

What Are Your Rights Over Your Remains?

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Family gathering

- **Prior to Margaret's death:**
 - **Verbally** informed her 4 children and siblings she wished be cremated



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Mom passed away

- **Margaret's Daughter**
 - Do "as Mom wished"
- **Her 3 sons**
 - Absolutely not
- **Siblings**
 - Anything but cremation



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Who made the decision about the disposition of Margaret's remains?

- Margaret's wishes through her daughter
- Wishes of Margaret's three son's
- Wishes of Margaret's siblings
- Mortuary Director

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Mortuary

- Had to follow direction:
 - **Majority of children**



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2009 Montana Right of Disposition Act

- Montanans now have legal control over their remains after death



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Do you have written directions for your body after death?

- Yes
- No

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Decision Process for Remains

- Impacts
 - Individual who is planning
 - Family members who remain



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Requirements under Montana Disposition Act

- 18 years of age or older
- Sound mind



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4 Methods for providing disposition directions

1. Prepaid funeral contract
2. Written disposition direction
3. Signed affidavit
4. Videotaped disposition direction



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Prepaid Funeral Contract



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Two Types of Funeral Contracts

1. Funeral Trust
2. Funeral Insurance Policy



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Prepaid Funeral Contract

- With a licensed mortuary:
 - Promises to provide services as specified in contract



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Proceeds of Funeral Contract

- Mortuary named as beneficiary



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Do you have a prepaid funeral contract?

- Yes
- No

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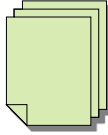
#2 Written Disposition Direction



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Written Instrument

- Contains disposition directions:
 - Typed
 - Handwritten
 - Computer generated



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Written Instrument Requirements

- ☐ Signed by person & 2 witnesses
 - 18 years of age
 - Sound mind



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Instrument Examples

- Will
- Letter of Last Instruction
- Trust Document
- Advance Directives



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Concerns About Will

- Must wait 5 days to submit a will for probate
- Will must be declared valid by district judge



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#3 Signed Affidavit



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Affidavit

- Authorization for another person to control disposition of your remains



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Example Affidavit

- **Provided by statute & in MontGuide**
 - **Must be signed before a notary public**



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Statute Wording

- **I (your name) do hereby designate (name of person) with the right to control the disposition of my remains upon my death.....**



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Statute Wording (cont'd)

- **I have ___ or have not ___ attached specific directions concerning the disposition of my remains with which the designee shall substantially comply, provided the directions are lawful and there are sufficient resources in my estate to carry out the directions.**

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Jeff



- **Wants wife to make decision:**
 - **Wrote an affidavit**
 - **Signed before notary public**

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#4 Videotaped/ DVD Disposition Direction



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Video/DVD

- **Person can record a video & explain preferences**



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Video/DVD

Written confirmation

❖ Signed by two witnesses

❖ 18 years of age

❖ Sound mind



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John



- Asked friend to videotape him explaining his wishes:
 - Cremation
 - Celebration of Life at Ranch

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Witnesses

- John's two close friends were present:

- Each dated & signed written confirmation of video tape



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Do you think a video is an effective way of expressing what a person wants done with his/her remains?

- Yes
- No

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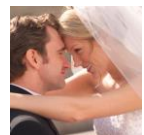
What if a disposition direction does not exist?



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Authority for Disposition passes to survivors in order of priority

1. Surviving Spouse of the Deceased



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Second Priority: Children

- Sole surviving child
- Majority of surviving children
 - Fewer than 1/2 majority, if have made reasonable efforts to notify all other children



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Third Priority:

3. Surviving Parent or Parents



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Fourth Priority:

4. Surviving Sibling or Majority of surviving Siblings



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Next in Line:

5. Grandparents
6. Guardian appointed by court
7. Personal Representative
8. More distant relatives



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Can right of disposition be lost?

Yes,
4 circumstances



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1. Does not exercise right within:

- 2 days after notification of death
- 3 days after deceased's death, whichever is earlier



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2. Petition of divorce



- **Surviving spouse loses "right of disposition"**
 - if a petition to dissolve marriage was pending at existed at time of deceased's death

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3. If district court determines estranged from deceased

- **Physical/emotional separation**



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4. Deliberate or negligent homicide



- **Right is reinstated if charges are dropped**

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Disputes among those sharing right of disposition



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If people with same relationship to deceased

- **Cannot make a decision by majority vote**
 - **File an *Order of Disposition* with District Court**



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Order of Disposition

- **District Judge determines**
 - **Who has authority to make decisions about deceased's remains**



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Factors in Statute

- **District Judge**
 - **Considers 6 factors** in making determination



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Making a Determination

- 1. Reasonableness & practicality of funeral arrangements**



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Making a Determination

- 2. Degree of the personal relationship between deceased & persons claiming right of disposition**



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Making a Determination

- 3. Desires of person(s) willing to pay for funeral costs**



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Making a Determination

- 4. Convenience & needs of other family & friends**



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Making a Determination

- 5. Desires of deceased**



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Making a Determination

6. Degree to what arrangements would allow maximum participation by all parties



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Do you know of a situation where children disagreed on the disposition of their parents' remains?

- Yes
- No

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Mortician Responsibilities



- If there is a dispute, not liable for:
 - Refusing to accept the remains

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Mortician



- May file **Order of Disposition**
 - Bill may include legal fees & court costs

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Mortician not required

- To contact or investigate the existence of:
 - Next of Kin
 - Relatives



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Not subject to criminal or civil liability

- Carrying out the disposition of remains according to instructions under right of disposition



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Until order of disposition is received by court, mortician should not:

- **Dispose of remains**
- **Complete funeral arrangements**



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Retaining remains while in dispute

- **Mortician may embalm or refrigerate remains**
 - **Cost may be added to final disposition**



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Completing Disposition

- **Mortician must have:**
 - **Final disposition signed by disputing parties**



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Summary

- **Montanans now have legal control over their remains after death**



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4 Methods for providing disposition directions

- 1. Prepaid funeral contract**
- 2. Written disposition direction**
- 3. Signed affidavit**
- 4. Videotaped disposition direction**



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What method do you intend to use of expressing your disposition of remains?

- **Prepaid Funeral Contract**
- **Written Disposition Direction**
- **Signed Affidavit**
- **Videotaped Disposition Direction**
- **Don't intend to do any of the 4 disposition methods**

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Further Information

- **Montana Board of Funeral Service**
 - 406-841-2394
- www.funeral.mt.gov



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Further Information

- **Montana Funeral Directors Association**
 - 406-449-7244
- www.montanafuneraldirectors.org



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Further Information

- **AARP Fulfillment**
 - 1-888-687-2277
- www.aarp.org



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Further Information

- **Federal Trade Commission**
 - 202-326-2222
 - www.consumer.ftc.gov



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Further Information

- **MSU Extension Publication: Cremation**
- www.msuextension.org
Search "Cremation"



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