

Vermont Secretary of State
Office of Professional Regulation

ADMINISTRATIVE RULES FOR CREMATORY ESTABLISHMENTS

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1.1 The Purpose of Licensure

The Director of Professional Regulation (referred to as "the Director" in this rule) has been given power by Vermont law to license and inspect crematory establishments to protect the public health, safety and welfare. This is done by setting standards for issuing licenses, licensing only qualified applicants and regulating license holders and their practices.

1.2 Laws That Govern Licensure

The operation of a crematory establishment is governed by a specific state law that establishes responsibilities for setting standards, issuing licenses and regulating the profession. In addition, the Director and the Office of Professional Regulation are obligated to comply with several other state laws, including the Administrative Procedure Act (3 V.S.A. §§801-849), the Open Meeting law (1 V.S.A. §§310-314) and the Access to Public Records law (1 V.S.A. §§315-320). These laws set forth the rights of an applicant, license holder or member of the public. Copies of these laws may be obtained from a town clerk or librarian or from the Office. "Vermont Statutes Online" are also available on the Internet at <http://www.leg.state.vt.us>.

1.3 Definitions

- (1) "Authorizing Agent(s)" mean a person or persons legally entitled to authorize the cremation of human remains.
- (2) "The Act" means The Funeral Services Act, 26 Vermont Statutes Annotated, Chapter 83.
- (3) "Cremated Remains" are all the remains of the cremated human body recovered after the completion of the cremation process, including pulverization which leaves only bone fragments reduced to unidentifiable dimensions and may possibly include the residue of any foreign matter including casket material, bridgework or eye glasses that were cremated with the human remains.
- (4) "Cremation" means the technical process, using direct flame and heat, that reduces human remains to bone fragments. The reduction takes place through heat and evaporation. Cremation includes the processing and usually includes the pulverization of the bone fragments.
- (5) "Cremation Chamber" means the enclosed space within which the cremation process takes place. Cremation chambers covered by these procedures shall be used exclusively for the cremation of human remains.
- (6) "Cremation Container" means the container in which the human remains are transported to the crematory and placed in the cremation chamber for a cremation.
- (7) "Crematory establishment" or "Establishment" means the legal entity or the authorized representative of the legal entity which is licensed by the state to operate a crematory and perform cremation.
- (8) "Crematory" means the building or portion of a building that houses the cremation chamber and the holding facility.
- (9) "The Director" means the Director of the Office of Professional Regulation.
- (10) "Holding Facility" means an area within or adjacent to the crematory facility designated for the retention of human remains prior to cremation.....
- (11) "Human Remains" means the body of a deceased person, or part of a body or limb that has been removed from a living person, including the body, part of a body or limb in any stage of decomposition.
- (12) "The Office" means the Office of Professional Regulation in the Office of the Secretary of State.
- (13) "V.S.A." means Vermont Statutes Annotated: for example 26 V.S.A. §1211 means section 1211 of Title 26 of the Vermont Statutes Annotated.

Part 2. Information For Applicants

2.1 Where to Get an Application

An application for licensure or more information about the licensing process may be obtained by writing or calling the Office at 26 Terrace Street, Drawer 09, Montpelier, Vermont 05609-1106. Telephone 802-828-2191, e-mail nmorin@sec.state.vt.us. Or visit the profession's website at <http://www.vtprofessionals.org>.

Applicants must submit a fully completed application form with all supporting documentation and the fee to the Office. Applications are reviewed only after the fully completed application and documentation are received.

An applicant issued an initial license within 90 days of the renewal date will not be required to renew or pay the renewal fee. The license will be issued through the next full licensing period. An applicant issued an initial license more than 90 days prior to the renewal expiration date will be required to renew and pay the renewal fee.

2.2 Applications for Licensure

Applications for new crematory establishments shall be on forms furnished and prescribed by the Director and shall provide the Office with the following information:

(1) The full name and address, both residence and business, of the applicant if the applicant is an individual; the full name and address of each partner and the partnership if the applicant is a partnership; the full name and address of every member of the board of directors and the association if the applicant is an association; and the name and address of every officer, director, and shareholder holding more than 25% of the corporate stock and the corporation and the name of the corporation if the applicant is a corporation.

(2) A detailed statement for each of the individuals listed in the application under (1) above providing any felony or misdemeanor convictions or involvement in civil litigation in which fraud was an essential element of the crime or complaint and any information about the loss or suspension of any license by this state or any other state related to the business of funeral directing, operation of a cemetery or crematory.

(3) The address and location of the crematory.

(4) A description of the type of structure and equipment to be used in the operation of the crematory.

(5) Copies of all applications for any licenses or permits issued for a crematory to operate in a state.

(6) Any further information that the Director may reasonably require.

2.3 Requirements For Licensure as a Crematory Establishment

Qualifications for a crematory establishment license are outlined in 26 V.S.A. §1252(c). Applicants for a crematory establishment license shall:

(1) identify the designated manager to be responsible for the establishment, and

(2) pass an inspection of the establishment by the Office or its designee.

2.4 Inspections; Establishment Requirements

An establishment shall pass an inspection in compliance with the Funeral Services Act and the minimum standards set forth in these rules. Additionally, a crematory establishment shall be subject to all local, state, and federal health and environmental protection requirements and shall obtain all necessary licenses and permits as may be required from the appropriate local, state or federal agencies.

2.5 Right to a Written Decision And Appeal

An applicant will be notified in writing whether the establishment is qualified to be licensed. If the Director denies an applicant a license, the Director shall give the applicant specific reasons in writing and inform the applicant of the right to request a hearing for review of this decision. The hearing will be held by an administrative law officer appointed by the Secretary of State. After giving the applicant and the Director an opportunity to present the application and any additional information, the administrative law officer shall affirm, reverse, remand or modify the Director's preliminary decision. The administrative law officer's decision may be appealed to Washington Superior Court.

Part 3. Information For Licensed Establishments

3.1 Renewing Licensure Biennially

The Office has a fixed 24-month licensing schedule. Licenses renew on a fixed biennial schedule: August 1 of the odd-numbered years. A license holder must renew by the expiration date printed on the license. Before the license expiration date, the Office will mail a renewal application and notice of renewal fee. A license will expire automatically if the renewal application and fee are not returned to the Office by the expiration date.

A license holder is responsible for notifying the Office promptly if the establishment changes designated managers, ownership, name, mailing address, or business address.

3.2 Reinstating a License

Licenses that have lapsed may be reinstated upon payment of a renewal fee for the current biennium and a late renewal penalty.

3.3 Professional Standards

A license holder may be disciplined for a violation of any of the grounds of unprofessional conduct which are found in 26 V.S.A § 1257 or 3 V.S.A. § 129a. In addition, a license holder may be disciplined for a violation of any of these administrative rules.

3.4 Complaint Procedure

The Office has a procedure for receiving, investigating and acting on complaints of unprofessional conduct. Copies of the procedure are available from the Office.

3.5 Disciplinary Actions

Hearings on charges of unprofessional conduct are held before an administrative law officer appointed by the Secretary of State. A party aggrieved by a decision of an administrative law officer may, within 30 days of the decision, appeal by filing a written notice with the Director. The appeal shall be decided by Washington Superior Court on the basis of the record before the administrative law officer.

Part 4. Minimum Standards for Crematory Establishments

4.1 Authorizing Agent

(A) The following persons, in the priority listed, shall have the right to serve as the authorizing agent, having the authority to authorize the cremation of human remains:

(1) The individual who was the spouse of the decedent at the time of the decedent's death.

(2) The decedent's surviving adult children. If there is more than one adult child, any adult child who confirms in writing the notification of all other adult children, may serve as the authorizing agent, unless the crematory authority receives a written objection to the cremation from another adult child.

(3) The decedent's surviving parent. If the decedent is survived by two parents, a parent who confirms in writing the notification of the other parent may serve as the authorizing agent, unless the crematory authority receives a written objection to the cremation from the other parent.

(4) The person in the next degree of kinship 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 serve as the authorizing agent.

(5) In the case of indigents or any other individual whose final disposition is the responsibility of the state or any of its instrumentalities, a public administrator, medical examiner, coroner, state appointed guardian, or any other public official charged with arranging the final disposition of the decedent may serve as the authorizing agent.

(6) In the case of individuals who have donated their bodies to science or whose death occurred in a nursing home or other private institution, who have executed pre-need cremation authorization forms and the institution is charged with making arrangements for the final disposition of the decedent, a representative of the institution may serve as the authorizing agent.

(7) In the absence of any person under paragraphs (1) through (7), any person willing to assume the responsibility as authorizing agent, as specified in this Act.

(B) In the case of body parts, a representative of the institution that has arranged with the crematory authority to cremate the body parts may serve as the authorizing agent, providing that the person whose body parts are being cremated or an authorizing agent has previously approved the cremation of the body parts.

4.2 Authorization to Cremate

(A) Except as otherwise provided in this section, a crematory authority shall not cremate human remains until it has received:

(1) A cremation authorization form signed by an authorizing agent. The cremation authorization form shall contain, at a minimum, the following information:

(a) The identity of the human remains and the date of death.

(b) The name of the person or establishment that obtained the cremation authorization.

(c) The name of the authorizing agent and the relationship between the authorizing agent and the decedent.

(d) A representation that the authorizing agent does in fact have the right to authorize the cremation of the decedent, and that the authorizing agent is not aware of any living person who has a superior or equal priority right to that of the authorizing agent. In the event there is another living person who has a superior or equal priority right to the authorizing agent, the form shall contain a representation that the authorizing agent has made reasonable efforts to contact that person, has been unable to do so, and has no reason to believe that the person would object to the cremation of the decedent.

(e) Authorization for the crematory authority to cremate the human remains.

(f) A representation that the human remains do not contain a pacemaker or any other material or implant that may be potentially hazardous or cause damage to the cremation chamber or the person performing the cremation.

(g) The name of the person authorized to receive the cremated remains from the crematory authority.

(h) The manner in which disposition of the cremated remains is to take place, if known. If the cremation authorization form does not specify a method of disposition, then the form may indicate that the cremated remains will be held by the crematory for 30 days before they are released, unless they are picked up from the crematory prior to that time, in person, by the authorizing agent. At the end of the 30 days the crematory may return the cremated remains to the authorizing agent if no disposition arrangements are made.

(i) A listing of any items of value to be delivered to the crematory authority along with the human remains, and instructions as to how the items should be handled.

(j) The signature of the authorizing agent, attesting to the accuracy of all representations contained on the cremation authorization form.

(k) The cremation authorization form, other than pre-need cremation forms, shall also be signed by a funeral director or other representative that obtained the cremation authorization. That individual shall execute the cremation authorization form as a witness and shall not be responsible for any of the representations made by the authorizing agent, except the funeral director, establishment or other representative shall warrant to the crematory that the human remains delivered to the crematory authority have been positively identified as the decedent listed on the cremation authorization form by the authorizing agent or a designated representative of the authorizing agent. Such identification shall be made by the authorizing agent or designated representative of the authorizing agent.

(2) A completed and executed burial transit permit, as provided by state law, indicating that human remains are to be cremated.

(3) A medical examiner's permit and any other documentation required by the state, county or municipality.

(B) If an authorizing agent is not available to execute the cremation authorization form in person, that person may execute the form in writing by other reliable means, including a facsimile transmission, telegram, or other electronic transmission.

(C) A crematory shall not accept unidentified human remains. The crematory authority may rely on the identification made before the body was placed in the cremation container. The crematory authority shall place appropriate identification upon the exterior of the cremation container based on the prior identification.

4.3 Permits, Documentation and Record-keeping

(A) Medical examiner's permit. Human remains shall not be cremated by the crematory authority until authorization to cremate has been received in writing from the medical examiner.

(B) Cremation log. Each crematory shall maintain a reliable system for recording and tracking cremations. The crematory shall retain a copy of this information in its permanent records. The information shall be easily accessible to inspection by the Director's designee, and shall show the following information, at a minimum:

- (1) the date and time of the receipt of human remains;
- (2) the type of casket or alternative container in which the body was delivered;
- (3) the name of the person or establishment from whom the human remains were received;
- (4) the name of the decedent;
- (5) the date and time of the cremation;
- (6) the date of release of the cremated remains; and
- (7) the name of the person or establishment to whom the cremated remains were released.

(C) Upon completion of the cremation, the establishment shall file the burial transit permit as required by law.

4.4 Identification of Remains

(A) Each crematory establishment shall have a reliable system to ensure that the human remains received by the establishment are properly identified and tracked throughout the cremation process. Immediately prior to being placed within the cremation chamber, the presence of identification of the human remains, as indicated on the cremation container, shall be verified by the establishment and the identification label or paperwork shall be removed from the cremation container and placed near the cremation chamber control panel where it shall remain in place until the cremation process is complete, unless the crematory is using a cremation disk for identification, which may be placed in the chamber.

(B) No unauthorized person shall be permitted in the crematory area while any human remains are in the crematory area awaiting cremation, being cremated or being removed from the cremation chamber. Family members or designated agents of the deceased may witness the cremation.

(C) The unauthorized, simultaneous cremation of the human remains of more than one person within the same cremation chamber is not allowed unless the establishment has received specific written authorization to do so from all authorizing agents for the human remains to be so cremated.

4.5 Handling, Containers and Holding Facilities

(A) A cremation container shall meet all of the following standards:

- (1) be composed of readily combustible materials suitable for cremation;
- (2) be able to be closed in order to provide a complete covering for the human remains;
- (3) be resistant to leakage or spillage;
- (4) be rigid enough for handling with ease; and
- (5) be able to provide protection for the health, safety and personal integrity of crematory

personnel.

(B) An establishment shall not be required to accept for holding a cremation container from which there is evidence of leakage of the body fluids from the human remains therein.

(C) Crematory personnel may come into contact with bodily fluids in the course of their employment. All personnel should be educated regarding blood-borne pathogens and infectious diseases. Universal precautions shall be followed in crematory establishments.

(D) Holding facilities shall:

- (1) comply with any applicable public health law;
- (2) preserve the dignity of the human remains;
- (3) recognize the integrity, health and safety of the crematory personnel operating the crematory;

and

- (4) be secure from access by anyone other than authorized personnel.

4.6 Pacemakers and Other Implanted Medical Devices

(A) No body shall be cremated with a pacemaker or other potentially hazardous implant in place. The authorizing agent for the cremation of the human remains shall be responsible for informing the funeral director or crematory establishment about a pacemaker or other potentially hazardous implant. The authorizing agent shall be ultimately responsible to ensure that any pacemakers or implants are removed prior to cremation.

(B) Pacemakers shall be removed by an embalmer, medical professional, or other persons appropriately trained in their removal. Removed pacemakers must be treated as medical waste and disposed of accordingly.

4.7 Equipment and maintenance

(A) Establishment floors, walls and other surfaces shall be washable and shall be clean and in good repair. Establishments shall have appropriate ventilation to keep the crematory free from excessive accumulation of ambient dust.

(B) Each establishment shall have at least one properly functioning retort, and equipment for the pulverization or grinding of remains. Equipment shall be maintained according to the manufacturer's instructions.

(C) Upon completion of the cremation, and in so far as is possible, all of the recoverable residue of the cremation process shall be removed from the cremation chamber and all residue from the cremation process shall then be separated from anything other than bone fragments. The bone fragments shall be processed, unless otherwise directed by the authorizing agent, so as to reduce them to unidentifiable particles. Anything other than the particles shall be removed from the cremated residuals in so far as is possible and shall be disposed of by the establishment.

4.8 Sale of Body Parts Prohibited

No establishment shall engage in or otherwise facilitate the illegal sale of bodies or body parts.

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