

Funeral Arrangements

- In South Dakota there is a statutory duty to comply with the written wishes of the deceased. You may wish to name an agent for body disposition if you want someone other than your next-of-kin to be in charge.
- It is legal for a family or designated agent to handle everything without a funeral director. To find a home funeral guide, check: <http://homefuneraldirectory.com/>
- If you will be using a funeral home, prices must be given over the telephone. You must be given a General Price List (GPL) if you visit in person and *before* discussing any services.
- You must be shown a Casket and Outer Burial Container Price List before selecting either.
- You must be given a Statement of Funeral Goods and Services Selected with the total cost before any services are provided.
- The Funeral Consumers Alliance in Rapid City has done a price survey: <http://www.funerals-sd.org/>
- **Do not sign any contract for more than you can afford to pay.** If the deceased was indigent, there may be county funds to help with funeral expenses. There is no other organization that assists with costs.

Autopsy

- If the death was unexpected or the cause of death uncertain, the state will probably require an autopsy.
- If you have questions about the death, you may request and pay for a private autopsy.
- If a viewing is planned, there will likely be extra charges to repair the body for embalming.
- Be sure to pick the funeral home of your choice without pressure to use the coroner's facility.

Organ, Body, and Tissue Donation

- If death occurs in the hospital, you are likely to be asked about organ donation. Only about 1% of the deaths are eligible for major organ donation. The organ procurement organization (OPO) will pay for any extra body preparation needed if you plan a viewing. Decline any such charge you might find on the GPL.

- After-death donation of eyes, skin, and long bones may be considered. Ask the hospital social worker or the funeral director about this.
- Whole body donation to a medical school is one way to lower costs although the family must pay for transportation and arterial embalming. After study, the school will cremate the body and return the cremated remains to the family if requested. You should have back-up funeral plans if your body cannot be accepted for any reason.
- There are also non-academic companies that accept whole bodies for research and education. Various body parts will likely be shipped around the country and possibly internationally. The state has no laws regulating these companies. Note that this is an entirely different category of body donation from the traditional cadaver donation to a medical school.
- To find the nearest body donation option, the cost if any, and the reasons for body rejection check: www.finalrights.org

Embalming and Other Requirements

- Regulations, not statutes, require embalming or refrigeration after 24 hours. This would not apply to home funeral folks, only licensees.
- Airlines prefer that a body be embalmed, but an airtight container may make that optional.
- Many funeral homes have a policy that requires embalming for a public viewing. Embalming does not protect the public health. It merely delays decomposition.

Caskets and Vaults

- Neither is required by state law for burial. A rigid combustible container is required for cremation.
- A casket will not prevent natural decomposition.
- You may build your own or purchase from a casket retailer. Vault dealers rarely sell to the public.
- The purpose of a vault is to keep the ground from caving in. It facilitates maintenance for the cemetery. It has no preservative qualities regardless of how much you spend.

Burial

- If you are planning home burial, a map must be recorded with the deed. A good practice is 150 feet from a water supply and 25 feet from a power line with two or three feet of earth on top.
- If you purchase a lot in a commercial, town, or religious cemetery, you will have the opening and closing costs in addition to the cost of the plot.
- Some cemeteries have restrictions on the kind of monuments or plantings and adornment allowed.
- The Health Department will issue a disinterment permit to a funeral director or upon court order.

The state Board of Funeral Service has seven members, two of whom are consumer representatives. The Secretary of Health also serves on the board for a total of eight. This board also regulates crematories. Some coroners are funeral directors with a potential conflict of interest.

Cremation

- There is a 24-hour wait prior to cremation unless death was from an infectious disease.
- A pacemaker must be removed.
- You may authorize your own cremation ahead of time.
- Some crematories will let the family witness the cremation.
- The cremation process takes about two-and-a-half hours for an average adult. The staff will remove any metal and pulverize the bone fragments to small particles, similar to white or gray coarse sand, about 5-10 pounds.
- The authorizing agent must indicate the planned disposition for the cremated remains. If not in a cemetery or public waterway, they may be buried or scattered on private land with the landowner's permission. The written permission must include a "legal description of the property." A deed? If scattering is planned, the

crematory may not release the cremated remains for 30 days and until proof that the plan has been filed with the local registrar. It will be easier if you just say you're taking them home. If scattering on public land or water, don't ask, don't tell. Park service people are concerned that some may want to create a little shrine at the site and would prefer not to know your plans. Be discreet. The Environmental Protection Agency (EPA) says they must be scattered three miles out to sea. That's because the federal agency has no jurisdiction over the first three miles; the bordering state does. Most other states have no restrictions on the disposition of cremated remains at all, and there are no "cremains police" or statutory penalties even in this state.

- If flying with cremated remains, be sure they are in a non-metal container to pass through the scanner.
- Cremated remains may be sent only by U.S. Postal Service. Use Priority Mail Express with delivery confirmation. FedEx and UPS will not knowingly accept cremated remains.
- All cremations must occur in a licensed crematory. If dealing with the public, a funeral director must be involved.

Veterans and Their Dependents

- You will need a copy of the DD214 discharge papers for gaining benefits.
- The VA cemetery in Hot Springs and at Fort Meade are closed to new interments. The other one in Sturgis has space for both casketed and cremated remains. Interment and marker are free of charge for the veteran, spouse, and certain dependents.
- The U.S. Department of Veterans Affairs (VA) provides markers for veterans no matter where they are interred. Markers can be upright or flat, and they come in bronze, marble, and granite: (800) 697-6947.
- A free flag can be ordered through the U.S. Postal Service.

- A comprehensive list of veterans benefits can be found here:

<http://www.funerals.org/faq/60-veterans-funeral-and-burial-benefits>

Prepaying for a Funeral

- If the contract guarantees the price, the interest is supposed to cover funeral inflation. But many investments do not appreciate as fast as the prices climb. You have a right to insist on no extra charges if it is clearly identified in the contract as "price guaranteed." Any substitutions should be of equal *quality* to that described in the contract.
- Prices of third-party items such as the crematory fee or obituary usually cannot be guaranteed.
- Only 70% of cemetery goods and services go into trust, making a full refund impossible if you were to change plans.

- Setting aside assets for Medicaid eligibility is the one time it makes sense to prepay for a funeral. There is a \$10,000 limit on what you can have in an irrevocable preneed account. Be sure to ask if you will be getting an annual report of your prepaid funds and let those who will be handling your affairs know that you have prepaid and where.

Social Security Death Benefit

- There is a \$255 death benefit for a surviving spouse. There is no similar benefit when that spouse dies.
- Dependent children are entitled to survivor benefits when a parent dies.

Complaints

- Valid complaints include dishonesty, misrepresentation, unprofessional conduct, negligence, breach of contract, violation of state or federal laws. For how to file a complaint, see: www.funerals.org/your-legal-rights/complaint
- The Board of Funeral Service: <http://doh.sd.gov/boards/funeralboard/>

Much of the information for this brochure was taken from *Final Rights: Reclaiming the American Way of Death* (Upper Access, 2011) www.finalrights.org

Additional information may be found at www.funerals.org

Your Funeral Consumer Rights in South Dakota

Prepaying the Funeral Home

Pros

Cons

Pay on Death Savings Account or Bank CD

- ❖ You have total control of the funds.
- ❖ Can easily change plans or use for emergencies.
- ❖ Can make time payments easily.

- ❖ Asset for Medicaid purposes.
- ❖ You must declare interest on tax return.
- ❖ Penalty to cash CD prior to death.

Qualified Funeral Trust

- ❖ If irrevocable, it won't be an asset for Medicaid.
- ❖ The trust pays taxes on the interest.

- ❖ The funeral home may keep 15% of a guaranteed-price contract if you move or cancel.
- ❖ There is no guarantee fund to protect against embezzlement.
- ❖ Taxes may be paid on interest that wouldn't be taxed if low income.

Master or Simple Trust

- ❖ If irrevocable, it won't be an asset for Medicaid.
- ❖ You are supposed to receive an annual report of the interest earned which will serve as reassurance your funeral funds are safe.

- ❖ The funeral home may keep 15% of a guaranteed-price contract if you move or cancel.
- ❖ You will have to declare the interest on your tax return.
- ❖ Can be converted to insurance without your permission. (See below.)
- ❖ No guarantee fund to protect against embezzlement.

Funeral or Life Insurance

- ❖ Easily portable.
- ❖ If the funeral home is the beneficiary, it won't be considered an asset for Medicaid eligibility.
- ❖ The insurance company pays the taxes.

- ❖ If you need to cancel, you may not get back more than half you paid.
- ❖ If paying over time, you may pay twice the face value.
- ❖ There may be a 30-day delay in receiving funds for which the funeral home may charge an extra fee.

Funeral Ethics Organization
87 Upper Access Rd.
Hinesburg, VT 05461
<http://www.funeraethics.org>