

## NEDA REVIEW OF STATE RIGHT OF DISPOSITION LAWS

Every state, but Alaska and Hawaii, has enacted right of disposition laws to specify who controls the funeral and/or disposition of a decedent's remains after death. NFDA has compiled each of these laws and, in the following chart, analyzes each law to see if it provides eight key provisions which assist families and funeral homes in carrying out dispositions.

For the most part, the eight provisions examined by the attached chart are those which allow families and funeral homes to make decisions that address many of the circumstances that will stalemate or stall funeral arrangements. Most of the laws also contain a mechanism by which an individual may control their funeral and disposition following their death. Other key components of an effective right of disposition law include sections which allow funeral homes to rely upon representations made to them by family members and to enjoy immunity against lawsuits if they carry out their duties in good faith.

A brief explanation of the eight key components is as follows:

1. **Decedent Control of Disposition.** Forty six states have one or more provisions in their right of disposition law which allows an individual to control their disposition following death. Most states allow an individual to control their funeral and/or disposition by entering into a written instrument, such as a will, preneed contract, or affidavit, that spells out the details of the funeral and/or disposition. Other states allow an individual during their lifetime to appoint an agent to carry out the disposition. A number of states have both of these provisions.
2. **Missing Relatives.** One of the most important features of an effective right of disposition law is a provision that takes away the right of disposition from any person who cannot be located. Typically, right of disposition laws set up a priority list of who holds the right of disposition. If an individual is missing and cannot be located using reasonable efforts, that missing person loses their right of disposition and the funeral home may make arrangements with other individuals who are lower on the priority list. This is a helpful provision because it allows the funeral and disposition to take place within a reasonable amount of time without the need to hold off on arrangements until missing relatives are located.
3. **Majority Control.** When the state law establishes a priority list, there are often two or more individuals who hold equal rights. For example, if a widow dies, there may be five children who all hold equal right to control the disposition. State laws with majority control provisions allow the majority of those who hold the right to control the disposition. This brings certainty to the funeral and disposition arrangements and allows the funeral and disposition to proceed, even though an individual in the minority may object to the funeral and disposition arrangements.
4. **Waiver of Uncooperative Relatives.** Funeral homes often face relatives who hold the right of disposition, but who will not cooperate in making arrangements. An effective right of disposition law takes away the right of disposition from an individual who does not actively exercise the right within a specified time period. **2 DAYS**
5. **Homicide Cases.** If an individual who holds the right of disposition is arrested for causing the death of the decedent whose disposition they control, it is nearly impossible to make arrangements with that individual. Effective right of disposition laws

take away the right of someone who is arrested for criminally causing the death of the person over whom they hold the right of disposition.

6. **Funeral Director May Dispose of Unclaimed Remains.** In some cases, there are no relatives or other persons holding the right of disposition that exist or that can be located. In those cases, an effective right of disposition law provides the funeral director holding custody of the body with the right to direct and carry out the disposition.
7. **Right to Rely on Representations.** An effective right of disposition law allows a funeral home acting in good faith to rely upon representations made by individuals claiming to hold the right of disposition. This relieves the funeral home from the obligation to independently verify claims by having to check birth records, marriage licenses, etc.
8. **Immunity for Funeral Home.** An effective right of disposition law provides immunity from civil, criminal, and administrative disciplinary measures for funeral homes that act in good faith in carrying out funerals and dispositions in accordance with instructions they have received from those who claim to hold the right of disposition.

| STATE        | DECEDENT CONTROL OF DISPOSITION | MISSING RELATIVES | MAJORITY CONTROL | WAIVER OF UNCOOPERATIVE RELATIVES | HOMICIDE CASES | FUNERAL DIRECTOR MAY DISPOSE OF UNCLAIMED REMAINS | RIGHT TO RELY ON REPRESENTATIONS | IMMUNITY FOR FUNERAL HOME |
|--------------|---------------------------------|-------------------|------------------|-----------------------------------|----------------|---|----------------------------------|---------------------------|
| Ohio         | Yes                             | Yes               | Yes              | Yes                               | Yes            | Yes   | Yes                              | Yes                       |
| Oklahoma     | Yes                             | No                | No               | No                                | No             | No  | Yes                              | Yes                       |
| Oregon       | Yes                             | Yes               | No               | No                                | No             | No  | Yes                              | Yes                       |
| Pennsylvania | Yes                             | No                | No               | No                                | No             | No  | No                               | No                        |
| Rhode Island | Yes                             | No                | No               | No                                | No             | No  | Yes                              | Yes                       |

#### NOTES

Ohio: In Ohio, a decedent may control the disposition of his or her remains by appointing a representative to carry out his or her wishes. The appointment is done by a written instrument that is signed and notarized. Ohio's right of disposition law is very comprehensive and provides extensive protection for funeral homes.

Oklahoma: Under Oklahoma's right of disposition law, an individual may execute a sworn affidavit containing instructions on the disposition of their remains. Oklahoma not only provides for the right of disposition, but also makes it an obligation if the person holding the right has sufficient resources to pay for the disposition. Oklahoma's right of disposition law does not address missing relatives, majority control, waiver of uncooperative relatives, homicide cases, or the disposition of unclaimed remains.

Oregon: Oregon law allows an individual to control his or her disposition by a written and signed instrument or a preneed contract. Oregon's right of disposition law does provide for immunity for funeral homes, but could be improved by adding provisions that address majority control, waiver of uncooperative relatives, homicide cases, and the disposition of unclaimed cremated remains.

Pennsylvania: Pennsylvania appears to allow an individual to control their disposition by making a provision in a valid will. While the Pennsylvania law does address resolutions of disputes by the court, there are many improvements that Pennsylvania could make in its right of disposition law including addressing missing relatives, majority control, waiver of uncooperative relatives, homicide cases, and the disposition of unclaimed remains. Pennsylvania also needs provisions to allow funeral directors to rely on representations made to them by family members and immunity for funeral homes.

Rhode Island: If an individual is entered into a preneed contract in Rhode Island, the arrangements set forth in the preneed contract must be substantially followed. Additionally, an individual may appoint a funeral planning agent to carry out their disposition. Rhode Island does not address missing relatives, majority control, waiver of uncooperative relatives, homicide cases, or the disposition of unclaimed remains. While Rhode Island does have an immunity section for funeral homes, it needs to improve the provisions that allow a funeral home to rely upon representations made to them by family members.