

PLANNING FOR YOUR FINAL ARRANGEMENTS

By: **Shane M. McCrohan, Esq.**

When reviewing and updating your estate plan, it is important to make sure your wishes regarding the burial or cremation of your remains ("final arrangements") are included in your planning documents to provide clear direction to your loved ones. Your loved ones could have vastly different opinions on your final arrangements which, if not resolved by them privately, can delay your final arrangements from being carried out and impose a considerable expense on your estate.

There are two methods recognized under New York statute to provide for your wishes regarding final arrangements. First, you can state your final arrangement wishes in your Will. Second, you can include these wishes in a document referred to by New York statute as the "Appointment of Agent to Control Disposition of Remains". See *Section 4201(3) of the New York Public Health Law*. Attached is a sample of this document. In this document, you can also name the person you wish to handle your final arrangements (the "agent") and indicate whether you have an existing agreement in place with a funeral home or cemetery for your burial or cremation and/or any memorial service. You should, however, consult with your attorney before completing and signing it. This document must be signed by you in front of two independent witnesses and by the person you are appointing as agent in order to be effective.

Regardless of the method chosen, you want to make sure that the appropriate person is the one in charge of your final arrangements. This person would be the one responsible for carrying out your final arrangements with the funeral home and/or cemetery. *Section 4201(2) of the New York Public Health Law* provides that, if no Appointment of Agent to Control Disposition of Remains is in place at the time of your death, the following persons, in the order listed, are eligible to be in charge of your final arrangements:

1. Surviving spouse or domestic partner;
2. Adult children;
3. Parents;
4. Adult siblings;
5. Legal guardian;
6. Adult heirs closest in relationship;
7. Executor/administrator of estate;
8. Close friend or relative reasonably familiar with your wishes; and
9. Chief fiscal officer of county or public administrator.

If you are relying on your Will to provide for your final arrangements, it cannot effectively appoint someone to handle your final arrangements. In that case, the New York statute decides who handles these arrangements. You can provide for both (a) your final arrangements and (b) the appointment of someone to handle your final arrangements in the Appointment of Agent to Control Disposition of Remains.

If you would like additional information or assistance in completing the forms, please do not hesitate to [contact me](#).

APPOINTMENT OF AGENT TO CONTROL DISPOSITION OF REMAINS

I, _____ [NAME OF PRINCIPAL], currently residing at _____ [ADDRESS OF PRINCIPAL], being of sound mind, willfully and voluntarily make known my desire, that upon my death, the disposition of my remains shall be controlled by _____ [NAME OF INITIAL AGENT], currently residing at _____ [ADDRESS OF INITIAL AGENT].

With respect to that subject only, I hereby appoint such person as my agent with respect to the disposition of my remains.

SPECIAL DIRECTIONS:

Set forth below are my special directions limiting the power granted to my agent as well as instructions or wishes desired to be followed in the disposition of my remains:

[INSERT FINAL ARRANGEMENT WISHES HERE]

Indicate below if you have entered into a pre-funded, pre-need agreement subject to Section 453 of the New York General Business Law for funeral merchandise or service in advance of need:

No, I have not entered into a pre-funded, pre-need funeral agreement subject to Section 453 of the New York General Business Law.

Yes, I have entered into a pre-funded, pre-need funeral agreement subject to Section 453 of the New York General Business Law with the following funeral home:

Name: _____

Address: _____

Telephone Number: _____

SUCCESSORS:

If my initial agent, as appointed above, dies, resigns or is unable to act, I hereby appoint _____ [NAME OF SUCCESSOR AGENT], currently residing at _____ [ADDRESS OF SUCCESSOR AGENT], to serve as my successor agent to control the disposition of my remains as authorized by this document.

DURATION:

This appointment becomes effective upon my death.

PRIOR APPOINTMENT REVOKED:

I hereby revoke any prior appointment of any person to control the disposition of my remains.

ENFORCEABILITY IN ALL STATES AND/OR TERRITORIES:

I intend for this appointment to control the disposition of my remains to be honored in any jurisdiction in which I am domiciled at the time of my death. I also intend that any such jurisdiction refer to the laws of the state in which this document is executed to interpret and determine the validity of this document and any of the powers granted hereunder.

IN WITNESS WHEREOF, I have hereunto signed my named this ____ day of _____, 20____.

[SIGNATURE OF PRINCIPAL]

I declare that the person who signed or asked another to sign this document is personally known to me and appears to be of sound mind and acting willingly and free from duress.

_____ [NAME OF PRINCIPAL] signed (or asked another to sign for him/her) this document in my presence (and that person signed in my presence). I am not the person appointed as agent by this document.

_____ residing at _____
Witness

_____ residing at _____
Witness

ACCEPTANCE AND ASSUMPTION BY INITIAL AGENT:

1. I have no reason to believe there has been a revocation of this appointment to control disposition of remains.

2. I hereby accept this appointment.

Signed this ____ day of _____, 20____.

[SIGNATURE OF INITIAL AGENT]

ACCEPTANCE AND ASSUMPTION BY SUCCESSOR AGENT:

1. I have no reason to believe there has been a revocation of this appointment to control disposition of remains.

2. I hereby accept this appointment.

Signed this ____ day of _____, 20____.

[SIGNATURE OF SUCCESSOR AGENT]