

## In New York

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*Please refer to Chapter 8 as you use this section.*

Until there is a court challenge or other change in the laws, families and church groups in New York will be limited in caring for their own dead. Some statutes seem contradictory or defy logic; others are restrictive and intrusive.



*Article 41 Vital Statistics Sec. 4140. Deaths; registration 2. . . . the registrar of the district in which the death occurred shall then issue a burial or removal permit to the funeral director or undertaker.*

In addition, the Sanitary Code—“Practice of Funeral Directing” states:

*77.7 (b)(1) In no case shall a dead human body be released from any hospital, institution or other place where the death occurred or from the place where the body is held by legal authority to any person not a duly licensed and registered funeral director or undertaker.*

Later in the same code, however, is found:

*77.7(f) Nothing contained in this section shall be deemed to require that a mere transporter, to whom or to which a dead human body has been duly released for the sole purpose of transportation or transfer, shall be a duly licensed and registered funeral director or undertaker.*

So the State of New York has determined that there is no health problem with someone other than a funeral director transporting bodies. What, then, is the rationale that would require a licensee to pick up the accompanying paperwork and add his/her signature? The doctor fills out the medical portion; the family supplies the personal data. But the undertaker's signature will cost the family a nondeclinable fee of \$1,025—if New York prices match the national average at this writing. Just for a signature! Was the industry more than a little involved in the construction of these statutes?

But back to the statutes in 77.7 to see how the industry has literally promoted itself:

*(a)(2) A licensed funeral director or undertaker shall be present and personally supervise the conduct of each funeral service.*

*(a)(3) Nothing herein shall be construed as prohibiting religious supervision of the funeral service by a member or members of the clergy designated by the family of the deceased person.*

Apparently, New York funeral directors—with a mere two years of mortuary school (that most likely did not include any training on religious funeral rituals and services whatsoever)—have now become pseudo-clergy, usurping a role that traditionally was religious in nature.<sup>1</sup> That legitimate clergy would not be *prohibited* from supervising funerals smacks of poorly worded after-thought that—if penned by industry hands as I suspect—borders on arrogance. There will, of course, be an attending charge, regardless of whether the presence of a funeral director is wanted or needed.<sup>2</sup>

And an undertaker can keep the meter running with another bit of statutory help:

*77.7(a)(4) A licensed funeral director or undertaker shall be present and personally supervise the interment or cremation . . . .*

The undertaker isn't needed to transport the body, but the undertaker must be at a crematory when that method of disposition has been chosen? Rather strange. Crematory operation is *not* included in mortuary curricula; crematory operation is *not* mentioned on the national exam for funeral directors. What kind of supervision is the undertaker qualified to do at the crematory?

Oh, yes, if you are planning home burial as permitted in New York, you'll have to pay a funeral director to hang around under the apple tree.

A movement is afoot to get the limiting statutes changed—through legislation or court action. It shouldn't be hard. In a 1909 federal case, *Wyeth v. Cambridge Board of Health*, the court ruled:

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<sup>1</sup> E-mail received in the FAMSAs office: "I am a Catholic priest. About three years ago, while still a seminarian, I was doing a feature story on the most prominent mortician in the diocese, a Catholic active in just about everything. In the interview, I asked him if the curriculum at mortuary school included courses about religious practices. I was floored when he said 'No'."

<sup>2</sup> A Bruderhof Christian community in New York handles all aspects of the funeral for a member—the preparation and bathing of the body, as well as conducting the service and burial. "Oh, yes, the funeral director comes out and spends the day with us, has lunch with us, and sort of hangs around," one member told me.

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*. . . the refusal to permit one to bury the dead body of his relative or friend, except under an unreasonable limitation, is also an interference with a private right that is not allowable under the Constitution of the Commonwealth or the Constitution of the United States.*

The same ruling referred to an earlier case, *Lochner v. New York*, 198 U.S. 45, 57, in which the opinion said:

*. . . the mere assertion that the subject relates though but in a remote degree to the public health does not render the enactment valid. The act must have a more direct relation, as a means to an end, and the need itself must be appropriate and legitimate, before an act can be held to be valid which interferes with the general right of an individual to be free in his person. . . .*

### ❖ **Death Certificate**

The doctor last in attendance, county coroner, or medical examiner will supply and sign the death certificate, stating the cause of death. The remaining information must be supplied, typewritten or in black ink. The death certificate must be filed with the local registrar within 72 hours and before final disposition.

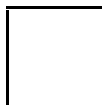
### ❖ **Fetal Death**

A fetal death report is required for each fetal death and must be filed as above. If there is no family physician involved, the local medical examiner must sign the fetal death certificate.

### ❖ **Transporting and Disposition Permit**

The local registrar will issue the burial and removal permit to a licensed funeral director only (until the statute has been challenged). This authorization must be obtained within 72 hours of death and prior to final disposition. Once this permit has been obtained, a family may handle the moving of a body, although you will need a mortician at the other end to oversee disposition if burial or cremation will occur in New York. Make sure that the undertaker you initially use will be willing to relinquish custody, however; more than one family has had difficulty when the undertaker did not understand the law. During transportation, the body must be obscured from public view.

### ❖ **Burial**



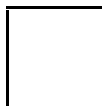
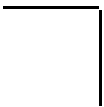
Any person may dedicate land to be used as a family cemetery provided that it is less than three acres and not closer than 100 rods (1,650 feet) to a dwelling. Such land must be registered with the county clerk. Check with the county or town for local zoning laws regarding home burial. There are no state burial statutes or regulations with regard to depth. A sensible guideline is 150 feet from a water supply and at least two feet of earth on top.

When a person is buried in a cemetery or other burial place where no person is in charge, the undertaker will sign the permit and write across the face of the permit, "No person in charge." The permit must be filed within three days with the registrar of the district in which burial took place.

Because towns are obliged by law to "provide for the removal of grass and weeds at least twice in each year" from cemeteries that are not being maintained, the town may want you to provide for some sort of perpetual care fund when seeking permission to establish a new cemetery, even if it's a family one. Dedicating the entire site as a "wildflower garden" might possibly avert the need for such a fund.

#### ❖ **Cremation**

No additional permit is needed for cremation. Authorization by next-of-kin is usually required, and a pacemaker must be removed. The crematory will file the disposition permit with the local registrar. If there is no licensed funeral director on the crematory staff, the family must arrange for a funeral director to be present at the time of delivery, a totally unnecessary and burdensome requirement.



❖ **Other Requirements**

A body must be buried or cremated within a “reasonable time after death.” Weather and reasonable planning should be considered.

If the person died of a contagious or communicable disease, the doctor in attendance should be consulted.

❖ **Medical Schools for Body Donation**

Union University  
Albany Medical College  
Albany, NY 12208  
518-262-5379  
Moderate to high need

Cost to family: transportation beyond 120 miles or \$150  
Prior enrollment: not required  
Over-enrollment: shared  
Disposition: cremation; return of cremains by request  
Body rejection: decomposition, contagious and communicable diseases

Yeshiva University  
Albert Einstein College of Medicine  
Bronx, NY 10461

Repeated requests for information have not been returned from this school.

S.U.N.Y.  
Health Sciences Center/Brooklyn  
450 Clarkson Ave.  
Brooklyn, NY 11203  
718-270-1014 or 2379  
227-1402 or 235-0505

Cost to family: transportation beyond 100 miles  
Prior enrollment: not required  
Over-enrollment: shared  
Disposition: cremation; return of cremains by request and at the expense of the family  
Body rejection: standard,\* under 10, previous embalming

S.U.N.Y.  
University at Buffalo  
Dept. of Anatomy & Cell Biol.  
Buffalo, NY 14214  
716-829-2912  
834-8128 other times  
Moderate need

Cost to family: transportation beyond 100 miles  
Prior enrollment: preferred  
Over-enrollment: shared  
Disposition: cremation; return of cremains by request  
Body rejection: standard,\* under 18, previous embalming

NY Chiropractic College  
Glen Head, NY 11545

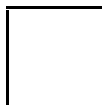
Repeated requests for information have not been returned from this school.

City University of NY, Mt. Sinai  
New York, NY 10029

Repeated requests for information have not been returned from this school.

Columbia University  
College of Physicians and Surgeons

630 West 168th St.  
New York, NY 10032



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212-305-3451	Cost to family: transportation beyond 100 miles Prior enrollment: not required Over-enrollment: shared Disposition: cremation; return of remains by request and at the expense of the family Body rejection: standard,* under 21, previous embalming
Cornell University Medical College Dept. of Cell Biol. & Anatomy 1300 York Ave. New York, NY 10021 212-746-6140 212-674-3630 (funeral home) Moderate to high need	Cost to family: transportation beyond 60 miles Prior enrollment: not required Over-enrollment: not occurred Disposition: city cremation or burial; no return Body rejection: standard,* under 18
New York University School of Medicine New York, NY 10016 212-263-5378 Always needed	Cost to family: transportation outside Manhattan, case by case Prior enrollment: not required Over-enrollment: not occurred Disposition: burial or cremation; return by request Body rejection: standard,* previous embalming
New York Institute of Technology Old Westbury, NY 11568	Repeated requests for information have not been returned from this school.
University of Rochester School of Medicine Rochester, NY 14642	Repeated requests for information have not been returned from this school.
S.U.N.Y School of Medicine Stonybrook, NY 11794 516-444-3111 or 599-0041 Moderate need	Cost to family: transportation outside Suffolk & Nassau counties Prior enrollment: not required Over-enrollment: shared Disposition: cremation; return of remains by request Body rejection: standard,* under 16, previous embalming
S.U.N.Y Health Sciences Center/Syracuse Dept. of Anatomy & Cell Biology 750 E. Adams St. Syracuse, NY 13210 315-464-5120 or 4349 Moderate need	Cost to family: transportation over \$100 + \$.23 /mi. Prior enrollment: not required Over-enrollment: shared Disposition: cremation; return of remains by request Body rejection: standard,* under 13
New York Medical College	Dept. of Cell Biology & Anatomy

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Valhalla, NY 10595  
914-993-4025 or  
735-4849 nights/weekends  
Urgent need

Cost to family: transportation beyond 50 miles  
Prior enrollment: not required  
Over-enrollment: not occurred  
Disposition: cremation; return of remains by request  
Body rejection: standard,\* previous embalming

\* autopsy, decomposition, mutilation, severe burn victim, meningitis, hepatitis, AIDS, and other contagious or communicable diseases

### **❖ Crematories**

#### **Albany**

Albany Rural Chapel & Crematory  
Cemetery Ave., 12204  
518-463-7017

#### **Central Square**

Traub Crematory  
684 N. Main St., 13036  
315-668-2688

#### **Bronx**

The Woodlawn Cemetery  
20 W. 233rd & Webster, 10470  
718-920-0500

#### **Cheektowaga**

Mt. Calvary Cemetery  
800 Pine Ridge Rd., 14225  
716-892-6660

#### **Brooklyn**

The Green-Wood Cemetery  
5th Ave. & 25th St.  
718-783-8776

#### **Cherry Valley**

The Leatherstocking Crematory  
22 Church St., 13320  
607-264-8141

#### **Buffalo**

Buffalo Cremation Co.  
901 W. Delavan Ave., 14209  
716-885-3079

#### **Chester**

Oxford Hills Crematory  
Black Meadow Rd., 10918  
914-783-1811

Cutler Cremation Co.  
1386 Love Joy Ave., 14212

#### **Coram**

Washington Memorial Park  
Canal Rd., 11727  
516-473-0437

Forest Lawn Cemetery  
1411 Delaware Ave., 14209  
716-885-1600

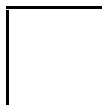
#### **Dryden**

Cayuga Crematorium  
55 W. Main St., 13053  
607-844-8161

Sheridan Park Crematory  
2600 Sheridan Dr., 14150  
716-836-6500

#### **Earlville**

Chenango Valley Crematorium  
Preston St., Box 92, 13132



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Ellensburg Depot

Whispering Maples Mem. Gardens  
13 Cemetery Ln., 12935  
518-594-7500

Elmira (Pine City)

South Port Crematorium  
1050 Pennsylvania Ave., 14904  
607-734-7373

Endicott

Twin Tiers Crematory  
P.O. Box 244, 13760  
607-754-0144

Falconer

Southern Tier Memorial Crematory  
46 E. Falconer St.  
716-665-4455

Glens Falls

Pine Crematorium  
Quaker Rd., 12801  
516-796-4726

Hartsdale

Ferncliff Cemetery Assn.  
Secor Rd., 10530  
914-693-4700

Kenmore

Elmlawn Cemetery & Crematory  
3939 Delaware Ave., 14217  
716-876-8131

Kingston

Wiltwyck Rural Cemetery Assn.  
321 Fair St., 12401

Lewiston

Niagara Falls Memorial Park  
5871 Military Rd., 14092  
716-297-0811

Livonia

Fingerlakes Crematory  
P.O. Box 59, 14487  
716-346-5401

Monroe

Hickory Cremation Service  
139 Stage Rd., 10950  
914-783-1811

Newark

Pleasant Valley Crematorium  
Box 131, 14513

Newburgh

Cedar Hill Cemetery Assn.  
706-720 Rt. 9W North, 12550  
914-562-0505

Niagara Falls

Niagara Falls Memorial Park  
5871 Military Rd.  
716-297-0811

Oakwood Cemetery Assn.  
763 Portage Rd., 14301  
716-284-5131

Pittsford

White Haven Memorial Park  
210 Marsh Rd., 14534  
716-586-5250

Poughkeepsie

Poughkeepsie Rural Cemetery  
342 South Rd., 12602  
914-454-6020

Rochester

Mt. Hope Cemetery & Crematory  
1133 Mt. Hope Ave., 14620



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716-473-2755	Troy
Schenectady	Gardner-Earle Memorial Chapel Head of 101 St., 12180 518-272-7520
Mohawk Cemetery Assn. 1867 State St., 12304	
Parkview Crematory Fehr Ave., 12309 518-346-3217	Vestal Vestal Hills Memorial Park 3997 Vestal Rd., 13850 607-797-8407
Syracuse	Watertown
Oakwood-Morningside Cemetery 1001 Comstock Ave., 13205 315-475-2194	Brookside Cemetery 19000 County Rte. 165, 13601 315-788-5668
Theresa	Waterville
Frederick Bros. Crematory 38422 NYS Rt. 37, 13691 315-628-4451	Waterville Cemetery Assn. 4883 Waterville Rd., 13480 315-841-4883
Tonawanda	West Babylon
Tonken Crematory 417 Kenmore Ave., 14233 716-835-4522	Long Island Cremation Co. 91 Eads St., 11704 516-293-6664

Additional crematories may have been established in this state after the date of publication.

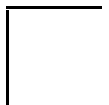
**❖ State Governance**

The Funeral Directing Advisory Board, under the Department of Health, has ten members. There are three consumer representatives, one cemetery operator, and six undertakers.

Cemeteries are governed by the Cemetery Board and the Division of Cemeteries. The board is made up of the Secretary of State, the Attorney General, and the Commissioner of Health.

Crematories are regulated by the Cemetery Board. One does not need to be a funeral director to run a crematory, but a funeral director must be present for cremation. Why?

A few funeral homes were permitted by the Cemetery Board to construct what are supposed to be not-for-profit crematories. That practice will no longer be allowed once the governor signs the bill on his desk.



❖ **Prepaid Cemetery and Funeral Funds**

Cemeteries must be run not-for-profit. Both Loewen and SCI have tried to get into the cemetery business in New York by purchasing cemetery mortgage certificates for which they have paid wildly-inflated sums compared to the face value. Loewen paid between \$45 and \$50 million for certificates worth a mere \$2 million. SCI paid \$2 million for a face value of \$30,000. (Ownership of such certificates yields a voice in cemetery operations.)

The Cemetery Board found that financial practices at these cemeteries have not always stayed within the law. Thanks to tight regulations and vigilant oversight, those practices were quickly corrected.

The state board has won the first round of litigation with Loewen over its attempt at cemetery control, but—given the huge investment at risk—there's bound to be a continuing saga. Stay tuned. And if you want to know whether “your” cemetery is at risk, call the Division of Cemeteries at 212-417-5713.

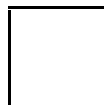
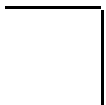
If a lot-owner wishes to sell a lot, it must first be offered back to the cemetery at the original sale price plus 4% per year.

Cemeteries may not sell monuments or vaults; they may sell grave-liners. If there is a religious objection to the use of a liner or vault, the cemetery may not require one but it may impose a “reasonable” maintenance fee for refilling a settling grave, such fee having been approved by the Cemetery Board. Cemeteries must be available for interments six days a week.

100% of all prepaid *funeral and cemetery* purchases must be placed in **trust**, with the **interest** to accrue. The purchaser must be notified within 30 days of the institution where the funds have been deposited.

The seller must **report** annually to the purchaser where the funds are held, along with the current total. Administrative fees may not exceed .75 of 1%. Although there is no guarantee fund to protect funeral consumers against default, the annual reporting should go far in enforcing the trusting requirement.

Prepaid funds are considered the property of the purchaser and may be withdrawn at any time for a full **refund** if it is a revocable contract. An irrevocable agreement may be **transferred**.



If a funeral home changes ownership, the owner of a preneed agreement must be notified. With the mad scramble of chains to purchase funeral homes, it would be interesting to see if they are obliging. The Bureau of Funeral Directing should be able to tell you who owns the one where you prepaid for your funeral: 518-402-0785. Be sure to file a complaint if you were not notified.

A preneed contract must specify whether or not it is a guaranteed-price agreement. It must “fully describe” the service and merchandise selected, but there is no clear provision for how detailed that should be. There might be a \$1,000 difference between the least expensive “20-gauge steel” and the highest. I am told that the agreement is supposed to stipulate **substitution** obligations, but there is no statutory directive for this. Excess funds must be returned to the estate or the purchaser, if it is not a guaranteed-price arrangement.

A funeral home may not sell or be the beneficiary of funeral insurance. However, funeral homes are likely to ask you to sign over such a policy to cover the deceased's funeral expenses at a time of need. It's better not to let the funeral home even know how much the policy is for. Otherwise, if there is a surplus of funds, you may not get a refund. The cost of the funeral has a strange way of rising to the amount of insurance available. Get the bill from the funeral home and then have the insurance company mail any check to you so you can pay the funeral bill from that.

#### ❖ **Consumer Concerns**

- The death rate in New York can support approximately 661 full-time mortuaries; there are, however, 1,949. Funeral prices tend to be higher in areas where there are “too many” funeral homes.
- The laws should be changed to permit families and church groups to care for their own dead.
- There is no provision for an adequate description of funeral goods selected on a guaranteed-price agreement nor for a substitution of equal quality if the selected item is no longer available at the time of death. Substitutions should meet the approval of survivors.
- There is no requirement that low-cost caskets be included in any display.
- The format for pricing is in conflict with FTC requirements. New York requires a separate charge for *supervision* and another for *facilities* for viewing, for example. The FTC requires a single fee—*facilities and staff for viewing*. Consequently, many funeral homes list prices both ways in order to be in compliance with both state and federal requirements. This is cluttering the General Price List (GPL) and definitely confusing

to consumers. New York may *certainly* require that additional options be offered on the price list—as does Vermont—but the standard pricing format of the FTC should be adopted.

- The New York GPLs are now required to include a statement, “The direct cremation prices do not include the crematory charge,” probably because most crematories are on the grounds of cemeteries and are not owned by funeral homes. This should be changed to require the inclusion of the crematory fee. How can you have a “direct cremation” without cremation? Who would think to ask if it were extra? For someone shopping over the phone, the disclosure will never be seen. If a funeral home uses more than one area crematory, and prices differ from one to the next, an appropriate disclosure would be, “There will be an additional \$50 charge if the crematory at Mt. Such-and-Such is used.”
- Identification and tagging of the body at the place of death before removal should be required, given the regular mix-ups that have been happening at chain-owned establishments with central prep facilities.
- There is no law that allows you to state your funeral preferences or for naming a designated agent to make your final arrangements. In situations where you are estranged or distant from next-of-kin, this could be important.
- Complaint procedures are unclear and inadequate.
- The FTC Funeral Rule should be adopted by reference to make it fully enforceable in this state. Fortunately, most provisions are identical to the wording of New York's funeral statutes.

❖ **Miscellaneous Information**

- Educational requirements for becoming a funeral director or embalmer: mortuary college (60 semester credits) and one year of apprenticeship.
- The law states, “Upon receipt of satisfactory evidence that a license or certificate has been lost, mutilated or destroyed, the department may issue a duplicate license. . . .” How does one prove something is lost?
- Cash advance items must be billed at the actual cost to the funeral director.
- Misconduct in funeral directing is defined in a fairly comprehensive listing, although additional factors will be found in the Appendix of this book.
- The state office has funeral consumer information pamphlets available:

Bureau of Funeral Directing  
NY State Dept. of Health  
Hedley Park Plaza  
433 River St., 6th Floor  
Troy, NY 12180

- It is a misdemeanor to hold a body for debt.
- Medical examiners are physicians who are appointed. Coroners are elected.

❖ **Nonprofit Funeral Consumer Information Societies**

These consumer groups are run mostly by volunteers. Consequently, contact information may change. If you have difficulty reaching a society or are interested in starting a society in your area, call the FAMSA office: 800-765-0107. Or check the internet directory—

**[www.funerals.org/famsa](http://www.funerals.org/famsa)**

Albany

Mem. Soc. of Hudson-Mohawk Region  
405 Washington Ave., 12206-2604  
518-465-9664

Buffalo

Greater Buffalo Memorial Society  
695 Elmwood Ave., 14222-1601  
716-837-8636

Binghamton

Southern Tier Memorial Society  
183 Riverside Dr., 13905

Corning

Memorial Soc. of Grtr. Corning Area  
P.O. Box 23, Painted Post, 14870-0023  
607-962-7132 or 936-6563

Farmingdale

Memorial Society of Long Island  
P.O. Box 3495, 11735  
516-541-6587

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Ithaca

Ithaca Memorial Society  
Box 134, 14851  
607-273-8316

Poughkeepsie

Mid-Hudson Memorial Society  
249 Hooker Ave., 12603  
914-229-0241

New Hartford

Mohawk Valley Memorial Society  
P.O. Box 322, 13413  
315-797-2396 or 735-6268

Rochester

Rochester Memorial Society  
220 Winton Rd. S., 14610  
716-461-1620

New York

Community Church Funeral Society  
40 E. 35th St., 10016  
212-683-4988 (membership open to all)

Syracuse

Syracuse Memorial Society  
P.O. Box 67, DeWitt, 13214  
315-446-0557

White Plains

Westchester Funeral Planning Assn.  
Rosedale Ave. & Sycamore Ln., 10605  
(This one is desperate for volunteers.)



*This chapter was reviewed by the New York Division of Cemeteries and  
the Bureau of Funeral Directing.*

