WEST VIRGINIA CODE: §30-6-22a

§30-6-22a. Right of disposition; preneed contract; affidavit on disposition of remains; role of county commission; liability of funeral home.

(a) Notwithstanding section 22 of this article, a person who is 18 years of age or older and of sound mind, by entering into a preneed funeral contract, as defined in §47-14-2 of this code, may direct the location, manner and conditions of the disposition of the person's remains and the arrangements for funeral goods and services to be provided upon the person's death. The disposition directions and funeral prearrangements that are contained in a preneed funeral contract are not subject to cancellation or revision unless any resources set aside to fund the preneed funeral contract are insufficient under the terms of the preneed funeral contract to carry out the disposition directions and funeral prearrangements contained in the contract.

(b) As to any matter not addressed in a preneed funeral contract as described in subsection (a) of this section and except as provided in subsection (c) of this section, the right to control the disposition of the remains of a deceased person, the location, manner and conditions of disposition, and arrangements for funeral goods and services to be provided vests in the following, in the order named, provided that the person is 18 years or older and is of sound mind:

(1)(A) A person designated by the decedent as the person with the right to control the disposition in an affidavit executed in accordance with paragraph (B) of this subdivision; and

(B) A person who is 18 years of age or older and of sound mind wishing to authorize another person to control the disposition of his or her remains may execute an affidavit before a notary public in substantially the following form:

"I, _____, do hereby designate _____ with the right to control the disposition of my remains upon my death. I ___ have/ ____ have not attached specific directions concerning the disposition of my remains with which the designee shall substantially comply, provided that these directions are lawful and there are sufficient resources in my estate to carry out the directions.

_____

Signed

State of _____

County of _____

I, _____, a Notary Public of said County, do certify that _____, as principal whose name is signed to the writing above

WV Legislature

bearing date on the _____ day of _____, 20____, has this day acknowledged the same before me.

Given under my hand this _____ day of _____, 20__.

My commission expires: _____

_____

Notary Public";

(2) The surviving spouse of the decedent;

(3) The sole surviving child of the decedent or, if there is more than one child of the decedent, the majority of the surviving children. However, less than one half of the surviving children shall be vested with the rights under this section if they have used reasonable efforts to notify all other surviving children of their instructions and are not aware of any opposition to those instructions on the part of more than one half of all surviving children;

(4) The surviving parent or parents of the decedent. If one of the surviving parents is absent, the remaining parent shall be vested with the rights and duties under this section after reasonable efforts have been unsuccessful in locating the absent surviving parent;

(5) The surviving brother or sister of the decedent or, if there is more than one sibling of the decedent, the majority of the surviving siblings. However, less than the majority of surviving siblings shall be vested with the rights and duties under this section if they have used reasonable efforts to notify all other surviving siblings of their instructions and are not aware of any opposition to those instructions on the part of more than one half of all surviving siblings;

(6) The surviving grandparent of the decedent or, if there is more than one surviving grandparent, the majority of the grandparents. However, less than the majority of the surviving grandparents shall be vested with the rights and duties under this section if they have used reasonable efforts to notify all other surviving grandparents of their instructions and are not aware of any opposition to those instructions on the part of more than one half of all surviving grandparents;

(7) Adult grandchildren.

(8) The guardian of the person of the decedent at the time of the decedent's death if one had been appointed;

(9) The personal representative of the estate of the decedent;

(10) The person in the classes of the next degree of kinship, in descending order, under the laws of descent and distribution to inherit the estate of the decedent. If there is more than

WV Legislature

one person of the same degree, any person of that degree may exercise the right of disposition;

(11) If the disposition of the remains of the decedent is the responsibility of the state or a political subdivision of the state, the public officer, administrator or employee responsible for arranging the final disposition of decedent's remains; or

(12) In the absence of any person under subdivisions (1) through (11) of this subsection, any other person willing to assume the responsibilities to act and arrange the final disposition of the decedent's remains, including the funeral director with custody of the body, after attesting in writing that a good-faith effort has been made to no avail to contact the individuals under subdivisions (1) through (11) of this subsection.

(c) A person entitled under law to the right of disposition forfeits that right, and the right is passed on to the next qualifying person as listed in subsection (b) of this section, in the following circumstances:

(1) Any person charged with murder or voluntary manslaughter in connection with the decedent's death and whose charges are known to the funeral director. However, if the charges against that person are dismissed or if the person is acquitted of the charges, the right of disposition is returned to the person;

(2) Any person who does not exercise his or her right of disposition within two days of notification of the death of decedent or within three days of decedent's death, whichever is earlier;

(3) If the person and the decedent are spouses and a petition to dissolve the marriage was pending at the time of decedent's death.

(d) Any person signing a funeral service agreement, cremation authorization form or any other authorization for disposition shall be deemed to warrant the truthfulness of any facts set forth therein, including the identity of the decedent whose remains are to be buried, cremated or otherwise disposed of, and the party's authority to order the disposition. A funeral home has the right to rely on that funeral service agreement or authorization and shall have the authority to carry out the instructions of the person or persons the funeral home reasonably believes holds the right of disposition. The funeral home has no responsibility to independently investigate the existence of any next of kin or relative of the decedent where a means of disposition is fully set forth in a preneed funeral contract or other written directive of the deceased in accordance with this section. If there is more than one person in a class who are equal in priority and the funeral home has no knowledge of any objection by other members of that class, the funeral home may rely on and act according to the instructions of the first person in the class to make funeral and disposition arrangements, if no other person in that class provides written objections to the funeral home.

WV Legislature

(e) No funeral establishment or funeral director who relies in good faith upon the instructions of a preneed funeral contract, written directive of the deceased, or an individual claiming the right of disposition in accordance with this section shall be subject to criminal or civil liability or subject to disciplinary action under this section for carrying out the disposition of the remains in accordance with those instructions.

WV Legislature