

## **Authorization for Final Disposition: Who Decides What Happens with My Body?**

Funeral arrangements are overwhelming in the midst of losing a loved one. It is even more difficult when the decedent leaves the decision up to family members with regard to disposition of the decedent's body. Someone can make it easier for his or her family by providing detailed instructions regarding funeral arrangements, disposal preferences, what finances will be used to pay funeral costs, as well as appointing a representative to carry out these instructions. While people can include pre-planned funerals as part of their overall pre-planning strategy, at minimum, they should have an Authorization for Final Disposition form to appoint a representative to make decisions regarding disposition of their body when the time comes.

Some attorneys include a provision in the client's will regarding final disposition; however, in the state of Wisconsin, such provisions are not legally binding. A personal representative of an estate is not obligated to carry out the decedent's final disposition wishes as expressed in a will. In addition, as a practical matter the will is often not located, read, or admitted to probate until after the funeral. Consequently, the decedent's wishes may be seen too late. The Authorization for Final Disposition form solves both issues. First, a signed Authorization for Final Disposition form legally binds the appointed representative to carry out the decedent's wishes as stated in the document, so long as the estate can reasonably cover the costs of the requests. Second, the form can be filed with a funeral home and a copy given to the representative so each party is aware of what the decedent wants.

In Wisconsin there is a default for who will be in charge of the final disposition in the absence of an authorization form. The order is: 1) surviving spouse; 2) surviving child over the age of 18 (or if more than one, the majority of surviving children); 3) surviving parent(s), or one surviving parent if the other parent is unavailable; 4) surviving siblings, unless there is more than one, in which case it will be majority; 5) distant relatives as set forth in Wisconsin law; 6) the guardian of the "person" if the decedent had one legally appointed before death; and 7) an individual other than anyone specified above who will attest in writing to acting in good faith. It is particularly important to keep in mind that a failure to appoint a representative to make decisions regarding final disposition could lead to family disagreements and problems. In practice, disagreements over disposition are commonly found if the decedent was in a second marriage and had children from a previous marriage. Under these circumstances, it is crucial to have an authorization form to make sure the funeral and disposition process goes smoothly.

If a person chooses to complete an Authorization for Final Disposition form, they will have to determine who they would want to be their representative to make final disposition decisions. Choosing a representative that will value and adhere to final disposition wishes is a very personal decision. There is no obligation to choose the same person that is the personal representative in your will; however, doing so may help facilitate the final disposition and funeral process because the personal representative of the estate is in charge of paying for funeral expenses. The Authorization for Final Disposition form contains a section that allows someone to determine how they would like their funeral paid for and from which accounts the money will be drawn.

While disposition requests are only legally binding if they are recorded on the Authorization for Final Disposition form, there is one major exception to be aware of. Health care power of

attorneys often include a provision for the desire to give an anatomical gift if needed. If someone chooses to give an anatomical gift, the health care power of attorney provision is legally binding as to the anatomical gift; thus, your final disposition representative cannot choose to withdraw the anatomical gift donation unless the decedent revoked it prior to death by removing it from their health care power of attorney document.

Completing an Authorization for Final Disposition form will ensure that your final wishes are realized and avoid unnecessary family conflict. It is an important component of your estate plan. At Hildebrand Law Firm, LLC we are passionate about helping you with your estate planning and probate needs. The experienced team at Hildebrand Law Firm, LLC can assist you with drafting an Authorization for Final Disposition form and any other estate planning you need.