

State:	Texas
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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?**

22 Tex. Admin. Code § 203.32

(d) Nothing in this section shall be interpreted to require embalming if a family member or the person responsible for making arrangements for final disposition does not authorize embalming.

22 Tex. Admin. Code § 203.33

(a) If permission to embalm is oral, the funeral establishment must maintain for two years written documentation of the name of the person authorizing embalming, that person's relationship to the deceased, and the time permission was obtained.

(b) When oral or written permission to embalm cannot be obtained from the person authorized to make funeral arrangements, the funeral establishment must maintain for two years written documentation of the efforts taken as mandated by Occupations Code §651.457 to obtain permission to embalm.

(c) In cases where a Medical Examiner or Justice of the Peace has given permission to a funeral establishment to take custody of a body, the receiving funeral establishment may not embalm the body until the person responsible for making arrangements for final disposition has given permission. Nothing in this subsection shall be construed as allowing a funeral establishment to initiate contact with the person authorized to make funeral arrangements.

(d) Authorization to Embalm Form.

(1) If embalming is performed, the Commission promulgated Authorization to Embalm Form must be signed by a family member or the person responsible for making arrangements for final disposition when written authorization is secured.

(2) The Commission's Authorization to Embalm Form may not be altered and must be used in its adopted form. A copy of this form may be obtained from the Commission and may be reproduced by a licensed funeral establishment.

(e) If a mortuary student who is not a provisional licensee is to assist the licensed embalmer, the authorization pursuant to Occupations Code §651.407 must be in the possession of the funeral establishment and/or embalmer at the time of the embalming. A copy of the mortuary student authorization shall be retained according to Occupations Code §651.407.

(f) Nothing in this rule diminishes the requirement of the establishment to abide by the Federal Trade Commission funeral rule regarding embalming disclosures. In the event of a conflict between this rule and the Federal Trade Commission funeral rule, the Federal Trade Commission funeral rule prevails.

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

Texas law mentions burial, cremation, entombment, 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?**

Texas has an electronic death registration system.

Tex. Health & Safety Code Ann. § 193.002

The person in charge of interment or in charge of removal of a body from a registration district for disposition shall:

- (1) obtain and file the death certificate or fetal death certificate;
- (2) enter on the certificate the information relating to disposition of the body;
- (3) sign the certificate; and
- (4) file the certificate electronically as specified by the state registrar.

Texas Health & Safety Code § 193.003

(a) Not later than the 10th day after the date of a death that occurs in this state, a death certificate shall be filed with the local registrar of the registration district in which:

- (1) the death occurs; or
- (2) the body is found, if the place of death is not known.

(b) Subject to department rules, a certificate of a fetal death that occurs in this state shall be filed with the local registrar of the registration district in which:

- (1) the fetal death occurs; or
- (2) the body is found, if the place of fetal death is not known.

**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?**

Tex. Health & Safety Code Ann. § 193.008

(a) A burial-transit permit issued under the law and rules of a place outside of this state in which a death or fetal death occurred authorizes the transportation of the body in this state. A cemetery or crematory shall accept the permit as authorization for burial, cremation, or other disposal of the body in this state.

(b) The department shall prescribe the form and contents of the burial-transit permit.

**Inquiry 7: Personal Preference Statute**

Tex. Health & Safety Code Ann. § 711.002

(g) A person may provide written directions for the disposition, including cremation, of the person's remains in a will, a prepaid funeral contract, or a written instrument signed and acknowledged by such person. A party to the prepaid funeral contract or a written contract providing for all or some of a decedent's funeral arrangements who fails to honor the contract is liable for the additional expenses incurred in the disposition of the decedent's remains as a result of the breach of contract. The directions may govern the inscription to be placed on a grave marker attached to any plot in which the decedent had the right of sepulture at the time of death and in which plot the decedent is subsequently interred. The directions may be modified or revoked only by a subsequent writing signed and acknowledged by such person. The person otherwise entitled to control the disposition of a decedent's remains under this section shall faithfully carry out the directions of the decedent to the extent that the decedent's estate or the person controlling the disposition are financially able to do so.

(h) If the directions are in a will, they shall be carried out immediately without the necessity of probate. If the will is not probated or is declared invalid for testamentary purposes, the directions are valid to the extent to which they have been acted on in good faith.

**Inquiry 8: Designated Agent Statute**

Tex. Health & Safety Code Ann. § 711.002

(b) The written instrument referred to in Subsection (a)(1) may be in substantially the following form:

**APPOINTMENT FOR DISPOSITION OF REMAINS**

I,

(your name and address)

being of sound mind, willfully and voluntarily make known my desire that, upon my death, the disposition of my remains shall be controlled by \_\_\_\_\_

(name of agent)

in accordance with Sections 711.002 and 711.004, Health and Safety Code, and, with respect to that subject only, I hereby appoint such person as my agent (attorney-in-fact).

All decisions made by my agent with respect to the disposition of my remains, including cremation, shall be binding.

**SPECIAL DIRECTIONS:**

Set forth below are any special directions limiting the power granted to my agent:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

AGENT:

Name: \_\_\_\_\_

Address: \_\_\_\_\_

Telephone Number: \_\_\_\_\_

SUCCESSORS:

If my agent or a successor agent dies, becomes legally disabled, resigns, or refuses to act, or if my marriage to my agent or successor agent is dissolved by divorce, annulled, or declared void before my death and this instrument does not state that the agent or successor agent continues to serve after my marriage to that agent or successor agent is dissolved by divorce, annulled, or declared void, I hereby appoint the following persons (each to act alone and successively, in the order named) to serve as my agent (attorney-in-fact) to control the disposition of my remains as authorized by this document:

1. First Successor

Name: \_\_\_\_\_

Address: \_\_\_\_\_

Telephone Number: \_\_\_\_\_

2. Second Successor

Name: \_\_\_\_\_

Address: \_\_\_\_\_

Telephone Number: \_\_\_\_\_

DURATION:

This appointment becomes effective upon my death.

PRIOR APPOINTMENTS REVOKED:

I hereby revoke any prior appointment of any person to control the disposition of my remains.

RELIANCE:

I hereby agree that any cemetery organization, business operating a crematory or columbarium or both, funeral director or embalmer, or funeral establishment who receives a copy of this document may act under it. Any modification or revocation of this document is not effective as to any such party until that party receives actual

notice of the modification or revocation. No such party shall be liable because of reliance on a copy of this document.

**ASSUMPTION:**

THE AGENT, AND EACH SUCCESSOR AGENT, BY ACCEPTING THIS APPOINTMENT, ASSUMES THE OBLIGATIONS PROVIDED IN, AND IS BOUND BY THE PROVISIONS OF, SECTIONS 711.002 AND 711.004, HEALTH AND SAFETY CODE. SIGNATURES:

This written instrument and my appointments of an agent and any successor agent in this instrument are valid without the signature of my agent and any successor agents below. Each agent, or a successor agent, acting pursuant to this appointment must indicate acceptance of the appointment by signing below before acting as my agent.

Signed this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_.

\_\_\_\_\_  
(your signature)

State of \_\_\_\_\_

County of \_\_\_\_\_

This document was acknowledged before me on \_\_\_\_\_ (date) by \_\_\_\_\_ (name of principal).

\_\_\_\_\_  
(signature of notarial officer)

(Seal, if any, of notary)

\_\_\_\_\_  
(printed name)

My commission expires: \_\_\_\_\_

**ACCEPTANCE AND ASSUMPTION BY AGENT:**

I have no knowledge of or any reason to believe this Appointment for Disposition of Remains has been revoked. I hereby accept the appointment made in this instrument with the understanding that I will be individually liable for the reasonable cost of the decedent's interment, for which I may seek reimbursement from the decedent's estate.

Acceptance of Appointment:

\_\_\_\_\_  
(signature of agent)

Date of Signature: \_\_\_\_\_

Acceptance of Appointment:

\_\_\_\_\_  
(signature of first successor)

Date of Signature: \_\_\_\_\_

Acceptance of Appointment:

\_\_\_\_\_  
(signature of second successor)

Date of Signature: \_\_\_\_\_

(c) A written instrument is legally sufficient under Subsection (a)(1) if the instrument designates a person to control the disposition of the decedent's remains, the instrument is signed by the decedent, the signature of the decedent is acknowledged, and the agent or successor agent signs the instrument before acting as the decedent's agent. Unless the instrument provides otherwise, the designation of the decedent's spouse as an agent or successor agent in the instrument is revoked when the marriage of the decedent and the spouse appointed as an agent or successor agent is dissolved by divorce, annulled, or declared void before the decedent's death. Such written instrument may be modified or revoked only by a subsequent written instrument that complies with this subsection.

#### **Inquiry 9: Right of Sepulcher Statute**

Tex. Health & Safety Code Ann. § 711.002

(a) Except as provided by Subsection (l), unless a decedent has left directions in writing for the disposition of the decedent's remains as provided in Subsection (g), the following persons, in the priority listed, have the right to control the disposition, including cremation, of the decedent's remains, shall inter the remains, and in accordance with Subsection (a-3) are liable for the reasonable cost of interment:

- (1) the person designated in a written instrument signed by the decedent;
- (2) the decedent's surviving spouse;
- (3) any one of the decedent's surviving adult children;
- (4) either one of the decedent's surviving parents;
- (5) any one of the decedent's surviving adult siblings;
- (6) any one or more of the duly qualified executors or administrators of the decedent's estate; or
- (7) any adult person in the next degree of kinship in the order named by law to inherit the estate of the decedent.

(a-1) If the person with the right to control the disposition of the decedent's remains fails to make final arrangements or appoint another person to make final arrangements for the disposition before the earlier of the 6th day after the date the person received notice of the decedent's death or the 10th day after the date the decedent died, the person is presumed to be unable or unwilling to control the disposition, and:

- (1) the person's right to control the disposition is terminated; and
- (2) the right to control the disposition is passed to the following persons in the following priority:
  - (A) any other person in the same priority class under Subsection (a) as the person whose right was terminated; or
  - (B) a person in a different priority class, in the priority listed in Subsection (a).