

A.C.A. § 20-17-102

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\*\*\* CURRENT THROUGH THE 2011 REGULAR SESSION AND UPDATES \*\*\*  
\*\*\* FROM THE ARKANSAS CODE REVISION COMMISSION THROUGH \*\*\*  
\*\*\* JUNE 2, 2011 \*\*\*

Title 20 Public Health And Welfare  
Subtitle 2. Health And Safety  
Chapter 17 Death and Disposition of the Dead  
Subchapter 1 -- General Provisions

A.C.A. § 20-17-102 (2011)

**20-17-102. Arkansas Final Disposition Rights Act of 2009.**

**(a) (1)** This section may be cited as the "Arkansas Final Disposition Rights Act of 2009".

**(2)** As used in this section:

**(A)** "DD Form 93" means a United States Department of Defense Record of Emergency Data or its successor form;

**(B)** "Died while serving" means the death of a person in a capacity when the secretary of the military service has the authority to provide for the recovery, care, and disposition of the remains of the person as provided under 10 U.S.C. § 1481(a)(1)-(8) as in effect on January 1, 2011; and

**(C)** "Final disposition" means the burial, interment, cremation, removal from Arkansas, or other authorized disposition of a dead body or fetus.

**(b) (1) (A)** Except as provided under subdivision (b)(2) of this section, an individual of sound mind and eighteen (18) or more years of age may execute at any time a declaration specifying the final disposition of his or her bodily remains at his or her death, provided the disposition is in accordance with existing laws, rules, and practices for disposing of human remains.

**(B)** The declaration of final disposition executed under this section shall be signed by the declarant or another at the declarant's direction and shall be witnessed by two (2) individuals.

**(C)** Additional consent of any other person is not required if the declaration of final disposition contains a disposition authorized under this section and is otherwise valid under this section.

**(2)** Notwithstanding any other declaration made under this section or any other law, if the decedent died while serving in any branch of the armed forces of the United States, the National Guard, or a reserve component of the armed forces, the decisions regarding the final disposition for the decedent shall be made by the person authorized to direct disposition on the DD Form 93 completed by the decedent prior to death.

**(c)** Except as provided under subdivision (b)(2) of this section, a person having possession, charge, or control of the declarant's human remains following the death of a person who has executed a declaration of final disposition shall not knowingly dispose of the body in a manner inconsistent with the declaration.

**(d) (1)** The right to control the disposition of the remains of a deceased person, the location, manner, and conditions of disposition, and arrangements for funeral goods and services to be provided vests in the following in the order named, provided such person is eighteen (18) years of age or older and is of sound mind:

age or older and is of sound mind:

**(A)** First, if the decedent died while serving in any branch of the armed forces of the United States, the National Guard, or a reserve component of the armed forces, the decisions regarding the final disposition for the decedent shall be made by the person authorized to direct disposition on the DD Form 93 completed by the decedent prior to death;

**(B)** Second, a person appointed by the decedent in the decedent's declaration of final disposition executed before his or her death, in accordance with this section;

**(C)** Third, the surviving spouse;

**(D)** Fourth, the sole surviving child of the decedent or if there is more than one (1) child of the decedent, the majority of the surviving children;

**(E) (i)** Fifth, the surviving parent or parents of the decedent.

**(ii)** If one (1) of the surviving parents is absent, the remaining parent shall be vested with the rights and duties of this section after reasonable efforts have been unsuccessful in locating the absent surviving parent;

**(F)** Sixth, the surviving brother or sister of the decedent or if there is more than one (1) sibling of the decedent, the majority of the surviving siblings;

**(G)** Seventh, the surviving grandparent of the decedent or if there is more than one (1) surviving grandparent, the majority of the grandparents;

**(H)** Eighth, the surviving grandchild of the decedent or if there is more than one (1) surviving grandchild, the majority of the grandchildren;

**(I)** Ninth, the guardian of the person of the decedent at the time of the decedent's death, if one had been appointed;

**(J) (i)** Tenth, the person in the classes of the next degree of kinship, in descending order, under the laws of descent and distribution to inherit the estate of the decedent.

**(ii)** If there is more than one (1) person of the same degree, any person of that degree may exercise the right of disposition;

**(K)** Eleventh, any representative of state government or a political subdivision thereof that has the statutory obligation to provide for the disposition of the remains of the decedent, including but not limited to any entity authorized to take possession of the remains under § 20-17-701 et seq.; and

**(L)** In the absence of any person under this subsection, any other person willing to assume the responsibilities to act and arrange the final disposition of the decedent's remains, including without limitation the personal representative of the decedent's estate or the funeral director with custody of the body, after attesting in writing that a good faith effort has been made to no avail to contact the individuals under this subsection.

**(2) (A)** Within each class, less than the majority of the class shall be vested with the rights of this section if they have used reasonable efforts to notify all other members of the class of their instructions and are not aware of any opposition to those instructions on the part of more than one-half (1/2) of all surviving children.

**(B)** In this subdivision, "class" means surviving children, siblings, grandparents, or grandchildren, where applicable.

**(e) (1)** A person entitled under this section to the right of disposition shall forfeit that right, with the right passing to the next qualifying person as listed in this section, in the following circumstances:

**(A) (i)** Any person charged with murder under § 5-10-101, § 5-10-102, or § 5-10-103, or manslaughter under § 5-10-104, in connection with the decedent's death, and whose charges are known to the funeral director.

**(ii)** If the charges against such person are terminated by an acquittal, dismissal, or nolle prosequi, the right of disposition is returned to the person;

**(B)** Any person who does not exercise his or her right of disposition within two (2) days of notification of the death of the decedent or within five (5) days of the decedent's death, whichever is earlier;

**(C)** Any person who possesses the right of disposition, but who is unwilling to assume the liability for the costs of such arrangements and disposition if sufficient resources are not available in the decedent's estate to pay such costs at the time the costs become due and payable;

**(D) (i)** When the person entitled to the right of disposition and the decedent were estranged at the time of death.

**(ii) (a)** As used in this section, "estranged" means a physical and emotional separation from the decedent at the time of death which has existed for a period of time that clearly demonstrates an absence of due affection, trust, and regard for the decedent.

**(b)** This shall also include the filing of a complaint for divorce by either party that remains pending at the time of the decedent's death or the separation by living apart of the decedent and spouse for a period of more than ninety (90) days preceding the decedent's death; and

**(E)** Where the Department of Human Services has custody of the decedent and a person authorized under subsection (d)(1) of this section has not claimed the right to possession of the decedent's remains within forty-eight (48) hours following the decedent's death.

**(2)** If there is a dispute between those sharing the right of disposition as to the decisions regarding the decedent's remains, the circuit court for the county where the decedent resided may award the right of disposition to the person it determines to be the most fit and appropriate to carry out the right of disposition. The following provisions shall apply to the court's determination under this section:

**(A)** If the persons holding the right of disposition are two (2) or more persons with the same relationship to the decedent and they cannot, by majority vote, make a decision regarding the disposition of the decedent's remains, any of the persons or a funeral director with custody of the remains may file a petition asking the circuit court to make a determination in the matter;

**(B)** In making a determination under this subdivision (e)(2), the circuit court shall consider the following:

**(i)** The reasonableness and practicality of the proposed funeral arrangements and disposition;

**(ii)** The degree of the personal relationship between the decedent and each of the persons claiming the right of disposition;

**(iii)** The desires of the person or persons who are ready, able, and willing to pay the cost of the funeral arrangements and disposition;

**(iv)** The convenience and needs of other families and friends wishing to pay respects;

**(v)** The desires of the decedent; and

**(vi)** The degree to which the funeral arrangements would allow maximum participation by all wishing to pay respect;

wishing to pay respect;

**(C) (i)** In the event of a dispute regarding the right of disposition, a funeral director is not liable for refusing to accept the remains or to inter or otherwise dispose of the remains of the decedent or complete the arrangements for the final disposition of the remains until the funeral director receives a court order or other written agreement signed by the parties in the disagreement that decides the final disposition of the remains.

**(ii)** If the funeral director retains the remains for final disposition while the parties are in disagreement, the funeral director may embalm or refrigerate and shelter the body, or both, in order to preserve it while awaiting the final decision of the circuit court and may add the cost of embalming and refrigeration and sheltering to the final disposition costs.

**(iii)** If a funeral director brings an action under this section or is made a party to an action concerning the right of disposition of the decedent's remains, either individually or as an agent of any entity, the funeral director may add the legal fees and court costs associated with a petition under this section to the cost of final disposition.

**(iv)** This section may not be construed to require or to impose a duty upon a funeral director or bring an action under this section.

**(v)** A funeral director may not be held criminally or civilly liable for choosing not to bring an action under this section; and

**(D) (i)** Except to the degree it may be considered by the circuit court under this subdivision (e)(2), the fact that a person has paid or agreed to pay for all or part of the funeral arrangements and final disposition does not give that person a greater right to the right of disposition than the person would otherwise have.

**(ii)** The personal representative of the estate of the decedent does not, by virtue of being the personal representative, have a greater claim to the right of disposition than the person would otherwise have.

**(f) (1)** Any person signing a funeral service agreement, cremation authorization form, or any other authorization for disposition shall be deemed to warrant the truthfulness of any facts set forth therein, including the identity of the decedent whose remains are to be buried, cremated, or otherwise disposed of, and the party's authority to order such disposition.

**(2)** A funeral establishment, cemetery, or crematory shall have the right to rely on such funeral service contract or authorization and shall have the authority to carry out the instructions of the person or persons whom the funeral home, cemetery, or crematory reasonably believes holds the right of disposition.

**(3)** Employees of funeral homes, cemeteries, or crematories shall have no responsibility to contact or to independently investigate the existence of any next-of-kin or relative of the decedent.

**(4)** If there is more than one (1) person in a class who are equal in priority and the funeral home, cemetery, or crematory employee has no knowledge of any objection by other members of such class, that employee shall be entitled to rely on and act according to the instructions of the first such person in the class to make funeral and disposition arrangements, provided that no other person in such class provides written notice of his or her objections to that employee.

**(g)** A funeral director shall have complete authority to control the final disposition and to proceed under this section to recover reasonable charges for the final disposition when the following applies:

**(1)** If after a good faith effort has been made with no success to contact the individuals listed under subdivision (d)(1) of this section, the funeral director has no knowledge that any of the persons described in subdivision (d)(1) of this section exist or if none of the persons so described can be found after reasonable inquiry or contacted by reasonable means; and

**(2) (A)** No person or entity has assumed responsibility for disposition of the remains within five (5) days of the decedent's death or within twenty-four (24) hours after receiving written notice of the facts, whichever is longer, but in no event longer than seven (7) days after the date of the decedent's death.

**(B)** Written notice may be delivered by hand, United States Postal Service, facsimile transmission, or other reliable means of electronic transmission.

**(h) (1)** Crematory operators shall not be liable for civil damages for cremating human remains if a declaration of final disposition indicating that the declarant wished to be cremated has been executed under this section.

**(2)** Crematory operators shall not be liable for civil damages for failing to cremate human remains if:

**(A)** The declarant executed a declaration of final disposition indicating that he or she did not wish to be cremated; or

**(B)** The crematory operator knows that there is a dispute as to the validity of the declaration of final disposition.

**(i)** If a decedent did not execute a declaration of final disposition, the person having lawful possession, charge, or control of the decedent's human remains has the right to dispose of the remains in any manner that is consistent with existing laws, rules, and practices for disposing of human remains, including the right to have the remains cremated.

**(j)** A funeral home shall not be liable for any damages for carrying out the disposition of a decedent's human remains in any lawful manner that is consistent with a decedent's declaration of final disposition.

**(k) (1)** In the event that a person claiming the right of disposition directs the cremation of the remains of a decedent or in the event that a funeral director assumes responsibility for the disposition of the remains of a decedent under this section and proceeds to cremate the remains of the decedent, and thereafter no person or entity identified in (d)(1) of this section claims custody of the cremated remains for a period of ninety (90) days following the cremation, the funeral director may dispose of the cremated remains of the decedent.

**(2)** A funeral home, cemetery, crematory, or an employee who disposes of the remains of a decedent under the terms of this section shall not be subject to criminal or civil liability or subject to disciplinary action for such actions.

**(l)** A funeral home, cemetery, crematory, or an employee who relies in good faith upon the instruction of an individual claiming the right of disposition shall not be subject to criminal or civil liability or subject to disciplinary action for carrying out the disposition of the remains in accordance with the instruction.

**(m)** Nothing in this section shall be construed to affect, repeal, or replace the provisions and procedures set forth in the Revised Arkansas Anatomical Gift Act, § 20-17-1201 et seq.

**HISTORY:** Acts 1991, No. 376, §§ 1-3; 2003, No. 666, § 1; 2007, No. 839, § 4; 2009, No. 402, § 1; 2011, No. 29, §§ 1, 2; 2011, No. 1121, § 5.