

# NEW JERSEY'S LAWS PERTAINING TO THE RIGHT TO CONTROL THE FUNERAL AND DISPOSITION

## **N.J.S.A. 45:27-22 RIGHT TO CONTROL FUNERAL AND DISPOSITION OF HUMAN REMAINS**

Effective September 17, 2019

a. If a decedent, in a will as defined in N.J.S.A. 3B:1-2, appoints a person to control the funeral and disposition of the human remains, the funeral and disposition shall be in accordance with the instructions of the person so appointed. A person so appointed shall not have to be executor of the will. The funeral and disposition may occur prior to probate of the will, in accordance with section 40 of P.L.2003, c. 261.

On or after the effective date of P.L.2019, c. 187, a decedent may appoint a person to control the funeral and disposition of the human remains in writing, and if a decedent so appoints a person it shall be in the presence of no less than two witnesses, on a form approved by the board. The written form appointing a person to control the funeral and disposition shall include the signatures of the decedent and witnesses, and shall be notarized. Nothing in this section shall be construed as prohibiting a decedent from appointing a person to control the funeral and disposition on the form approved by the board who is also named as the executor of the decedent's will.

The appointment of a person to control the funeral and disposition of the human remains made in the most recently dated and properly executed will as defined in N.J.S.3B:1-2 or board approved form as provided by P.L.2019, c. 187 shall supersede any similar appointment made in any previously executed document.

A person appointed or in a priority class with a right to control the funeral and disposition of the human remains under this subsection shall have the right to relinquish control of the funeral and disposition. Whenever a person relinquishes control pursuant to this subsection, the right to control the funeral and disposition of the human remains shall transfer to the next available priority class as enumerated in this subsection.

No officer, partner, member, shareholder, owner, representative, or employee of the funeral home, cemetery, or crematory providing any goods or services related to the decedent's funeral and disposition of the human remains shall be the person appointed by the decedent, under this subsection, to control the funeral and disposition, unless that person is a relative of the decedent.

In the case of an active duty service member who died while on active duty in any branch or component of the United States Armed Forces, including the New Jersey National Guard called to federal active duty, the person designated by the decedent as authorized to direct disposition, as listed on the decedent's United States Department of Defense Record of Emergency Data, DD Form 93, or its successor form, shall be the person appointed to control the funeral and disposition of the remains of the decedent.

If the decedent has not left a will appointing a person to control the funeral and disposition of the remains or the United States Department of Defense Record of Emergency Data, DD Form 93, or its successor form, is not applicable, the right to control the funeral and disposition of the human remains shall be in the following order, unless other directions have been given by a court of competent jurisdiction:

- (1) The surviving spouse of the decedent or the surviving civil union or domestic partner.
- (2) A majority of the surviving adult children of the decedent.
- (3) The surviving parent or parents of the decedent.
- (4) A majority of the brothers and sisters of the decedent.
- (5) Other next of kin of the decedent according to the degree of consanguinity.
- (6) If there are no known living relatives, a cemetery may rely on the written authorization of any other person acting on behalf of the decedent.

The right to control the funeral and disposition of the remains shall be granted to the next available priority class, as enumerated in this subsection, if the decedent had a temporary or permanent restraining order issued pursuant to P.L.1991, c. 261 (C.2C:25-17 et seq.) against the person or persons in the highest priority class, or the person or persons in the highest priority class are charged with the intentional killing of the decedent.

If the decedent has not appointed a person to control the funeral and disposition of the human remains, or the United States Department of Defense Record of Emergency Data, DD Form 93, or its successor form, is not applicable, the person or persons in the highest priority class of the right to control the funeral and disposition shall exercise the right to control within 72 hours after the decedent's death. If the person or persons in the highest priority class fail to exercise the right to control within 72 hours after the decedent's death, or if the person or persons in the highest priority class are unable to be notified after a reasonable attempt to notify within 72 hours after the decedent's death, the right to control the funeral and disposition shall transfer to the person or persons in the next highest priority class, as enumerated in this subsection. If the person or persons who would otherwise retain the right to control the funeral and disposition are deemed medically incapable or medically incapacitated by a licensed physician, the right to control shall transfer to the person or persons in the next highest priority class, as enumerated in this subsection.

If more than one person is deemed to have equal right to control the funeral and disposition of the human remains, a majority of the persons with the equal right to control is required to authorize the funeral and disposition. In instances where the parents of the decedent retain the right to control the funeral and disposition, both parents are required to authorize the funeral and disposition, if both parents are living and both parents are able to be notified after a reasonable attempt to notify. If only one parent is living or if only one parent is notified after a reasonable attempt to notify both parents, the authorization of one parent shall be sufficient to proceed with a funeral and disposition.

Notwithstanding any law, rule, or regulation to the contrary, the divorce, annulment, or dissolution of a marriage, civil union, or domestic partnership shall remove the right of control of the funeral and disposition of the human remains from the former spouse or former partner of the decedent, unless the former spouse or partner serves as an other interested party.

"Domestic partner" means a domestic partner as defined in section 3 of P.L.2003, c. 246 (C.26:8A-3).

"Reasonable attempt to notify" shall mean a good faith effort to contact the person or persons with the right to control the funeral and disposition via correspondence sent by registered mail or electronic mail to his or her last known address, or a telephone call placed to the last known telephone number, by a family member, personal representative of the decedent, or any other interested party. If a reasonable attempt to notify is unsuccessful, the person or persons assuming the right to control the funeral and disposition shall attest in writing that a good faith effort was made to contact any person or persons with a higher priority right to control.

- b. A cemetery may permit the disposition of human remains on the authorization of a funeral director handling arrangements for the decedent, or on the written authorization of a person who claims to be, and is believed to be, a person who has the right to control the disposition. The cemetery shall not be liable for disposition pursuant to this authorization unless it had reasonable notice that the person did not have the right to control the disposition.

[Unrelated language omitted]

- d. A person who signs an authorization for the funeral and disposition of human remains warrants the truth of the facts stated, the identity of the person whose remains are disposed and the authority to order the disposition. The person shall be liable for damages caused by a false statement or breach of warranty. A cemetery or funeral director shall not be liable for disposition in accordance with the authorization unless it had reasonable notice that the representations were untrue or that the person lacked the right to control the disposition.

[Unrelated language omitted]

**N.J.S.A. 3B:10-21.1 APPOINTMENT OF PERSON TO CONTROL FUNERAL AND DISPOSITION**

Prior to probate, a decedent's appointment of a person in a will to control the funeral and disposition of human remains may be carried out in accordance with section 22 of P.L.2003, c. 261 (C.45:27-22). If known to them, a person named executor in a will shall notify such a person of their appointment and advise them of what financial means are available to carry out the funeral and disposition arrangements.