

Legal requirements when a death occurs

1. Contact local law enforcement official if the death was unattended.
2. A determination of death must be made by a coroner, Justice of the Peace, or attending physician.
3. When a death occurs out of state or country it is recommended a funeral director in your local area be contacted who will know the requirements that must be met if a body is to be shipped to another location.
4. There are legal limitations regarding solicitation by a funeral director at or near the time of death. Solicitation means any direct or indirect contact with the family, next of kin, or one who has custody of a person who is deceased or near death for the purpose of securing the right to provide funeral services or merchandise for the deceased or person near death.

What to do when a death occurs

1. Contact relatives.
2. Locate deceased's letter of direction, prepaid funeral contract, insurance policy and/or will.

Prior to filing a death certificate, you will need the following information:

- ◆ Full name of deceased
- ◆ Occupation
- ◆ Date of birth
- ◆ Place of birth
- ◆ Social security number
- ◆ Residence address
- ◆ Spouse's name (maiden name)
- ◆ Father's name, mother's maiden name
- ◆ Place of burial or disposition
- ◆ Discharge papers, if veteran

Steps to take to ease the burden of funeral planning prior to death

1. Advise your family and loved ones of your wishes, by recording your wishes.
2. You may prearrange your service with your funeral director.
3. A spouse, next of kin or legal representative generally can make arrangements for disposition of the deceased.

Available methods of disposition

Human remains can be buried, entombed, cremated, or donated for scientific study.

A family can bury its own dead without using a licensed funeral director

A statement of death and a death certificate are legally required. Generally, local ordinances or deed restrictions prohibit private burials within city limits. Check with the State Health Department and local zoning authorities for applicable laws.

A body cannot be cremated immediately following death without a waiver

Texas law prohibits cremating any dead human body within 48 hours after death. *The County Medical Examiner or a Justice of the Peace may waive this time requirement.*

Cremated remains may be disposed of or kept in a number of ways:

- ◆ Privately scattered
- ◆ Interred in a cemetery
- ◆ Placed in a niche in a columbarium
- ◆ Kept by the family in their home

How to donate remains

Donation of human bodies to medical facilities can be made either directly to the facility, through a funeral establishment or by contacting the:

Anatomical Board, State of Texas
301 University Blvd.
Galveston, Texas 77555-1301
(409) 772-1293

There is a set fee for donations, which is paid by the Anatomical Board. However, this may not cover the cost of any additional services selected that are provided by the funeral home.

You can change your mind about donating your body or your organs

Prior to death, a person can revoke his or her donation by destroying or canceling the instructions or by alternate instructions to the next of kin or the person designated in the written instructions.

Embalming and its purpose

Embalming is the use of chemicals, internally and externally, to disinfect and temporarily preserve the body.

Texas law does not require embalming. Most common carriers will require a body to be embalmed prior to shipping. The laws of the destination country or state will apply. Because of the rapid deterioration of a body after death, Texas law requires that bodies held for over 24 hours or in transit must be embalmed, refrigerated, or encased in a leak and odor proof container.

How to select a funeral director

If you need a funeral director, the reference of a relative or friend who has been served satisfactorily is one way to make a decision. The best way to know in advance whom you would select is to visit the funeral home, examine the facilities and ask about prices. Consider all alternatives and consult several different firms/organizations to compare costs. Be prepared to ask questions concerning all aspects of the funeral arrangements.

How to learn about funeral costs

Funeral establishments are required to give current retail price information by telephone. By law, any consumer entering an establishment and making inquiries must be presented a general price list, which the customer may keep, itemizing the costs of funeral services and the merchandise for sale from a funeral director. These retail prices, appearing on a printed or typewritten list must specify at least the charges for the following items, provided they are available for purchase through the establishment:

1. Forwarding or receiving remains, to or from another funeral home and a list of services provided for the stated price
2. The price range for direct cremations
3. The price range for immediate burial
4. Embalming
5. Other preparation of the body
6. Use of facilities and staff for viewing, funeral ceremony, memorial service, and/or graveside service
7. Hearses
8. Limousines
9. Caskets
10. Outer burial containers, such as vaults, grave liners, and boxes. Such outer enclosures are not required by law, but may be required by the cemetery

Additionally, the general price list must include the following:

1. Name, address and phone number of the establishment.
2. The effective date of the price list.
3. Notice stating: "You may choose only the items you desire. If you are charged for items that you did not specifically request, we will explain the reason for the charges on the written memorandum. Please note that there may be charges for items such as cemetery fees, flowers and newspaper notices."

After completing all funeral arrangements, you **must** be given a written funeral purchase agreement, signed by

the funeral director who assisted you, which lists the items you selected from the general price list and the cost of each item.

The price of each casket must be stated and varies depending on the type. Caskets are not required by law, however, there may be cemetery or mausoleum restrictions regarding caskets and outer burial containers or vaults. The law does not require a casket for cremation but some type of container such as a cardboard box or canvas pouch is usually required by the crematory.

Caskets are constructed from various materials including steel, copper, bronze, and wood. There is no direct relationship between the protective features of the casket and the preservation of the body.

Requirements regarding advertising by funeral directors

Consumer protection statutes require all advertising to be factual and clear in content. Any misrepresentations should be reported to the **Texas Funeral Service Commission, the Office of the Attorney General, Consumer Protection Division**, or your local **Better Business Bureau**.

Information regarding prepaid funeral contracts*

Prepaid funeral contracts are governed by Chapter 154 of the Texas Finance Code and are under the jurisdiction of the **Texas Department of Banking**. Such contracts are being marketed extensively and offer the opportunity to permit a person to fully consider his or her needs and wishes and control the cost and nature of funeral services desired. The contracts vary in terms and coverage and should, like any other purchase involving a substantial sum of money, be reviewed carefully before execution.

Texas law requires that any seller of contracts for prepaid funeral arrangements must first apply and obtain a permit from the Texas Department of Banking. Do not contract with any seller who does not have such a permit, and make certain that the proposed contract meets the minimum Texas legal requirements, including that a fund has been created for the proceeds from prepaid contracts through a contract of insurance with an insurance company licensed in Texas, or that such trust fund is established in a bank or savings and loan association operated under the provisions of the Texas Trust Act.

A deposit fund is established with a financial institution approved by the **Texas Department of Banking**, or a

FACTS ABOUT FUNERALS

fund is created by a life insurance or annuity contract with an insurance company authorized to do business in the State of Texas. If a life insurance or annuity contract is used, the Texas Department of Insurance must license the person who sells you the policy and the insurance company issuing the policy. In addition, you are entitled to receive a copy of the policy and should be sure that you understand the benefits, limitations, and exclusions. You can telephone the **Texas Department of Insurance at 1-800-252-3439 or 512-463-6515** for license information on both agents and companies or for assistance in interpreting policy language.

In a deposit fund arrangement, the purchaser can cancel the contract prior to maturity and receive a refund in accordance with the terms of the contract. If you have a life insurance or annuity arrangement, you may receive only the cash surrender value, if any, as indicated in the insurance policy or annuity and the prepaid contract. **Read and understand the cancellation language in the policy or annuity and in the prepaid contract.** On a deposit arrangement any unpaid balance would become due at the time of the funeral. Depending on the type of insurance policy or annuity contract used to fund the prepaid funeral contract, expenses may not be paid in full. If you are unsure, question the seller and/or the **Texas Department of Banking** or the **Texas Department of Insurance**.

Should you decide or need to change funeral homes and the prepaid funeral contract is in a deposit fund you may have to cancel your contract and make other arrangements. If the prepaid contract is funded by a policy of insurance you may be able to transfer the contract and keep the insurance policy allowing you to choose another funeral establishment. Talk with the seller of your prepaid contract and the funeral director of the funeral home you wish to use. Make sure all parties are in agreement and be sure to get a copy of any such agreement in writing, and contact the insurance company regarding the change.

You are entitled to receive all items shown on the contract at no additional charge, if the terms of the contract have been met. There may be additional charges for items that are not part of the prepaid contract. These may include cemetery fees, such as lowering equipment, opening and closing the grave, and burial vaults. You should discuss with the seller items that are not covered.

If a funeral home that sold trust funded prepaid funeral benefit contracts goes out of business, or misappropriates prepaid funds, what happens would

depend on whether the funeral home was a licensed seller or not. If the funeral home held a valid permit when the prepaid funeral contracts were sold, the **Texas Department of Banking** would take over the contracts and find a subsequent provider. Any shortages to the fund would be covered by the **Prepaid Funeral Guaranty Fund**. However, if the funeral home was an unlicensed seller, the **Texas Department of Banking** will take actions in coordination with the local District Attorney to try to recover the prepaid funds through restitution. The purchaser can suffer a financial loss in this situation because the **Prepaid Funeral Guaranty Fund** can not be used.

If you have additional questions regarding prepaid funerals, please contact:

Texas Department of Banking, Special Audit Div., 2601 North Lamar Blvd., Austin, Texas 78705-4294, (512) 475-1290 or 1-877-276-5554, fax (512) 475-1288. Website: www.banking.state.tx.us

Or

Texas Department of Insurance, Consumer Help Line, P.O. Box 149104, Austin, Texas, 78714-9104, (512) 463-6515 or 1-800-252-3439

You may secure additional information regarding **mortuary laws in the State of Texas** by requesting a complete copy of the **Texas Occupations Code, Chapter 651**, and the **Commission Rules**, by contacting the **Texas Funeral Service Commission at P. O. Box 12217, Capitol Station, Austin, Texas, 78711, (512) 936-2474 or 1-888-667-4881, fax (512) 479-5064. Website: www.tfsc.state.tx.us**

Who to contact if you have a complaint against a funeral director or a funeral establishment

First, discuss your problem with the funeral director and/or management of the funeral establishment. If you believe you were not treated fairly the funeral director should be given the opportunity to rectify your complaint. If this is not acceptable, you may provide the facts in writing to:

- ◆ **Texas Funeral Service Commission.** This is the licensing and regulatory agency for all funeral establishments, funeral directors, and embalmers in the State of Texas. Complaints should specify the exact nature and circumstances of the complaint. You will be notified of the receipt of your complaint. Allegations are reviewed for a violation of Chapter 651, Texas Occupations Code. If there is not a violation of the Code, you will be notified in writing. Once a complaint is opened for investigation the complainant is notified every three (3) months until the complaint is resolved. Send complaints to the **Texas Funeral Service Commission, P. O. Box 12217, Capitol Station, Austin, Texas 78711.** Enclose copies of all documents you may have received from the funeral establishment.
- ◆ **Attorney General of Texas, Consumer Protection Division, P.O. Box 12548, Austin, Texas 78711, (512) 463-2070.**
- ◆ **The local Better Business Bureau.**
- ◆ **The Federal Trade Commission, Dallas Regional Office, 1999 Bryan Street, Suite 2150, Dallas, Texas 75201, toll free 1-877-382-4357.**

*Information provided courtesy of the **Texas Department of Banking** and the **Texas Department of Insurance**.

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