

Agents and Instructions for Disposition of Remains



Why Name an Agent?

- Consider client's particular circumstances. Will there be family disagreement?
- Ex: "Dad would have wanted A." "No, he would have wanted B."

Agents and Instructions for Disposition of Remains

- **Appointment of Agent to Control Remains**
 - Named agent has the right to control the disposition of remains.
 - Includes room for instructions for disposition of remains.
 - Tex. Health & Safety Code § 711.002.
- **Instructions for Disposition of Remains**
 - Instructions can be included in the Appointment of Agent form or be written independently of an Appointment of Agent.
 - Tex. Health & Safety Code § 711.002(g).

Persons Who Have Right to Control Disposition of Remains, by Priority

- 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;
- 6) Any one or more of the duly qualified executors or administrators of the decedent's estate; or
- 7) Any adult person in the next degree of kinship in the order named by law to inherit the estate of the decedent.

Tex. Health & Safety Code § 711.002(a).

Appointment of Agent in Writing

- Statutory Appointment for Disposition of Remains – the appointment “may be in substantially the following form.” Tex. Health & Safety Code § 711.002(b).
- Allows the principal to appoint an agent who has the right to control the disposition of remains.
- If no agent is named, look to § 711.002(a), as described in the preceding slide, to determine who has the right to control the disposition of remains.

Instructions for Disposition of Remains

- Tex. Health & Safety Code § 711.002(g) – 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 signed and acknowledged by such person. A party to the prepaid funeral contract or a written contract providing for all or some of a decedent's funeral arrangements who fails to honor the contract is liable for the additional expenses incurred in the disposition of the decedent's remains as a result of the breach of contract. 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 person otherwise entitled to control the disposition of a decedent's remains under this section shall faithfully carry out the directions of the decedent to the extent that the decedent's estate or the person controlling the disposition are financially able to do so.**

Execution Requirements

- Appointment of Agent to Control Remains – notary.
- Instructions for Disposition of Remains – in a will, prepaid funeral contract, or written instrument signed and notarized.
- See also Bill Pargaman’s video presentation called “A Guide to Executing Estate Planning Documents in Uncertain Times.”

Free Access to the Texas Guardianship Manual Online

- The Appointment for Disposition of Remains form is available at the State Bar of Texas Law Practice Management web site:
<http://texaslawpracticemanagement.com/>.
- TexasBarBooks is providing all State Bar members free access to the Texas Guardianship Manual Online. The manual includes forms and instructions for creating guardianships, advance directives, and end-stage planning.
- To request access to these resources, email books@texasbar.com with your name, bar card number, and preferred email address. Complimentary access extends until May 31, 2020.