

## WILL THEY FIGHT OVER YOUR REMAINS?

By Joseph A. Bollhofer, Esq.

Every now and then a dispute arises over what to do with the body. A few years ago, the New York State legislature finally got around to creating a law that allows people to designate an agent in writing to control the disposition of remains.

Although many people will find this unnecessary, with the increase of multiple marriages, same-sex relationships and individuals choosing to live together without being married, litigation has increased on this subject. Even without litigation, the confusion, arguments and hard feelings that sometimes result often drive wedges between family members at a time when compassion and healing are needed.

The document is relatively simple and is authorized by New York's Public Health Law. If you designate such an agent, that person has full authority to control the disposition of your remains, even if you are married. The law also formally specifies an order of authority if no agent was designated. That order begins with the surviving spouse, then domestic partner (as defined in the law), then any children eighteen or older. There are then listed other categories in descending order.

The disputes I have seen most commonly are between a spouse and children from a prior marriage. However, I have also seen disputes between and among children. This can all be avoided (at least the legal part of it) by designating an agent. It also gives funeral homes some peace of mind – that they won't be successfully sued.

Please note that if you have made pre-paid funeral arrangements and/or have authorized organ donation, the designation of an agent to control the disposition of your remains does not change those matters.

You may name a substitute agent, and you may revoke the designation at any time. Of course, proving and insuring that revocation is effective can be tricky. Making sure that all copies are destroyed would be the easiest way. If that is not possible, written revocation with notice to the former agent would be necessary. Further steps depend upon the circumstances. If a new designation is made, the first is revoked.

The law does not automatically resolve all disputes regarding this subject. Experience shows that if someone is intent on contesting the authority to dispose of remains, there will still be a challenge. However, having a properly signed and witnessed designation usually will resolve the issue at what is likely the most emotional time in most survivors' lives.

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### ***Editor's Note:***

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