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Who controls "You" when you die?

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Lots has been written about who controls your "money and stuff" when you die, but who gets to make decisions about "You"? Who gets to say what your funeral service looks like, whether there'll be a burial or cremation, where your ashes might be scattered, or cryogenics or other alternatives? You might be shaking your head about the need to ask such a question, but I was just told a story that falls squarely within this question. A gentleman passed away overseas. He told his brothers he wanted to be cremated, and the ashes scattered, but his ex-wife and children want the body back for a funeral and burial. *Who gets to decide?*

According to New Jersey law, the the first person who gets to decide what is done with "you" when you die, is you. NJSA 45:27-22 states that you can appoint a person in your Will to control your funeral disposition of the remains. That person does not need to be your executor, and the funeral/disposition can occur prior to the probate of the Will (very important as the Will cannot be probated until 10 days after death).

But what if you didn't appoint someone? In that event, the statute directs that certain people or groups of people are given the authority to make the decision, in order of priority:

- (1) The surviving spouse of the decedent.
- (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.

Going back to the example above, if the children are 18, they would be allowed to say will be done with the gentleman's remains, even though he orally told his brothers that he wanted to be cremated and did not want have a funeral. This underscores the point: if you want the person who makes decisions about what happens to "you" to be you, you must make your wishes known in your Will and appoint someone to carry them out.



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An additional wrinkle in the example I gave is that the person passed away in another jurisdiction, not even another state, but another country. The laws of that jurisdiction will have priority over the laws of

New Jersey in dealing with this question, but the laws of the other jurisdiction may defer to the laws of New Jersey law to answer the question, so it is still critically important that you make your wishes known in your Will.

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