FUNERAL SERVICE LAW – GLOSSARY

Abatement - a proportional reduction of a legacy under a will when assets out of which such legacy are payable are not sufficient to pay it in full.

Actual custody of the body - the physical possession of the dead human body.

Ademption - the extinction or withdrawal of an inheritance because decedent did not own the property at the time of death.

Administrative agency - a governmental body created by legislation empowered to regulate an industry and issue rules and regulations.

Administrative law - that body of law created by Federal and State administrative agencies to implement their powers and duties in the form of rules, regulations, orders and decisions (e.g., OSHA, FTC, state board rules and regulations).

Administrator - a man who has been appointed by the court to settle an estate.

Administratrix - a woman who has been appointed by the court to settle an estate.

Agent driver - those drivers under the directions and control of the funeral establishment which is liable for the driver's negligent actions.

Americans with Disabilities Act (ADA) - a federal statute prohibiting discrimination against the disabled in employment, public transportation, telecommunications services, and public accommodations and services operated by private entities.

Apprentice (intern/resident trainee) - a person engaged in learning the practice of funeral directing and/or embalming under instruction, direction or personal supervision of a duly licensed funeral director and/or embalmer.

Bailee – a person who receives personal property from another as a bailment.

Bailment – a delivery of personal property by one person (the bailor) to another (the bailee) who holds the property for a certain purpose under an express or implied-in-fact contract.

Bailor – a person who delivers personal property to another as a bailment.

Bequest (legacy) - a gift of personal property by will.

Body parts - in the Uniformed Anatomical Gift Act part is defined as organs, tissues, eyes, bones, arteries, blood, other fluids and other portions of a human body for transplantation. After removal of a body part, without unnecessary mutilation, the
custody of the remainder of the body rests with the person who otherwise has the
right to control final disposition.

**Brain death** - total and irreversible cessation of brain function as indicated by a flat EEG
reading.

**Building code** - laws, ordinances and government regulations setting forth requirements
for construction, maintenance, operation, occupancy, use or appearance of
buildings.

**Cadaver** - a dead human body intended solely for scientific study and dissection.

**Case law** - appellate court decisions that establish precedent ed principles.

**Clinical death (legal death)** – the absence of all vital signs.

**Codicil** - an addition or amendment of a last will and testament executed with the same
formality of the will.

**Common carrier** - any carrier required by law to convey passengers or freight without
refusal if the approved fare or charge is paid (e.g., airline, train, etc.).

**Common law** - non legislated principles and rules of action predicated upon usages and
customs.

**Constitution** - any fundamental or important law or edict.

**Contract carrier** - provides transportation for compensation only to those with whom it
desires to do business—(e.g., livery service)

**Constructive custody (possession)** - where a party has a right to acquire actual
custody/possession of the dead body although another party has actual physical
possession.

**Coroner** - a public officer whose duty it is to investigate cause of death when the
question of accident, suicide, or homicide may be evident or where there was no
doctor in attendance (see also medical examiner and justice of the peace).

**Corpse (dead human body)** - the body of a dead human being, deprived of life, but not
yet entirely disintegrated.

**Cremation** - the reduction of a dead human body to inorganic bone fragments by intense
heat in a specifically designed retort or chamber.

**Crime** - an action in violation of constitution, statues, or ordinances, e.g., treason, felony,
misdemeanor.
**Custodian** - funeral director becomes legal protector of dead human body from time of removal until final disposition.

**Dead human body (see corpse)**

**Death** - the cessation of life; permanent cessations of all vital functions and signs.

**Degree of kindred** - relationship to decedent of his relatives; each generation is one degree, counting to a common ancestor.

**Devise** - a gift of real estate made by will.

**Devisee** - one who inherits real estate under a will

**Disinterment (exhumation)** - the removal of a human remains previously buried in the earth.

**Due diligence** – the attention reasonably expected from, and ordinarily exercised by, a person who seeks to satisfy a legal requirement or to discharge an obligation.

**Durable power of attorney** - exists when person executes a power of attorney which will become or remain effective in the event he or she should later become disabled.

**Embalmer** - a person, properly licensed, who disinfects, preserves, or restores a dead human body.

**Eminent domain** - the inherent power of a government to take private property for public use. In the U.S. just compensation to the property owners is required.

**Entombment** - the placing of a remains in a crypt in a mausoleum.

**Environmental Protection Agency (EPA)** - a governmental agency with environmental protection regulatory and enforcement authority.

**Escheat** - forfeiture of a decedent's property to the state in the absence of heirs.

**Estate** - the property of a deceased person, both real and/or personal.

**Executor** - a man appointed by the will of a deceased person to carry out the provisions thereof and settle the estate.

**Executrix** - a woman appointed by the will of a deceased person to carry out the provisions thereof and settle the estate.
Exhumation - (see disinterment)

Federal Trade Commission (FTC) - an agency of federal government created in 1914 to promote free and fair competition by prevention of trade restraints, price fixing, false advertising and other unfair methods of competition.

Final disposition - the conclusive performance of services with respect to the dead human body.

Funeral director - a person properly licensed, engaged in, or conducting, or holding him/herself out as being engaged in:
1. preparing, other than by embalming, for the burial or disposition of dead human bodies; and/or
2. maintaining or operating a funeral establishment for the preparation and disposition, or for the care of dead human bodies.

Funeral establishment - a place of business used in the care and preparation for the funeral and/or final disposition of dead human bodies.

Funeral service law (mortuary law/mortuary jurisprudence) - that branch of law which relates to matters concerned with the disposal of the dead and regulation of funeral directors/embalmers and funeral establishments.

General power of attorney - an instrument in writing authorizing one person to do anything for the principal. In other words, one party has full power of attorney for another party.

Gross negligent act - the intentional failure to perform a manifest duty in reckless disregard of the consequences as affecting the life or property of another.

Guardian - a judicial appointment of a person to administer the affairs of another person who is incompetent by virtue of age or legal disability.

Heir - one who inherits, or is entitled to receive property by will or laws intestacy.

Holographic will - a will written entirely by the testator with his own hand.

Householder - the occupier of a house; one who owns or controls real estate where a death occurs.

Inheritance - the estate which passes from the decedent to his/her heirs.

Insolvent estate - the condition of the estate of a deceased person which is unable to pay the debts of the decedent and/or the estate.

Interment - the act of placing the dead human body in the ground.
Intern – (see apprentice)

Interstate - between two or more states.

Intestate - the state or condition of dying without having made a will.

Intestate succession - the succession of an heir at law to the property and estate of his ancestor when the latter has died without a will.

Intrastate - within a state.

Inventory - listing and valuation of a decedent's assets by personal representative of the estate.

Invitee – one who has been invited on the property by the landowner; persons coming to a funeral home for the purpose of attending funerals, viewing remains, or engaging the funeral director’s services.

Justice of the Peace - a public officer whose duties may include among other things the investigation of death (see also coroner and medical examiner).

Kin - one's relatives collectively; referring to blood relationship (legally, the surviving spouse is not a kin).

Law - a rule of action prescribed by an authority able to enforce its will.

Legacy - (see bequest)

Legal death – (see clinical death)

Legatee - one who inherits personal property under a will.

Liability - responsibility for wrongful acts or other debts.

Lien - a claim or charge against property for payment of some debt (there can be no lien against a dead human body for it is not property).

Livery - automotive equipment made available for hire.

Living will - a document which governs the withholding or withdrawal of life-sustaining treatment from an individual in the event of an incurable or irreversible condition that will cause death within a relatively short time, and when such person is no longer able to make decisions regarding his/her medical treatment.

Malpractice - improper or negligent professional act by a professional person.
**Medical examiner** – a forensically-trained physician whose duty it is to investigate questionable or unattended deaths (has replaced the coroner in some states); (see also coroner and justice of the peace)

**Mental anguish** - mental suffering resulting from grief, severe disappointment, indignation, wounded pride, shame, public humiliation, despair, etc., usually accompanied by physical injury or by an outrageous intentional or grossly negligent act.

**Morgue** - a place where dead human bodies are kept until identified and/or released for final disposition.

**Mortgage** - a secured loan on a parcel of real estate.

**Moral turpitude** - an act showing inherent baseness or vileness of principle or action; shameful wickedness; depravity.

**Mortuary law** - (see funeral service law)

**Mutilation** - any altering or change made to a dead human body from the time of death, other than by natural causes.

**Negligence** - failure to exercise ordinary care; omission to do something which a reasonable prudent person would do under ordinary circumstances or the doing of something which a reasonable and prudent would not do; the lack of due care (exercised by a wrongdoer who has not acted as a reasonable person would).

**Nuisance** - a landowner's use of property which interferes with the public or another landowner's use of his property.

**Nuisance in fact** - acts, occupations or structures which are not nuisances per se, but may become nuisances by reason of the location or manner in which it is operated.

**Nuisance per se** - acts, occupations or structures which are nuisances at all times and under all circumstances; it may be prejudicial to public morals, dangerous to life, or injurious to public rights.

**Nuncupative will** - oral will declared or dictated by testator during last illness before appropriate witnesses to dispose of personal property and afterwards reduced to writing (not valid in all states).

**Occupational Safety and Health Administration (OSHA)** - a governmental agency with the responsibility for regulatory and enforcement of safety and health matters for most employees.
Ordinance - a law passed by a local municipal governing body (e.g., zoning, building, safety, etc.).

Outrageous act - an act with complete disregard for proper conduct which transcends the bounds of common decency.

Per capita - the method of dividing an estate by which an equal share is given to each of a number of persons, all of whom stand in equal degree to the decedent.

Personal service contract - contract which involves such personal knowledge, skills or confidence that it can only be performed by the person with whom it is made; a contract whereby both parties should recognize that any breach will usually cause anguish.

Per stirpes - the method of proportionately dividing an estate between beneficiaries according to their deceased ancestor’s share.

Personal representative - person who represents and administers the estate of deceased persons (e.g., executors and administrators).

Police power - the inherent power of every government to make reasonable laws to protect the safety, health, morals and general welfare of its citizens.

Power of attorney - an instrument granting someone authority to act as agent or attorney-in-fact for the grantor; an ordinary power of attorney is revocable and automatically terminates upon the death or incapacity of the principal.

Precedent - a decision of a court which is thereafter followed as an example in subsequent similar cases.

Preparation room - that facility in a funeral home especially designed and equipped for embalming and otherwise preparing dead human bodies.

Private carrier - those who transport only in particular instances and only for those they choose to contract with (e.g., funeral home vehicles and livery)

Probate - the process where the estate of a decedent is administered.

Probate court - a court having jurisdiction over estates.

Probate estate - the property of a decedent that is subject to administration by the executor or administrator of an estate.

Quasi contract - a fictional contract created or implied by a court for a person who is unable to contract for himself (e.g., medical care, death); an obligation which law
creates in the absence of agreement; is invoked by courts where there is unjust enrichment.

**Quasi-property theory** - the accepted theory of the legal status of a dead human body; rights associated with the body are as if it were property for the purpose of disposition only.

**Reciprocity** - the relationship existing between two states whereby each extends some privileges of licensure to licensees of the other state.

**Replevin** - an action to recover possession of **wrongfully withheld** personal property.

**Resident trainee** – (see apprentice)

**Restrictive covenant** - provision in a deed limiting the use of property and prohibiting certain uses.

**Revocation** - the omission or cancellation of an instrument, act, license, or promise.

**Rules and regulations** - enactments by an administrative body within the jurisdiction of that agency.

**Secured claim** - a debt which is supported by a pledge, mortgage or lien on assets belonging to the debtor.

**Soldiers and sailors will** - a nuncupative will, informal in nature, in which a soldier in the field or sailor at sea may dispose of personal property only.

**Solvent estate** - an estate in which the assets exceed the liabilities.

**Springing power of attorney** - an instrument in writing authorizing one person to act as an agent for another affective only upon a certain event occurring.

**Stare decisis** - a policy of courts to stand by a precedent and apply it to all future cases where the facts are substantially the same; to stand by things decided.

**Statute** - a law enacted by a federal or state legislative body

**Statutory law** - law created by legislative bodies in contrast to law generated by judicial opinions (case law) and administrative bodies.

**Testate** - the condition of leaving a will at death.

**Testator** - a man who makes a valid will.

**Testatrix** - a woman who makes a valid will.
**Tort** - a private or civil wrong, other than breach of contract, for which there may be action for damages.

**Trespasser** – one who intentionally and without consent or privilege enters another’s property.

**Trustee** - one who holds title to property or another position of trust to a beneficiary; in funeral arrangements, the person who has the right to control funeral does so on behalf of all survivors.

**Uniform Anatomical Gift Act** - a law permitting a person of legal age and sound mind to give all or any part of his body to take effect upon his/her death or gives the right to another.

**Uniform Probate Code** - a model law to achieve uniformity in probate proceedings throughout the U.S.

**Unsecured claim** - a claim which is not supported by a pledge, mortgage, or lien on other assets.

**Vital statistics** - the registration, preparation, transcription, collection, compilation and preservation of data pertaining to births, adoptions, deaths, stillbirths, marital status, etc.

**Volunteer driver** - those drivers not under the control of the funeral director.

**Will** - an instrument executed with required formality by a person making disposition of their property to take effect upon their death.

**Zoning ordinance** - a law passed by a municipality by virtue of the police power which regulates and prescribes the kind of building, residences, or businesses that shall be built and used in different parts of the municipality.