



Oh Bury Me Not on the Lone Prairie

Making Sure Your Burial Wishes Are Honored

By Laurie S. Hart

Vickie Lynn Marshall, better known as Anna Nicole Smith, died on Feb. 8. She was finally buried on March 2 after a month of well-publicized legal wrangling over who had the right to determine where her final resting place should be — her mother, her 5-month-old daughter, or her boyfriend/attorney. The court finally granted custody of Smith's remains to the court-appointed guardian ad litem of her daughter. In the court's 21-page decision granting custody to the guardian ad litem the following paragraph reads:

Recognizing the public nature of this dispute, it is the court's fervent hope that everyone reading this decision will take at least one message to heart: These proceedings are the poster child for why it is necessary for every individual — whether or not an international celebrity — to make proper arrangements to avoid litigation upon their demise.

Oh come on, you say, this only happens to celebrities. Unfortunately, it happens every day to people just like you and me. A few examples include:

- >> Someone who wants to be cremated, but their family doesn't want them to be; so they are not.
- >> Someone who wants a plain and simple funeral and burial, but their family throws a big, elaborate (and expensive) funeral.
- >> Someone who doesn't want a church service, but the family does; so they have one.
- >> A widow who has remarried wants to be buried by her first husband, but her second husband has her buried in a joint plot where he intends to be buried. I know of a case where after the second husband died and was buried beside his wife, her children had her body exhumed and reburied beside their father, her first husband.

The court was correct in its advice to others based on the fiasco surrounding Smith's death. Everyone should make proper arrangements for their burial to avoid disputes, expenses, broken family relationships and, yes, even litigation.

How to Plan

So how do you go about making proper arrangements? Most states, including Utah and Idaho, have laws that allow you to provide written directions for the disposition of your remains by any lawful means including designating a funeral service establishment, as well as burial or cremation arrangements. Of course, you also need to have provided the resources necessary to carry out the directions. (Don't direct that you be buried in a gold Cadillac if you don't have the money to pay for one.) In this document, you can also designate a person to have the right and duty to control the disposition and/or make any other arrangements necessary to carry out your wishes.

Utah Law

In Utah, this written directive can be done in a separate document that contains the following:

1. Your name and address;
2. Your written directions regarding your disposition;
3. Your signature;
4. The signatures of at least two unrelated individuals; and
5. The date the written directive was prepared and signed.

If, in your directive, you designate someone to have control over your disposition, you must give the name and address of the person.

Your directive can also be contained in your will. However, if you put funeral and/or burial directives in your will, you need to make sure that people know this is where your directives are. Otherwise, you might be buried before anyone thinks to read your will.

Idaho Law

In Idaho, written instructions must be part of a prearranged funeral plan. Prearranged funeral plans are done through a state certified individual or entity who is qualified to provide prearranged funeral plans. If you want to leave a written directive, you should consult a professional (a lawyer or funeral home in Utah, and a state certified individual or entity in Idaho) to help you prepare the proper documentation.

Also remember that generally, it is the law of the

state where you die that will control your disposition if you have not left a valid directive. Smith was living in the Bahamas at the time of her death, but it was a court in Florida, the state where she died, that determined who had the right to control her final disposition. If you maintain residences in more than one state or travel a lot, it is even more important to leave a written directive.

Failing to Plan

If you fail to leave proper directions, state law determines who has the right to control disposition of your remains. Generally, the order of priority is as follows:

1. The person you have designated in a legal directive.
2. Your surviving, legally recognized spouse. (If you are living with someone who is not recognized as your lawful spouse and want him/her to have the power to control your disposition, it is imperative that you prepare a written directive.)
3. A majority of your surviving children who are over the ages of 18. (Better hope they can all agree.)
4. The unanimous consent of your surviving parent, parents or lawful custodian.
5. Your closest living relative.

Conclusion

Still not convinced? Smith's son Daniel died shortly before she did. She had him buried in the Bahamas. It has been reported that Daniel's father reportedly wants his son's body exhumed and reburied in his home state of Texas.

As the old cowboy ballad says:

"It makes no difference, so I've been told
Where the body lies when life grows cold
But grant, I pray, one wish to me
O bury me not on the lone prairie." ²⁸

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