

State:	West Virginia
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Inquiry 1: How long can I keep the body at home after death and under what conditions?

There are no statutes or regulations that address this question.

Inquiry 2: Does my state require the body to be embalmed? Refrigerated?

WV ADC s 6-1-6.

6.1. Authority to assume control.

A licensee, licensee's agent, assistants or employees shall not assume control of any dead body without first gaining permission from the next of kin or their representatives, or a medical examiner, health officer or other public official legally authorized to give the permission to release the body.

6.2. Responsibility to honor instructions.

6.2.1 A licensee or licensee's agents, assistants or employees who have assumed control of a dead body shall honor all instructions from persons who have given the control, as to matters relating to the handling of the body, including all steps in preparation; autopsy; embalming; viewing; photographing; clothing; casket; box or vault; cremation; time, location and type of ceremonies; and burial or other customary disposal, insofar as considerations of public health, legal requirements and customary respectful handling of the dead body may permit.

6.2.2. A licensee may establish a general policy which requires embalming for public viewings of dead human bodies as a matter of public health. A licensee may conduct a public viewing of an unembalmed body, provided that he or she shall provide a disclosure of the risks to every person viewing the body, pursuant to subsection 6.3 of this rule.

6.3. Authority to embalm.

A licensee or licensee's agents, assistants or employees shall not authorize the embalming of, or embalm any body without first gaining permission from the person or persons authorized to give permission, or in the event services are being rendered by virtue of reference from another funeral establishment, from a representative of the funeral establishment, provided that the other funeral establishment provides proof of authorization from the person or persons authorized to give permission.

6.4. Exception.

6.4.1. If a question exists to whether the condition of a body may pose a hazard to public health which would be eliminated by embalming, the embalmer shall get a written certification of the condition along with a request that the body be embalmed from a public health officer prior to embalming.

6.4.2. If the funeral establishment is unable to contact the next of kin or other authorized representative of the decedent, the funeral establishment shall follow procedures outlined in subsection 25.1 of this rule relating to storage and disposal of unclaimed human remains.

6.5. Responsibility for fees.

A person or persons authorized to give permission to embalm a body pursuant to subsections 6.3 and 6.4 of this rule, shall not be responsible for the payment of any fee in connection with an unauthorized embalming.

Inquiry 3: What methods of disposition are legal in my state?

West Virginia law mentions burial, cremation, entombment, alkaline hydrolysis, donation to medical science, and removal from the state.

Inquiry 4: Are there any circumstances under which I would be required to wait before final disposition?

There are no statutes or regulations that address this question.

Inquiry 5: What do I need to do to get a death certificate?

W. Va. Code Ann. § 16-5-19

(a) A certificate of death for each death which occurs in this state shall be filed with the section of vital statistics, or as otherwise directed by the State Registrar, within five days after death, and prior to final disposition, and shall be registered if it has been completed and filed in accordance with this section.

(1) If the place of death is unknown, but the dead body is found in this state, the place where the body was found shall be shown as the place of death.

(2) If the date of death is unknown, it shall be approximated. If the date cannot be approximated, the date found shall be shown as the date of death.

(3) If death occurs in a moving conveyance in the United States and the body is first removed from the conveyance in this state, the death shall be registered in this state and the place where it is first removed shall be considered the place of death.

(4) If death occurs in a moving conveyance while in international waters or air space or in a foreign country or its air space and the body is first removed from the conveyance in this state, the death shall be registered in this state but the certificate shall show the actual place of death insofar as can be determined.

(5) In all other cases, the place where death is pronounced shall be considered the place where death occurred.

(b) **The funeral director or other person who assumes custody of the dead body** shall:

(1) Obtain the personal data from the next of kin or the best qualified person or source available including the deceased person's social security number or numbers, which shall be placed in the records relating to the death and recorded on the certificate of death;

(2) Within forty-eight hours after death, provide the certificate of death containing sufficient information to identify the decedent to the physician nurse responsible for completing the medical certification as provided in subsection (c) of this section; and

(3) Upon receipt of the medical certification, file the certificate of death: *Provided,* That for implementation of electronic filing of death certificates, the person who certifies to cause of death will be responsible for filing the electronic certification of cause of death as directed by the State Registrar and in accordance with legislative rule.

(c) The medical certification shall be completed and signed within twenty-four hours after receipt of the certificate of death by the physician, physician assistant or advanced practice registered nurse in charge of the patient's care for the

illness or condition which resulted in death except when inquiry is required pursuant to chapter sixty-one, article twelve or other applicable provisions of this code.

(1) In the absence of the physician, physician assistant or advanced practice registered nurse or with his or her approval, the certificate may be completed by his or her associate physician, any physician who has been placed in a position of responsibility for any medical coverage of the decedent, the chief medical officer of the institution in which death occurred, or the physician who performed an autopsy upon the decedent, provided inquiry is not required pursuant to chapter sixty-one, article twelve of this code.

(2) The person completing the cause of death shall attest to its accuracy either by signature or by an approved electronic process.

(d) When inquiry is required pursuant to article twelve, chapter sixty-one or other applicable provisions of this code, the state Medical Examiner or designee or county medical examiner or county coroner in the jurisdiction where the death occurred or where the body was found shall determine the cause of death and shall complete the medical certification within forty-eight hours after taking charge of the case.

(1) If the cause of death cannot be determined within forty-eight hours after taking charge of the case, the medical examiner shall complete the medical certification with a "Pending" cause of death to be amended upon completion of medical investigation.

(2) After investigation of a report of death for which inquiry is required, if the state Medical Examiner or designee or county medical examiner or county coroner decline jurisdiction, the state Medical Examiner or designee or county medical examiner or county coroner may direct the decedent's family physician or the physician who pronounces death to complete the certification of death: *Provided*, That the physician is not civilly liable for inaccuracy or other incorrect statement of death unless the physician willfully and knowingly provides information he or she knows to be false.

(e) When death occurs in an institution and the person responsible for the completion of the medical certification is not available to pronounce death, another physician may pronounce death. If there is no physician available to pronounce death, then a designated licensed health professional who views the body may pronounce death, attest to the pronouncement by signature or an approved electronic process and, with the permission of the person responsible for the medical certification, release the body to the funeral director or other person for final disposition: *Provided*, That if the death occurs in an institution during court-ordered hospitalization, in a correctional facility or under custody of law-enforcement authorities, the death shall be reported directly to a medical examiner or coroner for investigation, pronouncement and certification.

(f) If the cause of death cannot be determined within the time prescribed, the medical certification shall be completed as provided by legislative rule. The attending physician or medical examiner, upon request, shall give the funeral director or other person assuming custody of the body notice of the reason for the delay, and final disposition of the body may not be made until authorized by the attending physician, medical examiner or other persons authorized by this article to certify the cause of death.

(g) Upon receipt of autopsy results, additional scientific study, or where further inquiry or investigation provides additional information that would change the information on the certificate of death from that originally reported, the certifier or any State Medical Examiner who provides such inquiry under authority of article twelve, chapter sixty-one of this code shall immediately file a supplemental report of cause of death or other information with the section of vital statistics to amend the record, but only for purposes of accuracy.

(h) When death is presumed to have occurred within this state but the body cannot be located, a certificate of death may be prepared by the state Registrar only upon receipt of an order of a court of competent jurisdiction which shall include the finding of facts required to complete the certificate of death. The certificate of death will be marked "Presumptive" and will show on its face the date of death as determined by the court and the date of registration, and shall identify the court and the date of the order.

(i) The local registrar shall transmit each month to the county clerk of his or her county a copy of the certificates of all deaths occurring in the county, and if any person dies in a county other than the county within the state in which the person last resided prior to death, then the state Registrar shall furnish a copy of the death certificate to the clerk of the county commission of the county where the person last resided, from which copies the clerk shall compile a register of deaths, in a form prescribed by the state Registrar. The register shall be a public record.

Inquiry 6: What do I need to do to get a burial-transit permit? Is there a wait period before I can receive a burial-transit permit?

W. Va. Code Ann. § 16-5-23

(a) **The funeral director or other person who assumes custody of a dead body** shall obtain authorization prior to final disposition of the body.

(1) The physician or State Medical Examiner, county medical examiner or designee shall authorize final disposition of the body on a form or in a format prescribed by the State Registrar.

(2) If the body is to be cremated, authorization for cremation must be obtained from the State Medical Examiner, county medical examiner or county coroner on a form or in a format prescribed by the State Medical Examiner's office.

(b) Prior to final disposition of a fetus, irrespective of the duration of pregnancy, the funeral director, the person in charge of the institution, or other person assuming responsibility for final disposition of the fetus shall obtain from a parent authorization for final disposition on a form or in a format prescribed by the State Registrar.

(c) With the consent of the physician or State Medical Examiner or county medical examiner or designee who is to certify the cause of death, a dead body may be moved from the place of death for the purpose of being prepared for final disposition.

(d) An authorization for disposition issued under the law of another state which accompanies a dead body or fetus brought into this state shall be authority for final disposition of the body or fetus in this state.

(e) No sexton or other person in charge of any place in which interment or other disposition of dead bodies is made may inter or allow interment or other disposition of a dead body or fetus unless it is accompanied by authorization for final disposition.

(f) Each person in charge of any place for final disposition shall return all authorizations to the funeral director or person acting as such within ten days after the date of disposition and shall indicate the date of disposition on the authorization.

(g) Each person in charge of any place for final disposition shall keep a record of all bodies interred or otherwise disposed of on the premises under his or her charge. The record must contain the name of the deceased person, place

of death, date of burial or disposal, name and address of the funeral director or person acting for him or her, and other information as may be required by legislative rule. The record shall at all times be open to official inspection.

(h) When there is no person in charge of the place for final disposition, the funeral director or person acting as such shall complete the authorization and write across the face of the authorization "No person in charge."

(i) Not later than the tenth day of each month, the funeral director or person acting as such shall transmit to the State Registrar, in the state where the death occurred, all authorizations received during the month.

(j) Authorization for disinterment and reinterment is required prior to disinterment of a dead body or fetus, except as authorized by legislative rule or otherwise provided by law or by order of a court of competent jurisdiction. The authorization must be issued by the local registrar to a licensed funeral director, embalmer, or other persons acting on their behalf, upon proper application.

Inquiry 7: Personal Preference Statute

W. Va. Code Ann. § 30-6-22

(a) No public officer, employee, physician or surgeon, or other person having a professional relationship with the deceased, shall send, or cause to be sent to an embalmer, funeral director or crematory operator the body of a deceased without first inquiring the desires of the deceased who has designated his or her wishes regarding the disposal of their remains through a last will and testament, an advance directive or preneed funeral contract, as defined in section two, article fourteen, chapter forty-five of this code; the surviving spouse of the deceased, unless a petition to dissolve the marriage was pending at the time of decedent's death; and, an individual previously designated by the deceased as the person with the right to control disposition of the deceased's remains in a writing signed and notarized by the deceased: *Provided*, That no person may be designated to serve in such capacity for more than one nonrelative at any one time. If there is no last will and testament, advance directive or preneed funeral contract, surviving spouse, or designated person, then the authority and direction of any next of kin or person who may be chargeable with the funeral expenses of the deceased shall be used as to the disposal of the body of the deceased.

W. Va. Code Ann. § 30-6-22a

(a) Notwithstanding section 22 of this article, a person who is 18 years of age or older and of sound mind, by entering into a preneed funeral contract, as defined in § 47-14-2 of this code, may direct the location, manner and conditions of the disposition of the person's remains and the arrangements for funeral goods and services to be provided upon the person's death. The disposition directions and funeral prearrangements that are contained in a preneed funeral contract are not subject to cancellation or revision unless any resources set aside to fund

the preneed funeral contract are insufficient under the terms of the preneed funeral contract to carry out the disposition directions and funeral prearrangements contained in the contract.

Inquiry 8: Designated Agent Statute

W. Va. Code Ann. § 30-6-22

(a) No public officer, employee, physician or surgeon, or other person having a professional relationship with the deceased, shall send, or cause to be sent to an embalmer, funeral director or crematory operator the body of a deceased without first inquiring the desires of the deceased who has designated his or her wishes regarding the disposal of their remains through a last will and testament, an advance directive or preneed funeral contract, as defined in section two, article fourteen, chapter forty-five of this code; the surviving spouse of the deceased, unless a petition to dissolve the marriage was pending at the time of decedent's death; and, an individual previously designated by the deceased as the person with the right to control disposition of the deceased's remains in a writing signed and notarized by the deceased:

Provided, That no person may be designated to serve in such capacity for more than one nonrelative at any one time. If there is no last will and testament, advance directive or preneed funeral contract, surviving spouse, or designated person, then the authority and direction of any next of kin or person who may be chargeable with the funeral expenses of the deceased shall be used as to the disposal of the body of the deceased.

W. Va. Code Ann. § 30-6-22a

(b) As to any matter not addressed in a preneed funeral contract as described in subsection (a) of this section and except as provided in subsection (c) of this section, the right to control the disposition of the remains of a deceased person, the location, manner and conditions of disposition, and arrangements for funeral goods and services to be provided vests in the following, in the order named, provided that the person is 18 years or older and is of sound mind:

(1)(A) A person designated by the decedent as the person with the right to control the disposition in an affidavit executed in accordance with paragraph (B) of this subdivision; and

(B) A person who is 18 years of age or older and of sound mind wishing to authorize another person to control the disposition of his or her remains may execute an affidavit before a notary public in substantially the following form:

"I, _____, do hereby designate

_____ with the right to control the disposition of my

remains upon my death. I _____ have/ _____ have not attached specific directions concerning the

disposition of my remains with which the designee shall substantially comply, provided that these directions are lawful and there are sufficient resources in my estate to carry out the directions.

Signed

State of _____

County of _____

I, _____, a Notary Public of said County, do certify that

_____ as principal whose name is signed to the writing above bearing date on the _____ day of _____, 20_____, has this day acknowledged the same before me.

Given under my hand this _____ day of _____, 20_____.

My commission expires: _____

Notary Public”;

Inquiry 9: Right of Sepulcher Statute

W. Va. Code Ann. § 30-6-22a

(b) As to any matter not addressed in a preneed funeral contract as described in subsection (a) of this section and except as provided in subsection (c) of this section, the right to control the disposition of the remains of a deceased person, the location, manner and conditions of disposition, and arrangements for funeral goods and services to be provided vests in the following, in the order named, provided that the person is 18 years or older and is of sound mind:

(1)(A) A person designated by the decedent as the person with the right to control the disposition in an affidavit executed in accordance with paragraph (B) of this subdivision; and

(B) A person who is 18 years of age or older and of sound mind wishing to authorize another person to control the disposition of his or her remains may execute an affidavit before a notary public in substantially the following form:

“I, _____, do hereby designate

_____ with the right to control the disposition of my

remains upon my death. I _____ have/ _____ have not attached specific directions concerning the disposition of my remains with which the designee shall substantially comply, provided that these directions are lawful and there are sufficient resources in my estate to carry out the directions.

Signed

State of _____

County of _____

I, _____, a Notary Public of said County, do

certify that

as principal whose name is signed to the writing above bearing date on the _____ day of

_____, 20_____, has this day acknowledged the same before me.

Given under my hand this _____ day of _____, 20_____.

My commission expires: _____

Notary Public”;

(2) The surviving spouse of the decedent;

(3) The sole surviving child of the decedent or, if there is more than one child of the decedent, the majority of the surviving children. However, less than one half of the surviving children shall be vested with the rights under this section if they have used reasonable efforts to notify all other surviving children of their instructions and are not aware of any opposition to those instructions on the part of more than one half of all surviving children;

(4) The surviving parent or parents of the decedent. If one of the surviving parents is absent, the remaining parent shall be vested with the rights and duties under this section after reasonable efforts have been unsuccessful in locating the absent surviving parent;

(5) The surviving brother or sister of the decedent or, if there is more than one sibling of the decedent, the majority of the surviving siblings. However, less than the majority of surviving siblings shall be vested with the rights and duties under this section if they have used reasonable efforts to notify all other surviving siblings of their instructions and are not aware of any opposition to those instructions on the part of more than one half of all surviving siblings;

(6) The surviving grandparent of the decedent or, if there is more than one surviving grandparent, the majority of the grandparents. However, less than the majority of the surviving grandparents shall be vested with the rights and duties under this section if they have used reasonable efforts to notify all other surviving grandparents of their instructions and are not aware of any opposition to those instructions on the part of more than one half of all surviving grandparents;

(7) Adult grandchildren.

(8) The guardian of the person of the decedent at the time of the decedent's death if one had been appointed;

(9) The personal representative of the estate of the decedent;

(10) The person in the classes of the next degree of kinship, in descending order, under the laws of descent and distribution to inherit the estate of the decedent. If there is more than one person of the same degree, any person of that degree may exercise the right of disposition;

(11) If the disposition of the remains of the decedent is the responsibility of the state or a political subdivision of the state, the public officer, administrator or employee responsible for arranging the final disposition of decedent's remains; or

(12) In the absence of any person under subdivisions (1) through (11) of this subsection, any other person willing to assume the responsibilities to act and arrange the final disposition of the decedent's remains, including the funeral director with custody of the body, after attesting in writing that a good-faith effort has been made to no avail to contact the individuals under subdivisions (1) through (11) of this subsection.