

The Law & Vatican guidance on cremation

Dear Mr. Premack: My wife and I have decided that upon our deaths we want our remains to be cremated. We are Catholic and have been told that there are new restrictions on cremation. Can you tell us what we need to do legally to follow through on cremation, or are we now forced to go the traditional funeral route? – G.W.

It is true that the Vatican recently announced new doctrinal guidance regarding cremation, but it is very important to note that the guidance does not forbid cremation and is not legally binding.

The guidance deals with disposition of the cremains (ashes). The Vatican does not want ashes to be scattered, does not want ashes to be retained privately by the survivors, does not want ashes divided among family members, and does not want ashes used to fabricate memorial items. Instead, the guidance instructs that ashes be placed in a location deemed sacred by the Vatican, including a cemetery or columbarium.

The guidance does prohibit cremation if the decedent's motive for cremation is love of nature, a naturalist philosophy, or religious skepticism. If any of those secular motives are apparent, the church guidance would deny that person a Catholic burial. Of course, if the decedent's personal philosophy is secular then the decedent is unlikely to have desired a Catholic burial or to be swayed by the Vatican's guidance.

The actual binding rules are found in Texas law, which makes the intention of the decedent the highest influence. Those motives – whether religious or based on other personal philosophies – are legally enforceable if properly expressed.

Any Texan who desires cremation should take several legal steps. First, it is sensible (but not required) to prearrange cremation. If you enter into a cremation contract that specifies your intention to be cremated and your instructions for disposition of the ashes, the contract is legally enforceable. Second, even without a prearrangement contract, you can specify in writing your exact funeral instructions. The law allows you to specify instructions in your Will (but often family is reluctant to review the Will prior to the funeral). A better approach is to utilize a legal document called an Appointment of Agent for Disposition of Remains, which your Estate Planning attorney can prepare.

After a Texan dies, the crematory must have a signed Authorization for Cremation before it can proceed. The Authorization can be signed by the Will's Executor (if any), or by the Agent under the Appointment document (if any). If those do not exist, the law requires the Authorization be signed by the surviving spouse. If there is no surviving spouse, then legally any adult child of the decedent may sign the Authorization.

However, sometimes, to avoid perception of conflict, the crematory will demand that all the children sign the Authorization. Though this demand could be turned aside with legal intervention, the family may not know that all signatures are not legally required, which de facto gives any one of the children a veto. If one of the children follows a religious doctrine that does not match the decedent's intent, this de facto veto may give that adult child unfair power to impose his beliefs on the decedent and other family members.

Hence, if there is any possibility of family conflict, it is always wise to have your Estate Planning attorney prepare for you the Appointment of Agent for Disposition of Remains. The law gives you responsibility for your own plans and to see that your own philosophical intentions are honored at the time of your death.

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