

DISPOSAL OF DECEDENT'S REMAINS
IN PENNSYLVANIA

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A problem that can cause serious conflicts and disputes at the time of the death of an individual revolves around the disposal of that individual's remains.

If the decedent leaves a Will in which they spell out in detail their specific desires concerning disposal of their remains, the problem is basically solved.

For instance, an individual can provide in their Will that they be buried in a specifically identified burial lot located in a specifically identified cemetery. Obviously, it is very important that an individual either purchases a burial lot prior to their passing or that there is a burial lot (i.e., family burial plot purchased by an individual's parents, grandparents, etc.) in which the individual has the right to be buried.

If an individual neither owns a burial lot nor has a burial plot in which they have the right to be buried, the survivors, or the executor of their Will (if they die leaving a Will) or the administrator of their estate (if they die without a Will) will have the responsibility, within a day or so after the decedent's passing, to purchase a burial lot in which they can be buried. For the surviving heirs or representatives to be involved in such a purchase within a short time after the death of the decedent imposes upon them a significant responsibility and, to a great extent, emotional distress. Therefore, all individuals who do not have a pre-arranged site for their burial should be responsible and purchase a burial lot.

In tune with this theme, the survivors or representatives are also relieved of the significant emotional experience of arranging for a funeral or cremation, selecting a coffin or urn or arranging for the disposal of the decedent's ashes if the decedent has specifically made those pre-arrangements with a funeral director.

If such pre-arrangements have not been made, the decedent should have a Will in which they have specifically instructed their executor with regard to the disposal of their remains and the type of funeral service or services desired by them.

If such provisions are not set forth in a Will, **Section 305 of the Commonwealth of Pennsylvania's Probate, Estate and Fiduciary Code** provides for the disposal of an individual's remains if that individual has not left specific written instructions concerning same. The main portions of Section 305 are as follows:

1. If a living person has not provided in a valid, executed Will to take effect after death for a particular manner of disposition of their remains and have not made an anatomical gift of their body in accordance with the applicable Pennsylvania Statutes, either in their Will or in accordance with instructions on their driver's license, Section 305(a) governs who will make the "determination of the final disposition of a decedent's remains".
2. When a married person dies without directions, the "surviving spouse shall have the sole authority in all matters pertaining to the disposition of their remains", **unless** the surviving spouse has forfeited that authority due to "enduring estrangement, incompetence, contrary intent, or waiver and agreement which is proven by clear and convincing evidence" to a court.
3. "Contrary intent" is "an explicit and sincere expression, either verbal or written, of a decedent adult or emancipated minor prior to death, and not subsequently revoked, that a person other than the one authorized by this section, determine the final disposition of the [decedent's] remains".
4. If there is no surviving spouse (and absent the same disqualifying events), then "the next of kin shall have sole authority in all matters pertaining to the disposition of the remains of the decedent".

5. If those disqualifying events are alleged, a court must hold a hearing “within 48 hours of the death or discovery of the body of the decedent, whichever is later”.
6. Pending the Court’s determination, a court may order that no final disposition of the decedent’s remains take place.
7. Notice of the hearing must be provided “to each person with equal or higher precedence than the petitioner”, to their counsel (if known), and to “the funeral home or other institution where the body is being held”.
8. The Court may require the posting of a bond which could be applied against counsel fees if the petitioner does not prevail.

Section 305(d) address the situation where two or more persons with **equal standing** as next of kin disagree on the disposition of the decedent’s remains. In that event, it is a judge’s responsibility to determine who should have “the authority to dispose” with preference given to the person who had the closest relationship with the deceased.

In the 2006 Pennsylvania Superior Court case of *Kulp v. Kulp*, the setting of the dispute was a **divorce** action. Separated parents disagreed about the disposition of their late son’s cremated remains. In conjunction with **equitable distribution** of their marital property, a trial judge was called upon to resolve the dispute. The trial judge took the position that the ashes of the parties’ deceased child were property of the parents and therefore divisible with the son’s ashes being divided into two parts, with each parent authorized to dispose of their portion in an individual urn.

The Pennsylvania Superior Court disagreed. The Court held that there are certain factors that are relevant in the resolution of a dispute under Section 305. Those factors set forth in the 1904 Pennsylvania Supreme Court case of *Pettigrew v. Pettigrew*, as expanded in the 1980 Pennsylvania Superior Court case of *Novelli v. Carroll*, which actually pertained to a dispute over the reinterment of a deceased body, are as follows:

1. The degree of relationship that the party seeking [to direct a specific means of disposal] reinterment bears to the decedent and the strength of that relationship.
2. The degree of relationship to the party seeking to prevent [as specific means of disposal] reinterment bears to the decedent.
3. The desire of the decedent, including the “general presumption that the decedent would not wish his remains to be disturbed”, or a specific statement of desire by the decedent.
4. “The conduct of the party seeking [to direct a specific means of disposal], especially as it may relate to the circumstances of the original interment”.
5. The conduct of the person seeking to prevent [the specific means of disposal].
6. “The length of time that has elapsed since the original interment”.
7. The strength of the reasons offered in favor of and in opposition to [the desired means of disposal] reinterment.

The trial court’s ruling was therefore vacated and the case was remanded for further fact-finding under these factors.

Obviously, no adult individual should leave their affairs in such condition that their heirs, next of kin or personal representatives may be subject to lawsuits concerning the disposition of their remains. It is very easy to prevent such disputes – **HAVE A WILL PREPARED BY AN ATTORNEY EXPERIENCED IN THE PREPARATION OF WILLS AND THE HANDLING OF DECEDENT’S ESTATES!**

I personally have been involved in the after-death arrangement for three of my own family members who, in each case, although they had Wills, had not made pre-arrangements either in their Wills or in separate agreements with a funeral director for the disposition of their remains, which resulted in family members visit to a funeral director within a day or so after their passing in order to choose caskets and/or urns as well as making the necessary arrangements for the funeral services, celebration of life, etc. By either providing specific instructions in your Will or by pre-arranging for such matters with a licensed funeral director of your choice, much of the trauma experienced by your survivors can be dramatically reduced by having such pre-arrangements.

The attorneys of Hoffmeyer & Semmelman, LLP are well versed in the preparation of Wills and the handling of decedent's estates and stand ready to counsel and advise you with regard to the correct preparation of Wills that will stand the test of any disputes among your survivors.