



NEW YORK STATE'S  
PUBLIC HEALTH LAW § 4201

**FINAL DISPOSITION LAW**

***A COMPLIANCE GUIDE FOR  
FUNERAL DIRECTORS***

***2025***

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## Appendix A (Final Disposition Law)

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This guide and the forms contained within it are provided as a courtesy to the members of the New York State Funeral Directors Association, Inc. (NYSFDA), with the understanding that NYSFDA is not engaged in rendering legal service. If legal services are required, the services of an attorney should be sought.

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# Final Disposition Agent

## *Appointing a “Final Disposition Agent” in New York State*

Since 2006, New York State law allows a person to appoint a person they trust – such as a family member or close friend – to act as their “agent” (legal representative) to control the disposition of their remains following death. The person named the agent would then have the legal authority and responsibility to ensure that the deceased’s wishes concerning final disposition are carried out as intended. Funeral directors, cemeteries, crematories and other providers involved in the process of final disposition must follow the deceased’s directions, as well as any decision made by the agent if there are no specific written instructions.

By appointing an agent, an individual is making sure that his or her wishes are honored by significantly reducing any chance that family members or others who disagree with these plans can alter them. The agent may be given as much or as little authority as the individual wants to identify. In addition, an individual may also give the agent very specific instructions concerning details of the funeral and/or burial.

## I. ORIGINS OF THE LAW

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In 2005, NYS Senator Michael Balboni (R-Nassau County) and NYS Assemblyman Jeffrey Dinowitz (D-Bronx) introduced legislation to establish a priority list (“hierarchy”) of individuals who have the legal right to control the funeral arrangements (“final disposition”) of the remains of a deceased person in NYS law. In addition, the bill created a legal structure to allow a person to formally designate/appoint anyone they choose to serve as their “agent” to carry out their decisions when it comes to the final disposition of their remains. (This latter provision is very similar in concept to New York State’s “Health Care Proxy” law.)

The legislation was introduced at the request principally of organizations that advocate for the interests of the gay community, which wanted to ensure that “domestic partners” had legal standing to control their partner’s final disposition.

Although this law was not originally initiated or sought by NYSFDA, the bill’s ramifications extended well beyond the issue of “domestic partnerships” and into the practice of funeral directing. The legislation also had the potential to address a significant and growing area of concern for funeral directors. The political winds made NYSFDA’s charge clear: act quickly and proactively before the bill went too far. In light of the momentum behind the legislation and the need for clarity, NYSFDA sought – and achieved - inclusion of a series of amendments. **The law became effective on August 2, 2006.**

Subsequently, in 2007, NYSFDA successfully advocated for a new law requested by the Metropolitan Funeral Directors Association (MFDA) that added numerous relatives and other individuals to the previously-enacted next-of-kin list.

And, in late 2012, a law passed to strengthen New York’s domestic violence laws. Effective November 24, 2012, any person – whether next-of-kin or appointed “agent” – is automatically disqualified from having or exercising control of the disposition of the deceased’s remains if

- that person is the subject of an Order of Protection issued by a court that had been in place to protect the decedent, or
- that person has been charged with causing the death of the deceased person.

Many states have had laws that are substantially similar, if not exact, to this on their books for years.

## **II. THE ISSUES FOR FUNERAL SERVICE**

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For quite some time, funeral directors have dealt with the question of “who controls” a person’s final disposition. Increasingly, funeral directors find themselves in the middle of a disagreement, or outright dispute, among family members as to the method and/or procedure of a loved one’s final disposition.

In addition, the landscape has been altered by the complexities and realities of today’s society, which includes more non-traditional family structures. This factor presents emerging legal and practical challenges for funeral directors, who are also looked to by the deceased’s survivors to make the decision as to which of them has the legal authority to control their loved one’s final disposition. However, each situation is unique, and funeral directors are not always made aware of all the facts in a particular case. It is also extremely important to note that prior to this law in 2006, NYS law did not provide funeral directors with any specific guidance as to how to handle these situations or any explicit legal protection when doing so.

Too often, funeral directors are put in the uncomfortable position of “taking sides” with one party over another and, by extension, seemingly “endorse” a type of disposition that could ultimately be found to contravene the wishes of either the deceased or the loved one possessing legal control. Of course, the irreversible finality of cremation raises the stakes even further. Needless to say, such a role goes well beyond a funeral director simply acting in the less risky, albeit important, position as mediator or arbiter. These realities formed the cornerstone of NYSFDA’s intense and successful efforts to provide funeral directors with heightened levels of clarity in dealing with family disputes, as well as significant liability protections that had been non-existent in the funeral laws of our State.

These goals were accomplished through the establishment of a New York State “next-of-kin” hierarchy and the creation of a document that allows a person to appoint an “agent” (proxy) to carry out and control his or her final disposition. This law is applicable statewide, irrespective of any similar local laws that may exist.

### III. THE LAW – SUMMARY AND HIGHLIGHTS

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Following is a summary of the law's major provisions:

- (1) A State next-of-kin hierarchy law specifically to determine who has the legal right to control a person's disposition in the following descending order:
  - Person designated in written instrument;
  - Spouse;
  - Domestic Partner;
  - Any Child 18 or Older;
  - Either Parent;
  - Any Brother or Sister 18 or Older;
  - Authorized Guardian;
  - Person 18 or Older now Eligible to Receive an Estate Distribution, in the following order:
    - Grandchildren;
    - Great-Grandchildren;
    - Nieces and Nephews;
    - Grand-nieces and Grand-nephews;
    - Grandparents;
    - Aunts and Uncles;
    - First Cousins;
    - Great-Grandchildren of Grandparents;
    - Second Cousins;
  - Fiduciary;
  - Close friend or other relative who is reasonably familiar with the decedent's wishes, including his or her religious or moral beliefs, when no one higher on the list is available, willing, or competent to act; (NOTE: This person must complete an "At-Need Written Statement of Person Having the Right to Control Disposition" form.)
  - Public administrator (or the same official in a county not having a public administrator); or, anyone willing to act on behalf of the decedent who completes the "At-Need Written Statement" form.

NOTE: if there are more than two (a) children over 18, or (b) siblings over 18, or (c) relatives in a group eligible to receive an estate distribution, then the disposition shall be determined by a majority of the members of the group who are reasonably available. For example, if a father dies with 3 children all over the age of 18 and his children are the highest priority group that survives him (meaning he has no agent, spouse, or domestic partner) then 2 of the 3 children must agree on the disposition to move forward.

- (2) Clear liability protection for funeral directors who refuse to provide services until family disputes are resolved.

- (3) Provides an expedited judicial process to resolve any disputes concerning final disposition.
- (4) Immunity from liability to funeral directors for acting to carry out a decedent's written directions.
- (5) Legal recourse for funeral directors to enforce a contract if an agent or other person does not fulfill his/her agreement to pay funeral/burial costs.
- (6) Access to a decedent's estate by an agent or next-of-kin to pay funeral/burial expenses.
- (7) False Identity Protection: Person asserting control must state in writing to the funeral director that he or she is the next-of-kin or designated agent, offering additional legal protection.
- (8) Disclosure must be made to the agent if a preneed agreement exists and, if so, the name of the funeral firm.
- (9) "Grandfathering" of current wills that designate a person to control final disposition remain in effect, unless a written instrument is subsequently completed; new wills may be used as well, but either can be superseded by an "agent designation form."
- (10) Protection to automatically disqualify any person – whether next-of-kin or appointed "agent" – from having or exercising control of the disposition of the deceased's remains if (a) that person is the subject of an Order of Protection issued by a court that had been in place to protect the decedent, or (b) that person has been charged with causing the death of the deceased person.

## IV. QUESTIONS AND ANSWERS

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### ***PART A: AGENT DESIGNATION***

**Q: Why would a person designate an “agent” for final disposition?**

**A:** An agent is a person who the future decedent trusts to carry out his or her final disposition instructions after death. The appointment of an agent greatly reduces the uncertainty that results from disputes among family members and in cases when loved ones disregard the deceased’s own final disposition preferences. This process provides more clarity for funeral directors, who often look to family members or other loved ones for guidance in these important matters.

When more than one survivor is involved in this decision, disagreement on the type and methods of final disposition may result. In addition, there is the possibility that a decedent may not feel comfortable, for whatever reason, having their next-of-kin be in control of their funeral/burial arrangements. In reality, these situations are quite common.

Designating an agent greatly reduces these disagreements because it is then clear who is in charge of final disposition.

NOTE: This law reaffirms current New York State case law, which holds that an individual – not family members or loved ones – possesses the legal authority to control his or her own final disposition, even after death. An agent is vested with this controlling authority by the decedent to act on his or her behalf.

**Q: What if a person doesn’t designate a final disposition agent?**

**A:** Then the decedent’s next-of-kin, as defined in law, would legally control the final disposition. The next-of-kin hierarchy can be “bypassed” if the person chooses to designate an agent.

**Q: How does a person appoint an agent?**

**A:** By simply completing a form titled “Appointment of Agent to Control Disposition of Remains” (“agent designation form”)<sup>1</sup>. A lawyer or notary is not needed to complete it, just two witnesses 18 years of age or older – one of which may be the funeral director.

**Q: Who can be an agent?**

**A:** Anyone that person chooses who is 18 years of age or older at the time of designation. Although it most likely would be a relative or friend of the person, an agent can be *anyone* the decedent wishes. This is the same as with a Health Care Proxy.

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<sup>1</sup> A sample “Appointment of Agent to Control Disposition of Remains” form is attached at Appendix B.



**Q: Can a funeral director be an agent?**

**A:** A funeral director can only be an agent if they are not paid or compensated for the funeral of the person that appointed the funeral director as agent. In addition to funeral directors, this rule applies to employees and anyone with an interest in a funeral firm, cemetery, or business operating a crematory, columbarium or similar business.

**Q: When would an agent begin to act on behalf of the deceased?**

**A:** An agent cannot act until the death of the person that made the appointment.

**Q: How much authority does an agent have in controlling the disposition?**

**A:** The agent can control all aspects of disposition. This includes the care, disposal, transportation, burial, cremation or embalming of the body, and all “associated measures.” These powers can be limited, however, if a person explicitly writes this in the designation form. In any case, the agent’s authority covers only the disposition/funeral arrangements. It does not involve any other health care or financial matters.

**Q: Can an agent overrule the deceased’s wishes?**

**A:** No. The agent is legally obligated to carry out the deceased’s written directions to the extent they are legal and possible. This includes consideration of the finances in the decedent’s estate and any other funds that are available for final disposition, such as a preneed trust.

The agent must also act in a manner consistent with the moral and individual beliefs of the decedent but only to the extent they do not conflict with the decedent’s written directions.

Not all agents will have written instructions. This gives even greater importance to the need for funeral directors to ensure, at the time of need, that they first request and receive a completed “At-Need Written Statement of Agent Claiming Legal Control of Disposition” form (“agent control form”)<sup>2</sup> BEFORE acting on this person’s direction.

**Q: Does this law change who is responsible for paying funeral/burial costs?**

**A:** No. Unless he or she voluntarily agrees to pay, (such as when not enough money is available to pay for all that the deceased wanted) the agent is not responsible or liable for paying funeral/burial expenses. In addition to moral, ethical, legal and practical considerations, the agent must consider whether enough funds are available – whether in an estate or a preneed trust – to pay funeral/burial expenses as directed by the decedent. This ensures that an agent cannot make reckless decisions on choosing funeral services and merchandise if they are not already spelled out.

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<sup>2</sup> A sample “At-Need Written Statement of Agent Claiming Legal Control of Disposition” form is attached at Appendix B.

**Q: So, what can an agent do to make sure funeral/burial expenses are paid?**

**A:** The law gives the agent the legal ability to seek to recover funds from the estate to pay disposition costs. If successful, payment by the estate's fiduciary must be made in the same priority required by current law: in other words, preferred to all debts and claims against the estate and paid out of the first funds the fiduciary receives.

**Q: What can I do as a funeral director if an agent/next-of-kin does not pay for goods and services that he or she agreed to?**

**A:** Funeral directors have clear legal standing to enforce contracts against an agent or next-of-kin who agrees in writing to pay for funeral goods or services and who controls that person's final disposition. The written "Itemization of Funeral Services and Merchandise Selected" statement (called the "at-need itemization"), with their signature and the *exact* amount he/she has agreed to pay, will serve this purpose. Once again, such an act is voluntary; the agent/next-of-kin is not financially responsible in any way just because he or she serves in this capacity.

**Q: Can a funeral director inform families about the NYS Final Disposition law and provide "agent designation forms" if requested?**

**A:** Yes. In fact, funeral directors are strongly encouraged to share this information with families during all preneed arrangements or presentations in the community.

**Q: What if someone wants to make a designation while in my funeral home, such as when making prearrangements?**

**A:** The law allows this. The form also needs to be signed and dated by the "designator," as well as the person being appointed as the agent. Two individuals must serve as "witnesses" for the appointment. A funeral director may serve as a witness.

Please remember, however, that a funeral director cannot serve as an agent if he will be receiving any monies. In other words, a funeral director cannot serve as an agent and receive compensation for goods and services provided to that person.

**Q: How will an agent know if the decedent has established a pre-need agreement with my funeral home?**

**A:** The agent form allows the person making an agent designation to indicate whether or not a preneed fund exists. It also requires him or her to state the name of the funeral firm holding the preneed contract.

The law does not require that any particular persons, including funeral directors, receive a copy of the agent form at any time. However, a person could do so if they choose. You should then place the form in the person's preneed file.

**Q: Is it possible that a person could be appointed an agent without knowing it?**

**A:** No. The form requires the document be signed by the person making the designation in the presence of two witnesses, who also are required to sign the document. In addition,

the agent must then sign the form for it to become valid. This ensures that all parties are fully aware that a designation has been made and the name of that agent.

**Q: What if the agent dies, resigns, or is simply unable or unwilling to act?**

**A:** The person's "Successor Agent," as named in the designation form, would assume control of the person's final disposition.

**Q: What if a person changes his or her mind and wants to name a new agent?**

**A:** Completing a subsequent agent designation form will revoke a prior appointment. The completion dates on the agent forms would be used to show which is in effect.

**Q: Are there any other ways that an agent designation can be revoked?**

**A:** Yes. The designation of a decedent's spouse or domestic partner as an agent will be revoked automatically upon the divorce or legal separation of the decedent and spouse, or when a domestic partnership is terminated according to the process specified in a local law. However, the decedent can still have the ex-spouse/ex-partner serve as the agent if he/she specifies this in writing in the agent designation form.

**Q: What if a person has already made out a will that gives instructions on final disposition before this new law took effect?**

**A:** The will remains fully effective – there is no need to make a new will or designate an agent. The law clearly states that a will containing the directions for disposition and/or the person named to control it reflects the intent of the deceased. The language used in the will should be substantially similar to the agent form to ensure the decedent's intent is clearly conveyed. In fact, these wishes remain valid even if the will is later probated or declared invalid and apply to wills executed in New York or in another state.

**Q: What if a person who has a will then designates an agent under the new law?**

**A:** All information and directions contained in the new agent form would take precedence over that in the will. Similarly, the authority of an agent would replace that of any person named in a will to control disposition.

In fact, a person can override his or her own will's final disposition instructions or the person charged with carrying them out simply by showing specific intent to do so. This could be in the form of anything in writing, as long as its purpose is clear.

**Q: Can a person continue to use wills to provide instructions on their final disposition?**

**A:** Of course! A subsequently executed will can replace a prior will or an agent form, so long as the intent to do so is clear.

**Q: If wills can be used to provide directions and authorizations for final disposition, why is this new agent form needed?**

**A:** Because wills go through probate, a time-consuming legal process that does not recognize the relatively short time frames for funerals/burials. By the time a person's will is probated, he or she has been deceased for weeks, if not months. The agent designation process should be much quicker – and more practical.

It is for these reasons that this law encourages the use of the agent designation process. However, it does not prohibit the continued use of wills in any way.

**Q: Does a person need an attorney or notary public when filling out an agent designation form?**

**A:** No. The person simply must make the designation and sign/date the form in the presence of two witnesses. The form must also be signed and dated by the agent. Unless revoked at a later time, the appointment becomes legally effective right at that time.

**Q: When did this law take effect?**

**A:** August 2, 2006. Agent designations started on that date, and the new next-of-kin hierarchy became law on that date as well.

## ***PART B: NEXT-OF-KIN HIERARCHY***

The second major part of the final disposition law establishes a next-of-kin hierarchy in State law for the specific purpose of determining who has the legal right to control a person's disposition in the following descending order:

- Person designated in written instrument;
- Spouse;
- Domestic Partner;
- Any Child 18 or Older;
- Either Parent;
- Any Brother or Sister 18 or Older;
- Authorized Guardian;
- Person 18 or Older now Eligible to Receive an Estate Distribution, in the following order:
  - Grandchildren;
  - Great-Grandchildren;
  - Nieces and Nephews;
  - Grand-nieces and Grand-nephews;
  - Grandparents;
  - Aunts and Uncles;
  - First Cousins;
  - Great-Grandchildren of Grandparents;
  - Second Cousins;
- Fiduciary;
- Close friend or other relative who is reasonably familiar with the decedent's wishes, including his or her religious or moral beliefs, when no one higher on the list is available, willing, or competent to act; (NOTE: This person must complete an "At-Need Written Statement of Person Having the Right to Control Disposition" form.)
- Public administrator (or the same official in a county not having a public administrator); or, anyone willing to act on behalf of the decedent who completes the "At-Need Written Statement" form.

NOTE: if there are more than two (a) children over 18, or (b) siblings over 18, or (c) relatives in a group eligible to receive an estate distribution, then the disposition shall be determined by a majority of the members of the group who are reasonably available. For example, if a father dies with 3 children all over the age of 18 and his children are the highest priority group that survives him (meaning he has no agent, spouse, or domestic partner) then 2 of the 3 children must agree on the disposition to move forward.

**Q: What was used prior to this Final Disposition law?**

**A:** Except for New York City (which had its own next-of-kin hierarchy), any prior State law put in place only for settling estates had to be used for guidance.

**Q: I'm a funeral director in New York City. When it comes to controlling a final disposition, do I follow the State's next-of-kin hierarchy? What about NYC's local law?**

**A:** Funeral directors must follow the State's next-of-kin hierarchy, which became effective on August 2, 2006. A main purpose of the law was to establish one set of uniform guidelines for statewide use. Therefore, next-of-kin laws on the books in New York City and other municipalities would not apply when it comes to controlling a final disposition. They may apply, however, for other purposes depending on how the local law is written.

**Q: If the deceased has appointed an agent, does the surviving next-of-kin have any control?**

**A:** No. The appointment of an agent gives that agent legal control over the final disposition. A next-of-kin would have control only if a decedent has **not** appointed a final disposition agent, as discussed in Part A. The agent and next-of-kin provisions work together to ensure that there is a clear "roadmap" for funeral directors to follow for either possibility.

**Q: What if the agent or next-of-kin is unable or unwilling to control the final disposition?**

**A:** Then the next persons of "equal priority" on the hierarchy would have the right to control the disposition. This means children, parents and siblings, in that order. If they are not available, the individuals having the "next succeeding priority" on the hierarchy would have the controlling authority.

**Q: How does this next-of-kin law help me as a funeral director?**

**A:** There is now a clear structure – in law – that can be relied upon with confidence when you have to determine which of a deceased's survivors has the primary legal standing to control the final disposition.

## ***PART C: DOMESTIC PARTNERS***

**Q: Am I responsible for getting any of the documentation for proof of a “domestic partnership?”**

**A:** No! The burden of proof is on the surviving domestic partner to prove that he/she was, indeed, in a domestic partnership with the deceased. In addition, legal concerns over confidentiality may prohibit you from getting this information from governmental entities and private companies anyway.

A funeral director is not responsible for determining whether a domestic partnership exists, provided that the surviving domestic partner represents in writing that he/she was a domestic partner of the deceased. (Use “At-Need Written Statement of Agent Claiming Legal Control of Disposition” or “At- Need Written Statement of Person Having the Right to Control Disposition” forms as appropriate.)<sup>3</sup>

Asking the surviving domestic partner for documentation may make sense, however, if identified family conflicts are brought to your attention. Having this documentation in your funeral home records is always helpful, although not required by law.

**Q: Are there any circumstances in which a person could not be the domestic partner of the deceased?**

**A:** Yes. The law sets some conditions on a domestic partnership:

1. Neither of them is currently a party to another domestic partnership.
2. Both persons are age 18 or older.
3. Neither of the persons are married or related by blood in a manner that would bar his or her marriage in New York State, as well as marriage to the lawful spouse of the other.
4. Neither person can be the adopted child of the other.
5. The partnership has been formally terminated.

**Q: But what about a domestic partner serving as an agent?**

**A:** Again, anyone can be designated an agent, without consideration of the personal relationship.

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<sup>3</sup> For an agent: “At-Need Written Statement of Agent Claiming Legal Control of Disposition.” For next-of-kin/any other person: “At-Need Written Statement of Person Having the Right to Control Disposition.” Copies of both forms are attached at Appendix B.

**Q: How does the State law effect New York City’s domestic partnership law and similar other local laws?**

**A:** As stated above, this state law automatically recognizes the existence of a “domestic partnership” for purposes of final disposition if a local (county, city, town, village) law also recognizes that partnership. New York City’s registry would “qualify” because it was formally enacted as a local law.

There is nothing in the State law requiring that there be a local “registry” – just a local law that permits/recognizes domestic partnerships.

**Q: The State law defines “domestic partnership” differently than our local law. What do we follow?**

**A:** Follow the State definition, which takes precedence over any contained in local laws. Please remember that the broader State definition applies only to “final disposition,” while some local laws apply the term more broadly for other purposes.



## ***PART D: LIABILITY ISSUES***

**Q: Does this law provide funeral directors with any liability protection for errors committed in the process of final disposition?**

**A: Yes!** This law recognizes the intricacies and complexities of funeral service by providing funeral directors, for the first time, with immunity from liability in various ways so long as funeral directors exercise their usual degree of due diligence and care and act reasonably and in good faith.

For instance, funeral directors will not be held liable for:

- Carrying out a decedent’s directions written in an agent form or will.
  
- Carrying out the directions of a person claiming to have control of the remains, so long as the director first requests and receives a written statement<sup>4</sup> from the person that:
  1. He/she is the agent designated in an agent form or in a will;  
OR
  2. He/she has no knowledge that the decedent designated a controlling agent through an agent form or a will and that he/she is the priority next-of-kin with control of the remains.
  
- Refusing to proceed with funeral services when there is a dispute over who has control of the decedent’s disposition.

For a funeral director, under the new law, this immunity holds firm as long as he/she acts reasonably and in good faith.

**Q: What about the liability of the next-of-kin or appointed agent?**

**A:** Agents also enjoy some protection under this new law. If they, too, acted in “good faith,” the agent or next-of-kin would not be liable for:

- Asserting that they are the person in control of the decedent’s disposition;
- Disposing of the remains if they reasonably believed it was consistent with law; and
- Identifying a decedent.

These measures of protection were put in place so as not to discourage someone from acting in the capacity of an agent or even fulfilling their rightful and legal obligations as next-of-kin.

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<sup>4</sup> For an agent: “At-Need Written Statement of Agent Claiming Legal Control of Disposition.”

For next-of-kin/any other person: “At-Need Written Statement of Person Having the Right to Control Disposition.” Copies of both forms are attached at Appendix B.

**Q: Could I still be sued even if all procedures are correctly followed?**

**A:** Yes. Even though this law provides significant legal protections for funeral directors and agents/next-of-kin that never existed before, these protections only apply if the person acted “reasonably and in good faith.” That means always using best practices and the proper due diligence, as well as operating by the usual high standards of care, honesty and integrity for which funeral directors in New York State are renowned. Indeed, funeral directors must ensure appropriate care when providing funeral services.

## ***PART E: HANDLING FAMILY DISPUTES***

**Q: When family members disagree over funeral arrangements, funeral directors are now often placed in the middle. Does this law address these situations?**

**A:** Yes! If a funeral director is unable to bring the family members to an agreement, the law specifically states that the dispute must then be resolved by a court. This can include a County Court or County Surrogate's Court, or State Supreme Court. The law also gives the case, once filed, priority status due to the unique circumstances surrounding it.

In cases where a dispute exists, a funeral director should advise both (or all) parties that he/she cannot proceed until the dispute is settled, either through a court order or a document signed by all parties (or their attorneys) demonstrating their agreement and stating who has legal control. If a family member becomes upset with you, please inform them that you cannot be held liable under State law for refusing to provide funeral services.

A family member wishing to go to court to establish who has control needs to first and foremost **hire an attorney** to bring this court action. In no way should a funeral director initiate or be a litigant in a court action as part of a family dispute.

## ***PART F – DOMESTIC VIOLENCE CASES***

**Q: What does state law say about domestic violence-related deaths?**

**A:** A 2012 amendment to NYS law automatically disqualifies ***any person*** – whether next-of-kin or appointed “agent” – from having or exercising control of the disposition of the deceased’s remains if:

- a) that person is the subject of an Order of Protection issued by a court that had been in place to protect the decedent, or
- b) that person has been charged with causing the death of the deceased person.

Many states have had laws that are substantially similar, if not exact, to this one on the books for years.

Although the situations identified in this law fortunately occur in only a very small percentage of deaths, funeral directors foremost will be concerned about “How will I know if this is a domestic violence case?”

**Q: How should I as a funeral director handle cases involving domestic violence, given this update to law?**

**A:** Just as in cases of family disputes, funeral directors can only act on what they know because of what they are told – whether it be by other family members asserting control of their loved one’s final disposition, or coroners/MEs. As long as you do not know something other than what you have been told, you may carry out the directions of the person or persons claiming to have control of the remains as long as the funeral director first requests and receives a written statement signed by the person making this claim. This is performing your own due diligence, as well as acting “reasonably and in good faith” – the dual standards for heightened liability protection contained in the final disposition statute.

## ***PART G – GENERAL QUESTIONS***

**Q: What documents am I required to keep?**

**A:** The final disposition law does not have any record-keeping requirements. However, you should certainly keep a copy of the agent’s or next-of-kin’s/other person’s written statement claiming control of the final disposition. You are required to “request and receive” this signed statement first to ensure that you are protected from liability when acting on the direction of the agent or next-of-kin/other person.<sup>5</sup>

**Q: Does this law relates only to final disposition?**

**A:** Yes, it only applies to “control of the disposition of a decedent’s remains.” None of the definitions, use of the agent designation form or other forms, the next-of-kin hierarchy or liability protections extend to any other area.

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<sup>5</sup> For an agent: “At-Need Written Statement of Agent Claiming Legal Control of Disposition.”  
For next-of-kin/any other person: “At-Need Written Statement of Person Having the Right to Control Disposition.” Copies of both forms are attached at Appendix B.

# APPENDIX A

## New York State Public Health Law Section 4201

§ 4201. Disposition of remains; responsibility therefor. 1. As used in this section, the following terms shall have the following meanings, unless the context otherwise requires:

- (a) "Cremation" means the incineration of human remains.
- (b) "Disposition" means the care, disposal, transportation, burial, cremation, natural organic reduction or embalming of the body of a deceased person, and associated measures.
- (c) "Domestic partner" means a person who, with respect to another person:
  - (i) is formally a party in a domestic partnership or similar relationship with the other person, entered into pursuant to the laws of the United States or any state, local or foreign jurisdiction, or registered as the domestic partner of the person with any registry maintained by the employer of either party or any state, municipality, or foreign jurisdiction; or
  - (ii) is formally recognized as a beneficiary or covered person under the other person's employment benefits or health insurance; or
  - (iii) is dependent or mutually interdependent on the other person for support, as evidenced by the totality of the circumstances indicating a mutual intent to be domestic partners including but not limited to: common ownership or joint leasing of real or personal property; common householding, shared income or shared expenses; children in common; signs of intent to marry or become domestic partners under subparagraph (i) or (ii) of this paragraph; or the length of the personal relationship of the persons.

Each party to a domestic partnership shall be considered to be the domestic partner of the other party. "Domestic partner" shall not include a person who is related to the other person by blood in a manner that would bar marriage to the other person in New York state. "Domestic partner" shall also not include any person who is less than eighteen years of age or who is the adopted child of the other person or who is related by blood in a manner that would bar marriage in New York state to a person who is the lawful spouse of the other person.

- (c-1) "Natural organic reduction" means the contained, accelerated conversion of human remains to soil.
- (d) "Person" means a natural person eighteen years of age or older.

2. (a) The following persons in descending priority shall have the right to control the disposition of the remains of such decedent; provided that if there are more than two members of a class listed in subparagraph (iii), (v), or (vii) of this paragraph entitled to control the disposition of remains of a decedent, the disposition shall be determined by a majority of the members of the class who are reasonably available:

- (i) the person designated in a written instrument executed pursuant to the provisions of this section;
- (ii) the decedent's surviving spouse;
- (ii-a) the decedent's surviving domestic partner;
- (iii) any of the decedent's surviving children eighteen years of age or older;
- (iv) either of the decedent's surviving parents;
- (v) any of the decedent's surviving siblings eighteen years of age or older;
- (vi) a guardian appointed pursuant to article seventeen or seventeen-A of the surrogate's court procedure act or article eighty-one of the mental hygiene law;

(vii) any person eighteen years of age or older who would be entitled to share in the estate of the decedent as specified in section 4-1.1 of the estates, powers and trusts law, with the person closest in relationship having the highest priority;

(viii) a duly appointed fiduciary of the estate of the decedent;

(ix) a close friend or relative who is reasonably familiar with the decedent's wishes, including the decedent's religious or moral beliefs, when no one higher on this list is reasonably available, willing, or competent to act, provided that such person has executed a written statement pursuant to subdivision seven of this section; or

(x) a chief fiscal officer of a county or a public administrator appointed pursuant to article twelve or thirteen of the surrogate's court procedure act, or any other person acting on behalf of the decedent, provided that such person has executed a written statement pursuant to subdivision seven of this section.

(b) If a person designated to control the disposition of a decedent's remains, pursuant to this subdivision, is not reasonably available, unwilling or not competent to serve, and such person is not expected to become reasonably available, willing or competent, then those persons of equal priority and, if there be none, those persons of the next succeeding priority shall have the right to control the disposition of the decedent's remains.

(c) The person in control of disposition, pursuant to this section, shall faithfully carry out the directions of the decedent to the extent lawful and practicable, including consideration of the financial capacity of the decedent's estate and other resources made available for disposition of the remains. The person in control of disposition shall also dispose of the decedent in a manner appropriate to the moral and individual beliefs and wishes of the decedent provided that such beliefs and wishes do not conflict with the directions of the decedent. The person in control of disposition may seek to recover any costs related to the disposition from the fiduciary of the decedent's estate in accordance with section eighteen hundred eleven of the surrogate's court procedure act.

(d) No funeral director, undertaker, embalmer or no person with an interest in, or who is an employee of any funeral firm, cemetery organization or business operating a crematory, natural organic reduction facility, columbarium or any other business, who also controls the disposition of remains in accordance with this section, shall receive compensation or otherwise receive financial benefit for disposing of the remains of a decedent.

(e) No person who: (1) at the time of the decedent's death, was the subject of an order of protection protecting the decedent; or (2) has been arrested or charged with any crime set forth in article one hundred twenty-five of the penal law as a result of any action allegedly causally related to the death of the decedent shall have the right to control the disposition of the remains of the decedent. However, the application of this paragraph in a particular case may be waived or modified in the interest of justice by order of (i) the court that issued the order of protection or in which the criminal action against the person is pending, or a superior court in which an action or proceeding under the domestic relations law or the family court act between the person and the decedent was pending at the time of the decedent's death, or (ii) if proceeding in that court would cause inappropriate delay, a court in a special proceeding.

3. The written instrument referred to in paragraph (a) of subdivision two of this section may be in substantially the following form, and must be signed and dated by the decedent and the agent and properly witnessed:



APPOINTMENT OF AGENT TO CONTROL DISPOSITION OF REMAINS

I, \_\_\_\_\_

(Your name and address)

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

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Indicate below if you have entered into a pre-funded pre-need agreement subject to section four hundred fifty-three of the general business law for funeral merchandise or service in advance of need:

No, I have not entered into a pre-funded pre-need agreement subject to section four hundred fifty-three of the general business law.

Yes, I have entered into a pre-funded pre-need agreement subject to section four hundred fifty-three of the general business law.

\_\_\_\_\_  
(Name of funeral firm with which you entered into a pre-funded pre-need funeral agreement to provide merchandise and/or services)

AGENT:

Name: \_\_\_\_\_

Address: \_\_\_\_\_

Telephone Number: \_\_\_\_\_

SUCCESSORS:

If my agent dies, resigns, or is unable to act, I hereby appoint the following persons (each to act alone and successively, in the order named) to serve as my agent to control the disposition of my remains as authorized by this document:

1. First Successor

Name: \_\_\_\_\_

Address: \_\_\_\_\_

Telephone Number: \_\_\_\_\_

2. Second Successor

Name: \_\_\_\_\_

Address: \_\_\_\_\_

Telephone Number: \_\_\_\_\_

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.

Signed this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_ .

\_\_\_\_\_  
(Signature of person making the appointment)

Statement by witness (must be 18 or older)

I declare that the person who executed this document is personally known to me and appears to be of sound mind and acting of his or her free will. He or she signed (or asked another to sign for him or her) this document in my presence.

Witness 1: \_\_\_\_\_  
(signature)

Address: \_\_\_\_\_

Witness 2: \_\_\_\_\_  
(signature)

Address: \_\_\_\_\_

ACCEPTANCE AND ASSUMPTION BY 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 \_\_\_\_\_, \_\_\_\_ .

\_\_\_\_\_  
(Signature of agent)

4. (a) In the absence of a written instrument made pursuant to subdivision three of this section, the designation of a person for the disposition of one's remains or directions for the disposition of one's remains in a will executed pursuant to the laws of the state of New York prior to the effective date of this section, or otherwise executed pursuant to the laws of a jurisdiction outside the state of New York, shall be: (i) considered reflective of the intent of the decedent with respect to the disposition of the decedent's remains; and (ii) superseded by a written instrument subsequently executed pursuant to subdivision three of this section, or by any other subsequent act by the decedent evidencing a specific intent to supersede the designation or direction in such a will with respect to the disposition of the decedent's remains. All actions taken reasonably and in good faith based upon such authorizations and directions regarding the disposition of one's remains in such a will shall be deemed valid regardless of whether such a will is later probated or subsequently declared invalid.

(b) In the absence of a written instrument made pursuant to subdivision three of this section, the designation of a person for the disposition of one's remains or directions for the disposition of one's remains in a will executed pursuant to the laws of the state of New York on or after the effective date of this section, shall be considered a reflection of the intent of the decedent with respect to the disposition of the decedent's remains, provided that the person who represents that he or she is entitled to control the disposition of remains of the decedent has complied with subdivision five and paragraph (a) of subdivision seven of this section and signed a written statement in accordance with paragraph (b) of subdivision seven of this section.

4-a. A written instrument under this section may limit the disposition of remains agent's authority to consent to organ or tissue donation or designate another person to do so, under article forty-three of this chapter. Failure to state wishes or instructions shall not be construed to imply a wish not to donate.

5. A written instrument executed under this section shall be revoked upon the execution by the decedent of a subsequent written instrument, or by any other subsequent act by the decedent evidencing a specific intent to revoke the prior written instrument and directions on disposition and agent designations in a will made pursuant to subdivision three of this section shall be superseded by a subsequently executed will or written instrument made pursuant to this section, or by any other subsequent act of the decedent evidencing a specific intent to supersede the direction or designation. The designation of the decedent's spouse or domestic partner as an agent in control of disposition of remains shall be revoked upon the divorce or legal separation of the decedent and spouse, or termination of the domestic partnership, unless the decedent specified in writing otherwise.

6. A person acting reasonably and in good faith, shall not be subject to any civil liability for:

- (a) representing himself or herself to be the person in control of a decedent's disposition;
- (b) disposing of a decedent's remains if done with the reasonable belief that such disposal is consistent with this section; or
- (c) identifying a decedent.

7. No cemetery organization, business operating a crematory, natural organic reduction facility, or columbarium, funeral director, undertaker, embalmer, or funeral firm shall be held liable for actions taken reasonably and in good faith to carry out the written directions of a decedent as stated in a will or in a written instrument executed pursuant to this section. No cemetery organization, business operating a

crematory, natural organic reduction facility, or columbarium, funeral director, undertaker, embalmer or funeral firm shall be held liable for actions taken reasonably and in good faith to carry out the directions of a person who represents that he or she is entitled to control of the disposition of remains, provided that such action is taken only after requesting and receiving written statement that such person:

(a) is the designated agent of the decedent designated in a will or written instrument executed pursuant to this section; or

(b) that he or she has no knowledge that the decedent executed a written instrument pursuant to this section or a will containing directions for the disposition of his or her remains and that such person is the person having priority under subdivision two of this section.

8. Every dispute relating to the disposition of the remains of a decedent shall be resolved by a court of competent jurisdiction pursuant to a special proceeding under article four of the civil practice law and rules. No person providing services relating to the disposition of the remains of a decedent shall be held liable for refusal to provide such services, when control of the disposition of such remains is contested, until such person receives a court order or other form of notification signed by all parties or their legal representatives to the dispute establishing such control.

9. This section does not supersede, alter or abridge any provision of section four hundred fifty-three of the general business law. In the event of a conflict or ambiguity, the provisions of section four hundred fifty-three of the general business law shall govern.

10. This section does not supersede, alter or abridge any provision of article forty-three of this chapter including, but not limited to, the persons authorized to execute an anatomical gift pursuant to section forty-three hundred one of this chapter.

11. This section does not diminish the enforceability of a contract or agreement in which a person controlling the disposition of the remains of a decedent agrees to pay for goods or services in connection with the disposition of such remains.

# APPENDIX B

# APPOINTMENT OF AGENT TO CONTROL DISPOSITION OF REMAINS

*This document shall constitute the "written instrument" as provided in Section 4201 of the NYS Public Health Law.*

## To Be Completed by the Intended Funeral Recipient:

I, \_\_\_\_\_, being of sound mind, willfully and  
(Print Your Name)

voluntarily make known my desire that, upon my death, the disposition of my remains

shall be controlled by \_\_\_\_\_.  
(Print Name of Agent)

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

## A. SPECIAL DIRECTIONS:

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

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

- NO, I have not entered into a pre-funded, pre-need agreement subject to Section 453 of the NYS General Business Law.
- YES, I have entered into a pre-funded, pre-need agreement subject to Section 453 of the NYS General Business Law with:

\_\_\_\_\_  
(Name of Funeral Firm with which you have this Agreement)

**B. AGENT INFORMATION:**

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Name: \_\_\_\_\_  
Address: \_\_\_\_\_  
Telephone #: \_\_\_\_\_

**C. SUCCESSORS:**

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If my agent dies, resigns, or is unable or unwilling to act, I hereby appoint the following persons (each to act alone and successively, in the order named) to serve as my agent to control the disposition of my remains as authorized by this document:

**1. First Successor:**

Name: \_\_\_\_\_  
Address: \_\_\_\_\_  
Telephone #: \_\_\_\_\_

**2. Second Successor:**

Name: \_\_\_\_\_  
Address: \_\_\_\_\_  
Telephone #: \_\_\_\_\_

**D. DURATION:**

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This appointment becomes effective upon my death.

**E. PRIOR APPOINTMENT REVOKED:**

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

SIGNED this \_\_\_\_\_ day of \_\_\_\_\_, 20 \_\_\_\_\_.

\_\_\_\_\_  
(Signature of Person Making the Appointment)

**F. STATEMENT BY WITNESS:**

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*Witness must be 18 or older*

I declare that the person who executed this document is personally known to me and appears to be of sound mind and acting of his or her free will. He/She signed (or asked another to sign for him or her) this document in my presence.

**Witness #1:**

Signature: \_\_\_\_\_  
Printed Name: \_\_\_\_\_  
Address: \_\_\_\_\_  
Telephone #: \_\_\_\_\_

**Witness #2:**

Signature: \_\_\_\_\_  
Printed Name: \_\_\_\_\_  
Address: \_\_\_\_\_  
Telephone #: \_\_\_\_\_

**G. ACCEPTANCE AND ASSUMPTION BY AGENT:**

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1. I have no reason to believe that 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 Agent)



# AT-NEED WRITTEN STATEMENT OF PERSON HAVING THE RIGHT TO CONTROL DISPOSITION

(Provided to Funeral Director)

## ***PERSON OTHER THAN AGENT***

I/We, \_\_\_\_\_ hereby represent  
Name of Next-of-Kin, Other Person (Printed) \*List majority of children, siblings or persons eligible  
to receive an estate distribution if more than two persons\*

and assert that I/we am/are entitled to control the disposition of the remains of \_\_\_\_\_.  
Name of Decedent (Printed)

I/We further represent that I/we am/are the person(s) having priority to control the disposition in accordance with Subdivision 2 of Section 4201 of the NYS Public Health Law. The order of priority set forth in Subdivision 2 of Section 4201 of the NYS Public Health Law is the following:

- Person designated in written instrument
- Spouse
- Domestic Partner
- A Child 18 or Older\*
- Either Parent
- Any Brother or Sister 18 or Older\*
- Authorized Guardian
- A Majority of the Persons 18 or Older now Eligible to Receive an Estate Distribution, in the following descending order\*:
  - Grandchildren
  - Great-Grandchildren
  - Nieces and Nephews
  - Grand-nieces and Grand-nephews
  - Grandparents
  - Aunts and Uncles
  - First Cousins
  - Great-Grandchildren of Grandparents
  - Second Cousins
- Fiduciary
- Close friend or other relative who is reasonably familiar with the decedent's wishes, including his or her religious or moral beliefs, when no one higher on the list is available, willing, or competent to act.
- Public administrator (or the same official in a county not having a public administrator); or, anyone willing to act on behalf of the decedent who completes the "At-Need Written Statement" form.

I/We also have no knowledge that the decedent executed a will containing directions for the disposition of his/her remains, or designated an agent by executing a written instrument pursuant to Section 4201 of the Public Health Law.

*\* If there are more than two persons in these categories (i.e. 3 or more siblings) entitled to control the disposition of remains of a decedent, the disposition shall be determined by a majority of the persons in the category who are reasonably available.*

I/We also hereby attest that I/we am/are not the person who (1) at the time of the decedent's death, was the subject of an order of protection issued to protect the decedent; or (2) has been arrested or charged with any crime allegedly causally related to the death of the decedent. *(NOTE: State law automatically prohibits any such person from having or exercising control of the disposition of the deceased's remains.)*

\_\_\_\_\_  
Signature of "Person Other Than Agent"

\_\_\_\_\_  
Date

\_\_\_\_\_  
Signature of "Person Other Than Agent"

\_\_\_\_\_  
Date

\_\_\_\_\_  
Signature of "Person Other Than Agent"

\_\_\_\_\_  
Date

\_\_\_\_\_  
Signature of "Person Other Than Agent"

\_\_\_\_\_  
Date

\_\_\_\_\_  
Signature of "Person Other Than Agent"

\_\_\_\_\_  
Date

Original: Funeral Director | Copy: Next-of-Kin

Updated May 2024

**AT-NEED WRITTEN STATEMENT OF AGENT  
CLAIMING LEGAL CONTROL OF DISPOSITION**

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(Provided to Funeral Director by AGENT)

***AGENT***

I, \_\_\_\_\_, hereby represent and assert that I am entitled to  
Name of Agent (Printed)

control the disposition of the remains of \_\_\_\_\_,  
Name of Decedent (Printed)

who named me as his/her designated agent in a will or written instrument executed pursuant to Section 4201 of the NYS Public Health Law.

I also hereby attest that I am not the person who (1) at the time of the decedent's death, was the subject of an order of protection issued to protect the decedent; or (2) has been arrested or charged with any crime allegedly causally related to the death of the decedent.

*(NOTE: State law automatically prohibits any such person from having or exercising control of the disposition of the deceased's remains.)*

\_\_\_\_\_  
Signature of Agent

\_\_\_\_\_  
Date