



WISCONSIN LEGISLATIVE COUNCIL
ACT MEMO

2007 Wisconsin Act 58
[2007 Assembly Bill 305]

Control of Disposition of Certain
Human Remains; Advance
Directives

Under *current law*, if the applicable assets of the estate of a decedent are insufficient to pay all claims and allowances in full, the personal representative for the decedent's estate must pay certain items under an order of priority that begins with the costs and expenses of administering the estate, followed by the reasonable funeral and burial expenses, and then other items.

Act 58 does the following:

1. **Advance Directive: Authorization for Final Disposition.** Authorizes an individual who is of sound mind and at least 18 years of age to execute a written, witnessed document, termed an "*authorization for final disposition*" (authorization). This document may express the special directions, instructions concerning religious observances, and suggestions concerning the source of funds of the individual (declarant) for disposition of the declarant's body after death (final disposition), including arrangements for a viewing; a funeral ceremony, memorial service, graveside service, or other last rite; and burial, cremation and burial or other disposition, or donation of the declarant's body. The authorization:

- a. Must be signed voluntarily by the declarant in the presence of two witnesses or a notary public.
- b. Requires a representative and one or more named successor representatives to carry out the directions, instructions, and suggestions of the declarant unless the directions, instructions, or suggestions exceed available resources from the decedent's estate or are unlawful or unless there is no realistic possibility of compliance.

2. **Advance Directive: Authorization Form.** Specifies an authorization form, although a written document that meets certain requirements for an authorization need not follow this form. The Department of Health and Family Services must prepare and provide copies of the statutory form and certain other information for distribution to funeral directors, crematory authorities, cemetery

This memo provides a brief description of the Act. For more detailed information, consult the text of the law and related legislative documents at the Legislature's Web site at: <http://www.legis.state.wi.us/>.

authorities, hospitals, nursing homes, county clerks, and local bar associations, and individually to private persons, and may charge a reasonable fee for the preparation and distribution.

3. **Control of Disposition of Remains: Order of Priority of Individuals Who May Control Remains.** Specifies a list of individuals, in order of priority, who may control the disposition of the decedent's remains. The list includes, in order of priority, the authorized representative of the decedent acting under the decedent's authorization or a successor representative; the decedent's surviving spouse, child, parent, and sibling, in that order; an individual in the next degree of kinship; the decedent's guardian of the person, if any; and another individual who meets specified criteria who attests in writing that he or she has made a good-faith effort to contact the individuals above.

4. **Process Where Disagreement Amongst Individuals Qualified on the Same Level of Priority.** If individuals qualified on the same level of priority *disagree* concerning the final disposition, specifies a process and criteria for determination by a probate court of the individual with control of final disposition.

5. **Civil and Criminal Immunities for Funeral Director and Others.** Provides civil and criminal immunities for a funeral director, crematory authority, or cemetery authority who refuses to accept the decedent's remains or inter or otherwise dispose of the remains or complete arrangements for final disposition, *if individuals qualified on the same level of priority disagree, unless ordered by a probate court or unless presented with a written agreement of the individuals.* A funeral director, crematory authority, or cemetery authority that retains the decedent's remains during such a dispute may add the costs of the retention to final disposition costs. The Act also provides a funeral director, crematory authority, or cemetery authority with civil or criminal immunity for certain actions in good faith reliance on instructions from an individual who claims priority.

6. **Individuals Prohibited from Control of Final Disposition.** Prohibits control of final disposition by any of the individuals specified in the prioritized list if the individual has been charged with any of several crimes in connection with the decedent's death, *except that*, if the charges have been dismissed or the individual has been found not guilty, the individual is restored to his or her level of priority in the list for control of final disposition.

The Act also prohibits control of final disposition by: (a) an authorized individual who fails to exercise authorization within two days after notification of the decedent's death or who cannot be located; (b) by the decedent's spouse, if an order to terminate the marriage was pending at the time of the decedent's death; and (c) by an individual whom the probate court determines was estranged from the decedent at the time of the decedent's death.

7. **Persons Prohibited from Acting as Declarant's Representative Unless Certain Circumstances Apply.** Specifies that if any of the following has a direct professional relationship with or provides professional services directly to the declarant and is not related to the declarant by blood, marriage, or adoption, that person *may not* serve as a declarant's representative: a funeral director, crematory authority, cemetery authority, employee of these, a health care provider, or a social worker.

8. **Things that Supersede any Control of Final Disposition Under the Act.** Specifies that an *unrevoked anatomical gift* made by the decedent or by an individual other than the decedent and any power or duty of a coroner, medical examiner, or other physician with respect to reporting certain deaths or performance of autopsies and inquests supersede any control of final disposition specified in the Act.

9. **Revocation of Authorization.** Specifies methods by which a declarant may revoke an authorization.

10. **Penalty Provisions.** Specifies a fine of not more than \$500 or imprisonment for not more than 30 days, or both, for persons who intentionally conceal, cancel, deface, obliterate, or damage an authorization without consent.

Effective Date: Act 58 took effect on March 18, 2008.

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