



# COMMONWEALTH of VIRGINIA

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June 11, 2009

The Honorable William J. Howell  
Speaker, House of Delegates  
106 Carter Street  
Fredericksburg, Virginia 22405

Dear Speaker Howell:

I am responding to your request for an official advisory opinion in accordance with § 2.2-505 of the *Code of Virginia*.

### Issue Presented

You ask whether the word “burial” relating to preneed funeral contracts in § 54.1-2825 is to be read narrowly, *i.e.*, as meaning “interment,” or more broadly, as meaning “funeral.” Further, you ask whether a person properly designated under § 54.1-2825 has priority over all of the decedent’s next of kin in making the permitted arrangements or, by virtue of § 54.1-2800 and § 54.1-2807(B), is merely to be treated as any of the “next of kin.”

### Response

It is my opinion that the word “burial” in § 54.1-2825 is not synonymous with funeral and must be construed narrowly as authorizing the designee to make arrangements to dispose of a decedent’s remains. It further is my opinion that pursuant to § 54.1-2807(B) a funeral home has a statutory duty to inquire about the desires of the next of kin, as defined by § 54.1-2800, prior to accepting a decedent’s body, and the directions of “any next of kin” govern disposal of the body. Included in the nonhierarchical definition of next of kin is “any person designated to make arrangements for the disposition of the decedent’s remains upon his death pursuant to § 54.1-2825.”

### Applicable Law and Discussion

Section 54.1-2825, relating to preneed funeral contracts,<sup>1</sup> provides that “[a]ny person may designate in a signed and notarized writing, which has been accepted in writing by the person so designated, an individual who shall make arrangements for his burial or the disposition of his remains, including cremation, upon his death.”

Section 54.1-2800 provides the following definitions for purposes of Chapter 28 (“Funeral Services”) of Title 54.1, §§ 54.1-2800 through 54.1-2807.1 and §§ 54.1-2808.1 through 54.1-2825:

“*Next of kin*” means any of the following persons, regardless of the relationship to the decedent: any person designated to make arrangements for the disposition of the

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<sup>1</sup>See VA. CODE ANN. §§ 54.1-2820 to 54.1-2825 (2005 & Supp. 2008).

decedent's remains upon his death pursuant to § 54.1-2825, the legal spouse, child over 18 years of age, custodial parent, noncustodial parent, siblings over 18 years of age, guardian of minor child, guardian of minor siblings, maternal grandparents, paternal grandparents, maternal siblings over 18 years of age and paternal siblings over 18 years of age, or any other relative in the descending order of blood relationship.

*"Practice of funeral services"* means engaging in the care and disposition of the human dead, the preparation of the human dead for the funeral service, burial or cremation, the making of arrangements for the funeral service or for the financing of the funeral service and the selling or making of financial arrangements for the sale of funeral supplies to the public.

In the absence of a statutory definition, the plain and ordinary meaning of the term is controlling.<sup>2</sup> It is well settled that "[i]f the language of a statute is plain and unambiguous, and its meaning perfectly clear and definite, effect must be given to it."<sup>3</sup> The term "burial" means "the act or process of burying."<sup>4</sup> Further, the term "bury" means "to dispose of by depositing in or as if in the earth; *esp*: to inter with funeral ceremonies."<sup>5</sup> As such, the plain meaning of the term "burial" is the disposition of human remains through interment that may be, but need not be, part of a funeral. Further, while "care and disposition of the human dead" and "the preparation of the human dead for ... burial" are part of the definition of "practice of funeral services,"<sup>6</sup> burial is not synonymous with funeral.<sup>7</sup>

The 1989 Session of the General Assembly enacted a new article authorizing the Board of Funeral Directors and Embalmers to regulate preneed contracts for funeral services.<sup>8</sup> Section 54.1-2821

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<sup>2</sup>See *Sansom v. Bd. of Supvrs.*, 257 Va. 589, 594-95, 514 S.E.2d 345, 349 (1999); *Commonwealth v. Orange Madison Coop. Farm Serv.*, 220 Va. 655, 658, 261 S.E.2d 532, 533-34 (1980); *Op. Va. Att'y Gen.*: 2006 at 204, 205; 1999 at 10, 11.

<sup>3</sup>*Temple v. Petersburg*, 182 Va. 418, 423, 29 S.E.2d 357, 358 (1944), *quoted in Op. Va. Att'y Gen.*: 2006, *supra* note 2, at 205; 2002 at 320, 320.

<sup>4</sup>MIRIAM WEBSTER'S COLLEGIATE DICTIONARY 153 (10th ed. 2001).

<sup>5</sup>*Id.* at 154.

<sup>6</sup>Section 54.1-2800 (Supp. 2008).

<sup>7</sup>See *Mazur v. Woodson*, 191 F. Supp. 2d 676, 681 (E.D. Va. 2002) (holding "[t]hat disposition includes burial [which] is supported by the plain meaning of the word 'bury'").

<sup>8</sup>See 1989 Va. Acts ch. 684, at 1582, 1587-89 (adding Article 5, Chapter 28 of Title 54.1, §§ 54.1-2820 to 54.1-2825); *see also* § 54.1-2803(9) (Supp. 2008) (directing Board to regulate preneed funeral contracts). I note that present § 54.1-2825 is similar to the section enacted in 1989 with the exception of minor clarification regarding the notary requirement and the specific authority regarding the disposition of remains through cremation. See 1998 Va. Acts ch. 718, at 1702, 1708 (amending § 54.1-2825). Section 54.1-2825 is also referenced in certain other statutes. See § 2.2-713 (2008) (authorizing public guardian or conservator to make funeral, cremation, or burial arrangements if no one has been designated under § 54.1-2825); § 54.1-2818.1 (2005) (prohibiting cremation of dead human body without permission of medical examiner and visual identification of the deceased by certain persons, including person designated under § 54.1-2825, or specified waiting period); § 54.1-2973 (2005) (authorizing certain parties, including person designated under § 54.1-2825, to authorize and consent to postmortem examination and autopsy of decedent's body for specific purposes); *see also* § 57-27.3 (2007) (authorizing cemetery to accept notarized signature of one of next of kin of decedent for purpose of authorizing interment or entombment). The "next of kin" definition in § 57-27.3 is identical to that found in § 54.1-2800. Compare § 54.1-2800 (Supp. 2008) with § 57-27.3 (2007).

specifically exempts the preneed sale of cemetery services or supplies, including preneed burial contracts that are regulated by the Cemetery Board, from the laws applicable to preneed funeral services.<sup>9</sup> Section 54.1-2310 defines “interment” as “all forms of final disposal of human remains including, but not limited to, earth burial, mausoleum entombment and niche or columbarium inurnment.”<sup>10</sup> Therefore, a preneed funeral services contract does not cover burial and disposal of remains. If an individual has not obtained a preneed burial contract, § 54.1-2825 permits that individual to designate another individual to make arrangements for his burial or the disposition of his remains, including cremation.

Section 54.1-2807(B) provides, in pertinent part, that:

Except as provided in §§ 32.1-288 and 32.1-301, funeral service establishments shall not accept a dead human body from any public officer except a medical examiner, or from any public or private facility or person having a professional relationship with the decedent without having first inquired about the desires of the next of kin and the persons liable for the funeral expenses of the decedent. The authority and directions of any next of kin shall govern the disposal of the body.

“[T]he plain, obvious, and rational meaning of a statute is always to be preferred to any curious, narrow, or strained construction.”<sup>11</sup> Section 54.1-2807(B) prohibits a funeral home, except in limited circumstances, from accepting a corpse without “having first inquired about the desires of the next of kin” and provides that any next of kin may authorize and direct the disposal of the body.<sup>12</sup> The definition of “next of kin” in § 54.1-2800 creates a “broad and coequal” class of individuals.<sup>13</sup> Therefore, no member of the “next of kin” class listed in § 54.1-2800 has precedence over any other.

### Conclusion

Accordingly, it is my opinion that the word “burial” in § 54.1-2825 is not synonymous with funeral and must be construed narrowly as authorizing the designee to make arrangements to dispose of a decedent’s remains. It further is my opinion that pursuant to § 54.1-2807(B) a funeral home has a statutory duty to inquire about the desires of the next of kin, as defined by § 54.1-2800, prior to accepting a decedent’s body, and the directions of “any next of kin” govern disposal of the body. Included in the

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<sup>9</sup>See tit. 54.1, ch. 23.1, §§ 54.1-2310 to 54.1-2342 (2005).

<sup>10</sup>Columbarium inurnment refers to placement of urns containing human ash in a vault or similar structure. 1980-1981 Op. Va. Att’y Gen. 39, 40. I also note that a “preneed burial contract” is “a contract for the sale of property or services used in connection with interring or disposing of the remains ... of a deceased human being.” Section 54.1-2310 (2005).

<sup>11</sup>Turner v. Commonwealth, 226 Va. 456, 459, 309 S.E.2d 337, 338 (1983), *quoted in* 2006 Op. Va. Att’y Gen. 180, 182.

<sup>12</sup>Siver v. Rockingham Mem’l Hosp., 48 F. Supp. 2d 608, 611 (W.D. Va. 1999).

<sup>13</sup>*Id.* at 612 “[T]he instant definition of ‘next of kin’ opens the class concurrently to *any* individual listed regardless of degree of relationship to the decedent so that there may be an orderly and expeditious interment by the funeral director. That other states establish a sequential hierarchy of relatives analogous to those for distribution of an estate has no relevance here because ... the General Assembly of Virginia clearly has elected to fashion a class of individuals with rights to a body that are both broad and coequal. Any person within that class has the right to possess, preserve, or bury the dead body[.]” *Id.* at 611-12 (emphasis in original).

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nonhierarchical definition of next of kin is “any person designated to make arrangements for the disposition of the decedent’s remains upon his death pursuant to § 54.1-2825.”

Thank you for letting me be of service to you.

Sincerely,

A handwritten signature in black ink, appearing to read "W. C. Mims", with a stylized flourish at the end.

William C. Mims