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Who is Legally Entitled to Make My Funeral Arrangements? *Frequently Asked Questions*

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Who is Legally Entitled to Make My Funeral Arrangements?

Your designated agent has the legal right to make your funeral arrangements. Laws vary by state, but under Illinois law, any agent you designate in a valid written instrument is entitled to control your remains and make decisions regarding your funeral. The Illinois Disposition of Remains Act sets forth the requirements for properly designating your agent in writing. To simply designate an agent, you may do so by means of a statutory form entitled “Appointment of Agent to Control Disposition of Remains”. A valid power of attorney for healthcare may also be drafted so as to empower an agent to make decisions regarding your funeral arrangements. If you would prefer to designate an agent to carry your wishes, rather than simply designating an agent to make decisions for you, a qualified estate planning attorney can assist you in preparing detailed, legally binding instructions regarding your funeral arrangements which must be honored by your agent.

What If I Do Not Designate An Agent in Writing?

If you do not designate an agent to make your funeral arrangements in a valid, legally binding written instrument, your next of kin as defined under the Illinois Disposition of Remains Act is entitled to make decisions about your funeral. Your spouse, if any, is first entitled to make your arrangements. If you do not have a spouse, your adult children, by majority vote, are entitled to make decisions regarding your funeral. If you do not have adult children, then your parents and finally your siblings are entitled to make decisions regarding your arrangements.

How Can I Ensure My Wishes are Carried Out?

Seek the advice of an experienced estate planning attorney to avoid family conflict and to ensure your wishes are carried out. People often leave written instructions setting forth their wishes with respect to their funeral arrangements but do so without the assistance of an attorney. In many cases, these instructions are not valid and legally binding and are therefore disregarded. With proper legal advice, you can ensure the instructions you leave are legally binding and the person of your choice is empowered under the law to carry out your wishes regarding the disposition of your remains, anatomical gifts and your funeral arrangements.



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