LEGAL CONCERNS IN MANAGING PUBLIC CEMETERIES

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NORTH CAROLINA LAW GOVERNING MUNICIPAL CEMETERIES

N.C.G.S.A. § 160A-341. Authority to establish and operate cemeteries

A city shall have authority to establish, operate, and maintain cemeteries either inside or outside its corporate limits, may acquire and hold real and personal property for cemetery purposes by gift, purchase, or (for real property) by exercise of the power of eminent domain, may devote any property owned by the city to use as a cemetery, may prohibit burials at any place within the city other than city cemeteries, and may regulate the manner of burial in city cemeteries. Nothing in this section shall confer upon any city authority to prohibit or regulate burials in cemeteries licensed by the State Burial Association Commissioner, or in church cemeteries.

As used in this Article “cemetary” includes columbariums and facilities for cremation.

N.C.G.S.A. § 160A-342. Authority to transfer cemeteries

A city may transfer and convey any city cemetery property, together with any accumulated perpetual care trust funds set aside for the maintenance of the cemetery, to any religious organization or cemetery licensed by the State Burial Association Commissioner, upon condition that the transferee will continue use of the property as a cemetery, will perpetually maintain it, and will apply any perpetual care trust funds so transferred only for maintenance of the cemetery.

N.C.G.S.A. § 160A-343. Authority to abandon cemeteries

A city shall have authority to abandon any cemetery that has not been used for interment purposes within 10 years. Upon abandonment, all monuments, tombstones, and the contents of all graves within the cemetery shall be transferred at city expense to another city cemetery, or to a cemetery licensed by the State Burial Association Commissioner. After the transfer of monuments, tombstones, and the contents of graves, the city may take possession of, convey, or use the former cemetery property for any lawful purpose.

N.C.G.S.A. § 160A-344. Authority to assume control of abandoned cemeteries

(a) Whenever property not under the control or in the possession of any church or religious organization in any city has been heretofore set aside or used for cemetery purposes, and the trustees or owners named in the deed or deeds for the property have died, or are unknown, or the deeds of conveyance have been lost or misplaced and no record of title thereto has been found, and the property has been occupied and used for burial purposes for a time sufficient to identify its use as cemetery property, the city in
which the cemetery is located is authorized to take possession of the land and any adjoining
land not held by known claimants of title, have the property surveyed and lines established,
and to designate and appropriate the property as a city cemetery.

(b) The city may have the land subdivided and laid off into family burial plots, may sell
any of the unused lots so laid off to any person for burial purposes, and may use the
proceeds of the sale for the improvement and upkeep of the cemetery.

(c) The city may appropriate and use funds for the improvement and maintenance of
the cemetery, and all laws and ordinances applicable to city cemeteries shall apply to the
cemetery from and after the date that the city assumes control of it.

N.C.G.S.A. § 160A-345. Authority to condemn cemeteries
A city shall have authority to acquire title in fee simple by purchase or exercise of the power
of eminent domain to any cemetery, graveyard, or burial place within the city and to
operate and maintain the property so acquired as a city cemetery. This section shall not
apply to a cemetery licensed by the North Carolina State Burial Association Commissioner,
nor to property owned or controlled by any church or religious organization, unless the
owner of the property consents to the acquisition.

N.C.G.S.A. § 160A-346. Authority to condemn easements for perpetual care
A city shall have authority to acquire an easement for perpetual care by gift, grant,
purchase, or exercise of the power of eminent domain in any cemetery, graveyard, or burial
place within the city. When a perpetual care easement is acquired under this section, all city
ordinances concerning the care and upkeep of city cemeteries shall be applicable to the
cemetery, and the income from city perpetual care trust funds may be used to care for and
maintain the cemetery. This section shall not apply to a cemetery licensed by the North
Carolina State Burial Association Commissioner or to property owned or controlled by any
church or religious organization unless the owner of the property consents to the acquisition.

N.C.G.S.A. § 160A-347. Perpetual care trust funds
(a) A city is authorized to create a perpetual care trust fund for any cemeteries under its
ownership or control, to accept gifts, grants, and devises on behalf of the perpetual care
trust fund, to deposit any revenues realized from the sale of lots in or the operation of city
cemeteries in the perpetual care trust fund, and to hold and administer the trust fund for
the purpose of perpetually caring for and beautifying the city's cemeteries. The city may
make contracts with the owners of plots in city cemeteries obligating the city to maintain
the plots in perpetuity upon payment of such sums as the council may fix.

(b) The principal of perpetual care trust funds shall be held intact, and the income from
such funds shall be used to carry out contracts with plot owners for the perpetual care of
the plots, and to maintain and perpetually care for the cemetery.

(c) Perpetual care trust funds shall be kept separate and apart from all other city funds,
and shall in no case be appropriated by, lent to, or in any manner used by the city for any
purpose other than the perpetual care of city cemeteries.
N.C.G.S.A. § 160A-348. Regulation of city cemeteries

A city may by ordinance adopt rules and regulations concerning the opening of graves, the erection of tombstones and monuments, the building of walls and fences, the hours of opening and closing and all other matters concerning the use, operation, and maintenance of city cemeteries. The ordinance may impose a schedule of prices for lots and fees for the opening of graves in the cemetery, but it may not require the owners of plots to purchase monuments, vaults, or other items from the city.

N.C.G.S.A. § 160A-349.1. Creation of board authorized; official title; terms of office; vacancies

The governing body of any municipal corporation which now owns or shall hereafter own a cemetery is authorized, if it is deemed proper, to create a board composed of not less than three nor more than five persons, to be known as “Cemetery Trustees of the Town or City of ........, North Carolina”; shall fix the term of office of each member, in no case to exceed five years, and in case of any vacancy by death, resignation or otherwise, elect a successor.

N.C.G.S.A. § 160A-349.2. Members to meet and organize; meetings; bond of secretary and treasurer; record of proceedings

The members of said board, when properly elected, shall within 30 days after notice of their election convene and designate one of their number chairman, one secretary and treasurer, and provide for regular meetings at such times as the said board shall fix; it shall also fix the bond to be given by the secretary and treasurer, conditioned for the faithful accounting of all moneys which shall come into his hands; shall provide for special meetings, and shall cause the secretary to keep a record of its proceedings.

N.C.G.S.A. § 160A-349.3. Property vested

Upon the creation of such board the title to all property held by the town or city and used for cemetery purposes shall pass to and vest in said board, subject to the same limitations, conditions and restrictions as it was held by the town or city; provided, that the governing body of the town or city may at any time by resolution direct that title to such property shall pass to and vest in the town or city itself, and in such event it shall be the duty of the board and its officers to execute all necessary documents to effect such transfer and vesting.

N.C.G.S.A. § 160A-349.4. Control and management; superintendent and assistants; enumeration of powers

The said board shall have the exclusive control and management of such cemetery; shall have the power to employ a superintendent and such assistants as may be needed, and may do any and all things pertaining to the control, maintenance, management and upkeep of the cemetery which the governing body of the town or city could have done, or which by law the governing body of the town or city shall hereafter be authorized to do.
N.C.G.S.A. § 160A-349.5. Rules continued in force

All rules and regulations heretofore adopted by the town or city for the control, upkeep, management, and maintenance, as well as policing of the cemetery, shall continue in force and effect until and after the said board shall have changed the same as herein provided for.

N.C.G.S.A. § 160A-349.6. Rules for maintaining order and policing; force of rules; copy to governing body; publication

The said board shall have power to adopt rules and regulations for maintaining order in the cemetery and policing the same, and such rules and regulations, when adopted, shall have the same force and effect as ordinances adopted and passed by the governing body of the town or city. When any such rules and regulations shall be adopted the secretary of the board shall transmit a copy thereof to the governing body of the town or city, and shall cause a copy to be published in some newspaper published in the town or city, and the said rules and regulations shall be in force and effect 10 days after their publication.

N.C.G.S.A. § 160A-349.7. Presentation of budget; details of budget; appropriation; payment to board

Thirty days prior to the adoption of the annual budget by the governing body of the town or city, the said trustees shall present to such governing body a budget for the ensuing year, in which said budget there shall be set out in detail an accurate account of the receipts and expenditures of the board for the previous year, the estimated expense for the ensuing year, the estimated source of income from all sources, other than appropriation by the governing body of the town or city, any balance on hand, and such other information as the said trustees may think proper; and the said governing body of the town or city shall in the annual budget include such appropriation as it deems proper for the care and maintenance of the said cemetery for the ensuing year, which shall be paid over to the board of trustees in monthly installments.

For purposes of the Local Government Budget and Fiscal Control Act (Chapter 159, Subchapter III), the board of trustees of a cemetery is a board of the municipal corporation establishing the board of trustees and is not a public authority as defined by G.S. 159-7.

N.C.G.S.A. § 160A-349.8. Commissioners to obtain maps, plats and deeds; list of lots sold and owners; surveys and plats to be made; additional lots, streets, walks and parkways; price of lots; regulation of sale of lots

The board of trustees shall obtain from the governing body all maps, plats, deeds and other evidences relating to the lands, lots and property of the cemetery; they shall also obtain from the governing body of the town or city, as nearly as possible, an accurate list of the lots theretofore sold, together with the names of the owners thereof. The said board of trustees shall from time to time cause surveys to be made, maps and plats prepared, laying out additional lots, streets, paths, walks and parkways; shall fix a price at which such lots shall be sold, which price may from time to time, in the discretion of the board, be changed; shall adopt rules and regulations as to the sale of said lots and deliver to the purchaser or purchasers deed or evidences of title thereto.
N.C.G.S.A. § 160A-349.9. Power to acquire land; adjacent property; disposal of money from lot sales; investments; income from investment

The said board shall have the power to acquire additional lands for cemetery purposes, either by purchase or otherwise. In making such additional acquisitions of property, if possible, they shall acquire adjacent property; all moneys received from the sale of lots shall be held by the board of trustees intact and used for the purchase of additional lands; to beautify and otherwise maintain and keep the present property and the future acquired property. The board may, if it seems best to it, invest the said money in good, interest-bearing securities, payable to the said board, and the income derived therefrom shall be by the board used in the beautifying, maintenance and upkeep of the cemetery or cemeteries under its control.

N.C.G.S.A. § 160A-349.10. Power to condemn land; procedure for condemnation; board incorporated

If it becomes necessary to acquire additional lands for cemetery purposes and the board cannot agree with the owners upon the price thereof, the board shall have the power to condemn the lands for cemetery purposes, and in so doing the provisions of Chapter 40A of the General Statutes shall be followed as nearly as possible, and to that end, and for that purpose, the board of trustees of any cemetery acquired under this Article shall be deemed and considered a corporation and a body politic.

N.C.G.S.A. § 160A-349.11. Price of lands included in budget

If any lands are acquired by purchase or condemnation for cemetery purposes and the board of trustees shall not have sufficient funds with which to pay for the same, the amount necessary shall be included in their budget request, and the governing body of any town or city may make an appropriation to complete the purchase.

N.C.G.S.A. § 160A-349.12. Power to accept gifts; exclusive use of gifts

The board of trustees of any cemetery shall have the power to accept gifts, either by devise or otherwise, and hold the same for the purposes expressed in the gift, and any monies coming into the hands of such board by devise or otherwise shall be by the board used exclusively for the purposes for which it is given.

N.C.G.S.A. § 160A-349.13. Sale of unnecessary property

The board of trustees of any cemetery, created pursuant to this Article, shall have the power to sell at public auction, as provided by G.S. 160-59, any real property, title to which is held by it, which it shall determine to be unfit or unnecessary for cemetery purposes, except when such sale would violate the terms of any deed, gift or trust pursuant to which the property proposed to be sold was acquired. Any such sales and conveyances heretofore made by any such board of trustees are hereby validated.
N.C.G.S.A. § 160A-349.14. Exercise of powers subject to approval

The board may not act to acquire or sell land pursuant to G.S. 160A-349.9, G.S. 160A-349.10, or G.S. 160A-349.13 unless such action was approved in advance by the governing body of the town or city.

N.C.G.S.A. § 160A-349.15. Termination

The governing body of the town or city shall have the authority to terminate the existence of the board at any time. In the event of such termination, all property and assets of the board shall automatically become the property of the town or city and the town or city shall succeed to all rights, obligations and liabilities of the board. Further, in the event of such termination, it shall be the duty of the board and its officers to execute all necessary documents to effect the transfer of property and assets to the town or city.

CRIMINAL LAWS PROTECTING MUNICIPAL CEMETERIES


(a) As used in this section, “graffiti vandalism” means to unlawfully write or scribble on, mark, paint, deface, or besmear the walls of (i) any real property, whether public or private, including cemetery tombstones and monuments, (ii) any public building or facility as defined in G.S. 14-132, or (iii) any statue or monument situated in any public place, by any type of pen, paint, or marker regardless of whether the pen or marker contains permanent ink, paint, or spray paint.

(b) Except as otherwise provided in this section, any person who engages in graffiti vandalism is guilty of a Class 1 misdemeanor. A person convicted of a Class 1 misdemeanor under this subsection shall be fined a minimum of five hundred dollars ($500.00) and, if community or intermediate punishment is imposed, shall be required to perform 24 hours of community service.

(c) Any person who violates subsection (a) of this section shall be guilty of a Class H felony if all of the following apply:

(1) The person has two or more prior convictions for violation of this section.
(2) The current violation was committed after the second conviction for violation of this section.
(3) The violation resulting in the second conviction was committed after the first conviction for violation of this section.


(a) It is a misdemeanor if any person shall:

(1) Make any rude or riotous noise, or be guilty of any disorderly conduct, in or near any public building or facility; or
(2) Unlawfully write or scribble on, mark, deface, besmear, or injure the walls of any public building or facility, or any statue or monument situated in any public place; or

(3) Commit any nuisance in or near any public building or facility.

(b) Any person in charge of any public building or facility owned or controlled by the State, any subdivision of the State, or any other public agency shall have authority to arrest summarily and without warrant for a violation of this section.

(c) The term “public building or facility” as used in this section includes any building or facility which is:

   (1) One to which the public or a portion of the public has access and is owned or controlled by the State, any subdivision of the State, any other public agency, or any private institution or agency of a charitable, educational, or eleemosynary nature; or

   (2) Dedicated to the use of the general public for a purpose which is primarily concerned with public recreation, cultural activities, and other events of a public nature or character.

   (3) Designated by the Director of the State Bureau of Investigation in accordance with G.S. 143B-987.

The term “building or facility” as used in this section also includes the surrounding grounds and premises of any building or facility used in connection with the operation or functioning of such building or facility.

(d) Unless the conduct is covered under some other provision of law providing greater punishment, any person who violates any provision of this section is guilty of a Class 2 misdemeanor.


If any person shall, by any other means than burning or attempting to burn, unlawfully and willfully demolish, destroy, deface, injure or damage any of the houses or other buildings mentioned in Article 15 (Arson and Other Burnings) of this Chapter; or shall by any other means than burning or attempting to burn unlawfully and willfully demolish, pull down, destroy, deface, damage or injure any church, uninhabited house, outhouse or other house or building not mentioned in such article; or shall unlawfully and willfully burn, destroy, pull down, injure or remove any fence, wall or other enclosure, or any part thereof, surrounding or about any yard, garden, cultivated field or pasture, or about any church or graveyard, or about any factory or other house in which machinery is used, every person so offending shall be punished as follows:

(1) If the damage is five thousand dollars ($5,000) or less, the person is guilty of a Class 2 misdemeanor.

(2) If the damage is more than five thousand dollars ($5,000), the person is guilty of a Class I felony.

(a) It is unlawful to willfully:

(1) Throw, place or put any refuse, garbage or trash in or on any cemetery.

(2) Take away, disturb, vandalize, destroy or change the location of any stone, brick, iron or other material or fence enclosing a cemetery without authorization of law or consent of the surviving spouse or next of kin of the deceased.

(3) Take away, disturb, vandalize, destroy, or tamper with any shrubbery, flowers, plants or other articles planted or placed within any cemetery to designate where human remains are interred or to preserve and perpetuate the memory and name of any person, without authorization of law or the consent of the surviving spouse or next of kin.

(b) The provisions of this section shall not apply to:

(1) Ordinary maintenance and care of a cemetery by the owner, caretaker, or other person acting to facilitate cemetery operations by keeping the cemetery free from accumulated debris or other signs of neglect.

(2) Conduct that is punishable under G.S. 14-149.

(3) A professional archaeologist as defined in G.S. 70-28(4) acting pursuant to the provisions of Article 3 of Chapter 70 of the General Statutes.

(c) Violation of this section is a Class I felony if the damage caused by the violation is one thousand dollars ($1,000) or more. Any other violation of this section is a Class 1 misdemeanor. In passing sentence, the court shall consider the appropriateness of restitution or reparation as a condition of probation under G.S. 15A-1343(b)(9) as an alternative to actual imposition of a fine, jail term, or both.

N.C. Gen. Stat. Ann. § 14-149. Desecrating, plowing over or covering up graves; desecrating human remains

(a) It is a Class I felony, without authorization of law or the consent of the surviving spouse or next of kin of the deceased, to knowingly and willfully:

(1) Open, disturb, destroy, remove, vandalize or desecrate any casket or other repository of any human remains, by any means including plowing under, tearing up, covering over or otherwise obliterating or removing any grave or any portion thereof.

(2) Take away, disturb, vandalize, destroy, tamper with, or deface any tombstone, headstone, monument, grave marker, grave ornamentation, or grave artifacts erected or placed within any cemetery to designate the place where human remains are interred or to preserve and perpetuate the memory and the name of any person. This subdivision shall not apply to the ordinary maintenance and care of a cemetery.


(a1) It is a Class H felony, without authorization of law or the consent of the surviving spouse or next of kin of the deceased, to knowingly and willfully disturb, destroy, remove, vandalize, or desecrate any human remains that have been interred in a cemetery.
(b) The provisions of this section shall not apply to a professional archaeologist as defined in G.S. 70-28(4) acting pursuant to the provisions of Article 3 of Chapter 70 of the General Statutes.

ABANDONED AND NEGLECTED CEMETERIES

N.C.G.S.A. § 65-85. Definitions
As used in this Article, the following terms mean:

(1) Abandoned. -- Ceased from maintenance or use by the person with legal right to the real property with the intent of not again maintaining the real property in the foreseeable future.

(2) Cemetery. -- A tract of land used for burial of multiple graves.

(3) Department. -- The Department of Natural and Cultural Resources.

(4) Grave. -- A place of burial for a single decedent.

(5) Neglected. -- Left unattended or uncared for through carelessness or intention and lacking a caretaker.

(6) Public cemetery. -- A cemetery for which there is no qualification to purchase, own, or come into possession of a grave in that cemetery.

N.C.G.S.A. § 65-91. Money deposited with the clerk of superior court
For the maintenance and preservation of abandoned or neglected graves or abandoned or neglected cemeteries, any person, firm, or corporation may, by will or otherwise, place in the hands of the clerk of the superior court of any county in the State where such grave or lot is located any sum of money not less than five thousand dollars ($5,000), the income from which is to be used for keeping in good condition the abandoned or neglected grave or the abandoned or neglected cemetery with specific instructions as to the use of the fund.

N.C.G.S.A. § 65-92. Separate record of accounts to be kept
It shall be the duty of the clerk of the superior court to keep a separate record for keeping account of the money deposited as provided in G.S. 65-91, to keep a perpetual account of the same therein, and to record therein the specific instructions about the use of the income on such money. The clerk shall see that the income is spent according to such specific instructions and shall place a copy of the accounting in the estate file.

N.C.G.S.A. § 65-93. Funds to be kept perpetually
All money placed in the office of the superior court clerk in accordance with this Part shall be held perpetually, or until such time as the balance of the trust corpus falls below one hundred dollars ($100.00), at which time the trust shall terminate, and the clerk shall disburse the remaining balance as provided in G.S. 36A-147(c). Except as otherwise provided herein, no one shall have authority to withdraw or change the direction of the
income on same.

**N.C.G.S.A. § 65-94. Investment of funds**

Money placed in the office of the superior court clerk in accordance with this Part shall be invested in the same manner as is provided by law for the investment of other trust funds by the clerk of the superior court.

**N.C.G.S.A. § 65-95. Clerk’s bond; substitution of bank or trust company as trustee**

The official bond of the clerk of the superior court shall be liable for all such sums as shall be paid over to the clerk in accordance with the provisions of this Part. In lieu of the provisions of this section, the clerk may appoint any bank or trust company authorized to do business in this State as trustee for the funds authorized to be paid into his office by virtue of this Part; provided, that no bank or trust company shall be appointed as such trustee unless such bank or trust company is authorized and licensed to act as fiduciary under the laws of this State.

Before any clerk shall turn over such funds to the trustee so appointed, the clerk shall require that the trustee so named qualify before the clerk as such trustee in the same way and manner and to the same extent as guardians are by law required to so qualify. After such trustee has qualified as herein provided, all such funds coming into the clerk's hands may be invested by the trustee only in the securities set out in G.S. 7A-112 and the income therefrom invested for the purposes and in the manner heretofore set out in this Part. All trustees appointed under the provisions of this Part shall render and file in the office of the clerk of the superior court all reports that are now required by law of guardians.

**N.C.G.S.A. § 65-96. Funds exempt from taxation**

All money referred to in the preceding sections of this Part shall be exempt from all State, county, township, town, and city taxes.

**N.C.G.S.A. § 65-101. Entering public or private property to maintain or visit with consent**

Any of the following persons, with the consent of the public or private landowner, may enter the property of another to discover, restore, maintain, or visit a grave or abandoned public cemetery:

1. A descendant of the person whose remains are reasonably believed to be interred in the grave or abandoned public cemetery.
2. A descendant's designee.
3. Any other person who has a special personal interest in the grave or abandoned public cemetery.

**N.C.G.S.A. § 65-102. Entering public or private property to maintain or visit without consent**

(a) If the consent of the landowner cannot be obtained, any person listed in G.S. 65-101(1), (2), or (3) may commence a special proceeding by petitioning the clerk of
superior court of the county in which the petitioner has reasonable grounds to believe the grave or abandoned public cemetery is located for an order allowing the petitioner to enter the property to discover, restore, maintain, or visit the grave or abandoned public cemetery. The petition shall be verified. The special proceeding shall be in accordance with the provisions of Articles 27A and 33 of Chapter 1 of the General Statutes. The clerk shall issue an order allowing the petitioner to enter the property if the clerk finds all of the following:

(1) There are reasonable grounds to believe that the grave or abandoned public cemetery is located on the property or it is reasonably necessary to enter or cross the landowner’s property to reach the grave or abandoned public cemetery.

(2) The petitioner, or the petitioner’s designee, is a descendant of the deceased, or the petitioner has a legitimate historical, genealogical, or governmental interest in the grave or abandoned public cemetery.

(3) The entry on the property would not unreasonably interfere with the enjoyment of the property by the landowner.

(b) The clerk’s order may state one or more of the following:

(1) Specify the dates and the daylight hours that the petitioner may enter and remain on the property.

(2) Grant the petitioner the right to enter the landowner’s property periodically, as specified in the order, after the time needed for initial restoration of the grave or abandoned public cemetery.

(3) Specify a reasonable route from which the petitioner may not deviate in all entries and exits from the property.

N.C.G.S.A. § 65-106. Removal of graves; who may disinter, move, and reinter; notice; certificate filed; reinterment expenses; due care required

(a) The State of North Carolina and any of its agencies, public institutions, or political subdivisions, the United States of America or any agency thereof, any church, electric power or lighting company, or any person, firm, or corporation may effect the disinterment, removal, and reinterment of graves as follows:

(1) By the State of North Carolina or any of its agencies, public institutions, or political subdivisions, the United States of America or any agency thereof, when it shall determine and certify to the board of county commissioners in the county from which the bodies are to be disinterred that such removal is reasonably necessary to perform its governmental functions and the duties delegated to it by law.

(2) By any church authority in order to erect a new church, parish house, parsonage, or any other facility owned and operated exclusively by such church; in order to expand or enlarge an existing church facility; or better to care for and maintain graves not located in a regular cemetery for which such church has assumed responsibility of care and custody.

(3) By an electric power or lighting company when it owns land on which graves are located, and the land is to be used as a reservoir.
(4) By any person, firm, or corporation who owns land on which an abandoned cemetery is located after first securing the consent of the governing body of the municipality or county in which the abandoned cemetery is located.

(b) The party effecting the disinterment, removal, and reinterment of a grave containing a decedent's remains under the provisions of this Part shall, before disinterment, give 30 days' written notice of such intention to the next of kin of the decedent, if known or subject to being ascertained by reasonable search and inquiry, and shall cause notice of such disinterment, removal, and reinterment to be published at least once per week for four successive weeks in a newspaper of general circulation in the county where such grave is located, and the first publication shall be not less than 30 days before disinterment. Any remains disinterred and removed hereunder shall be reinterred in a suitable cemetery.

(c) The party removing or causing the removal of all such graves shall, within 30 days after completion of the removal and reinterment, file with the register of deeds of the county from which the graves were removed and with the register of deeds of the county in which reinterment is made, a written certificate of the removal facts. Such certificate shall contain the full name, if known or reasonably ascertainable, of each decedent whose grave is moved, a precise description of the site from which such grave was removed, a precise description of the site and specific location where the decedent's remains have been reinterred, the full and correct name of the party effecting the removal, and a brief description of the statutory basis or bases upon which such removal or reinterment was effected. If the full name of any decedent cannot reasonably be ascertained, the removing party shall set forth all additional reasonably ascertainable facts about the decedent including birth date, death date, and family name.

The fee for recording instruments in general, as provided in G.S. 161-10(a)(1), for registering a certificate of removal facts shall be paid to the register of deeds of each county in which such certificate is filed for registration.

(d) All expenses of disinterment, removal, and acquisition of the new burial site and reinterment shall be borne by the party effecting such disinterment, removal, and reinterment, including the actual reasonable expense of one of the next of kin incurred in attending the same, not to exceed the sum of two hundred dollars ($200.00).

(e) The Office of Vital Records of North Carolina shall promulgate regulations affecting the registration and indexing of the written certificate of the removal facts, including the form of that certificate.

(f) The party effecting the disinterment, removal, and reinterment of a decedent's remains under the provisions of this Part shall ensure that the site in which reinterment is accomplished shall be of such suitable dimensions to accommodate the remains of that decedent only and that such site shall be reasonably accessible to all relatives of that decedent, provided that the remains may be reinterred in a common grave where written consent is obtained from the next of kin. If under the authority of this Part, disinterment, removal, and reinterment are effected by the State of North Carolina or any of its agencies, public institutions, or political subdivisions, the United States of America or any agency thereof, any electric power or lighting company, then such disinterment, removal, and reinterment shall be performed by a funeral director duly licensed as a “funeral director” or a “funeral
service licensee” under the provisions of Article 13A of Chapter 90 of the General Statutes.

(g) All disinterment, removal, and reinterment under the provisions of this Part shall be made under the supervision and direction of the county board of commissioners or other appropriate official, including the local health director, appointed by such board for the county where the disinterment, removal, and reinterment take place. If reinterment is effected in a county different from the county of disinterment with the consent of the next of kin of the deceased whose remains are disinterred, then the disinterment and removal shall be made under the supervision and direction of the county board of commissioners or other appropriate official, including the local health director, appointed by such board for the county of the disinterment, and the reinterment shall be made under the supervision and direction of the county board of commissioners or other appropriate official, including the local health director, appointed by such board for the county of reinterment.

Due care shall be taken to do said work in a proper and decent manner, and, if necessary, to furnish suitable coffins or boxes for reinterring such remains. Due care shall also be taken to remove, protect, and replace all tombstones or other markers, so as to leave such tombstones or other markers in as good condition as that prior to disinterment. Provided that in cases where the remains are to be moved to a perpetual care cemetery or other cemetery where upright tombstones are not permitted, a suitable replacement marker shall be provided.

(h) Nothing contained in this Part shall be construed to grant or confer the power or authority of eminent domain, or to impair the right of the next of kin of a decedent to remove or cause the removal, at his or their expense, of the remains or grave of such decedent.

N.C.G.S.A. § 65-111. County commissioners to provide list of public and abandoned cemeteries

Each board of county commissioners shall have the following duties and responsibilities:

(1) To prepare and keep on record in the office of the register of deeds a list of all public cemeteries in the county outside the limits of incorporated municipalities, and not established and maintained for the use of an incorporated municipality, including the names and addresses of the persons in possession and control of those public cemeteries.

(2) To prepare and keep on record in the office of the register of deeds a list of all abandoned public cemeteries.

(3) To furnish to the Department and the Publications Division in the Department of the Secretary of State copies of the lists of such public and abandoned cemeteries, to the end that it may furnish to the boards of county commissioners, for the use of the persons in control of such cemeteries, suitable literature, suggesting methods of taking care of such places.
N.C.G.S.A. § 65-112. Appropriations by county commissioners

To encourage the persons in possession and control of the public cemeteries referred to in G.S. 65-111 to take proper care of and to beautify such cemeteries, to mark distinctly their boundary lines with evergreen hedges or rows of suitable trees, and otherwise to lay out the grounds in an orderly manner, the board of county commissioners of any county, upon being notified that two-thirds of the expense necessary for so marking and beautifying any cemetery has been raised by the local governing body of the institution which owns the cemetery, and is actually in hand, is hereby authorized to appropriate from the general fund of the county one-third of the expense necessary to pay for such work, the amount appropriated by the board of commissioners in no case to exceed fifty dollars ($50.00) for each cemetery.

N.C.G.S.A. § 65-113. County commissioners to have control of abandoned public cemeteries; trustees

The county commissioners of the various counties are authorized to oversee all abandoned public cemeteries in their respective counties, to see that the boundaries and lines are clearly laid out, defined, and marked, and to take proper steps to preserve them from encroachment, and they are hereby authorized to appropriate from the general fund of the county whatever sums may be necessary from time to time for the above purposes.

The boards of county commissioners of the various counties may appoint a board of trustees not to exceed five in number and to serve at the will of the board, and may impose upon such trustees the duties required of the board of commissioners by this Article; and such trustees may accept gifts and donations for the purpose of upkeep and beautification of such cemeteries.

OTHER RELEVANT CEMETERY LAWS

N.C.G.S.A. § 65-4. State Division of Adult Correction of the Department of Public Safety to furnish labor

The Division of Adult Correction of the Department of Public Safety is hereby authorized and directed to furnish at such time, or times, as may be convenient, such prisoner’s labor as may be available, to properly care for the Confederate Cemetery situated in the City of Raleigh, such services to be rendered by the State's prisoners without compensation.

N.C.G.S.A. § 65-5. County commissioners may establish new cemeteries

The boards of county commissioners of the various counties in the State are authorized and empowered to locate and establish new graveyards or cemeteries upon the lands of their respective counties for the burial of the inmates of the county homes.

N.C.G.S.A. § 65-6. Removal and reinterment of bodies

Whenever the county commissioners have established new graveyards or cemeteries, they are authorized and empowered to remove to such graveyards or cemeteries all bodies of
deceased inmates of the county homes.

**N.C.G.S.A. § 65-77. Minimum burial depth**

When final disposition of a human body entails interment, the top of the uppermost part of the burial vault or other encasement shall be a minimum of 18 inches below the ground surface. This section does not apply to:

1. Burials where no part of the burial vault or other encasement containing the body is touching the ground.
2. Burials where the land is located in a family owned cemetery that was established by deed recorded prior to January 1, 1989, and the individual to be buried is to be buried in a surface burial vault in a manner similar to that of the individual’s deceased spouse who was buried prior to January 1, 1981.

The North Carolina Cemetery Act, N.C.G.S.A. § 65-46, et seq., does not apply to “cemeteries owned and operated by governmental agencies or churches.”

**N.C.G.S.A. § 130A-113. Permits for burial-transit, authorization for cremation and disinterment-reinterment**

(a) The funeral director or person acting as such who first assumes custody of a dead body or fetus which is under the jurisdiction of the medical examiner shall obtain a burial-transit permit signed by the medical examiner prior to final disposition or removal from the State and within five days after death.

(b) A dead body shall not be cremated or buried at sea unless the provisions of G.S. 130A-388 are met.

(c) A permit for disinterment-reinterment shall be required prior to disinterment of a dead body or fetus except as otherwise authorized by law or rule. The permit shall be issued by the local registrar to a funeral director, embalmer or other person acting as such upon proper application.

(d) No dead body or fetus shall be brought into this State unless accompanied by a burial-transit or disposal permit issued under the law of the state in which death or disinterment occurred. The permit shall be final authority for final disposition of the body or fetus in this State.

(e) The local registrar shall issue a burial-transit permit for the removal of a dead body or fetus from this State if the requirements of G.S. 130A-112 are met and that the death is not under the jurisdiction of the medical examiner.

**N.C.G.S.A. § 130A-420. Authority to dispose of body or body parts**

(a) An individual at least 18 years of age may authorize the type, place, and method of disposition of the individual’s own dead body by methods in the following order:

1. Pursuant to a preneed funeral contract executed pursuant to Article 13D of Chapter 90 of the General Statutes or pursuant to a cremation authorization form executed pursuant to Article 13C of Chapter 90 of the General Statutes.
Pursuant to a health care power of attorney to the extent provided in Article 3 of Chapter 32A of the General Statutes.

Pursuant to a written will.

Pursuant to a written statement other than a will signed by the individual and witnessed by two persons who are at least 18 years old.

An individual at least 18 years of age may delegate his or her right to dispose of his or her own dead human body to any person by one of the following methods:

1. Any means authorized in subsection (a) of this section.
2. By completing United States Department of Defense Record of Emergency Data, DD Form 93, or its successor form. A delegation made by filling out this form shall only be effective if the individual dies under the circumstances described in 10 U.S.C. § 1481(a)(1) through (8). A delegation under this subdivision takes precedence over any of the methods set forth in this section.

If a decedent has left no written authorization for the disposal of the decedent's body as permitted under subsection (a) of this section, the following competent persons in the order listed may authorize the type, method, place, and disposition of the decedent's body:

1. The surviving spouse.
2. A majority of the surviving children over 18 years of age, who can be located after reasonable efforts.
3. The surviving parents.
4. A majority of the surviving siblings over 18 years of age, who can be located after reasonable efforts.
5. A majority of the persons in the classes of the next degrees of kinship, in descending order, who, under State law, would inherit the decedent's estate if the decedent died intestate who are at least 18 years of age and can be located after reasonable efforts.
6. A person who has exhibited special care and concern for the decedent and is willing and able to make decisions about the disposition.
7. In the case of indigents or any other individuals whose final disposition is the responsibility of the State or any of its instrumentalities, a public administrator, medical examiner, coroner, State-appointed guardian, or any other public official charged with arranging the final disposition of the decedent.
8. In the case of individuals who have donated their bodies to science or whose death occurred in a nursing home or private institution and in which the institution is charged with making arrangements for the final disposition of the decedent, a representative of the institution.
9. In the absence of any of the persons described in subdivisions (1) through (8) of this subsection, any person willing to assume responsibility for the disposition of the body.

This subsection does not grant to any person the right to cancel a preneed funeral contract executed pursuant to Article 13D of Chapter 90 of the General Statutes, to prohibit the
substitution of a preneed licensee as authorized under G.S. 90-210.63, or to permit modification of preneed contracts under G.S. 90-210.63A. If an individual is incompetent at the time of the decedent’s death, the individual shall be treated as if he or she predeceased the decedent. An attending physician may certify the incompetence of an individual and the certification shall apply to the rights under this section only. Any individual under this section may waive his or her rights under this subsection by any written statement notarized by a notary public or signed by two witnesses.

(b1) A person who does not exercise his or her right to dispose of the decedent’s body under subsection (b) of this section within five days of notification or 10 days from the date of death, whichever is earlier, shall be deemed to have waived his or her right to authorize disposition of the decedent’s body or contest disposition in accordance with this section.

(c) An individual at least 18 years of age may, in a writing signed by the individual, authorize the disposition of one or more of the individual’s body parts that has been or will be removed. If the individual does not authorize the disposition, a person listed in subsection (b) of this section may authorize the disposition as if the individual was deceased.

(d) This section does not apply to the disposition of dead human bodies as anatomical gifts under Part 3A of Article 16 of Chapter 130A of the General Statutes or the right to perform autopsies under Part 2 of Article 16 of Chapter 130A of the General Statutes.

**SIGNIFICANT NORTH CAROLINA CEMETERY LAW CASES**

**State v. McGraw, 249 N.C. 205 (1958)**

Defendant was tried and convicted ... [for violating] an ordinance of Mooresville. He appealed to the Superior Court where a special verdict was returned.

Summarized, the facts found by the special verdict are: Mooresville, a municipal corporation, on 4 March 1957 adopted an ordinance with respect to public and private cemeteries and particularly Glenwood Memorial Cemetery owned by the town. The ordinance prohibits monuments or stones of any kind but permits bronze tablets and markers, which are required to be set level with the ground at the head or foot of a grave except family markers which may be set in the center of the plot. The ordinance specifically provides: ‘Work to be Done by Town. All grading, landscape work and improvements of any kind; all care on graves; all planting, trimming, cutting and removal of trees, shrubs and herbage; all openings and closings of graves, all interments, disinterments and removals, and all memorial settings and monument foundations shall be made by the Town.’ It also provides: ‘Duty of Town Treasurer. It shall be the duty of the Town Treasurer to deposit and distribute all sums in payment of lots, memorials and cemetery services to the General Fund and to the Perpetual Care Fund according to the schedule given in Section VI of this ordinance.’

Section VI of the ordinance fixes the price of lots dependent on location and grave capacity. One-half of the sale price of each lot is allocated to a perpetual care fund and the other one-half to the town general fund. It also fixes the price charged by the town for various types of markers sold by it, which price includes the cost of setting. Thirty per cent of the sales price is set aside for the perpetual care fund and approximately fifteen per cent is set aside for the town’s general fund. A scale of charges for setting memorials is prescribed when they are
not purchased from the town. For setting a memorial of the kind involved in this case the charge is $40, $12 of which is allocated to the perpetual care fund and $28 to the town's general fund. That section further provides: 'When the memorial is not furnished by the Town, the setting charge shall be remitted before setting.' Section XVI of the ordinance entitled 'Perpetual Care' provides in subdivision 3: 'The term 'Perpetual Care' shall in no case be construed as meaning the maintenance, repair or replacement of any grave markers placed upon lots or graves ...'

Subsequent to the adoption of the ordinance, R. W. Howard purchased from the town a lot in Glenwood Cemetery. Howard, to mark his father's grave, purchased a bronze marker from defendant, who set the marker, without paying or tendering the charges for setting as set out in the ordinance.

Defendant has been engaged in the business of selling cemetery markers and setting foundations therefor for a period of ten years. He is qualified to do such work and was licensed by the State of North Carolina to engage in the business of a marble yard. Defendant appeals from the adjudication of guilt based on the special verdict.

... 

Defendant admits he acted as charged. He denies the power of the town to declare such act a crime because (1) the Legislature has not delegated such authority to the town, and (2) if delegated, such delegation would do violence to sections 7, 17, and 31 of Art. I of our Constitution.

We need only consider the question of the authority to enact the provisions which reserve to the town the exclusive right to set memorial markers and require the payment of a special charge for setting such markers not purchased from the town.

...

If the power is to be implied, it must come from G.S. ss 160-2(3), 160-200(22), 160-200(36) which permit towns to acquire lands for cemetery purposes, prohibit burials in any other places with authority to 'maintain cemeteries' and 'regulate the manner of burial in such cemetery,' or from G.S. ss 160-258 and 160-259 which authorize the creation of a fund for perpetually caring for and beautifying cemeteries.

Defendant does not challenge the power of the town to prescribe reasonable rules and regulations relating to the management of the cemetery including interment and disinterment of the dead, size of lots, location and number of graves on a particular lot, kinds, types and sizes of memorial monuments and markers, types and character of foundation for such monuments as may be erected, kind and size of shrubbery and other means used to beautify and sanctify the lots. He does not question the right of the town to engage in competition with him in selling memorial markers. He merely says that it is not necessary to the proper exercise of the power given for the town to exercise a monopoly in the business of setting memorial markers, a purely commercial enterprise, or by legislative fiat penalize its commercial competition.

That the charge is not an inspection fee required to insure compliance with rules fixing the manner of setting is evident from the testimony of the city manager, a witness for the State. He said: 'In addition to selling grave lots, the Town of Mooresville is in the business of selling bronze markers and is in competition with other sellers of bronze markers. The Town is also in the business of setting markers in the cemetery ... If a dealer in memorials other than the Town sells a marker or memorial to an individual for a lot in this cemetery, the Town charges such dealer or the owner who purchases from that dealer, a setting
charge for the right to set a marker in the cemetery. The charge is specified in different amounts according to the type of memorial that is sold.’

We find no statute which in our opinion impliedly gives the town the authority claimed. Grave constitutional questions would be raised by any such statute.

Since the town was without authority to enact the challenged portion of the ordinance, it follows that noncompliance with this provision is not criminal.


‘There is a distinction between the rights existing prior to burial and those after burial, because after its interment the body is in the custody of the law, and a disturbance of its resting place and its removal is subject to the control and direction of a court of equity in any case properly before it. It is the policy of the law, except in cases of necessity or for laudable purposes, that the sanctity of the grave should be maintained, and that a body once suitably buried should remain undisturbed; and a court will not ordinarily order or permit a body to be disinterred unless there is a strong showing that it is necessary and that the interests of justice require it.’

The sentiment of all civilized peoples, since earliest Biblical times, has held in great reverence the resting places of the dead as hollowed ground. In such matters we deal with concerns that basically are spiritual. Awe toward the dead was a most powerful force in forming primitive systems for grappling with the supernatural. ‘It is a sound public policy to protect the burying place of the dead.’ Cave Hill Cemetery Co. v. Gosnell, 156 Ky. 599, 161 S.W. 980, 983.

Courts are reluctant to require disturbance and removal of bodies that have once been buried, for courts are sensitive to all those emotions that men and women hold for sacred in the disposition of their dead. Most people desire, and it is a natural desire, that there shall be forever an uninterrupted repose of their bodies when buried, and a regard for the feelings and love of their kindred and friends demands that their sepulchers shall not be violated except for compelling reasons. These tender sentiments and instincts of humanity are embedded deep in the hearts of men, and cannot be ignored. The aversion to disturbance of one’s remains is illustrated by Shakespeare’s choice of his own epitaph:

‘Good friend, for Jesus’ sake forbear
To dig the dust enclosed here.
Blest be the man that spares these stones,
And curst be he that moves my bones.’

‘Neither the ecclesiastical, common, nor civil system of jurisprudence permits exhumation for less than what are considered weighty, and sometimes compelling reasons. Securing ‘unbroken final repose’ has been the object of both civil and criminal legislation.’

The unauthorized disinterring of a dead body in this State is an indictable offense. G.S. s 14-150. See also G.S. s 14-148 as to the criminal offense of removing or defacing monuments and tombs.


Our law recognizes that the next of kin has a quasi-property right in the body—not property in the commercial sense but a right of possession for the purpose of burial—and that there
arises out of this relationship to the body an emotional interest which should be protected and which others have a duty not to injure intentionally or negligently.... Furthermore, the survivor has the legal right to bury the body as it was when life became extinct. ... For any mutilation of a dead body the one entitled to its custody may recover compensatory damages for his mental suffering caused thereby if the mutilation was either intentionally or negligently committed, ..., or was done by an unlawful autopsy. If defendant's conduct was wilful or wanton, actually malicious, or grossly negligent, punitive damages may also be recovered.

Parker v. Quinn-McGowen Co., 262 N.C. 560 (1964)

This Court has considered three types of tortious conduct involving the mistreatment of dead bodies: (1) the negligent mangling and dismemberment of bodies on railroad tracks by trains, (2) unauthorized autopsies; and (3) the wrongful withholding of a body as security for unauthorized embalming.

Although a wife is entitled to the body of her husband in the condition it was in at death, and to bury it without embalming if she so desires, embalming is now considered a routine incident in the preparation of a body for burial and ‘a very proper service.’ Although it has been said that an undertaker’s unauthorized embalming of a body received for burial constitutes mutilation similar to that involved in an autopsy ... there is a distinct difference in the two operations. An autopsy is a violation of the body not intended to preserve it intact—quite the contrary—and is totally unrelated to its proper burial. True, except in the case of an inquest, the avowed purpose of an autopsy is to advance medical knowledge and thus alleviate suffering in the living. Nevertheless, because many persons regard an autopsy with extreme aversion, it may not legally be performed without the consent of the person having the duty to bury the body unless authorized by statute. G.S. § 90-217. Embalming, on the other hand, creates no such repulsion. Although technically it may be included in the generic term mutilation, embalming involves no dismemberment or disfigurement and it is not popularly thought to be a mutilation. In our contemporary society it is regarded as the proper method of preparing a corpse for burial. Indeed, it is but one of the successfully standardized burial practices which have generated the high cost of dying.

Ordinarily, a body is delivered to a funeral home only for the purpose of embalming and otherwise preparing it for burial in the customary manner. Reasonable promptness in performing this service is essential. Plaintiff makes no allegation that defendant wilfully or maliciously prepared the body for burial in the knowledge that defendant was persona non grata to plaintiff and that its performance of this operation, rather than another’s performance, would cause her mental anguish. There is no allegation that its employees were aware that plaintiff did not know defendant had the body. In short, the complaint fails to allege any intentional wrong or negligent act on the part of the defendant, nor does it state wherein defendant’s preparation of her husband’s body for burial caused her such suffering. Defendant simply did what plaintiff would have preferred to have another do and, so far as we are told, it acted in good faith.

We hold that the bare fact of an unauthorized embalming, without more, does not constitute such a mishandling or mutilation of a body as will support a cause of action by the next of kin for mental anguish.
When Dirt and Death Collide

Legal and Property Interests in Burial Places

By Tanya D. Marsh

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Burial places are real property, but they are a special kind of real property. Thus, while the law with respect to land perpetually dedicated to the disposition of human remains is rooted in the general common law of property, there are unique doctrines that apply only to burial places. Moreover, although disputes occur with alarming frequency and the doctrines are rich and fascinating, the law of burial places has long been neglected by practicing attorneys and legal scholars. As a result, this unique niche of the law is not well understood, and it is a difficult area for the uninitiated to navigate. The purpose of this article is therefore to illuminate and explain the doctrinal framework of legal and property interests in burial places so readers are better prepared to confront these issues when they arise.

There are two major sources of the law of burial places in the United States: the common law and state statutory law. Very little federal statutory law is relevant. Until the 20th century, the law of burial places was almost exclusively common law. In the first half of the 20th century, the establishment of large, nondenominational, privately owned burial grounds by for-profit and nonprofit corporations prompted most states to enact statutory regimes to govern the creation and perpetual care of these “cemeteries.” These statutes are often highly fragmented, however, and scattered throughout state codes. Although they often address topics that are not the subject of common law doctrines, state statutes are strongly informed by principles found in that common law.

Although we may refer to any real property containing human remains as a “burial place,” it is not correct to refer to all burial places as “cemeteries.” Instead, “cemeteries” are creatures of and defined by state statutes that vary significantly. Statutory definitions of cemeteries often specifically exclude individual marked and unmarked graves and burial places owned by restricted groups such as families, religious organizations, or fraternal organizations. The common law is much more important with respect to those types of burial places. Unless otherwise noted, this article will use the term “burial places” to refer to all real property that holds human remains.

The Common Law
The common law establishes the framework of legal and property interests in burial places. To understand the unique complexities of the common law of burial places, it is necessary to reconstruct briefly the story of how this niche of the common law developed.

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In general, the common law of the United States is derived from the common law of England. But the common law was not the only source of law in 18th century England and did not cover all subjects. Since almost the time Christianity was introduced to the island of Britain, the Church of England has had the legal authority to create rules and adjudicate disputes regarding human remains. The law of burial places in England at the time of the American Revolution was therefore largely contained in ecclesiastical law. The Church’s authority over human remains, particularly after interment, was justified based both on theology (the Church was the spiritual guardian of human remains until the Second Coming of Jesus Christ and the resurrection of the dead) and practical considerations (the Church owned the consecrated real property in which the remains were interred or entombed and therefore had physical control over them).

Three fundamental assumptions therefore supported the English law of burial places: (1) the existence of an established Christian church; (2) the ownership by that church of all burial places; and (3) the adoption of ecclesiastical law. By rejecting the establishment of a single church, the United States undermined all three assumptions. As a result, the United States was born with a sizeable legal void—it had no law regarding the disposition of human remains or burial places. Congress or the state legislatures could have easily addressed this issue but, as previously noted, they did not. Instead, disputes in the 18th and 19th centuries were litigated, primarily in courts of equity, and early American jurists were charged with resolving them under common law rules. Courts lamented they had little precedent to follow. As a New York chancery court judge complained in 1820: “Are the principles of natural law, and of Christian duty, to be left unheeded, and inoperative, because we have no ecclesiastical Courts recognized by law?” Wightman v. Wightman, 4 Johns. Ch. 343, 347 (N.Y. Ch. 1820).

**General Principles of the Common Law of Burial Places**

The principles of Christian duty were not to be left unheeded. Although ecclesiastical law was not explicitly adopted, the worldview of 19th century Protestants is clearly reflected in the common law of burial places that evolved in the United States. As discussed in the next section, the primary inventor of this common law is somewhat surprising. A New York attorney named Samuel B. Ruggles was called on by the Surrogates’ Court of New York in 1856 to provide a memorandum of law regarding the legal and property interests in burial places to help the court allocate eminent domain proceeds following the taking of a portion of a churchyard by the city of New York. The learned Ruggles took his assignment seriously, and his resulting report is the most influential document in the history of the common law of burial places.

In his report, Ruggles argued that the Surrogates’ Court ought to recognize that a decedent’s next of kin have a natural and fundamental right to possess human remains and protect them after interment. He argued that such a “fundamental” and “self-evident right of humanity” was “so sacred and precious” that it “ought not to need any judicial precedent” and was “entitled to legal protection, by every consideration of feeling, decency, and Christian duty.” 4 Bradford’s Sur. Ct. 503 (1856). As discussed in the next section, Ruggles’s arguments were persuasive to the surrogates’ court and beyond. They also are illustrative of the reasoning implemented by many 19th century courts: they were not permitted to adopt ecclesiastical law, but they could, and believed that they should, adopt what they understood to be principles of ancient, natural law. In many cases, courts justified the “ancient” nature of Christian prin-
ciples by citing the Old Testament, particularly the story of Abraham’s family’s tomb. But in other cases, courts adopted doctrines that would have been equally familiar to 19th century Protestants and pre-Christian Romans.

The first principle of the common law of burial places is that human remains, places of human interment and entombment, and memorials to the dead are sacred and should be protected. This principle is simultaneously explicitly Christian and legitimately universal. Attorney and politician Daniel D. Barnard dedicated Albany Rural Cemetery in 1846 with these words:

We have sought out a pleasant habitation for the dead . . . we come now to dedicate and devote it solemnly to their use forever. With appropriate ceremonies, with religious rites, with consecrating prayer, we come now to set apart this ground to be their separate dwelling-place as long as time shall last. The purchase is ours, the inheritance belongs to them. The living make the acquisition, but only as a sacred trust; the dead shall possess it altogether. . . . [B]eneath the spreading canopy of the listening Heavens and in the awful presence of God, we declare and pronounce . . . that henceforward, and for all time to come, this ground belongs not to the living, but to the dead!

The most legally significant expression of this principle was articulated by the Supreme Court of the United States in *Beatty v. Kurtz*, 27 U.S. 566 (1829). In 1769, Beatty and Hawkins platted an addition to Georgetown, indicating on the plat that a particular parcel was for the use of the German Lutheran Church. A group of Lutherans built a church and an adjoining churchyard for burials. After decades of use, the church fell into disrepair. Claiming that the grant of land in the 1769 plat was a defeasible fee, the condition of which failed when the church fell down and was not replaced, the heirs of Beatty and Hawkins entered the churchyard in the late 1820s and tore down fences and tombstones to prepare it for redevelopment. The Lutherans filed a quiet title action that ended up in the Supreme Court.

Justice Joseph Story wrote on behalf of the unanimous court. He described the actions of the heirs of Beatty and Hawkins not as “mere private trespass” but as “a public nuisance, going to the irreparable injury of the Georgetown congregation of Lutherans.” The congregation’s interest in the churchyard had been “consecrated to their use by perpetual servitude or easement.” By trespass into the burial ground, Justice Story wrote:

[The sepulchres of the dead are to be violated; the feelings of religion, and the sentiment of natural affection of the kindred and friends of the deceased are to be wounded; and the memorials erected by piety or love, to the memory of the good, are to be removed so as to leave no trace of the last home of their ancestry to those who may visit the spot in future generations. It cannot be that such acts are to be redressed by the ordinary process of law. The remedy must be sought, if at all, in the protecting power of a court of chancery; operating by its injunction to preserve the repose of the ashes of the dead, and the religious sensibilities of the living.

Id. at 584–85.
The *Beatty v. Kurtz* decision is significant for several reasons. It emphasizes the importance of burial grounds by characterizing intrusion “not as mere private trespass” but as “a public nuisance” that results in “irreparable injury.” Justice Story also emphasized that in the absence of an established church and ecclesiastical courts, burial grounds in the United States fall under the “protecting power of a court of chancery,” that is, a court of equity. By referencing “irreparable injury,” Justice Story signaled that the appropriate remedy was equitable relief, not money damages. Justice Story also suggested that courts would protect burial places for two reasons—to preserve the “repose of the ashes of the dead” and to protect the living who remember the dead because of “piety or love.” In *Beatty v. Kurtz*, Justice Story foreshadowed Ruggles by identifying several parties with potential interests in burial places—the next of kin, the owner of the burial ground, and the dead themselves.

The second principle of the common law of burial places is closely tied to the first: real property used for burial or entombment purposes shall be perpetually dedicated to that use. The American social norm of the dedication of a single grave to an individual in perpetuity is a marked departure from modern and historical European Christian norms, but it is deeply entrenched in U.S. law. Barnard’s speech is grounded in this idea. “[The] inheritance belongs to [the dead],” according to Barnard, and the “acquisition” of land by the living is “only as a sacred trust” for the dead who “shall possess it altogether.” The same idea is expressed by Justice Story in *Beatty v. Kurtz*. The irreparable injury caused by the trespass in the Lutheran churchyard, he implicitly argues, was not only to the living Lutherans but to the interred dead themselves. The churchyard had been dedicated to and therefore in some sense belonged to them.

Although typically justified in the 19th century with Biblical references, perpetual dedication of burial places is not an exclusively Christian idea. In pre-Christian Rome, real property used for the disposition of human remains was automatically converted from *humani juris* (regular real property) to *divini juris* (property used for religious or sacred purposes). The Roman jurist Gaius (130–180 A.D.) wrote that “we make ground religious of our own free will by conveying a corpse into a place which is our own property.” Dedicated to divine purposes, such land had no owner. Once given to the gods, no human actor could revoke its divine status. In the United States, burial places have human and corporate owners. Even religious organizations are required to designate legal representatives on earth. Nevertheless, the ancient principle that burial places are perpetually dedicated to sacred purposes continues to inform modern common and statutory law.

The third principle of the U.S. common law of burial places flows naturally from the first two: human remains, once interred, shall not be disturbed. The removal of human remains from a place of burial or entombment is referred to as “disinterment.” Unauthorized disinterment was an offense under both ecclesiastical and English common law. It is now punished by criminal codes in the United States.

Justice Cardozo, then a member of the New York Court of Appeals, treated rules discouraging disinterment as self-evident: “The dead are to rest where they have been laid unless reason of substance is brought forward for disturbing their repose.” *Yome v. Gorman*, 152 N.E. 126, 129 (N.Y. 1926). Other courts have justified the rules by invoking ancient warnings.
The fact that the accident of death struck not once but twice if, indeed, not thrice, in quick succession the ranks of those disturbing the tomb of Tut-Ankh-Amen could afford only proof certain to the superstitious that an evil fate awaited those who dared disturb the sleep of the dead. While not sharing their tortured ideas, yet strongly bound by judicial precedent, as we are, we decline to enter an order which would unseal the tomb of this sleeping body. Let it sleep on wholly oblivious to the turmoil that rages above it. Requiescat in pace! Let the tomb remain sealed and the judgment which so directs stand affirmed.


The three principles of the common law of burial places noted above are stated in absolute terms. Burial places, human remains, and memorials to the dead are sacred. Burial places shall be perpetually dedicated. Human remains, once interred, shall not be disturbed. The fourth principle of the U.S. common law of burial places mediates the rigidity of the first three: the needs of the living trump the interests of the dead. The reality is that burial places are disturbed all the time; cemeteries are de-established and undedicated; graves are uncovered. The courts of equity must constantly balance the competing interests of the living and the dead in light of these general principles.

The principle that the needs of the living outweigh the interests of the dead was also a principle of English law, but it was of little practical importance because the Church of England had nearly unfettered control over burial places. The Church was the fee simple owner of the churchyard and charged with protecting the souls of the dead. No one else had a recognized legal or property interest in the churchyard or its inhabitants. Before the U.S. courts of equity could fulfill their charge by *Beatty v. Kurtz* to “preserve the repose of the ashes of the dead, and the religious sensibilities of the living,” they required a framework to establish relative legal and property interests in burial places. That framework was provided by Samuel B. Ruggles.

**An American Framework**

In the 1850s, the city of New York widened and straightened many downtown streets. The 15-foot widening of Beekman Street (near City Hall and Ground Zero) disturbed 13 vaults in the churchyard of the Brick Presbyterian Church. The vaults contained the remains of approximately 100 people. The sum of $28,000 was determined as just compensation for the taking, and the Surrogates’ Court was tasked with dividing that sum between the church and the vault owners. Finding no applicable statutes or precedent, the court appointed Ruggles, a New York attorney best known for writing the restrictive covenants that still keep Gramercy Park in Manhattan private, to provide a summary of the relevant legal principles.

English law, Ruggles explained, presumed family members would convey the corpse to the parish church, where it would be buried in the consecrated churchyard or, for an additional fee, entombed within the church or a vault. There was no role for the common law courts or family members following interment because the Church had theological and temporal custody of the remains. The Brick Presbyterian Church apparently appealed to this precedent to support its position that it should receive all of the eminent domain proceeds as well as responsibility for disinterment and reinterment. The vault ow-
ers, Ruggles, and ultimately the court disagreed. Instead, Ruggles appealed to principles of natural and ancient law to establish that the next of kin of the deceased have a common law “legal right” to control and dispose of human remains. That right, which is now referred to as the “Right of Sepulture” (sometimes spelled “Sepulcher”), included the right to select the place of burial and to “change it at pleasure.” If the place of burial “be taken for public use,” Ruggles concluded, the next of kin and not the church or secular owner of the burial place should receive eminent domain proceeds sufficient to allow reinterment in a place of their choice.

In *Beatty v. Kurtz*, Justice Story identified multiple interests in burial places but did not declare that any of those interests were enforceable. Instead, he simply transferred the protector role formerly held by the Church of England to the courts of equity. Ruggles reinforced the authority of the courts of equity but also elevated the status of the private interests identified by Justice Story by proposing a formal framework that recognizes four separate legal and property interests in burial places: (1) the rights of the deceased; (2) the Right of Sepulture; (3) the Right of Interment; and (4) the rights of the owner of the burial place.

The first interest is the right of the dead to a decent burial and an undisturbed repose. Although it seems odd to talk about rights surviving after death, it is a principle strongly rooted in Roman law and explicitly recognized in U.S. common law. For example, in an oft-cited 1880 decision, the New York Superior Court held that “the dead themselves now have rights, which are committed to the living to protect.” *Thompson v. Hickey*, 8 Abb. N. Cas. 159 (N.Y. Sup. Ct. 1880). Courts protect the rights of the dead by typically placing a high value on evidence regarding the expressed wishes of the deceased.

The second interest is the “Right of Sepulture,” which consists of two phases. Before interment, it grants the next of kin the right to control human remains and to choose the place and manner of disposition. This common law right has been codified in most states. After interment, the courts continue to recognize the interests of the holder of the Right of Sepulture, particularly to prevent the grave from being disturbed. Consistent with the Ruggles Report, the common law awards the Right of Sepulture to the individual or group of individuals identified as the next of kin. Typically, the spouse has first priority, then children, parents, and so on in degrees of kinship. This common-law priority list has been codified by most states with little variation.

The third interest is the “Right of Interment.” The Right of Sepulture attaches to human remains, but the Right of Interment attaches to the burial place. The Right of Interment also consists of two phases. The first phase occurs before disposition—the purchaser of a lot, grave, tomb, or niche acquires a property interest subject only to the rules established by the owner of the broader burial ground or cemetery (although the cemetery rules need not be servitudes, they are treated as such). After disposition, the holder of the Right of Interment continues to have a property interest distinct from the legal interest of the holder of the Right of Sepulture. Both rights may be held by the same person, but they are often held by different people. Because the Right of Interment is a property interest, it continues in perpetuity. But the Right of Interment has one fascinating and unique characteristic. Unlike other property interests, most common law courts have held that the Right of Interment is not devisable or alienable and passes only by inheritance.
The Right of Sepulture, which was invented to compensate for the lack of an established church acting as the guardian for the dead, attaches to all human remains in the United States. The Right of Interment, which arose in the common law to compensate for the lack of a single owner of burying grounds in the United States, is more limited in its application. It is used only with reference to specific graves or lots purchased from a third party that owns the surrounding land. The Right of Interment does not attach to remains buried on one’s own land or in a churchyard, Potter’s Field, or other burying ground if the right to a particular grave was not purchased.

If the Right of Interment is a property right, what kind of property right is it? That is an unresolved question in the common law that is often debated but ultimately irrelevant to the outcome of most disputes. In the eminent domain dispute that gave rise to the Ruggles Report, the parties hotly contested the nature of the property interest held by the families in the disturbed vaults. The families claimed that “the grants from the church were intended to convey, and did legally convey, the fee of the land occupied by the vaults and their steps: [and] that the church retained no legal estate or interest in the land so conveyed.” Conversely, the church claimed that “the grants of the vaults were not intended to convey, and did not convey, any portion of the legal fee, but only a privilege or easement in the land to bury the dead; [and] that the whole legal estate in the land remained in the church, subject only to such privilege or easement; and that the possession of such of the vault-owners.” In that dispute, the resolution of the nature of the property right conveyed to the families affected the distribution of eminent domain proceeds. Ruggles acknowledged that in that case, and more broadly, the nature of the property right may be a distinction without a difference. In either event, the owners of the property interest are subject to both the dedication of the land for burial purposes and the rules and regulations adopted by the owner of the cemetery. The property interest is therefore so restricted that even if it were technically a fee simple, it is practically indistinguishable from a servitude. The land cannot be used for any other purpose and is subject to the rules of the cemetery owner. That same discussion can be found in numerous reported cases in the United States.

The fourth interest is that of the owner of the burial place in which the lot, grave, or tomb is located. The law generally grants great deference to the owners of burial places, particularly if they are religious organizations, to establish rules and regulations that govern the use of individual places of interment and vaults. At the same time, the rights of the owners of burial places are mediated by the interests of the deceased, the holder of the Right of Sepulture, and the holder of the Right of Interment.

**Conclusion**

The legal and property interests in burial places are described by antiquated language and seem archaic, but the framework invented by Justice Joseph Story and Samuel B. Ruggles is alive and well in common and statutory law. The U.S. common law of burial places has significantly progressed from the blank legal slate after the American Revolution, but it is often difficult to discover and use. It is hoped that this article will provide some assistance.
Who Controls the Dead?

The Right to Make Funeral and Disposition Decisions

By Tanya D. Marsh

Death is a transformative event with profound consequences for the individual and her community. Promptly following this emotionally significant moment, decisions regarding the disposition of the corpse must be made. In a basic sense, the process of disposing of human remains is simply the solution to a practical problem. But the manner in which we dispose of remains matters, to many people, quite a bit. A human cadaver is no longer a person, but neither is it an item devoid of meaning. Anthropologists tell us that one of the key differences between humans and other animals is that we do not easily discard the remains of our species. Instead, we attach profound spiritual and emotional significance to their treatment and ultimate disposition.

Americans, pushing back against the commercialized “American way of death,” are exploring their options in death care to an unprecedented degree. The most significant evidence of this is the rising popularity of cremation. Before the mid-1980s, the US cremation rate was in single digits. In 2015, for the first time, more Americans were cremated than buried. The growing interest in cremation is driven by concerns about cost, the environmental impact of embalming and ground burial, and a desire for a closer connection between the living and the dead. These same concerns contribute to a growing interest in home funerals, alkaline hydrolysis, and green burial.

Socially conscious entrepreneurs, responding to these concerns, are pushing the accepted boundaries of death care. Katrina Spade and the Urban Death Project are working to create a community compost-based renewal system where human remains are transformed into life-giving soil. Jae Rhim Lee’s eco-friendly Infinity burial shroud and suit are infused with fungi that hasten decomposition while neutralizing toxins. Capsula Mundi is developing a biodegradable egg-shaped pod that will encapsulate human remains, serving as a metaphorical “seed” for a memorial tree planted above the pod. Jevon Truesdale and Qico promote an environmentally friendly, sustainable, water-based alternative to fire cremation known as alkaline hydrolysis. Progressive funeral directors like Amy Cunningham and Caitlin Doughty are providing education and services to allow families to take back as much control over remains as they feel comfortable with, subject to legal limitations.

Of course, these new frontiers in death care are controversial. In some American communities, cremation is still controversial. As a result, there may be tension between what disposition methods individuals might choose for themselves, and what choices their families and communities may be willing to support. The law limits choices in various ways and provides the framework to mediate those disputes.

The American Law of Human Remains

The American legal system includes two kinds of law—common law and statutory law. Statutory law is the collection of acts adopted by state legislatures and Congress. The common law is a framework of legal principles derived from custom and judicial precedent. It is sometimes known as “judge-made law.” Recognizing that elected legislatures cannot possibly address every kind of legal dispute, the common law fills in the gaps in statutory law. American common law is based upon and incorporates the body of English common law that existed as of the Revolution. The law of human remains was almost exclusively common law until the turn of the 20th century. At that time, state legislatures began to enact laws to regulate funeral directors and embalmers. Those occupational licensing statutes make up the bulk of the statutory law of human remains. Funeral directors are very concerned about clear rules regarding who has the authority to make funeral and disposition decisions. State statutes are therefore primarily concerned with creating that certainty, even at the expense of the interests of decedents and their families. There is very little federal law on these topics other than the Federal Trade Commission’s Funeral Rule, which mandates certain disclosures and presentation of pricing information.

The Rights of the Dead

At common law, the dead have rights. Strong and longstanding social and legal norms permit broad freedom to direct the disposition of our property after death and promote respect for dying wishes. With respect to the disposition of human remains, the common law grants two rights to the deceased: (1) the right to a “decent burial,” and (2) the right to direct the disposition of their remains.

Although the common law promises decedents that their wishes will be honored, it does not provide a specific mechanism for decedents to leave evidence of their disposition preferences. Many courts have honored the oral expression of dying wishes. The use of a will is more common, although it remains legally controversial. In some states, a decedent may not dispose of his remains in a will because human remains are not property. In other states, courts have held that a decedent may...
leave binding disposition instructions in a will.

Given the lack of clarity in the common law, and the need of funeral directors for certainty, it is not surprising that the state legislatures have intervened. Thirty-one states and the District of Columbia have statutes that provide that the decedent has the general right to express a personal preference regarding the disposition of his remains. I call these rules personal preference statutes. There is significant variety among the personal preference statutes. One important difference is the theoretical basis for the statutes. Only three states (Florida, Oklahoma, and South Dakota) expressly grant decedents a statutory right to determine the disposition of their own remains and then provide a mechanism for executing that right. The remaining states do not expressly establish a statutory right, but implicitly assume a common law right by specifying a mechanism for a person to declare how they would like their remains disposed of after death. At first glance, the failure to establish a statutory right seems inconsequential. After all, what is the purpose of the statutory process if not to effectuate an express common law right or an implicit statutory or constitutional right? But the formulation and placement of these statutes in their respective state codes strongly suggests that the point of the process statutes was to make it more difficult for survivors and estates to invalidate contracts for funeral goods and services (i.e., pre-need contracts) entered into by decedents before death. Indeed, in four states (Georgia, Idaho, Mississippi, and Rhode Island), a decedent's wishes will be respected only if he or she purchased a pre-need funeral contract. Three states (Kentucky, New Mexico, and South Carolina) permit individuals to pre-authorize their own cremations, but not to identify any other personal preferences.

A key corollary in state statutory law to the personal preference statutes is the absolution of liability for those who rely upon documents that comply with the statutory process for memorializing preference. Although some states generously forgive all persons from liability for following the written instructions of the decedent, most statutes are clearly intended to relieve only funeral professionals from liability. Other statutes primarily aim to give the funeral director clear legal authority to resolve inconsistencies between a decedent's written instructions and the contrary wishes of survivors. The combination of release of liability for funeral directors for following directives that comply with the statutory requirements, and the emphasis of the statutes on the selection and prepayment of funeral goods and services are clear signals that the personal preference statutes were heavily influenced by the funeral services industry. The result is that in many states, commercial consumer preferences are easier to enforce than non-commercial preferences. If, for example, a person in Wisconsin desired to have his body prepared by his religious congregation and buried in a shroud in a (legally-permissible) backyard cemetery, a choice that would not require the services of a funeral director, crematory authority, or cemetery authority, the law would say that those wishes should be honored, but would not shield those who carried them out from lawsuits brought by surviving next of kin.

The personal preference statutes also vary greatly in terms of the manner in which an individual is required to express his preferences. Some of the states set a very low bar—they simply require that instructions be in writing. Other states require a particular form set forth in the statute. A few states require a notarized declaration. Many states require the written instrument to be witnessed by one or two people. Several provide alternative methods, including setting forth preferences in a will, a health care power of attorney, or pre-need contract.

If a person does not leave instructions regarding the disposition of their remains, or if the relevant state law does not permit them to, the law establishes a framework to determine who may control the remains and make decisions regarding disposition.

The Rights of Next of Kin

Since the early 1850s the general rule in the United States has been that the next of kin have the right to possess and control remains after death, subject only to the wishes of the decedent. In the highly influential 1904 case of Pettigrew v. Pettigrew, the Supreme Court of Pennsylvania attempted to establish a process for sorting out conflicts among surviving kin:

The result of a full examination of the subject is that there is no universal rule applicable alike to all cases, but each must be considered in equity on its own merits, having due regard to the interests of the public, the wishes of the decedent, and the rights and feelings of those entitled to be heard by reason of relationship or association. Subject to this general result, it may be laid down: First, that the paramount right is in the surviving husband or widow, and, if the parties were living in the normal relations of marriage, it will require a very strong case to justify a court in interfering with the wish of the survivor. Secondly, if there is no surviving husband or wife, the right is in the next of kin in the order of their relation to the decedent, as children of proper age, parents, brothers and sisters, or more distant kin, modified, it may be, by circumstances of special intimacy or association with the decedent.

The order of priority set forth in Pettigrew is the most structured that
the common law has accomplished. As the court suggests, this individualized, equitable approach creates uncertainty that, in the event of a dispute among interested parties, can only be resolved by a court. Again, given the understandable interest of funeral directors for certainty in identifying the person or persons with the legal right to make funeral and disposition decisions, it is not surprising that state legislatures have intervened to establish a more orderly process.

Forty-six states and the District of Columbia have statutes that establish a personal obligation or right with respect to the disposition of human remains. These statutes are primarily focused on mediating the competing claims between survivors. Most of the statutes establish a priority list that roughly tracks the hierarchy set forth in Pettigrew and state intestate succession statutes. Not surprisingly, top priority is assigned to the surviving spouse. A few states qualify the spouse’s right and obligation based on competency or estrangement at the time of death. A few states put domestic partners or, in the case of Vermont, civil union partners and “reciprocal beneficiaries,” on equal standing with spouses.

If a decedent left no surviving spouse or domestic partner who meets the qualifications set forth in the statutes, 39 states identify the children of the decedent as the next in priority. Most states disqualify minor children, while a few do not. Some states permit “any” surviving child to assert the right to control the decedent’s remains, while others require a majority of surviving children to agree before they can act. Only two states—Arizona and New Mexico—put the parents of a decedent in a higher priority position than children of the decedent.

If a decedent has no qualifying spouse, parents, or children, 34 states then defer to siblings. As with other classes of kin, most states require the siblings to be adults, but a few do not. Some states allow any sibling to assert the right, while others require a majority to agree.

After siblings, there is significant divergence among the priority lists. A few states include detailed lists of kin. After relatives are exhausted, the lists generally call for an interested friend or stranger. For example, Minnesota seeks “an adult who exhibited special care and concern” for the decedent, while Missouri will take “any person or friend that will assume financial responsibility.” Some states end their lists with the public official charged with indigent relief, so that she may organize a pauper’s funeral. Only 15 states have statutes that obligate the government to bear the expense of indigent burials. A number of states (including my home states of Indiana and North Carolina) give authority to the funeral director with custody of the body or “any other willing person” to organize the disposition and charge the estate if kin cannot be found within a few days after death.

The Decedent’s Right to Designate an Agent

The common law granted decedents the right to dictate the disposition of their remains, but did not expressly give decedents the right to name the person who would control their remains. Many states, however, have statutes that expressly grant decedents the right to designate an agent to control their remains. These agents generally trump all persons in the statutory priority list who would otherwise have the right to control the remains. Presumably, a person would take advantage of a designated agent statute in order to choose a person who will be more likely than his next of kin to effectuate his wishes. Thirty-seven states and the District of Columbia have adopted designated agent statutes. Related statutes allow decedents to grant powers of attorney with respect to health care or similar purposes. Three states only permit the designation of an agent for limited purposes, such as authorizing cremation or making anatomical gifts. The remaining nine states do not allow individuals to designate agents under any circumstances.

Planning

What can, and should, a person do with this information? First, you need to understand your state’s laws and how they may allow you to express your personal preferences, choose the disposition method that you prefer, and appoint an agent if you would like one. An estate planning attorney in your state is a good resource. Some estate planning attorneys, however, are not familiar with the intricacies of these laws. Armed with the information in this article, however, you can ask informed questions that should get you the guidance you need. You can also consult resources like Final Rights by Josh Slocum and Lisa Carlson, which provides an overview of the relevant laws in every state. If you spent a significant amount of time in another state, you should also follow this process for that state as well. Remember that the laws that apply are those of state in which a person dies, and unless we never leave home, we cannot ultimately guarantee the location of our death.

Second, if you decide that one of the newly emerging methods of disposition appeals to you, but that the laws of your state will cause problems or prevent you from making that choice, get involved! Write a letter to your local newspaper. Talk to your friends. One of the main reasons that the funeral industry’s concerns have trumped consumer concerns in these state laws is because we don’t talk about death and they are happy to. If we want better laws and more choices, then we have to begin and sustain a lot of conversations about death. If we are unwilling to engage in those conversations, then we will have to accept that the choices we want and the choices we have may be radically different.