

**Under State Government Article, § 7-217, Annotated Code of Maryland, the printed version of COMAR is the official and enforceable text. Only the official text may be judicially noticed under Courts and Judicial Proceedings Article, §10-203 Annotated Code of Maryland.**

# **Title 05 DEPARTMENT OF HOUSING AND COMMUNITY DEVELOPMENT**

## **Subtitle 08 HISTORICAL AND CULTURAL PROGRAMS**

### **Chapter 07 Transfer of Human Remains and Associated Funerary Objects**

**Authority: Article 83B, §§1-204, 1-205, and 5-627(d), Annotated Code of Maryland**

#### **.01 General.**

These regulations govern activities designated in Chapter 645 of the Acts of the General Assembly of 1992 known as the Transfer of Human Remains Held by the Maryland Historical Trust Act and codified in Article 83B, §5-627, Annotated Code of Maryland. This Act authorizes the Maryland Historical Trust to transfer human remains and associated funerary objects, including Native American human remains, in its possession, custody, or control to certain persons, groups, or places.

#### **.02 Definitions.**

A. In this chapter, the following terms have the meanings indicated.

B. Terms Defined.

(1) "Advisory Committee on Archeology" means the Advisory Committee on Archeology established under Article 83B, §5-624, Annotated Code of Maryland.

(2) "Appropriate place of repose" means a location where human remains are placed under conditions ensuring restricted access and observation and long-term preservation.

(3) "Associated funerary object" or "object" means an object that, as a part of a death rite or ceremony of a culture, is reasonably believed to have been intentionally placed with individual human remains at the time of death or later.

(4) "Burial Committee" means the Burial Sites and Objects Review Committee described in Regulation .10 of this chapter.

(5) Claimant.

(a) "Claimant" means a person, group, or entity that requests the transfer of human remains or associated funerary objects under these regulations.

(b) "Claimant" does not include institutions or organizations that request temporary transfer of human remains or associated funerary objects for the purpose of study.

(6) "Commission on Indian Affairs" or "Commission" means the Commission on Indian Affairs created under Article 83B, §5-401, Annotated Code of Maryland.

(7) "Cultural affiliation" means a relationship of shared group identity which reasonably can be traced between a present day Native American tribe and an identifiable earlier Native American group or groups.

(8) "Disposition" means the relinquishment of ownership, possession, custody, or control to lineal descendants or culturally affiliated Native American tribes of human remains or associated funerary objects.

(9) "Human remains" or "remains" means any part of the body of a deceased human being in any state of decomposition.

(10) Lineal Descendant.

(a) "Lineal descendant" means an individual tracing the individual's ancestry directly to another individual.

(b) "Lineal descendant" status may be traced by means of the traditional kinship system of a Native American tribe for members of the tribe.

(11) "Maryland Historical Trust" or "Trust" means the Maryland Historical Trust created under Article 83B, Title 5, Subtitle 6, Annotated Code of Maryland.

(12) "Native American" means of, or relating to, a tribe, people, or culture indigenous to the United States of America.

(13) "Native American tribe" means a tribe, band, clan, or group of Native Americans which:

(a) Meets the requirements for recognition as an Indian tribe under the provisions of the federal Native American Grave Protection and Repatriation Act, 25 U.S.C. 3001----3013;

(b) Has obtained formal recognition of its Maryland Indian status under Article 83B, §5-406, Annotated Code of Maryland;

(c) Has been granted recognition of Indian status by another state of the United States; or

(d) Has submitted a petition for formal recognition of Maryland Indian status under Article 83B, §5-406, Annotated Code of Maryland, or has notified the Commission on Indian Affairs in writing that it intends to petition for formal recognition, and the Commission and the Maryland Historical Trust both determine that the tribe, band, clan, or group is likely to meet the recognition criteria.

(14) "Researcher" means a reputable museum, institution of higher education, recognized scientific or historical institution or organization, or an affiliated individual.

(15) "Right of possession" means possession of human remains or associated funerary objects obtained with the voluntary consent of a lineal descendant of the deceased or a Native American tribe culturally affiliated with the deceased.

(16) "Secretary" means the Secretary of Housing and Community Development.

### **.03 Inventory of Human Remains and Associated Funerary Objects.**

A. Within 1 year from the effective date of these regulations, the Trust shall complete an inventory of human remains and associated funerary objects in its possession, custody, or control.

B. For human remains, the inventory shall contain:

(1) A description of each set of remains, including:

(a) Whether the remains are a complete or partial skeleton, bone fragments, or cremation, and

(b) Information sufficient to identify remains by individual, or by skeletal types or elements when the remains cannot be identified by individual;

(2) The general location, if known, where the remains were disinterred or found;

(3) The cultural affiliation of the remains, if practicable, and a summary of the evidence used to make that determination; and

(4) A statement describing the legal basis for ownership or possession of the remains, including information relating to the acquisition of the remains by the Trust.

C. For an associated funerary object, the inventory shall contain:

(1) An identification of the human remains with which the object was interred or found, if known;

(2) A basic description of the object;

(3) The general location, if known, where the object was disinterred or found;

(4) The cultural affiliation of the object, if known, and a summary of the evidence used to make that determination; and

(5) A statement describing the legal basis for ownership or possession of the object.

D. Distribution of Inventory.

(1) Within 6 months of completion of the inventory, the Trust shall provide a copy of the inventory to:

(a) Identified and likely lineal descendants;

(b) Culturally affiliated Native American tribes;

(c) The Commission on Indian Affairs; and

(d) Other individuals, Native American tribes, or Native American cultural organizations which the Trust determines are likely to assist in the identification of lineal descendants or culturally affiliated Native American tribes.

(2) The Trust also shall provide to those listed in §D(1) of this regulation information on the procedures for:

- (a) Requesting transfer of human remains or associated funerary objects; or
- (b) Obtaining the documentation described in §E of this regulation.

#### E. Summary of Additional Documentation.

(1) The Trust shall prepare a summary to include:

- (a) Information listed in B and C of this regulation;
- (b) When known, the site name and the date and means by which the Trust obtained possession, custody, or control of specific remains or objects;
- (c) References to studies and reports known to the Trust that are relevant to the remains and objects; and
- (d) Any additional documentation known and available to the Trust relevant to the remains or objects.

(2) Upon written request, the Trust shall provide a copy of the summary to any individual or official of any Native American tribe which receives or, in the opinion of the Trust, should have received a copy of the inventory.

(3) The summary may not disclose specific information on site location if the Director of the Trust determines disclosure will create a substantial risk of harm, theft, or destruction to the site.

F. Extension of Time. The Secretary may grant the Trust reasonable extensions of time totaling not more than 2 years beyond the initial 1-year period to complete the inventory if the Trust:

- (1) Has made a reasonable effort to obtain the necessary resources and expertise to complete the inventory within the 1-year period; and
- (2) To the extent necessary resources and expertise are available, at the end of the initial 1-year period gathers the information required under B and C of this regulation and distributes the information as required under §D of this regulation.
- (3) Prepares a written plan for completing the inventory within the time extension.

#### **.04 Determinations of Lineal Descent and Cultural Affiliation.**

A. Lineal descent from a deceased individual whose remains or associated funerary objects are in the possession, custody, or control of the Trust, or cultural affiliation of a Native American tribe with those remains or objects, may be established through:

- (1) The inventory process set forth in Regulation .03 of this chapter; or
- (2) Documentary evidence as set forth in §B or C of this regulation.

B. A person may establish that the person is a lineal descendant of a deceased individual whose remains and associated funerary objects are in the possession, custody, or control of the Trust by providing to the Trust documentation tracing the person's ancestry directly to the deceased individual.

C. A group may establish its cultural affiliation with Native American human remains and associated funerary objects by providing to the Trust documentation establishing by a preponderance of the evidence that the:

(1) Group is a Native American tribe;

(2) Deceased individual was a member of an earlier Native American group that:

(a) Was a population biologically distinct from other contemporaneous Native American groups, or

(b) Is identified in the historical record, or in the archeological record by specific cultural characteristics or distinct material culture manufacture patterns and distribution methods, as distinct from other contemporaneous Native American groups; and

(3) Group can reasonably trace a shared group identity between itself and the earlier Native American group, including establishing that the group has been identified from prehistoric or historic times to the present as descending from members of the earlier Native American group.

D. The documentation required under §C of this regulation may include historical, geographical, kinship, biological, archeological, anthropological, or linguistic information, folklore, oral history, tradition, or other relevant information or expert opinion.

#### **.05 Consent to Long-Term Custody of Human Remains and Associated Funerary Objects by the Trust.**

A. Identified lineal descendants of a deceased individual whose remains and associated funerary objects are in the possession, custody, or control of the Trust may consent to continued long-term custody of the remains and objects by the Trust.

B. For Native American remains and objects for which no lineal descendant has been identified, identified culturally affiliated Native American tribes may give consent to continued long-term custody of remains and objects by the Trust.

C. If the Trust obtains consent for long-term custody, the Trust shall treat the remains as provided under Regulation .09 of this chapter, and treat the objects as provided under collections policies adopted from time to time by the Trust.

**.06 Requests for Transfer of Human Remains and Associated Funerary Objects to Lineal Descendants or Culturally Affiliated Groups.**

A. A person or Native American tribe may request transfer of human remains and associated funerary objects in the possession, custody, or control of the Trust. Requests shall be made upon standard forms prescribed by the Trust.

B. A request for transfer shall include at least the following information for each individual whose remains or associated funerary objects are requested:

(1) A copy of the Trust's inventory form or notification from the Trust under Regulation .03 of this chapter demonstrating that the claimant has been determined to be a lineal descendant or a culturally affiliated Native American tribe, or the documentary evidence required under Regulation .04 of this chapter;

(2) A description from the inventory of the remains and objects requested; and

(3) A summary of the proposed final disposition of the remains and objects.

C. A request for transfer may not be accepted for review until all information required on the request form has been submitted.

**.07 Approval or Denial of Requests for Transfer.**

A. Review of Requests for Transfer.

(1) The Trust may approve or deny a request for transfer of human remains or associated funerary objects.

(2) The Trust shall approve a request for transfer if the:

(a) Trust has no prior right of possession; and

(b) Claimant has been determined to be a lineal descendant or culturally affiliated Native American tribe under Regulation .03 or .04 of this chapter.

B. Requests for Transfer Involving Native American Human Remains or Associated Funerary Objects.

(1) Within 10 days of receipt of a complete request for transfer, the Trust shall provide a copy to the Commission on Indian Affairs and request its comments.

(2) The Commission has 45 days from receipt of the request to submit comments to the Trust.

(3) The Trust shall consider the comments of the Commission on Indian Affairs in reviewing a request for transfer.

C. The Trust shall mail to the claimant a notice of approval or denial of a request for transfer of:

- (1) Non-Native American human remains or associated funerary objects, within 60 days of receipt of a complete request; or
- (2) Native American remains or objects, within the earlier of:
  - (a) 60 days after receipt of comments from the Commission on Indian Affairs, or
  - (b) 105 days after the Trust provides a copy of the request to the Commission for its comments.

D. Subject to §E of this regulation and applicable federal law, the Trust shall promptly transfer remains and objects approved for transfer.

E. If more than one request for transfer of the same human remains or associated funerary objects is submitted before the remains or objects are transferred by the Trust, and more than one person or group is established as a lineal descendant or culturally affiliated group under these regulations, the Trust shall retain the remains and associated funerary objects until all claimants:

- (1) Agree to an appropriate disposition for the remains and objects and jointly inform the Trust;
- (2) Submit at their sole cost and expense to binding arbitration under the rules of the American Arbitration Association and notify the Trust of the arbitration decision; or
- (3) Submit the dispute to the Burial Committee for its review and recommendation to the Secretary for the Secretary's binding resolution.

### **.08 Reconsideration of Denied Requests for Transfer.**

A. Within 30 days of mailing by the Trust of notice that a request for transfer has been denied, a claimant may petition the Secretary to submit the Trust's determination to the Burial Sites and Objects Review Committee for its consideration. Upon receipt of a petition for reconsideration, if the Secretary believes that the request for transfer may have merit, the Secretary shall refer the petition to the Burial Committee.

B. Within 90 days after receiving a petition for reconsideration from the Secretary, the Burial Committee shall recommend to the Secretary approval or denial of the request for transfer and notify the Trust.

C. The Burial Committee may recommend approval of a request for transfer denied by the Trust if it finds that the:

- (1) Trust has not established a prior right of possession; and
- (2) Claimant is a lineal descendant or culturally affiliated Native American tribe under Regulation .03 or .04 of this chapter.

D. The Burial Committee may consider new evidence submitted with the petition in support of the claimant's request for transfer.

E. The Secretary shall approve or deny the request and the Secretary's determination shall be final. The Secretary may approve the request if the Secretary finds that the:

- (1) Trust has not established a prior right of possession; and
- (2) Claimant is a lineal descendant or culturally affiliated Native American tribe under Regulation .03 or .04 of this chapter.

### **.09 Disposition of Human Remains in the Trust's Possession, Custody, or Control.**

A. Subject to Regulations .07D and E and .11-----.13 of this chapter, all human remains in the possession, custody, or control of the Trust shall be placed in an appropriate place of repose.

B. The Secretary may determine the appropriate place of repose after consultation with the Trust and the Commission on Indian Affairs.

C. An appropriate place of repose shall be a dedicated place set aside solely for disposition of human remains and shall assure that:

- (1) The remains are not in open view of the general public;
- (2) The remains are kept above or below ground, as appropriate, in conditions conducive to their long-term preservation;
- (3) The remains of specific individuals or groups of remains are not intermixed with remains unrelated by ethnicity, descent, or place of recovery;
- (4) The remains of specific individuals or groups of related remains can be removed for the purpose of transfer to identified lineal descendants or culturally affiliated Native American tribes or for the purpose of study under Regulations .11-----.13 of this chapter; and
- (5) Access to or observation of the remains is not permitted, except by Trust staff or by federal staff as required by federal law to ensure against loss, deterioration, damage, or destruction.

### **.10 Burial Sites and Objects Review Committee.**

A. There is established within the Department a Burial Sites and Objects Review Committee.

B. Membership.

- (1) The Burial Committee shall consist of seven members.

(2) The Burial Committee shall be appointed by the Secretary and shall include the following members:

- (a) Two from nominations submitted by the Commission on Indian Affairs;
- (b) Two from nominations submitted by the Advisory Committee on Archeology;

and

- (c) Three from the general public.

(3) Burial Committee members shall:

(a) Serve terms of 5 years, except that initial members shall serve staggered terms of 1, 3, and 5 years; and

(b) Serve not more than 2 consecutive terms, and may not be reappointed again until at least 1 year has elapsed.

C. The Burial Committee shall select one member of the Burial Committee from among the members from the general public to serve as chairman.

D. Burial Committee members shall serve without compensation but are entitled to reimbursement for expenses as permitted by law.

E. Duties. The Burial Committee shall:

(1) At the request of the Secretary, review petitions for reconsideration of requests for transfer denied by the Trust;

(2) Facilitate the resolution of disputes among claimants; and

(3) Review requests by the Trust to study remains or objects as provided under Regulation .12B(4) of this chapter.

### **.11 Transfer of Human Remains and Associated Funerary Objects for Study.**

A. A reputable museum, institution of higher education, or recognized scientific or historical institution or organization may request that the Trust transfer to it for the purpose of study specific human remains or associated funerary objects in the Trust's possession, custody, or control.

B. The request shall include:

(1) A detailed description of the study, including methodologies and techniques, research questions, and predicted results;

(2) A plan and timetable not to exceed 1 year for accomplishing the study;

(3) The professional qualifications of principal personnel conducting the study;

(4) A description of the location and method of securely storing the remains and objects during the study; and

(5) A description of benefits of the study to Maryland.

C. Following receipt of a request for transfer of remains or objects for study, the Trust shall promptly notify the most closely related lineal descendant or descendants, if known, and culturally affiliated Native American tribes. The notification shall include the information required under §B of this regulation.

D. Approval by Lineal Descendants or Culturally Affiliated Native American Tribes.

(1) A lineal descendant or culturally affiliated Native American tribe notified under §C of this regulation has 90 days to notify the Trust in writing of its approval or disapproval of a request for transfer for study.

(2) If a lineal descendant, or a culturally affiliated Native American tribe if no lineal descendant has been identified, does not approve the request for transfer for study, the Trust may not approve the request.

(3) If the lineal descendants, or culturally affiliated Native American tribes if no lineal descendant has been identified, fail to approve or disapprove the request within 90 days, failure to approve or disapprove constitutes approval of the request.

E. Disputes.

(1) In the event of disputes between multiple lineal descendants regarding approval or denial of requests for transfer for study, the wishes of the lineal descendant most closely related to the deceased, when known, shall be followed. If the lineal descendant most closely related cannot be identified, the procedures set forth in §E(3) of this regulation shall be followed.

(2) In the event of disputes between culturally affiliated Native American tribes, the procedures outlined in §E(3) of this regulation shall be followed.

(3) In the event of unresolved disputes, lineal descendants and culturally affiliated Native American tribes may submit the dispute to:

(a) Binding arbitration:

(i) Within 6 months after the date the Trust notifies the disputants of its receipt of a request for transfer for study,

(ii) Under the rules of the American Arbitration Association, and

(iii) At their sole cost;

(b) The Burial Committee for its binding resolution.

F. Notice to the Advisory Committee on Archeology and Commission on Indian Affairs.

(1) Before consideration of a request for transfer for study, the Trust shall provide the information listed in §B of this regulation to the Advisory Committee on Archeology, and, in the case of Native American remains and objects, to the Commission on Indian Affairs:

(a) After notified lineal descendants approve the request for transfer; or

(b) If no lineal descendants have been identified, after notified culturally affiliated Native American tribes approve the request.

(2) The Advisory Committee on Archeology and the Commission on Indian Affairs has 60 days after the information listed in §B of this regulation is provided to them to submit comments to the Trust.

G. The Trust may approve a request and transfer the human remains or associated funerary objects for study if, in the case of:

- (1) Non-Native American remains and objects:
  - (a) Identified lineal descendants have been notified and approve the transfer for study;
  - (b) The Advisory Committee on Archeology has had an opportunity to review and comment on the proposed study;
  - (c) The study will be completed and the remains and objects returned to the Trust within 1 year of the date of transfer for study, unless an extension of time for study has been approved under Regulation .13 of this chapter; and
  - (d) The Trust finds that the:
    - (i) Study is an essential part of a scientific research project, and
    - (ii) Results of the study will be of benefit to the citizens of Maryland;
- (2) Native American remains and objects for which lineal descendants or culturally affiliated tribes have been identified, the:
  - (a) Lineal descendants approve the transfer for study or, if there are no identified lineal descendants, the culturally affiliated Native American tribe or tribes approve; and
  - (b) Requirements under §G(1)(b)----(d) of this regulation have been met;
- (3) Native American remains and objects for which no lineal descendants or culturally affiliated Native American tribes have been identified, the:
  - (a) Commission on Indian Affairs has had an opportunity to review and comment and the Trust has considered the comments; and
  - (b) Requirements under §G(1)(b)----(d) of this regulation have been met.

H. Subject to timely resolution of disputes as provided for in §E of this regulation, within 150 days of receipt of all information required under §B of this regulation, the Trust shall approve or deny the proposed transfer for study and promptly notify:

- (1) The requesting institution or organization;
- (2) Identified lineal descendants and culturally affiliated Native American tribes;
- (3) The Advisory Committee on Archeology; and
- (4) If the study involves Native American remains or objects, the Commission on Indian Affairs.

I. The Trust may place conditions on transfers for study to address comments received from the Advisory Committee on Archeology or the Commission on Indian Affairs.

## **.12 Study of Human Remains and Associated Funerary Objects by the Trust.**

If no request for transfer of human remains or associated funerary objects has been approved under these regulations or is under review, the Trust may conduct a study of the remains or objects:

A. To obtain the inventory information required under Regulation .03 of this chapter or supplemental information necessary to validate documentation submitted under Regulation .04 or .05 of this chapter, if the:

- (1) Study will be completed within 1 year, unless an extension of time is granted in accordance with Regulation .13B of this chapter;
- (2) Remains or objects remain in the Trust's possession, custody, or control; and
- (3) For studies of remains, the Trust studies first the remains for which the Trust determines that cultural affiliation can most probably be determined; and

B. For other purposes, if:

- (1) The Advisory Committee on Archeology and, for Native American remains or objects, the Commission on Indian Affairs, have had an opportunity to review and comment on the proposed study;
- (2) Identified lineal descendants, or, if there are no identified lineal descendants, culturally affiliated Native American tribes, approve;
- (3) The study will be completed within 1 year, unless an extension of time is granted in accordance with Regulation .13B of this chapter; and
- (4) The Burial Committee finds that the:
  - (a) Study is an essential part of a scientific research project, and
  - (b) Results of the study will be of benefit to the citizens of Maryland.

## **.13 Extensions of Time for Study.**

A. Studies by Authorized Institutions or Organizations.

(1) The Trust may approve an extension of time for study beyond the 1-year study period provided in Regulation .11 of this chapter if a researcher submits a written application to the Trust.

- (2) An application for an extension shall include a:
  - (a) Summary report of work to date, including preliminary results and tasks accomplished in relation to the overall study work plan;
  - (b) Description of the necessity for the request; and
  - (c) Revised plan and timetable for study completion.
- (3) An extension may not exceed 1 year.

- (4) A researcher may apply for additional time extensions as necessary.
- (5) The Trust may grant an extension if:
  - (a) It finds, based on the information submitted with the application, that the researcher has made a good faith effort to complete the study within the original 1-year time frame and any extensions;
  - (b) For remains and objects for which a lineal descendant has been identified, the lineal descendant approves the time extension; and
  - (c) For culturally affiliated Native American remains and objects for which no lineal descendant has been identified, culturally affiliated Native American tribes approve the time extension.

B. Studies by the Trust. For studies performed by the Trust under Regulation .12 of this chapter, the Secretary may grant a time extension if the Trust submits a written request containing the information in §A(2) of this regulation, and the Secretary finds that the Trust has made a good faith effort to complete the study within the original 1-year time frame and any extensions. An extension may not exceed 1 year. The Trust may apply for additional time extensions as necessary.

#### **.14 Inspection of Documentation.**

A. Documentation submitted in support of or in opposition to a request for transfer of human remains or associated funerary objects may be inspected or copied by a person as provided by the Access to Public Records Act, State Government Article, 10-611-----10-630, Annotated Code of Maryland, and COMAR 05.01.02.

B. The Trust shall keep documentation confidential relating to the location or character of a historic property if the Director of the Trust determines that disclosure will create a substantial risk of harm, theft, or destruction to the property or the area or place where the property is located.

C. The Trust shall deny inspection or copying of any part of the documentation that contains sociological information relating to an individual, as provided in the Access to Public Records Act. For purposes of this chapter, sociological information includes:

- (1) Social Security number;
- (2) Personal address;
- (3) Personal telephone number;
- (4) Medical or psychiatric history;
- (5) Educational history;
- (6) Work history;
- (7) Military service;

- (8) Financial information;
- (9) Religious preference, membership, and attendance;
- (10) Personal relationships, beliefs, and values;
- (11) Genealogical charts;
- (12) Family history other than evidence necessary to determine descendency or cultural affiliation; and
- (13) Other information of a similar sociological nature.

D. During review of a request for transfer the Trust shall retain the documentation in a secure facility.

E. After final action on a request for transfer, the Trust shall promptly return any original documents and personal memorabilia to the person who submitted the original documents and personal memorabilia. Copies of all documents and an inventory of all personal memorabilia submitted shall be retained by the Trust, except that:

(1) Copies may not be retained of those portions of the documents containing the information listed under §C of this regulation, and documents shall be returned to the person who submitted them; and

(2) Documents not subject to disclosure under the Access to Public Records Act shall be retained at the Maryland State Archives or other suitable secure depository until disposition under State Government Article, 10-637-----10-642, Annotated Code of Maryland.

### **Administrative History**

**Effective date: May 23, 1994 (21:10 Md. R. 841)**

**Regulation .06A amended effective November 20, 1995 (22:23 Md. R. 1800)**

**Regulation .14 adopted effective November 20, 1995 (22:23 Md. R. 1800)**