

Ensuring the Handling of Veterans' Cremated Remains is Lawful

I am a longtime advocate of handling unclaimed cremated remains in a consistent and unrecoverable manner in states that permit such treatment. I suggest that my clients require that the authorizing agent expressly acknowledge, on the cremation authorization documentation, that unclaimed cremated remains will be scattered as allowed by the law of the state in which the cremation occurred. Scattered cremated remains, of course, cannot be recovered and thus, no person can make a subsequent claim of failure to preserve or deliver cremated remains that have not been retrieved.

However, an exception to my advice on consistency is with regard to the cremated remains of veterans. Many experienced sellers of cremation services and operators of crematories do not realize the jeopardy they place themselves in when they handle the cremated remains of veterans in the same way as the cremated remains of non-veterans. Many state laws require that funeral establishments and crematories dispose of unclaimed cremated remains of veterans in an entirely different way than for those of non-veterans.

For example, consider the Florida law on this topic. The Florida Statutes permit a licensee that has provided cremation services to dispose of cremated remains that are unclaimed after a period of 120 days from the time of the cremation. Such disposal includes scattering the cremated remains at sea or placing them in a licensed cemetery scattering garden, pond or church columbarium. However, the law goes on to give special directions if the cremated remains are those of an eligible veteran or the spouse or dependent child of an eligible veteran. If the decedent is such a person, the licensee **shall arrange** for the interment of the cremated remains in a national cemetery. Note the use of the words "shall arrange" in the forgoing sentence. I strongly suspect that most Florida licensees fail to inquire when obtaining authorization to cremate remains as to whether the decedent was a veteran, spouse of a veteran or child of a veteran – highlighting the reason for this article.

Interestingly, Florida law does not place the burden of measuring the validity of a representation that a decedent is one of the persons covered by the relevant law. Rather, the law expressly authorizes the licensee to rely upon the information provided by the person making arrangements regarding the "veteran" status of the decedent.

Florida is not the only state to mandate special handling of the cremated remains of veterans. On the opposite coast California requires that licensees in possession of unclaimed cremated remains of a veteran or a veteran's dependent make inquiry to confirm the military status of the decedent and upon confirmation, and request from the appropriate organization, release the cremated remains for purposes of interment. Between the east and west many other states impose requirements similar to Florida's and California's upon licensees.

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