



## DISINTERMENT - WHO IS IN CHARGE?

### **A Few Basic Steps For Any Disinterment.**

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How many disinterments have you participated in over the years? The number is probably more than zero - and in today's world, it seems disinterments are becoming more common.

So, who is responsible? Funeral home? Cemetery? Vault company? Depending on what **the disinterment authorization** states - oh wait - you've never seen or used one of those? I can promise that if you haven't used a release or authorization, you have never been protected.

As someone that is involved in the disinterment process, you need to know and understand the process. Such as:

- What are the state laws for disinterment?
- Can the cemetery allow disinterment without any family?
- Who is responsible for the vault?

Make sure you know the risks - and more importantly - the process of how to handle disinterments.

### **LAWSUITS: WHO IS RESPONSIBLE IF SOMETHING GOES WRONG?**

Disinterments are a fantastic revenue source – says the attorney. OK, that may be a bit strong. Every disinterment does not equate into a lawsuit or a problem. However, any disinterment can turn into a lawsuit or a problem. Disinterments are a huge potential liability, and great care should be exercised when performing one. But what exactly does that mean?

As a provider in deathcare, one of the biggest questions is always, who is responsible. If you think about it, when we go to the cemetery, for any service, who is in charge? Specifically - who is liable if something goes wrong? Every time we ask that question, we start considering the funeral home, the cemetery, and the vault company. And in every scenario, we can usually find an area or two where everyone faces potential liability. Now,

enter the disinterment. Of all the potential areas where everyone could face potential liability - disinterments also represent the most common act where no-one really knows who is responsible!

Typically, the cemetery thinks that the funeral home must handle the disinterment; the funeral home sees a disinterment as a cemetery service; and get ready for this - the vault company is typically the one who actually does the disinterment. It gets better, most of the time there is little to no paperwork documenting the disinterment.

*This article is a primer on handling - legally - the disinterment.* Every disinterment is different, so there is no way for one article to handle all the issues that need to be addressed. But, there are some basics that should be considered when you are handling or participating in a disinterment.

## **CONSIDER THIS LIST OF 6 ITEMS THE BASICS, OR BETTER YET THE MINIMUM, OF WHAT SHOULD BE DONE WHEN YOU DECIDE IT'S TIME TO PARTICIPATE IN A DISINTERMENT.**

### **1 – INVESTIGATE**

Admit it; everyone wants to know the reason someone is being disinterred. And now you are being advised to find out the dirt! Why? The reason is because of the history of disinterments. Historically, Courts do not support disinterments. In fact, Courts today still use language such as, "We, the Court, disfavor disinterments" and "The Court believes that a body should not be disturbed once it is laid in its place of final rest."

Because Courts do not typically favor disinterments, it means that if you end up in Court over a problem with a disinterment, the Court is going to dislike you off the start. The Court is going to want to hear a good reason for the disinterment. So, what is a good reason? Don't misunderstand; it is not your job to decide if the reason is good enough. But, you can probably recognize a potential problem, and avoid it.

As one quick example, imagine 2 children wanting to disinter their mother so she can be back in a cemetery, closer to her home. Sounds fair. Now what if you find out after an investigation that there is other family and the 2 children are doing this to spite the rest of the family? You may not be able to stop the process, but you could get a stronger release to protect from potential issues. Also, as the vault company, you may not have any way of obtaining this information. In fact, this is probably not an area where you would want to get involved (communicating directly with the family) - but you want to make sure that you at least know from the cemetery and/or funeral home that they have gotten permission and acknowledgment from the family.

## **2 – PARTICIPATION**

If everyone wants to know why the disinterment is happening, the next thing people would probably want to do is watch. Enter your first issue as the provider - are you going to allow the family to watch? Are they allowed to watch? Can you stop them from watching? Many of the answers to these questions will depend on the specific facts of the case. But, there is one constant - you can at least identify what the participation will be from the family. By identifying who will participate, you will at least be in a better position to prepare for the situation.

Keep in mind that if you are performing the disinterment services, there are some things in your control. For example, you can control where people are standing if they are in attendance. Don't be afraid to mark off an area where individuals can and can't stand. Keep in mind that you will be responsible for the safety of those in attendance. Also, know that you can control things like photos and videos. Since your employees could be filmed/photographed you could have the option to prevent this.

## **3 – RESPONSIBILITIES**

As stated above, the funny thing about a disinterment is that everyone involved thinks it is someone else's job. The cemetery thinks the funeral home is responsible, because the funeral home gets permits. The funeral home thinks it's the cemetery's job, because the cemetery digs the grave. And guess what, the vault company typically does everything, and they have the least involvement when it comes to the proper documents (yes, I mean the Release)!

Disinterments involve everyone: the cemetery, funeral home, vault company, and the family. If it goes right – no one knows who did what. If it goes wrong – everyone gets blamed. Take time to identify who is going to be responsible for all the potential issues.

As an example, and one common issue where no one assumes responsibility, consider the old vault and casket. In a perfect world, the vault and casket are disinterred and then reinterred in a new spot. However, in the real world, the casket and vault may not be able to be re-used. So who is responsible for the new vault and/or casket? More importantly, who is responsible for the disposal of the old casket and/or vault? Does anyone even have permission from the family to dispose of these items? Identifying these responsibilities in the beginning avoids issue at the time of the disinterment.

## **4 – COMMUNICATION**

No one likes to be left in the dark. It is important to make sure everyone, family included, knows the status of the disinterment. (As an aside, many lawsuits have some element of poor communication as a basis. Failure to communicate can generate anger and give people a reason to take the step of filing a lawsuit.) All parties must

communicate. Easy items can become difficult problems when parties do not take the time to communicate.

Consider the timing of a disinterment. Disinterments are not typically a quick process. So, communicate to the family how long the process may take. Also, many times the disinterment takes more manpower and equipment. So, do not plan on calling and scheduling a disinterment the day before and expect it all to work. This may seem like common sense; however many times funeral homes, cemeteries, and vault companies fail to communicate. Let's face it – sometimes they don't like to talk to each other at all! Take the time to communicate on the status of the disinterment to help avoid issues that could affect everyone. Also, in your form and/or release, make sure that you provide yourself an 'out' for things such as weather or other uncontrollable events.

## **5 – DOCUMENT**

There is no way an attorney is going to tell you not to document everything – and this is no exception. Documenting the disinterment process is critical. With all the potential issues, you need everything possible to protect you. Where do you start with documentation? A *Disinterment/Reinterment Authorization and Release* is probably a good place to start.

With our Legal Counsel, NCBVA has created a 2.5 page Disinterment/Reinternment Authorization and Release form to use as a model in your own facility. This is available to members for no charge. If you are not currently a member, you may join NCBVA and then receive full access to this file and future files. This benefit alone is worth the annual membership fee of \$450 for a single site or \$1000 for multi-sites.

Send a request to [info@ncbva.org](mailto:info@ncbva.org) to receive the electronic file.

While no one document is bullet proof, a Release is a good place to start. Make sure any Release you use contains some of the items listed above as well as language that protects your business. This means that your company, whether you are the funeral home, cemetery, or vault company, is identified and provided some protection for your involvement.

## **6 – TRAINING**

The last step is to make sure that as a provider of a disinterment, you have provided training on the process. If your training is simply - instead of putting the vault and casket in the hole, you just take it out of the hole - then you probably need a bit more training. The truth is that a disinterment can lead to many more issues and requires thorough training on any of the potential risks as well as issues that could occur.

Consider a few items such as:

- a vault that is broken or filled with water;
- family that wants to 'open' the casket after the disinterment;
- collapsed grave;
- handling cremated remains versus full body burial;
- personal protective equipment in case of bloodborne pathogens.

These are but a few issues that may not typically occur with the original interment. Also, as far as training, make sure you have an internal process that not only protects employees but also your company. Have a policy that you receive copies of all authorizations and releases and permits for the disinterment. Make sure you also provide your employees with the ability to stop the process if it seems unsafe or is running outside of what was outlined. Many problems occur because things start to go a different direction - but no one is willing to say anything.

Again, this is not a complete list of everything you need when conducting a disinterment. It is a good place to start, and it does provide some of the basics. By implementing these steps and incorporating your own best practices, you can make disinterments a safe practice – and not just a risky practice.

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