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Kubasak's Corner

The Diligent Dozen

What steps of due diligence should a funeral home take when using an outside crematory?

In the United States today, approximately 1,800 crematories provide service to more than 20,000 funeral homes. The vast majority of funeral homes does not own their own crematory but use an "outside" crematory. Consumers rarely deal directly with a crematory but instead contract with a funeral home or cremation-only business. In serving a client family, the funeral home becomes their agent-representative. Among other things, this means that the agent-funeral home assumes responsibility to render all necessary care and services required and selected and becomes liable for damages resulting from any negligent or improper care by employees or outside contractors hired (by the funeral home) to fulfill its contractual obligations and professional duties.

Courts describe the relationship between the funeral-cremation provider and client family as a "special" relationship primarily due to the fact that:

- The provider is entrusted with custody of the body of a deceased person
- Once custody is assumed, a level of care will be performed by the provider (and is expected) that does not require direct supervision of the client family

The performance of all outside contractors becomes the responsibility of the agent funeral director as if he/she performed the work himself/herself.

When using an outside crematory, funeral directors must place themselves in the best possible position before something goes wrong. If something goes wrong, it is too late to begin doing risk management or practicing due diligence.

Due diligence is the practice of exercising judgment, care, prudence, determination and activity that a person (in this case, another funeral director) would reasonably be expected to do under similar circumstances. With an outside crematory, due diligence means all reasonable precautions to ensure that the crematory and its operating personnel perform each cremation in a professional manner while exercising the standards of practice within the industry.

The following steps known as "The Diligent Dozen" are recommended for the funeral director to perform as due diligence when using an outside crematory:

1. "Seeing is believing." Just as it is standard policy for the funeral director to remain at the crypt or grave to make sure things are properly done, so must similar procedures be followed when cremation is chosen. Additionally, "selling"

cremation services demands that you are knowledgeable and familiar with the product: cremation. Book learning or relying on theory alone is not enough. Seeing is believing and much can be learned about the process by observing a cremation from start to finish.

2. Funeral directors must inspect each crematory they use. Inspections are not social visits and they are not licensing inspections, either. They are performed to ensure that the highest level of professional care is rendered to client families. Funeral directors must also learn what to inspect. Inspections must be unannounced and conducted two to three times during the year. To inspect the inside and outside of the facility, along with its records and observe a cremation in progress, plan on taking three to five hours per inspection.
3. All inspections must be documented. An inspection that is not documented is the same as no inspection. The inspection report should be retained at the office of the funeral home in a "crematory" file.
4. Each crematory should have a policy and procedures manual stating how and under what conditions cremations are performed. Does the crematory abide by the standard of care for the industry? Does the operator follow a step by step process during all facets of cremation? How are remains held at the crematory prior to cremation? Is witnessing available? What is the method of disposing of metal removed from cremated remains? If there is a policy-procedures manual, read it. Ask for a copy to keep. If there is no such manual, insist that the crematory begin developing one.
5. The funeral director, as the agent of the client family, must be familiar with the crematory owner, crematory operator and staff. What are their backgrounds, experiences and training? The crematory owner should perform background checks on his employees. All references must be verified. If necessary, the funeral director should conduct his/her own background checks on crematory personnel.
6. The funeral director must be certain that all required licenses (city, county, state, etc.) for the crematory and any operator licenses required are current and posted at the crematory. If you are uncertain as to what is required, call your state funeral association office, licensing bureau, city or county office to inquire.
7. The crematory must maintain adequate errors and omission/professional liability insurance. In today's litigious climate, absolute minimum coverage is one million dollars. Do not do business with a crematory that does not carry insurance. Ask the crematory for proof of insurance and check effective dates to ensure it is in force.

8. Require that the crematory name the funeral home as ‘additional insured’ on their errors and omissions/professional liability insurance policy. A common practice in the insurance industry, the crematory (the insured) only needs to request this from the insurance company. When this is done, the funeral home will receive a copy of the certificate of insurance with the name of the funeral home listed as an additional insured party. Retain this document in the crematory file.
9. The crematory and crematory operator should provide the funeral home with proof of adequate training and certification from a recognized source.
10. Each crematory must maintain an official record book, known as a cremation log book. A standard of practice throughout the industry, the cremation log book records each cremation and many important details. At the minimum the log book must contain the name of the decedent, name of the funeral home/delivering agent, date of cremation, start and end time of cremation, name of crematory operator, type of container used for cremation, type of urn and disposition of cremated remains.
11. The entire funeral home staff must be trained as to what constitutes proper cremation practices and procedures. For instance, all persons who deliver decedents to the crematory must know what to look for and be trained in conducting a “mini-inspection” each time a delivery is made. Anything out of the ordinary should be immediately reported to funeral home management and documented.
12. Does the crematory hold active membership in recognized professional-trade-business organization within the industry? By itself, membership alone in such organizations is no assurance that the crematory is up to standard, but it is a start.
13. Do the crematory operator and staff participate in continuing education? Are certificates of continuing education posted? Does the crematory sponsor educational programs of its own?

For the funeral director who provides cremation services to his/her community, it involves much more than delivering the body to the crematory and accepting upon good faith only or conjecture that everything will be properly done. Due diligence is a risk assessment and management tool. When due diligence is practiced on an on-going basis and documented, it is an indication that you acted professionally and prudently. If problems develop in the future and the funeral home is named as a defendant in a complaint, your due diligence and inspection reports will help in your legal defense.

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