



AUTHORIZED REPRESENTATIVE

Who has the right of disposition

Easy Steps to Compliance

Who has the right to control funeral arrangements and final disposition:

Generally, you automatically believe that the closest next of kin has the right to make decisions about the funeral and final disposition of his/her relative. And, most of the time, you are correct. But what about those times.....

A married couple who has been legally separated for several years?

A blended family of step children and step parents?

What about the decedent's rights?

At some point, you will run into a difficult situation that you don't know how to handle. This is why West Virginia now has a method for determining who is the "authorized representative" - the person who has the right to make funeral arrangements. Below is the new legislative rule which covers this previously gray topic. It outlines when the decedent himself/herself is the authorized representative, as well as the closest next of kin, and other situations.

If you get into a situation that you are unsure about, call the Board for guidance. If you follow the list below - IN ORDER - you should be able to make a determination on your own. Remember, this list is IN PRIORITY ORDER. Start at the beginning and work your way down the list.

Advance directives, medical power of attorney and will of decedent

A person may direct his/her own funeral arrangements, either by oral or written instructions. The authorized representative (outlined in Priority Listing below) entitled to control the final disposition must faithfully carry out the reasonable and otherwise lawful directions of the decedent to the extent that the decedent has provided resources for the purpose of carrying out the directions. If the instructions are contained in a will, they shall be immediately carried out, regardless of the validity of the will in other respects or of the fact that the will may not be offered for or admitted to probate until a later date, subject to other provisions of this chapter or any other law of this state. If the instructions are contained in a valid medical power of attorney document, they shall be immediately carried out, pursuant to W.Va. Code §16-30-1 et. seq.

Priority Listing of Authorized Representatives.

The right and responsibility to control the disposition of a decedent, including the location and

conditions of final disposition (unless other directions have been given by the decedent by a will, advanced directive, medical power of attorney or other written document) devolves upon the following authorized representative **in the order named**:

1. the person appointed in a dated written instrument signed by the decedent. Written instrument includes, but is not limited to, a health care directive or medical power of attorney executed pursuant to W.Va. Code §16-30-1 et. seq. of the West Virginia Health Care Decisions Act. Written instrument does not include a durable or nondurable power of attorney which terminates on the death of the principal pursuant to W.Va. Code §39-4-1 et. seq. of the Uniform Durable Power of Attorney Act.
2. the surviving, legally recognized spouse.
3. the surviving biological or adopted child or children of the decedent over the age of majority, provided that, in the absence of actual knowledge to the contrary, you may rely on instructions given by the child or children who represent that they are the sole surviving child, or that they constitute a majority of the surviving children.
4. the surviving parent or parents of the decedent.
5. the surviving biological or adopted sibling or siblings of the decedent over the age of majority, provided that, in the absence of actual knowledge to the contrary, you may rely on instructions given by the sibling or siblings who represent that they are the sole surviving sibling, or that they constitute a majority of the surviving siblings.
6. the person or persons respectively in the next degree of kinship in the order named by law to inherit the estate of the decedent.
7. the appropriate public or court authority, as required by law. An appropriate public or court authority includes the county Department of Health and Human Resources of the county in which the death occurred if the person dies without apparent financial means to provide for final disposition or the circuit court in the county in which the death occurred.

What about Estranged Persons?

Where there is only one person in a degree of relationship to the decedent described above in the Priority Listing and a circuit court, pursuant to Dispute resolution procedures listed below, determines that the person and the decedent were estranged at the time of death, the right to control and the duty of disposition shall devolve to the authorized representative or representatives in the next degree of relationship pursuant to the Priority Listing above. "Estranged" means having a relationship characterized by mutual enmity, hostility, or indifference.

What if the Authorized Representative Refuses His/Her Right to Control Disposition?

If the authorized representative (based on Priority Listing) refuses to accept or declines to act upon the right or duty, that right and duty shall pass as follows:

1. to another person or persons with the same degree of relationship to the decedent as the person or persons refusing to accept or declining to act; or
2. If no one has the same degree of relationship to the decedent, it passes to the person or persons in the next degree of relationship to the decedent.

Disputes Over Who Should Be Named as the Authorized Representative

When a dispute exists regarding the right to control disposition, the parties in dispute *or* the funeral director may file a petition in a county circuit court, requesting that the court make a determination in the matter. The petition may be filed as follows:

1. in the circuit court in the county of residence of the decedent, or
2. if the decedent resided in another state, in the county where your funeral establishment is located.

Should the right to control disposition devolve to more than one person with the same degree of relationship to the decedent and those persons cannot, by majority vote, make a decision regarding arrangements and final disposition and a circuit court has been petitioned to make a determination, the court must consider the following factors in making its determination:

- a. the reasonableness, practicality, and resources available for payment of the proposed arrangements and final disposition;
- b. the degree of the personal relationship between the decedent and each of the persons in the same degree of relationship to the decedent;
- c. the expressed wishes and directions of the decedent and the extent to which the decedent has provided resources for the purpose of carrying out the wishes or directions; and
- d. the degree to which the arrangements and final disposition will allow for participation by all who wish to pay respect to the decedent.

Control by Funeral Director.

A funeral director, by this new rule, has complete authority to make funeral arrangements and perform related duties and to recover reasonable charges for the final disposition when both of the following apply:

1. the funeral director has actual knowledge that none of the persons described above in the

Priority Listing actually exist or that none of the persons so described can be found after reasonable inquiry or contacted by reasonable means; and

2. the appropriate public or court authority fails to assume responsibility for disposition of the remains within 36 hours after having been given written notice of the facts. Written notice may be delivered by hand, United States mail, facsimile transmission, or telegraph.

Immunity.

You can NOT be made subject to criminal prosecution or civil liability for carrying out the otherwise lawful instructions of the decedent or the person or persons whom the funeral director reasonably believes is entitled to control the final disposition as the authorized representative or representatives.

Granted...anyone can sue you for any reason! The best way to combat such a lawsuit is to thoroughly document the case and follow the laws and rules very closely.

Liability for cost of final disposition.

In addition to separate contractual obligations, the liability for the reasonable cost of final disposition devolves upon the estate of the decedent, regardless of whether testate or intestate, and the distributees of the estate, pursuant to Chapter 41 of W. Va. Code relating to wills. In the case of persons who die without apparent financial means to provide for final disposition, control of final disposition and liability devolves to the county Department of Health and Human Resources in which the death occurred, pursuant to W.Va. Code §9-5-18 relating to funeral expenses for indigent persons and pursuant to W.Va. Code §9-6-1 et. seq. relating to social services for adults. In the case of bodies delivered as anatomical gifts, pursuant to W.Va. Code §16-9-1 et. seq. of the Anatomical Gift Act, the institution receiving the body shall bear the responsibility for transportation and final disposition.

Interference with body or final disposition.

“Any person that arrests, attaches, detains, or claims to detain any human remains for any debt or demand, or upon any pretended lien or charge, or who, without authority of law, obstructs or detains a person charged with the duty or engaged in the final disposition of a dead human body, or fails to release any dead human body upon the receipt of authorization for the release signed by a person or persons entitled to custody of the body is guilty of a misdemeanor. Criminal prosecution shall not preclude the Board from taking any other lawful disciplinary action.”

In other words, you can't hold a body as a hostage!

This information sheet is designed to aid you in complying with state funeral laws.
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