



AGUDATH ISRAEL OF AMERICA LEGAL SUPPORT SERVICES

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We often receive calls regarding cremation, where someone Jewish has died and someone involved seeks to cremate the body rather than arrange for a proper Jewish burial. In some cases, someone involved seeks to bury the body in a non-Jewish cemetery, or in some other way that is contrary to halacha. Unless the decedent left clear legally binding instructions as to who should be in charge of his or her remains, each state has laws dictating who has that responsibility. The following is a very useful summary of the relevant statutes.

Disposition of Remains Statutes by State

Prepared for Agudath Israel of America

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A useful article with a survey of state laws on the topic:

Ann M. Murphy, *Please Don't Bury Me Down in That Cold Cold Ground: the Need for Uniform Laws on the Disposition of Human Remains*, 15 Elder L.J. 381 (2007)

ALABAMA

The statutes regarding funeral home reliance on an “authorizing agent”, along with the priority list of “authorizing agents” can be found in Ala. Code §§ 34-13-11 and 34-13-12.

However, see *McRae v. Booth*, 938 So. 2d 432 (Ala. Civ. App. 2006) (referring to the abovementioned statutes: “While a contest between parties who were in *differing* degrees of kinship to a decedent during his or her lifetime *might* be decided by reference to such statutes... those statutes do not shed light upon which party is entitled to prevail in a contest over rights regarding a decedent's dead body among multiple potential “authorizing agents” in the *same* degree of kinship.”)

ALASKA

There seems to be no statute on point. The only case I could find is *Edwards v. Franke*, 364 P.2d 60 (Alaska 1961) (“It is generally the law in this country that the right to possess, preserve and bury, or otherwise dispose of, a dead body belongs to the surviving spouse and, if none such, then to the next of kin in the order of their relation to the decedent...”)



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ARIZONA

Ariz. Rev. Stat. § 36-831 – Burial duties; notification requirements; failure to perform duty; definition

ARKANSAS

Arkansas Final Disposition Rights Act, Ark. Code Ann. § 20-17-102
This statute, until 2009, had no priority list. In 2009 it was amended by 2009 Arkansas Laws Act 402 (H.B. 140) (now called Arkansas Final Disposition Rights Act of 2009) to include a list and a number of other provisions.

CALIFORNIA

Cal. Health & Safety Code § 7100 – Right to control disposition of remains; duty and liability for internment; devolution; prior directions of decedent

COLORADO

Disposition of Last Remains Act, Colo. Rev. Stat. Ann. § 15-19-106 – Right to dispose of remains
Amended by 2009 Colo. Legis. Serv. Ch. 107 (H.B. 09-12)

CONNECTICUT

Conn. Gen. Stat. Ann. § 45a-318 – Document directing or designating individual to have custody and control of disposition of deceased person's body. Funeral director's reliance on document. Individuals entitled to custody and control of disposition. Revocation. Form. Petition to court of probate

DELAWARE

12 Del. Code Ann. § 264 – Right to dispose of remains
24 Del. Code Ann. § 3121 – Cremation

DISTRICT OF COLUMBIA

D.C. Code § 3-413 – Claim of human remains - Order of priority of next of kin

FLORIDA

Florida Funeral, Cemetery, and Consumer Services Act, F.S.A. § 497.001 et seq.



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see specifically: F.S.A. § 497.005(37) – definition of “legally authorized person”

FL ST 497.005

(37) "Legally authorized person" means, in the priority listed, the decedent, when written inter vivos authorizations and directions are provided by the decedent; the surviving spouse, unless the spouse has been arrested for committing against the deceased an act of domestic violence as defined in s. 741.28 that resulted in or contributed to the death of the deceased; a son or daughter who is 18 years of age or older; a parent; a brother or sister who is 18 years of age or older; a grandchild who is 18 years of age or older; a grandparent; or any person in the next degree of kinship. In addition, the term may include, if no family member exists or is available, the guardian of the dead person at the time of death; the personal representative of the deceased; the attorney in fact of the dead person at the time of death; the health surrogate of the dead person at the time of death; a public health officer; the medical examiner, county commission, or administrator acting under part II of chapter 406 or other public administrator; a representative of a nursing home or other health care institution in charge of final disposition; or a friend or other person not listed in this subsection who is willing to assume the responsibility as the legally authorized person. Where there is a person in any priority class listed in this subsection, the funeral establishment shall rely upon the authorization of any one legally authorized person of that class if that person represents that she or he is not aware of any objection to the cremation of the deceased's human remains by others in the same class of the person making the representation or of any person in a higher priority class.

GEORGIA

The default of the statutory form for “Advance Directive for Health Care”, Ga. Code Ann. § 31-32-4 provides that, unless the person specifies otherwise, the appointed health care agent will have the power to make decisions regarding the disposition of remains.

When there is no prior directive, there seems to be no statute to that provides a priority list of next of kin. See *Welch v. Welch*, 269 Ga. 742 (1998) (“ ‘in the absence of testamentary disposition, a quasi property right [in the body of a relative] belongs to the husband or wife, and, if neither, to the next of kin.’ [Cit.]”) (quoting *Georgia Lyons Eye Bank v. Lavant*, 255 Ga. 60 (1985))

HAWAII

There seems to be no statute on point. The only case I could find is *Lum v. Fullaway*, 42 Haw. 500 (1958)

IDAHO

Idaho Code Ann. § 54-1139 – Instructions for disposition of person's remains
Idaho Code Ann. § 54-1142 – Authority in absence of prearranged funeral plan
See amendments of above statutes in 2009 Idaho Laws Ch. 51 (S.B. 1062)



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ILLINOIS

Disposition of Remains Act, 755 Ill. Comp. Stat. 65/5 – Right to control disposition; priority

INDIANA

Cremation:

Ind. Code § 23-14-31-26 – Authorizing agents

23-14-31-27 – Authorization procedure; exceptions

IOWA

Final Disposition Act, Iowa Code § 144C.5 – Final disposition of remains--right to control

KANSAS

Kan. Stat. Ann. § 65-1734 – Order of priority of persons authorized to dispose of decedents' remains; immunity of funeral directors, funeral establishments and crematories

KENTUCKY

Ky. Rev. Stat. Ann. § 367.97501 – Definitions for KRS 367.97501 to 367.9753

LOUISIANA

La. Rev. Stat. Ann. § 8:655 – Right of Disposing of Remains

MAINE

Me. Rev. Stat. Ann. tit. 22, § 2843-A – Custody of remains of deceased persons
Amended by 2009 Me. Legis. Serv. Ch. 159 (H.P. 499) (L.D. 716)

Note: “domestic partner” is second in priority, after spouse

MARYLAND

Md. Code Ann., Health - General § 5-509 – Final disposition by [sic] body; authorizing agents



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MASSACHUSETTS

The only statute on point is Mass. Gen. Laws Ann. ch. 38, § 13 – Release of body; pronouncement of death. “After investigation or examination by the office, the body shall be released to the person with the proper legal authority to receive it, including the surviving spouse, the next of kin, or any friend of the deceased, who shall have priority in the order named.” However, it does not provide a detailed list.

The most recent case I could find on point is *Stackhouse v. Todisco*, 370 Mass. 860 (1976) (“In the absence of direction from the decedent, a surviving spouse, or, failing such a spouse... the decedent's next of kin, have a ‘possession’ of the body so that they may dispose of it for burial according to their wishes.”)

MICHIGAN

Mich. Comp. Laws Ann. § 700.3206 – Person with right and power to make decisions regarding funeral arrangements and disposition of decedent's body; presumption, priorities, and designation; sufficiency of attempt to locate person with priority; effect of provisions upon anatomical gifts

The above statute references Mich. Comp. Laws Ann. § 700.2103 – Order of individuals after surviving spouse.

MINNESOTA

Minn. Stat. Ann. § 149A.80 – Death; right to control and duty of disposition
Amended by 2009 Minn. Sess. Law Serv. Ch. 117 (H.F. 265)

MISSISSIPPI

Miss. Code Ann. § 73-11-58 – Disposition of body where no written authorization left by decedent

MISSOURI

Mo. Ann. Stat. 194.119 – Right of sepulcher, the right to choose and control final disposition of a dead human body

MONTANA

Mont. Code Ann. § 35-21-810 – Disposition of remains – liability
Amended by 2009 Montana Laws Ch. 208 (H.B. 386)



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NEBRASKA

Neb. Rev. Stat. § 38-1425 – Deceased persons; control of remains; interment; liability

NEVADA

Nev. Rev. Stat. § 451.024 – Authority to order burial of human remains; execution of affidavit

NEW HAMPSHIRE

N.H. Rev. Stat. Ann. § 290:16 – Definitions (defining “next-of-kin”)
N.H. Rev. Stat. Ann. § 290:17 – Custody and Control Generally

NEW JERSEY

N.J. Stat. Ann. § 45:27-22 – Right to control funeral and disposition of human remains

NEW MEXICO

N.M. Stat. Ann. § 61-32-19 – Cremation; requirements; right to authorize cremation; disposition of remains

NEW YORK

N.Y. Pub. Health Law § 4201 – Disposition of remains; responsibility therefore

NORTH CAROLINA

N.C. Gen. Stat. Ann. § 130A-420 – Authority to dispose of body or body parts

NORTH DAKOTA

N.D. Cent. Code § 23-06-03 – Duty of Burial

OHIO

Ohio Rev. Code Ann. § 2108.81 – Priority of assignment of right of disposition
Ohio Rev. Code Ann. § 2108.81 – Priority of assignment of right of disposition (later effective date)



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OKLAHOMA

Okl. Stat. Ann. tit. 21, § 1158 – Duty of burial devolves upon whom

OREGON

Or. Rev. Stat. Ann. § 97.130 – Delegation and control rights over human remains disposition

PENNSYLVANIA

20 Pa. Cons. Stat. Ann. § 305 – Right to dispose of a decedent's remains
Defines "next-of-kin" as identified under laws regarding intestate succession
See specifically 20 Pa. Cons. Stat. Ann. § 2103 – Shares of others than surviving spouse

RHODE ISLAND

R.I. Gen. Laws § 5-33.2-24 – Proper authority for funeral arrangements and disposition of human remains

SOUTH CAROLINA

S.C. Code Ann. § 32-8-320 – Persons who may serve as a decedent's agent; authorize cremation.

SOUTH DAKOTA

S.D. Codified Laws § 34-26-14 – Right to custody of dead body--Coroner's custody pending inquest
§ 34-26-16 – Persons charged with duty of burial--Grave marker
Regarding cremation see § 34-26A-2 – Authorizing agent defined--Public official or institutional representative as authorizing agent

TENNESSEE

There is no statute on point, only case law.
Crawford v. J. Avery Bryan Funeral Home, Inc., 253 S.W. 3d 149 (Tenn. Ct. App. 2007)
Foley v. St. Thomas Hosp., 906 S.W. 2d 448 (Tenn. Ct. App. 1995) (citing law regarding autopsies, Tenn. Code Ann. § 68-4-111)
Estes v. Woodlawn Memorial Park, Inc., 780 S.W. 2d 759 (Tenn. Ct. App. 1989)
("There is no universal rule regarding the right of persons to bury the dead, but



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each case must be considered in equity on its own merits.... Absent an expressed desire of deceased, the surviving spouse and, if no surviving spouse, the next of kin, has the right of custody and burial of the remains of the deceased.”)

Another case that may be relevant to religious issues: *State ex rel. Comm’r of Transp. v. Medicine Bird Black Bear White Eagle*, 63 S.W. 3d 734 (Tenn. Ct. App. 2001) (“while the courts should respect the rights of persons to freely exercise their religion... they must not permit the civil law to be circumscribed or superceded by the canon law of any particular religion.... Religious customs, laws, and beliefs regarding the disposition of human remains are to be considered only for the purpose of producing an equitable result.”)

TEXAS

Tex. Health & Safety Code Ann. § 711.002 – Disposition of Remains; Duty to Inter

UTAH

Utah Code Ann. § 58-9-602. Determination of control of disposition

VERMONT

Vt. Stat. Ann. tit. 18, § 5227 – Right to disposition

VIRGINIA

Va. Code Ann. § 54.1-2800 – Definitions

See definition of “Next of kin”, listing a number of relatives.

However, under VA caselaw, **there is no sequential order of “next of kin”;** **everyone has equal standing.** *Mazur v. Woodson*, 191 F. Supp. 2d 676, 680 (E.D. Va. 2002) (funeral home complied with statutory requirement to obtain authority from “next of kin”, even though it only consulted with decedent’s sibling, not widower and children); *Siver v. Rockingham Mem’l Hosp.*, 48 F. Supp. 2d 608, 611-612 (W.D. Va. 1999) (VA legislature clearly intended to make coequal class, unlike other states and VA’s own intestate succession statute)

From *Mazur* and *Siver*, it would seem according this statute that everyone in the “next of kin” class would have the same status, even someone who was designated by the decedent during his lifetime pursuant to § 54.1-2825. But see *Grisso v. Nolen*, 262 Va. 688 (2001) (implying that a designation pursuant to § 54.1-2825 would give someone a higher status).



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WASHINGTON

Wash. Rev. Code Ann. § 68.50.160 – Right to control disposition of remains--Liability of funeral establishment or cemetery authority--Liability for cost

WEST VIRGINIA

There is not much in the statutory code on point, but the administrative code has a provision: W. Va. Code R. § 6-1-24 – Authorized representatives; right to control and duty of disposition

WISCONSIN

Wis. Stat. Ann. § 154.30 – Control of final disposition of certain human remains

WYOMING

Wyo. Stat. Ann. § 2-17-101 – Authority to authorize burial or cremation; immunity for funeral directors and undertakers