

The Law and You

New Law Permits You to Specify Your Burial and Funeral Plans

The 2003 Legislature passed sweeping changes to Utah's funeral statutes. The new law was signed on March 15, 2003.

Before getting into the details of the new law, let me give some background on why this could be important to you.

I was involved in a probate case where the deceased's Will clearly stated that he wanted to be cremated. He had no surviving family members. However, "friends" of the deceased challenged the notion of cremation. They testified that the deceased wanted a proper burial, not cremation.

This dispute created undue turmoil at the time the deceased should have been cremated or buried. It also implicated the courts and attorneys. The cost was unnecessary and should have been avoided.

The new law could have prevented that messy and costly situation.

Probate laws allow a person to leave his or her property to whomever is specified in a Will or Trust. Distribution of a deceased's property is something for which the law has historically provided and protected.

In addition to property, some individuals provide specific directions about how and where they want to be buried or if they want to be cremated. Whether their wishes must be honored, however, has not been clear.

You may recall the recent family dispute over the disposition of Ted Williams' body. A court battle ensued and the story was in the national news. Some family members wanted his body buried. Others wanted it frozen for the future. What did Ted Williams want? Was there a law that governed this situation?

The new Chapter 9 of Title 58, is known as the "Funeral Services Licensing Act." Although it has the same title as previously, it is substantially different.

In particular, Part 6, which begins at

Section 58-9-601 and continues through 604, provides for the "Control of Disposition" of a deceased's remains.

It is now possible for you to direct the preparation, type, and place where your remains will be disposed. This can include designating a particular funeral home or providing directions for your burial arrangements. It can also include specific directions for your cremation.

These directions must be in writing and dated and must be witnessed by at least two unrelated individuals. It can be a separate writing, or it can be included in a Will or Trust.

If you include it in a Trust, however, the Trust will require the signatures of two, unrelated witnesses. Signatures in a Trust are usually notarized and not witnessed. So, your attorney may have to adapt accordingly.

If you specify your burial or funeral plans in your Will, you can always change your mind without amending or revoking your Will. All that is necessary is for you to provide written notice to the person named as your Personal Representative and also to the particular funeral home, if your Will designates a funeral establishment.

The new Act also establishes the priority of those who can make decisions about the disposition of your remains. First priority goes to the person that you designate in a witnessed statement or Will, provided that you follow the detailed requirements contained in Section 58-9-602.

If no such person is designated in a writing or a Will, then your surviving spouse has second priority. After that, the majority of your surviving children must concur on a particular disposition. The statute also provides for further priority in case no spouse or children survive you.

A funeral service director must carry out your wishes, if your wishes conform to the new Act and you have provided sufficient funds to pay for whatever services you have requested.

To ensure that your wishes are carried out, you should consult with an Elder Law Attorney. Check the National Academy of Elder Law Attorneys at (520) 881-4005, or the Yellow Pages under the heading of "Elder Law."