



# HOW TO GET RID OF A DEAD BODY:

Laws and regulations dealing with the treatment  
and disposal of human remains

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# INTRODUCTION

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# **STATUTORY AND REGULATORY RESOURCES**

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# STATUTORY AND REGULATORY RESOURCES

- **The Decedent's wishes are paramount**
- **International**
  - **Varies by Country**
- **Federal**
  - **Environmental Protection Agency**
  - **Transportation Security Administration**
- **State**
  - **Health and Safety Code**
  - **Government Code**
- **Local**

# THE CONTROL OF REMAINS

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# THE CONTROL OF REMAINS

- **WHO HAS CONTROL?**
- **The Decedent's written wishes**
  - **The Person Authorized to Direct Disposition (PADD) on a U.S. Department of Defense Record of Emergency Data (DD Form 93) (deaths of military personnel);**
  - **An agent under a power of attorney for health care under Probate Code sections 4600-4806;**
  - **The decedent's competent surviving spouse or registered domestic partner;**
  - **The decedent's competent surviving child (or a majority of adult children);**
  - **The decedent's competent surviving parent(s);**
  - **The decedent's competent adult sibling (or the majority of adult siblings);**
  - **The surviving competent adult persons in the next degree of kinship;**
  - **A conservator of the person;**
  - **A conservator of the estate;**
  - **The public administrator when the deceased has sufficient assets**

# THE CONTROL OF REMAINS

- **Disputes over control**
  - **Victims of murder**
  - **Disputes over authority to control**
- **Failures to act by person vested with authority**
- **Petitions for court determination**
  - **Probate Code section 7100**
- **Exclusive authority vested**

# THE CONTROL OF REMAINS

- **What governs the control?**
- **Legal requirements for the writing:**
  - **(1) the decedent's instructions clearly and completely set for the final wishes of the decedent in sufficient detail to preclude any material ambiguity,**
  - **(2) arrangements for payment have been made so as to preclude payment by the decedent's survivor(s), if any.**
- **If the decedent's instructions are set forth in a will, those instructions are to be faithfully carried out even where *the validity of the will in other respects is in dispute.***
- **If an indigent decedent has made no provision and the estate is insufficient to provide for interment, no duty of interment is imposed on any person residing in this state. In that case, the coroner of the county in which the person dies may take possession of the remains and dispose of them.**
- **What about when the Decedent does not leave instructions?**



# **IMMEDIATE CONCERNS POSTMORTEM**

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# **IMMEDIATE CONCERNS POSTMORTEM**

- **Anatomical Gifts**
- **Coroner's Inquest**
- **Autopsy and Other Procedures**
- **Deaths While Abroad**
- **Death Certificates**

# **IMMEDIATE CONCERNS POSTMORTEM – ANATOMICAL GIFTS**

- **An anatomical gift is defined under the Health and Safety Code as “a donation of all or part of a human body to take effect after the donor’s death for the purpose of transplantation, therapy, research, or education.”**
- **Gifts to a hospital, accredited medical school, dental school, college, university, or organ procurement organization, for research or education**
- **Gifts to a specific person**

# IMMEDIATE CONCERNS POSTMORTEM – ANATOMICAL GIFTS

- **How to properly make an anatomical gift**
  - **Power of attorney for health care**
  - **Other valid writings**
  - **Donate Life California Registry (DMV)**
  - **Conflicts between designations – what controls?**
- **Who can authorize a gift and how?**
- **Religious beliefs**

# **IMMEDIATE CONCERNS POSTMORTEM – ANATOMICAL GIFTS**

- **Conflicts between anatomical gifts, inquests, and autopsies**
  - **Pursuant to a valid request, the coroner may permit the removal of organs that constitute an anatomical gift from the decedent even when an inquest is required.**
  - **If no autopsy is required, the organs comprising the anatomical gifts may be released.**
  - **If an autopsy is required but the coroner and the county medical examiner agree that the removal of organs comprising an anatomical gift will not interfere with an inquest or autopsy, the organs may be released**

# **IMMEDIATE CONCERNS POSTMORTEM – CORONER'S INQUEST**

- **A coroner's inquest is an inquiry into the manner and cause of a person's death.**
- **It is required in a variety of circumstances set forth in Government Code section 27491.**
- **For example, such inquests are required in any case of violent, sudden, or "unusual" death, unattended death, accidental death, death suspected to be caused by a contagious disease, death of a person not attended by a physician within a period prior to death, and deaths resulting from criminal activity.**
- **After the inquest, the coroner has ninety (90) days to deliver the decedent's property to the appropriate party. Gov. Code, section 27491.**

# **IMMEDIATE CONCERNS POSTMORTEM – AUTOPSY AND OTHER PROCEDURES**

- **An autopsy may be performed if the decedent has authorized an autopsy in writing (by will or otherwise) or if there is a written request from any of the following individuals:**
  - **(a) the surviving spouse;**
  - **(b) a surviving child or parent;**
  - **(c) a surviving brother or sister;**
  - **(d) any other kin or person who has acquired the right to control the disposition of the remains;**
  - **(e) a public administrator; or**
  - **(f) a coroner or any other duly authorized public officer.**

# **IMMEDIATE CONCERNS POSTMORTEM – AUTOPSY AND OTHER PROCEDURES**

- **The cost is borne by the person requesting the autopsy.**
- **Additionally, in limited circumstances, the authority to perform an autopsy can be derived from a coroner's inquest.**
- **For those who oppose autopsies on religious grounds, an adult may execute a "certificate of religious belief" stating that an autopsy would violate his or her religious beliefs.**
- **The decedent's wishes may only be set aside by court order or if the coroner reasonably suspects that the death was caused by criminal act or contagious disease constituting a public health concern.**



# IMMEDIATE CONCERNS POSTMORTEM – AUTOPSY AND OTHER PROCEDURES

- **Autopsies and Court Actions**
- **The statutes authorizing autopsies are strictly construed.**
- **Civil Actions**
  - **Litigants should be aware that no court-ordered autopsies are permitted for discovery purposes.**
  - **Autopsies will not be ordered by a civil court even where it may be relevant to the determination of a disputed issue of fact. For example, in a medical malpractice wrongful death action, the defendant could not assert a spoliation of evidence argument against the surviving spouse, the plaintiff, who had the exclusive right to control disposition of the decedent's remains and was not required to authorize an autopsy.**
- **Criminal Actions – On the other hand, in criminal actions, defendants may have an implied right to have a body independently examined**

# **IMMEDIATE CONCERNS POSTMORTEM – AUTOPSY AND OTHER PROCEDURES**

- **Embalming is a process in which blood is drained from the body and replaced with fluids that delay decomposition.**
- **The process is often unnecessary since adequate refrigeration accomplishes the same purpose.**
- **All bodies must be embalmed or refrigerated if final disposition will not occur in 24 hours. Embalming is required if the decedent is transported by common carrier.**

# **IMMEDIATE CONCERNS POSTMORTEM – DEATHS WHILE ABROAD**

- **In the unfortunate and rare event when a California resident dies while traveling abroad, counsel should contact the U.S. Department of State or the U.S. Consulate of the country in which the person died.**
- **Since the applicable laws and procedures vary from country to country, the State Department or Consulates can advise on the immediate steps that are necessary, such as transportation of the body, arranging for burial, and death certificates.**
- **Typically, where expenses are paid in advance, arrangements can be made for burial or other disposition in the country of death or shipment of the remains to the United States.**

# **IMMEDIATE CONCERNS POSTMORTEM – DEATHS WHILE ABROAD**

- **If a death certificate is required from a foreign country and will produced in a court here, the attorney should review the requirements to properly authenticate that certificate.**
- **In the recent case of *Estate of Herzog* the court excluded German birth certificates offered in evidence because those certificates were not self-authenticating and the public officer who signed the certificate was not identified in a separate attestation that complied with Hague Public Documents Convention. *Estate of Herzog* (2019) 33 Cal.App.5th 894.**

# IMMEDIATE CONCERNS POSTMORTEM – DEATH CERTIFICATES

- Following an individual's death, there are a myriad of tasks that require the use of a **"Certified Copy"** or **"Certified *Informational* Copy"** of a death certificate.
- For example, the estate may need to transfer bank and other financial accounts, access safety deposit boxes, file insurance claims, or record affidavits of death relating to real property.
- Any interested person may obtain a **"Certified *Informational* Copy."**
- Only an authorized person may obtain a **"Certified Copy."**
  - **Child/Sibling of Decedent; Grandparent/Grandchild of Decedent; Authorized by Court Order; Parent/Legal Guardian of Decedent; An Agent or Employee of a Funeral Establishment; Power of Attorney/Executor of Decedent's Estate; Spouse/Registered Domestic Partner of Decedent; Attorney Representing Decedent or Decedent's Estate; Law Enforcement; Gov. Agency; Surviving Next of Kin.**

# **IMMEDIATE CONCERNS POSTMORTEM – DEATH CERTIFICATES**

- **A death certificate must be filed with the local registrar within eight (8) days of the death and before the body is buried or cremated.**
- **One of the more convenient ways of obtaining copies of a death certificates is to ask the person or entity that files the certificate to order them for you.**
- **Typically, this will be the funeral home, mortuary, or crematory.**
- **To order copies of death certificates at a later point in time, individuals can visit the California Department of Public Health website and download a mail-in order form. Health & Saf. Code, section 102775.**

# **TRANSPORTATION, INTERMENT, AND DISPOSAL OF REMAINS**

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# TRANSPORTATION, INTERMENT, AND DISPOSAL OF REMAINS

- **When the certificate of death is properly executed and completed, the local registrar of births and deaths will issue a permit for disposition of remains that specifies any one of the following methods of disposition: Gov. Code, section 103055, subd. (a).**
  - **The name of the cemetery where the remains shall be interred;**
  - **Burial at sea as provided in Health and Safety Code section 7117;**
  - **The address or description of the place where remains shall be buried or scattered; or**
  - **The address of the location where the cremated remains will be kept.**



# TRANSPORTATION, INTERMENT, AND DISPOSAL OF REMAINS

- **Transportation and Shipment of Remains**
  - **If the decedent's body has not been cremated, embalming is required when the decedent is to be transported by common carrier.**
  - **Mortuaries and other funeral services will obtain the requisite permitting and facilitate transfer of a decedent's body.**
  - **Otherwise, in transporting and disposing of a decedent's body that has been cremated the attorney and responsible parties need to be mindful of several issues.**

# TRANSPORTATION, INTERMENT, AND DISPOSAL OF REMAINS

- **Transportation and Shipment of Remains**
- **Flying with Cremains**
  - **The Transportation Security Administration regulations allow parties to transport ashes on an airplane but each airline's policy differs.**
  - **The cremains will be screened by TSA Officers as part of their standard operating procedure, which includes examination through x-ray devices.**
  - **TSA agents are not authorized to open urns or other containers that cannot be scanned by the x-ray machines and may deny parties access past the security checkpoint.**
  - **The TSA's recommendation: "To facilitate screening, we suggest that you purchase a temporary or permanent crematory container made of a scannable material. If the container is made of a material that generates an opaque image, the Transportation Security Office will not be able to clearly determine what is inside the container and the container will not be permitted."**

# TRANSPORTATION, INTERMENT, AND DISPOSAL OF REMAINS

- **Transportation and Shipment of Remains**
- **Shipment of Cremains**
  - **The U.S. Postal Service provides the only legal method of shipping cremains domestically or internationally, provided they are packaged accordingly.**
  - **One must use registered mail with a return receipt or express mail.**
  - **The package must be marked on the outside with the Postal Service Cremated Remains Label 139.**
  - **There must be two containers – an inner container and an outer container – and sufficient padding to prevent leakage. F**
  - **or international shipments, the cremains must not be prohibited by the destination country and the applicable customs declarations form must be completed. The Universal Postal Union requires cremated remains to be packaged and mailed in a funeral urn pursuant to the International Mail Manual.**

# TRANSPORTATION, INTERMENT, AND DISPOSAL OF REMAINS

- **Interment and Funeral Arrangements**
- **Although there is no property right in a dead body, there is an obligation of burial which rests upon the appropriate individual pursuant to Health and Safety Code section 7100.**
- **The individual has the right to control the disposition of the remains of a decedent, the location and conditions of interment, and arrangements for funeral goods and services to be provided. The right to dispose of a decedent's remains under Section 7100 includes the right to private funeral and burial services.**
- **Courts will enforce this exclusive right to disposition and protect the dead body from mutilation or desecration.**
- **As one court summarized: "The one in whom the right to control vests by statute has the right and the power to dispose of the remains without services, with public services or with services attended by invited guests only. Friends or family members who are uninvited have no right to be present." (Health & Saf. Code, section 7100, subd. (a); See *Enos v. Snyder* (1900) 131 Cal. 68, 72; *Cohen v. Groman Mortuary* (1964) 231 Cal.App.2d 1, 4; *Ross v. Forest Lawn Memorial Park* (1984) 153 Cal.App.3d 988, 995 [confirming right to exclude punk rockers from funeral and burial services].)**

# TRANSPORTATION, INTERMENT, AND DISPOSAL OF REMAINS

- **Disposition of Cremains**

- **In California, you may choose any of the following methods of disposition of cremated remains:**

- **Placement in a columbarium or mausoleum;**
- **Burial in a plot in a cemetery;**
- **Retention at a residence - the funeral establishment or crematory will have the person receiving the cremains sign a Permit for Disposition showing that the remains were released to that person and will file it with the local registrar of births and deaths. The recipient may not remove the cremated remains from the container and must arrange for their disposition upon that person's death;**
- **Storing in a house of worship or religious shrine if local zoning laws allow;**
- **Scattering in areas of the State where no local prohibition exists and with written permission of the property owner or governing agency - the cremated remains must be removed from the container and scattered in a manner so they are not distinguishable to the public;**
- **Scattering in a cemetery scattering garden; and**
- **Scattering at sea at least 500 yards from shore, including inland navigable waters but excluding lakes and streams.**

# TRANSPORTATION, INTERMENT, AND DISPOSAL OF REMAINS

- **Disposition of Cremains**
- **Cremated remains may not be transported without a permit from the county health department, and they may not be disposed of in refuse.**
- **Cremated remains may be disposed of or scattered pursuant to Health and Safety Code Sections 7054.6, 7116, 7117, and 103060.**
- **GENERALLY: Cremains may be scattered in any area where no local rule prohibits it, provided that the cremains are not distinguishable to the public, are not in a container, and the person in control of disposition has obtained written permission from the private property owner or governing state or local agency to scatter the cremains on the property.**
- **PERMITS: A permit for disposition must be obtained from the local registrar by the person having the right to control disposition of the cremains. Within ten (10) calendar days of scattering, the permit must be signed, endorsed with the final disposition date, and returned to the local registrar. The remains must be disposed of within sixty (60) days. (Health & Saf. Code, section 7116; Health & Saf. Code, section 103060.)**

# TRANSPORTATION, INTERMENT, AND DISPOSAL OF REMAINS

- **Disposition of Cremains at sea**
- **The term “at sea” is defined as the “inland navigable waters of this state, exclusive of lakes and streams, provided that no such scattering may take place within 500 yards of the shoreline.”**
- **WRITTEN CONSENT REQUIRED: Those wishing to dispose of cremains in lakes, streams, bridges, piers, or other similar locations must obtain the written consent of the property owner or governing agency.**
- **For disposal of cremains in state-regulated waters (inland waters, rivers, lakes, bays, etc.), any person in control of disposition is required to file a verified statement with the local registrar of deaths in the county nearest the point where the remains are scattered. That verified statement must contain the name of the deceased person, the time and place of death, the place at which the cremated remains were scattered, and any other information required from the local registrar. (Health & Saf. Code, section 7117, subd. (c).)**

# TRANSPORTATION, INTERMENT, AND DISPOSAL OF REMAINS

- **Disposition of Cremains at sea**
- **For disposal and burial of human remains in federally regulated ocean waters, the Environmental Protection Agency ("EPA") has additional requirements and restrictions.**
- **PERMIT REQUIRED: A Marine Protection, Research and Sanctuaries Act Permit ("MPRSA") permit must be obtained prior to disposal, and parties must notify the EPA of the burial within thirty (30) days. The permit may authorize disposal of both non-cremated and cremated remains at sea.**
- **LOCATION AND MANNER OF DISPOSITION: The placement of human remains in ocean waters within three nautical miles from the shore is not permitted. Non-cremated human remains may be disposed at sea, however, adequate measures must be taken to ensure that the remains sink to the bottom of the ocean rapidly and permanently and certain depth requirements may apply depending on the jurisdiction. Cremated remains can be disposed of at any depth provided that the disposal occurs at least three nautical miles from shore.**



# **TRANSPORTATION, INTERMENT, AND DISPOSAL OF REMAINS**

- **Water Cremation**
- **Starting last year, it became lawful to dispose of human remains through a process commonly referred to as water cremation, also known as alkaline hydrolysis, aquamation, or bio-cremation.**
- **The body is put in steel containers and dissolved in an alkaline solution for about four hours. Afterwards, all that is left are the bones which are then crushed into ashes.**
- **California joins over a dozen other states where liquid cremation is already legal including Oregon, Minnesota, Maryland, Maine, Kansas, Illinois, Florida, Colorado, Georgia, Wyoming, Idaho, Nevada, and Utah.**

# **TRANSPORTATION, INTERMENT, AND DISPOSAL OF REMAINS**

- **Criminal Consequences for Unlawful Disposition of Human Remains**
  - **Removal of Dead Bodies**
  - **Unlawful Disposal of Cremains**
  - **Unauthorized Removal of Personal Property**
  - **Mutilation of Dead Bodies**

# **DISINTERMENT AND REMOVAL**

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# DISINTERMENT AND REMOVAL

- **Under California law there is a well-established presumption against removing the remains of a deceased person, i.e. against disturbing “the repose of the dead.”**
- **No remains of any deceased person may be removed from any cemetery except upon court order or the written order of the health department with competent jurisdiction. Health & Saf. Code, section 7500.**
- **The remains may be removed from a cemetery plot only with the consent of the cemetery authority and the written consent of the following individuals, in the order of priority named: (a) the surviving spouse, (b) the surviving children, (c) the surviving parents, and (d) the surviving siblings. If the required consent cannot be obtained, parties should seek the permission of the superior court of the county where the cemetery is situated. (Health & Saf. Code, section 7525; Health & Saf. Code, section 7526.)**
- **Where litigation over disinterment ensues, each case involving disinterment must be considered in equity on its own merits based on the particular circumstances involved. *In re Keck* (1946) 75 Cal. App. 2d 846.**

## CONCLUDING REMARKS

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**THANK YOU**

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