

BERWITZ & DiTATA LLP

Attorneys and Counselors at Law

310 Old Country Road Suite 101
Garden City, New York 11530
Telephone (516) 747-3200 • Facsimile (516) 747-3727

Lawrence N. Berwitz

Maureen R. DiTata

Public Health Law Section 4201 - Disposal of a Decedent's Remains

All too often, disputes arise within a family regarding the disposition of a decedent's body – whether to cremate, bury or inter it, where to bury or how to otherwise dispose of the remains. It does not matter whether the dispute is between a second (or later) spouse and the children of an earlier marriage, between a domestic partner and the decedent's family, or among the decedent's children. The one common thread in all of these situations is that, instead of promoting closure, the disagreements and lingering hard feelings associated with this last decision create emotional distress.

Until recently, New York's laws did not adequately address the problems involving the disposition of a decedent's remains. Public Health Law §4201, which became effective on August 2, 2006, now addresses these issues.

Most significantly, this new law allows each of us, during our lifetime, to designate, in writing, a person who will carry out our wishes regarding the disposal of our remains. The written instrument must be signed by both the person whose directions it contains and the agent, and properly witnessed by two independent witnesses. The document can designate a successor agent in the event that the agent whom you have appointed dies before you, resigns, or otherwise fails or refuses to carry out your wishes. It can also provide special funeral or burial instructions, specify whether you wish to be buried or cremated, name the funeral home which you would like to utilize, and describe the type of funeral service that you wish. In short, it can be as explicit as you feel is necessary.

The agent designated will have authority to direct and decide where and how to dispose of our remains. Absent an appointment, the statute creates a priority among the survivors of a decedent as follows: (1) the decedent's surviving spouse, (2) the decedent's surviving domestic partner, (3) any of the decedent's surviving adult children, (4) either of the

decedent's surviving parents, (5) any of the decedent's surviving adult siblings, (6) a court appointed guardian, and (7) the duly appointed fiduciary of the decedent's estate.

The statute provides a definition of "domestic partner." It can be established by a domestic partnership entered into pursuant to the laws of the United States or any state, local or foreign government. The parties can be registered as domestic partners with any registry maintained by the employer of either party. The decedent or the surviving partner can be someone who is or was recognized as a beneficiary or covered person under the other's employment benefits or health insurance. Domestic partnership can also be established where there is or has been a relationship of dependence or mutual interdependence for support, as evidenced by a totality of circumstances, including but not limited to: common ownership or joint leasing of real or personal property, common householding, shared income or expenses, children in common, signs of intent to marry or become domestic partners, or the length of the personal relationship between the parties.

The new statute provides a new tool for ensuring that our wishes are carried out and preventing conflict among our loved ones. If you would like more information about this type of planning, please do not hesitate to contact us.