

JOHNSON, GASINK & BAXTER, LLP

TWO THINGS CERTAIN®

May 2015

WHO IS IN CHARGE OF FUNERAL DECISIONS?

By: Spencer M. Baxter, ESQ.

When a loved one passes away many people find themselves in a fog of indecision. It is often believed that the estate attorney needs to be contacted immediately. While contacting the attorney is an important step, taking time to mourn with one's family and loved ones should come first. In reality most people are not emotionally ready to address the legal implications of a death in the days following. The most time sensitive issue is to address memorial preparations. With that said, the next question is usually "Who is in charge of making funeral decisions?"

In JGB's Health Care Power of Attorney document, the health care agent is responsible for making funeral and disposition of remains decisions. Pursuant to VA CODE § 54.1-2825 an appointed person has the authority over "disposition of remains, including cremation, interment, entombment, or memorialization." The authorized agent must present the document to the funeral home or other authority to proceed with memorial decisions.

The issue of pre-planning one's funeral is a decision personal to us all. In most instances any type of pre-planning before death lends to a more efficient and peaceful memorial process. Some people choose to plan out every intricate funeral detail, from the casket down to the type of flowers and hymns. Other people feel pre-planning is simply not necessary and a waste of their time. At a very minimum, families seem to be grateful if preferences of cremation vs. traditional casket funeral are provided. As with many estate planning issues, when there has been an open and franc conversation among the family before death, the remaining loved ones can rely on that conversation to guide them through tough times.

The laws and regulations regarding burial are quite varied and diverse. In the majority of traditional casket burials the cemetery/funeral home provides all directions and addresses any legal issues. When a commercial cemetery is not used as the burial location, the laws get a bit varied and convoluted. Some people have chosen to be buried in their family cemetery on private land. Virginia regulations for private cemeteries are sparse at best but the law does require any current or future owners of private cemeteries to grant access to family members/those studying genealogy of those buried.

When considering a non-cemetery burial you must first research and consider the city/town ordinances, state laws, federal laws, state park regulations, and federal park regulations to name a few. For instance, the disposal of remains at seas is carefully regulated by the Federal Environmental Protection Agency. Bodily remains may only be dispersed greater than 3 nautical miles offshore, regardless if the burial is a traditional or cremation ceremony. The EPA also requires written

notification within 30 days of the burial at sea. Any inland body of water is regulated by the Clean Water Act as administered by the local governing agency. A permit is usually required from the local governing agency. In many cases local health departments still require additional burial/cremation permits separate from those provided according to the EPA or the Clean Water Act.

If a loved one wishes to have their ashes scattered in a federal park, you should always consult with the specific park management/regulations. For example, Yosemite National Park requires you to seek permission and a permit from their cremation office and abide by very detailed provisions. Essentially the remains cannot be disbursed within 100 yards of any water source, the remains cannot be within sight of any roads, access, trails, parking, and no markers of the remains are allowed.

The emotions and decisions involved with the burial of a loved one are never easy. With that said, you should conduct your due research to ensure no laws have been broken when carrying out the last wishes of a loved one. While it is true that there are no official "Cremation Police" patrolling the parks and seas, breaking the law to disburse one's remains may not be the best reminder of a loved one.



Johnson, Gasink, Baxter, LLP.

1100 Professional Drive
Williamsburg, VA 23185
(757) 220-9800
(804) 824-9690

GENERAL DISCLAIMER:

This newsletter is intended to be used for informational purposes only and should not be construed as personal legal advice. Transmission of this information is not in-tended to create, and receipt does not constitute, an attorney-client relationship.



About the Author:

Spencer Baxter is an experienced problem solver who helps individuals and businesses achieve and protect their goals of prosperity, stability and growth through appropriate planning. Spencer takes great pride in making sure that his work for clients is always reliable, correct, and on time.