

Authority for Disposition of Remains

New York State Public Health Law, Section 4201, establishes who shall have authority to make decisions about the disposition of a deceased person.

In brief, a person can legally specify who will have the authority to make these decisions about his or her body after death. A form for this purpose is available at the website of the New York State Public Health Department. The link to this form is:

http://www.health.state.ny.us/professionals/funeral_director/docs/control_disposition_of_remains.pdf

If a deceased person did not specify who would have the authority to decide about disposition of his or her body, then the following persons in descending priority have the right to control the disposition of the remains:

- the decedent's surviving spouse or surviving domestic partner;
- any of the decedent's surviving children eighteen years of age or older;
- either of the decedent's surviving parents;
- any of the decedent's surviving siblings eighteen years of age or older;
- a guardian appointed pursuant to article 17 or 17-a of the surrogate's court procedure act or article 81 of the mental hygiene law; or
- a duly appointed fiduciary of the estate of the decedent.

New York State Public Health Law, Section 4201 (exerpts)

§ 4201. Disposition of remains; responsibility therefor.

Paragraph 2.

(a) The following persons in descending priority shall have the right to control the disposition of the remains of such decedent:

- (i) the person designated in a written instrument executed pursuant to the provisions of this section;
- (ii) the decedent's surviving spouse;
- (ii-a) the decedent's surviving domestic partner;
- (iii) any of the decedent's surviving children eighteen years of age or older;
- (iv) either of the decedent's surviving parents;
- (v) any of the decedent's surviving siblings eighteen years of age or older;
- (vi) a guardian appointed pursuant to article seventeen or seventeen-a of the surrogate's court procedure act or article eighty-one of the mental hygiene law; or
- (vii) a duly appointed fiduciary of the estate of the decedent.

(b) If a person designated to control the disposition of a decedent's remains, pursuant to this subdivision, is not reasonably available, unwilling or not competent to serve, and such person is not expected to become reasonably available, willing or competent, then those persons of equal priority and, if there be none, those persons of the next succeeding priority shall have the right to control the disposition of the decedent's remains.