applies to FDs only</i>	
Oregon	None for home funeral families Dispositions not occurring within 10 days must be reported to the Mortuary Board		Embalming is required for bodies with specific communicable diseases in order to be viewed publicly. Funeral homes must embalm, refrigerate, or place in a sealed casket if body is not expected to reach destination within 24 hours, by regulation, not statute – <i>applies to FDs only</i> . Sealed casket may substitute for embalming when shipping by common carrier.	
Pennsylvania	None for home funeral families		Funeral homes must embalm, refrigerate between 35-40°, or place in a sealed casket after 24 hours, by industry standards of practice, not law – <i>applies to FDs only</i>	24 hours
Rhode Island	None for home funeral families Reporting of contagious or communicable disease to attending physician is recommended		Bodies must be embalmed OR sealed in an airtight container for shipping by common carrier. Funeral homes must embalm or refrigerate within 48 hours, by regulation, not statute – <i>applies to FDs only</i>	
South Carolina	None for home funeral families Reporting of contagious or communicable disease to attending physician is recommended			
South Dakota	None for home funeral families Reporting of contagious or communicable disease to attending physician is recommended		Funeral homes must embalm or refrigerate within 24 hours, by regulation, not statute – <i>applies to FDs only</i>	24 hours
Tennessee	None for home funeral families Reporting of contagious or communicable			

	disease to attending physician is recommended			
Texas	Bodies must be embalmed OR refrigerated to 35-40° after 24 hours unless placed in a sealed container; Reporting of contagious or communicable disease to attending physician is recommended			48 hours
Utah	None for home funeral families Reporting of contagious or communicable disease to attending physician is recommended			
Vermont	None for home funeral families Reporting of contagious or communicable disease to attending physician is recommended. Local health officer may be involved in disposition arrangements in this case.			24 hours
Virginia	Body must be embalmed OR refrigerated after 48 hours; Reporting of contagious or communicable disease to attending physician is recommended			24 hours
Washington	State Board of Health determines restrictions, if any; Reporting of contagious or communicable disease to attending physician is recommended			
West Virginia	None for home funeral families Reporting of contagious or communicable disease to attending physician is recommended			
Wisconsin	None for home funeral families Health Department determines restrictions, if any; Reporting of			48 hours

	contagious or infectious disease to attending physician is recommended			
Wyoming	None for home funeral families		Embalming is required for bodies with specific communicable diseases Public funerals for bodies that died of communicable diseases require supervision by a health department official; funeral homes must embalm, refrigerate, cremate or bury within 36 hours by regulation, not statute – <i>applies to FDs only</i> Embalming is required for shipping by common carrier	24 hours

Disclaimer:

Please note that laws change and the specific state of interest may have changed. This guide was researched in late 2015. Please check your state’s laws for accuracy. Report any changes in laws to the NHFA and/or FCA for inclusion in subsequent publications. The original document can be downloaded from the NHFA website at homefuneralalliance.org/the-law/quick-guide/

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Resources

National Home Funeral Alliance

NHFA Board of Directors contact info homefuneralalliance.org/about/board-of-directors/

Home Page of the NHFA website homefuneralalliance.org

NHFA Legislative Committee legal info homefuneralalliance.org/the-law/

NHFA Home Funeral Guides homefuneralalliance.org/assistance/find-a-home-funeral-guide/

NHFA Friendly Funeral Directors homefuneralalliance.org/get-assistance/find-a-home-friendly-funeral-director/

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Home Page of the FCA funerals.org

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Consumer Rights for Your State funeraethics.org/rights.htm

In this book you will learn

About pertinent funeral laws and the issues around them

Anyone who has considered the benefits of home funerals has probably also been concerned about the laws governing after-death processes and procedures. *Restoring Families' Right to Choose: the call for funeral legislation change in America* was written to educate the public and their policymakers at all levels of government about the issues that inform current laws and policies affecting home funeral families. In addition, it lays out a vision in clear language for legislative funeral reform in America that empowers families while addressing the needs of government.

How to navigate and overcome noncompliant institutional policies

Knowing that all Americans have the right to care for their own in their homes after death is the first step. But what happens when following the legal process still leads to roadblocks in institutions and businesses that have policies that are not in sync with the law? *What to Do When Home Funeral Rights Are Challenged* contains a concise list of potential obstacles and how to anticipate and resolve issues quickly.



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