

What are your rights over your remains?



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How many Montanans died in 2008?

1. 15,248
2. 13,146
3. 8,570
4. 6,238



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Montanans Died in 2008

▪ **8,570**



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Scenario



- Prior to Margaret's death:
 - Verbally informed her four children she wished to be cremated

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Children Disagreed

- Margaret's Daughter
 - Do "as Mom wished"
- Her sons
 - Absolutely not



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Majority Rule

- Mortuary had to follow direction of:
 - Majority of children



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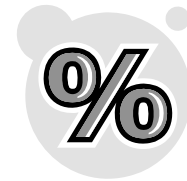
What percent of Americans were cremated in 2007?

1. 85%
2. 75%
3. 65%
4. 55%
5. 45%
6. 35%



Percent of Americans cremated in 2007?

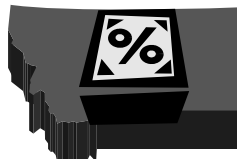
▪ 35%



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What percent of Montanans were cremated in 2007?

1. 85%
2. 76%
3. 61%
4. 50%
5. 32%
6. 21%



Percent of Montanans cremated in 2007?

▪ 61%



National Funeral Directors Association

www.nfda.org

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2009 Montana Right of Disposition Act

- Montanans now have legal control over their remains after death



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Requirements

- 18 years of age or older
- Sound mind



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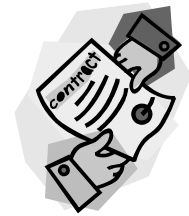
Methods for providing disposition directions

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 Contracts

- Funeral Trust
- 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

- Mortuary named as beneficiary



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Written Instrument



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Written Instrument

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



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Written Instrument

- 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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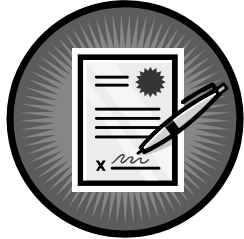
Concern about will

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



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Affidavit



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Affidavit



- Authorization for person to control disposition of 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 ___ do hereby designate ___ with the right to control the disposition of my remains upon my death.....

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Statute wording (con'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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Videotaped Disposition Direction



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Video



- 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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How many crematories are in Montana?

1. 14
2. 31
3. 55
4. 75
5. 100
6. 230



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Crematories in Montana

▪ 31



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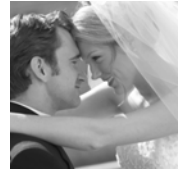
What if a disposition direction does not exist?



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Authority passes to survivors in order of priority

1. Spouse
2. Children
3. Parents
4. Siblings



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Priority Order (con'd.)

5. Grandparents
6. Guardian appointed by court
7. Personal Representative



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Can right of disposition be lost? Yes, ~~4~~ 4 circumstances

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1. Does not exercise right within:

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



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2. Petition of divorce



❖ Existed at time of decedent's death

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3. *Estranged* from decedent

❖ Physical/
emotional
separation



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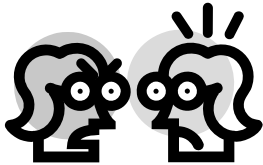
4. Deliberate or negligent homicide

❖ 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 decedent _____

- 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) paying 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. What arrangements would allow maximum participation by all parties



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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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Methods for providing disposition directions

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



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Further Information

- *Montana Board of Funeral Service*
- 406-841-2393
- www.mt.gov/dli/fnr



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Further Information

- *Montana Funeral Directors Association*
- 406-449-7244
- www.mfda.net



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Further Information

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



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Further Information

- *Federal Trade Commission*
 - Funerals: A Consumer Guide
 - Paying Final Respects
 - Pre-Planning Funerals
- www.ftc.gov



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Further Information

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



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Reviewers

- Montana Board of Funeral Service
- Montana Funeral Directors Association



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Reviewers con'd.

- Business, Estates, Taxes & Trusts & Real Property Section
 - State Bar of Montana



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Reviewers con'd.

- Morticians
 - ❖ Teton, Fergus, & Liberty Counties
- Clientele
 - ❖ Teton, Gallatin, & Missoula Counties



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What are your rights over your remains?

Questions
?????



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