



TORII LEGAL ASSISTANCE

OFFICE OF THE STAFF JUDGE ADVOCATE



BURIAL INSTRUCTIONS

BY: RUDY WARTELLA

*Adapted from an Article by Anthony R. Tempesta,
Former Chief of Legal Assistance at Fort Benning*

What if you wrote in your will that you wanted to be cremated? Well, your will is often not read for several days or weeks after you die, and so your family already will have made a decision about your cremation or burial. It can present a difficult situation for surviving family members if the first mention of cremation is not discovered until several weeks after the deceased's burial. So a letter of instruction may be what you need to let your next of kin know your desire for your funeral arrangements.

Most wills contain general language regarding burial arrangements, such as stating the person's desire for "a suitable burial" or "a burial that is appropriate to my station in life". Further details on burial arrangements are uncommon in a will however, for a number of reasons. Such arrangements, even if very detailed, are always subject to the availability of assets in the estate. Even though a will may clearly call for a marble mausoleum and a coffin made of gold, there may not be enough money in the estate to pay for them. It is best to leave the language general enough to allow the executor (the person in charge of handling the deceased's estate) flexibility in consideration of the estate's assets, balancing the deceased's desire for an appropriate burial with the intent to leave some funds to his or her beneficiaries.

This may mean that a deceased person does not get all the arrangements of his or her particular preference, especially if debts and expenses deplete or exhaust the estate. For this reason many people pre-plan their funeral arrangements during their lifetime, in order to guarantee that everything they want in this regard will be done in a certain way. Pre-planning generally means pre-paying however, so anyone who wants to pre-plan should consider their financial situation and whether or not pre-planning is advisable in their particular situation.

The best way to address desires regarding burial arrangements is by a separate letter of instruction. This is a stand-alone document that some people prepare, date and sign, and keep along with their will. There is no required format for a letter of instruction, and numerous samples are available on the Internet. It is almost never notarized, as notarization only becomes an issue if the person's signature is questioned. Be sure to let your loved ones know of your burial desires and that you are leaving a letter of instruction. Also let them know where you are going to keep your instructions, so he or she can comply with your desires to the maximum extent possible. You may want to keep it with your will or other important papers in a fireproof box.

If you have any questions about burial instructions, please contact the Legal Assistance Office on Torii Station.