

OHIO RIGHT OF DISPOSITION GUIDE

RIGHT OF DISPOSITION PRIORITY LIST:

THE PRIORITY LIST OF WHO HOLDS THE RIGHT OF DISPOSITION IS ESTABLISHED BY SECTIONS 2108.70 AND 2108.81 OF THE OHIO REVISED CODE.

PRIORITY LIST: WHO HOLDS THE RIGHT OF DISPOSITION FROM TOP TO BOTTOM

**Section 2108.81 states the noted classes need collective agreement on disposition. If there is a disagreement within the class, Section 2108.79 states if the persons in this group or class disagree regarding how the right is to be exercised, the decisions of the majority of persons in the group or class shall prevail or if after reasonable efforts, less than all of the persons in a group or class have been located, the decisions of the majority of the person in the group or class who have been located shall prevail. Timing comes into play for loss of right. See Loss of Right section for further explanation. Furthermore, if a majority of persons cannot be attained, Section 2108.82 states the assignment of right disposition can be made through Probate Court.*

1. A representative who has been appointed by the decedent to arrange the disposition using the Appointment of Representative form. The specific requirements for the Appointment of Representative form are listed in Section 2108.72. If the decedent died on active duty in the military, DD Form 93 is equivalent to an Appointment of Representative form.
2. The surviving spouse.
3. *A majority of the adult children who can be located and are willing to make arrangements.
4. The adult parents or if one cannot be located, the parent who can be located and is willing to make arrangements.
5. *The majority of the adult siblings who can be located and are willing to make arrangements.
6. *The majority of the surviving grandparents who can be located and are willing to make arrangements.
7. *The majority of the adult surviving grandchildren who can be located and are willing to make arrangements.
8. The lineal descendants of the decedent's grandparents as set forth in Section 2105.06 who are willing to make arrangements.
9. The decedent's guardian at the time of death.
10. Any person, including the funeral director, willing to carry out the disposition after attesting in writing that a good faith effort has been made to locate anyone in the above classes.
11. If the decedent is an indigent or person under the responsibility of the State of Ohio or a political subdivision, the public officer or employee responsible for arranging the final disposition.

RIGHT OF DISPOSITION SPECIAL RULES:

- 1. Adopted, Half-Blooded and Stepchildren:** Adopted and half-blooded siblings are on the same level as full-blooded children. Stepchildren and step-siblings have no rights.
- 2. Effect of Adoption:** If a child has been given up for adoption, he or she is no longer the child of biological parents. Likewise, the biological parents are no longer the parents of the adopted child under the law. Additionally, biological siblings are no longer related to a sibling who was given up for adoption.
- 3. Executor:** Simply because a person is the executor of the estate does not provide any special disposition rights.
- 4. Disputes:** In the event of a dispute or if a funeral director has a question regarding the accuracy of a claim of disposition, the statute permits the funeral director to stop all funeral and disposition services until the matter is resolved by the Probate Court or an agreement among the parties in a dispute. Any such agreement should be in writing and signed by the parties in the dispute.
- 5. Probate Court:** All right of disposition matters are handled by the Probate Court in the county where decedent was a resident at the time of his or her death.
- 6. Appointed Representatives:** Funeral homes, crematories, cemeteries, and their employees may not be appointed as a representative to carry out the right of disposition unless they are related to the decedent by blood, marriage or adoption.
- 7. Appointment of Representative Form:** This form contains 12 different items and specifications required by Section 2108.72(A). Make sure that any document presented to the funeral home meets the specifications required by the statute.
- 8. Reliance on Statements:** A funeral director may rely upon written statements from family members that they have conducted a search and have been unable to contact family members with a superior or equal right. Such statements of declaration should always be in writing and included in a cremation authorization form. Section 2108.86. In NO circumstances shall a funeral home, funeral director, crematory operator, or other person asked to assist with a deceased person's funeral burial, cremation, or other manner of final disposition have a duty to *independently investigate* the existence of the decedent's representative named in a written declaration. Section 2108.87.
- 9. Status Quo:** When there is any type of dispute about funeral arrangements or the type of disposition, the best course of action is to maintain the status quo and not to proceed with the funeral or disposition unless there is agreement among the disputing parties, or it is clear under the statute that one party has the superior right, or the Probate Court issues an order on what action the funeral home is to take.
- 10. Adult Decedent of Divorced Parents:** In the rare case where an adult dies and the decedent's parents, who got divorced when the decedent was a child, hold the right and cannot agree on a disposition, then the parent who was the residential parent and legal custodian of the decedent when the decedent turned 18 years of age will have priority over the other parent.

LOSS OF RIGHT

EIGHT WAYS THAT THE PERSON HOLDING THE RIGHT OF DISPOSITION CAN LOSE IT

- 1.** The person fails to exercise the right within forty-eight (48) hours after notification of the decedent's death, or, if there is no notification, within seventy-two (72) hours of the death or the discovery of the remains, whichever occurs last. This provision takes away the right after seventy-two (72) hours even if the person holding the right was unaware of the death. (2108.75(A)(4)).
- 2.** The person cannot be located with reasonable effort. (2108.75(A)(5)).
- 3.** The person refuses to assume the liability for the costs of the disposition. (2108.75(A)(7)).
- 4.** The person has been charged with murder, aggravated murder, or voluntary manslaughter for causing the death of the decedent. (2108.77(A)(1)).
- 5.** The person has been charged with an act of domestic violence which contributes to the death of the decedent. (2108.77(B)(1)).
- 6.** The person is the spouse and an action to terminate the marriage is pending in the court system at the time of the death. (2108.77(C)).
- 7.** The person is the spouse and a Probate Court finds that the spouse was estranged from the decedent at the time of death. (2108.77(D)).
- 8.** The person is not yet 18 years of age or is not of sound mind.