



LEGAL HOTLINE FOR OLDER TEXANS

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FAMILY CAREGIVER SERIES

APPOINTMENT OF AGENT TO CONTROL DISPOSITION OF REMAINS

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For advice that is specific to your particular circumstances, you should consult a lawyer.

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WRITTEN DIRECTIONS FOR THE DISPOSITION OF REMAINS

A person may provide written directions for the disposition, including cremation, of the person's remains in a will, a prepaid funeral contract, or a written instrument under V.T.C.A. Section 711.002 which is signed and acknowledged by such person. The directions may govern the inscription to be placed on a grave marker attached to any plot in which the decedent had the right of sepulture at the time of death and in which plot the decedent is subsequently interred. The directions may be modified or revoked only by a subsequent writing signed and acknowledged by such person. The agent otherwise entitled to control the disposition of a decedent's remains has a duty to faithfully carry out the directions of the decedent to the extent that the decedent's estate or the agent controlling the disposition are financially able to do so.

The third parties include a cemetery organization, a business operating a crematory or columbarium or both, a funeral director or an embalmer, or a funeral establishment. The third parties may not be held liable for carrying out the written directions of a decedent or the directions of any person who represents that they entitled to control the disposition of the decedent's remains.

FORM OF WRITTEN DIRECTIONS FOR APPOINTMENT OF AGENT TO CONTROL DISPOSITION OF REMAINS

A written instrument under V.T.C.A. Section 711.002 is referred to as an appointment of agent to control disposition of remains. A written instrument is legally sufficient if the wording of the instrument complies substantially with the form contained in V.T.C.A. Health & Safety Code Section 711.002(b), set forth below. The instrument must be properly completed, signed by the decedent, the agent, and each successor agent, and the signature of the decedent must be acknowledged. Such written instrument may be modified or revoked only by a subsequent written instrument that also complies with V.T.C.A. Health & Safety Code Section 711.002(b).

The written instrument or appointment of agent to control disposition of remains differs from a durable power of attorney and a medical power of attorney in a number of respects. First, the agents are required to sign the form and by signing it they agree to assume the obligations of interring the decedent. Second, it springs into effect upon the death of the decedent at which time it is, of course, irrevocable by the decedent. Thirdly, since the only way to modify or revoke the written instrument is by executing a subsequent written instrument, once an individual executes a written instrument that individual will have that written instrument or a subsequently executed written instrument for the rest of their life.

The written instrument is required to be in substantially the following form:

APPOINTMENT OF AGENT TO CONTROL DISPOSITION OF REMAINS

I, _____,

(your name and address)

being of sound mind, willfully and voluntarily make known my desire that, upon my death,

the disposition of my remains shall be controlled by _____

(name of agent)

in accordance with Section 711.002 of the Health and Safety Code and, with respect to that subject only, I hereby appoint such person as my agent (attorney-in-fact).

All decisions made by my agent with respect to the disposition of my remains, including cremation, shall be binding.

SPECIAL DIRECTIONS:

Set forth below are any special directions limiting the power granted to my agent:

AGENT:

Name: _____

Address: _____

Telephone Number: _____

Acceptance of Appointment: _____

(signature of agent)

Date of Signature: _____

SUCCESSORS:

If my agent dies, becomes legally disabled, resigns, or refuses to act, I hereby appoint the following persons (each to act alone and successively, in the order named) to serve as my agent (attorney-in-fact) to control the disposition of my remains as authorized by this document:

1. First Successor

Name: _____

Address: _____

Telephone Number: _____

Acceptance of Appointment: _____

(signature of first successor)

Date of Signature: _____

2. Second Successor

Name: _____

Address: _____

Telephone Number: _____

Acceptance of Appointment: _____

(signature of second successor)

Date of Signature: _____

DURATION:

This appointment becomes effective upon my death.

PRIOR APPOINTMENTS REVOKED:

I hereby revoke any prior appointment of any person to control the disposition of my remains.

RELIANCE:

I hereby agree that any cemetery organization, business operating a crematory or columbarium or both, funeral director or embalmer, or funeral establishment who receives a copy of this document may act under it. Any modification or revocation of this document is not effective as to any such party until that party receives actual notice of the modification or revocation. No such party shall be liable because of reliance on a copy of this document.

ASSUMPTION:

THE AGENT, AND EACH SUCCESSOR AGENT, BY ACCEPTING THIS APPOINTMENT, ASSUMES THE OBLIGATIONS PROVIDED IN, AND IS BOUND BY THE PROVISIONS OF, SECTION 711.002 OF THE HEALTH AND SAFETY CODE.

Signed this _____ day of _____, 19__.

_____ (your signature)

State of _____

County of _____

This document was acknowledged before me on _____ (date) by _____ (name of principal).

_____ (signature of notarial officer)

(Seal, if any, of notary)

_____ (printed name)

My commission expires: _____

WRITTEN DIRECTIONS IN A WILL

If the directions are in a will, they must be carried out immediately without the necessity of probate. If the will is not probated or is declared invalid for testamentary purposes, the directions are valid to the extent to which they have been acted on in good faith.

A potential problem with putting directions in a will is that the Texas Health and Safety Code requires generally that the remains be buried, cremated, or refrigerated virtually immediately after death of the decedent. Many times the contents of the will, for one reason or another, are not known at or immediately after the time of death. Thus, one who leaves directions for disposition of their remains may end up with an undesired disposition of their remains.

PROCEDURE WHEN NO WRITTEN DIRECTIONS

Unless a decedent has left directions in writing for the disposition of the decedent's remains as provided in a will, a prepaid funeral contract, or a written instrument signed and acknowledged by such person, the following persons, in the priority listed, have the right to control the disposition, including cremation, of the decedent's remains, have a duty to inter the remains, and are liable for the reasonable cost of interment:

- (1) the person designated in a written instrument signed by the decedent;
- (2) the decedent's surviving spouse;
- (3) any one of the decedent's surviving adult children;
- (4) either one of the decedent's surviving parents;
- (5) any one of the decedent's surviving adult siblings; or
- (6) any adult person in the next degree of kinship in the order named by law to inherit the estate of the decedent.

A person listed in above has the right, duty, and liability provided by that subsection only if there is no person in a priority listed before the person.

If there is no person with the duty to inter and:

- (1) an inquest is held, the person conducting the inquest shall inter the remains; and
- (2) an inquest is not held, the county in which the death occurred shall inter the remains.

Any dispute among any of the persons listed concerning their right to control the disposition, including cremation, of a decedent's remains shall be resolved by a court of

competent jurisdiction. A cemetery organization or funeral establishment is not liable for refusing to accept the decedent's remains, or to inter or otherwise dispose of the decedent's remains, until it receives a court order or other suitable confirmation that the dispute has been resolved or settled.

APPLICATION REQUESTING EMERGENCY INTERVENTION BY A COURT

An applicant may file an application requesting emergency intervention by a court exercising probate jurisdiction to provide for the payment of funeral and burial expenses or the protection and storage of personal property owned by the decedent that was located in rented accommodations on the date of the decedent's death with the clerk of the court in the county of domicile of the decedent or the county in which the rental accommodations that contain the decedent's personal property are located. The application must be filed not earlier than the third day after the date of the decedent's death and not later than the 90th day after the date of the decedent's death.

An applicant may file an emergency application with the court only if an application has not been filed and is not pending for letters testamentary, letters of administration, collection of small estates upon affidavit, or independent administration and the applicant:

(1) needs to obtain funds for the funeral and burial of the decedent; or

(2) needs to gain access to rental accommodations in which the decedent's personal property is located and the applicant has been denied access to those accommodations.

An application for emergency intervention to obtain funds needed for a decedent's funeral and burial expenses must be sworn and must contain:

(1) the name, address, social security number, and interest of the applicant;

(2) the facts showing an immediate necessity for the issuance of an emergency intervention order by the court;

(3) the date of the decedent's death, place of death, decedent's residential address, and the name and address of the funeral home holding the decedent's remains;

(4) any known or ascertainable heirs and devisees of the decedent and the reason:

(A) the heirs and devisees cannot be contacted; or

(B) the heirs and devisees have refused to assist in the decedent's burial;

(5) a description of funeral and burial procedures necessary and a statement from the funeral home that contains a detailed and itemized description of the cost of the funeral and burial procedures; and

(6) the name and address of an individual, entity, or financial institution, including an employer, that is in possession of any funds of or due to the decedent, and related account numbers and balances, if known by the applicant.

The application shall also state whether there are any written instructions from the decedent relating to the type and manner of funeral or burial the decedent would like to have. The applicant is required to attach the instructions, if available, to the application and must fully comply with the instructions. If written instructions do not exist, the applicant may not permit the decedent's remains to be cremated unless the applicant obtains the court's permission to cremate the decedent's remains.