

MAKE YOUR OWN FUNERAL DECISIONS OR HAVE SOMEONE ELSE MAKE THEM FOR YOU

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As part of their estate plans, many individuals execute a “Living Will” to let family members know their wishes in the last days of life. Unfortunately, these same individuals do not express their burial wishes to those same family members. This can require family members to guess how and where to dispose of the decedent’s body. This decision can become even more difficult and contentious in the case of separated married couples, second marriages, Department of Defense policy and divorced parents (for unmarried decedents). Proper planning can avoid this problem at death and any potential litigation over the issue.

Many states contain laws that determine who will be a decedent’s decision maker or "legally authorized person." The statutes provide the following order of priority: (i) The decedent (when written directions are provided by him or her); (ii) The individual designated by the decedent (as listed on the decedent's Department of Defense Record of Emergency Data); (iii) The surviving spouse; (iv) A child over the age of 18 years; (v) Parent; (vi) Sibling over the age of 18 years; or (vii) Grandchild over the age of 18 years. Alternatively, if no family member exists or is available, the following order of priority will apply: (i) Guardian of the decedent; (ii) Personal Representative; (iii) Attorney in fact; (iv) Health surrogate; or (v) Individual willing to assume the responsibility. In the case of a deceased U.S. service members, DoD policy dictates that the service members remains be given to the eldest surviving parent.

Similar to how a Last Will and Testament (“Will”) specifies who a decedent desires to serve as the personal representative (administrator) of their estate and to whom their assets are to distributed upon death, written burial instructions can specify who shall be the decedent’s legally authorized individual and desired burial arrangements (standard funeral, military funeral, cremation, burial at sea, scattering of ashes, etc.). It is recommended, although not legally required, that the burial instructions be signed in the presence of two witnesses and a notary public.

A popular technique among many individuals is to include their burial instructions in his or her Will. However, this technique is not recommended because most Will’s are neither found or reviewed until after a decedent’s funeral or cremation (meaning their requests may not be honored). In light of the recent U.S. Supreme

Court ruling, that permits protesters at military funerals, the decision maker's role is even more important.

To learn more, contact me at (941) 928-0310 or mjs@fl-estateplanning.com. I look forward to assisting you with your Florida legal matter.