

STATE OF NEW YORK

171

2017-2018 Regular Sessions

IN SENATE

(Prefiled)

January 4, 2017

Introduced by Sen. RIVERA -- read twice and ordered printed, and when printed to be committed to the Committee on Health

AN ACT to amend the public health law, in relation to disposition of human remains

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

1 Section 1. Subdivisions 3, 4, 5, 7, 8 and 9 of section 4201 of the
2 public health law, subdivisions 3, 4, 5, 7 and 8 as amended and subdivi-
3 sion 9 as added by chapter 76 of the laws of 2006, are amended to read
4 as follows:

5 3. The written instrument referred to in paragraph (a) of subdivision
6 two of this section may be, but is not required to be, in substantially
7 the following form~~[, and]~~. It must be signed and dated by the decedent
8 ~~[and the agent]~~ and ~~[properly]~~ witnessed by one witness who must be
9 eighteen years of age or older. A signed acceptance by the appointed
10 agent is not required for the written instrument to be valid:

11 APPOINTMENT OF AGENT TO CONTROL DISPOSITION OF REMAINS

12 I, _____
13 (Your name and address)
14 being of sound mind, willfully and voluntarily make known my desire
15 that, upon my death, the disposition of my remains shall be controlled
16 by _____ .
17 (name of agent)
18 With respect to that subject only, I hereby appoint such person as my
19 agent with respect to the disposition of my remains.

20 SPECIAL DIRECTIONS:

EXPLANATION--Matter in italics (underscored) is new; matter in brackets
[-] is old law to be omitted.

LBD00946-01-7

1 Set forth below are any special directions limiting the power granted to
2 my agent as well as any instructions or wishes desired to be followed in
3 the disposition of my remains:

4 _____
5 _____
6 _____
7 _____
8 _____

9 Indicate below if you have entered into a [~~pre-funded~~] pre-need
10 [~~agreement subject to section four hundred fifty three of the general~~
11 ~~business law~~] arrangement for funeral, cemetery or other merchandise or
12 service in advance of need:

13 ☐ No, I have not entered into a [~~pre-funded~~] pre-need [~~agreement~~
14 ~~subject to section four hundred fifty three of the general business law~~]
15 arrangement.

16 ☐ Yes, I have entered into a [~~pre-funded~~] pre-need [~~agreement subject~~
17 ~~to section four hundred fifty three of the general business law~~]
18 arrangement.

19 _____
20 (Name of [~~funeral firm~~] establishment with which you entered into a
21 [~~pre-funded~~] pre-need funeral [~~agreement~~] arrangement to provide
22 merchandise and/or services)

23 AGENT:

24 Name: _____

25 Address: _____

26 Telephone Number: _____

27 SUCCESSORS:

28 If my agent dies, resigns, or is unable to act, I hereby appoint the
29 following persons (each to act alone and successively, in the order
30 named) to serve as my agent to control the disposition of my remains as
31 authorized by this document:

32 1. First Successor

33 Name: _____

34 Address: _____

35 Telephone Number: _____

36 2. Second Successor

37 Name: _____

38 Address: _____

39 Telephone Number: _____

40 DURATION:

41 This appointment becomes effective upon my death.

42 PRIOR APPOINTMENT REVOKED:

43 I hereby revoke any prior appointment of any person to control the
44 disposition of my remains.

45 Signed this _____ day of _____, _____.

1 _____
2 (Signature of person making the appointment)

3 Statement by witness (must be 18 or older)

4 I declare that the person who executed this document is personally known
5 to me and appears to be of sound mind and acting of his or her free
6 will. He or she signed (or asked another to sign for him or her) this
7 document in my presence.

8 Witness [~~1~~]: _____ (signature)

9 Address: _____

10 [~~Witness 2: _____ (signature)~~]

11 [~~Address: _____~~]

12 ACCEPTANCE AND ASSUMPTION BY AGENT:

13 1. I have no reason to believe there has been a revocation of this
14 appointment to control disposition of remains.

15 2. I hereby accept this appointment.

16 Signed this _____ day of _____, _____.

17 _____
18 (Signature of agent)

19 4. [~~(a)~~] In the absence of a written instrument made pursuant to
20 subdivision three of this section, the designation of a person for the
21 disposition of one's remains or directions for the disposition of one's
22 remains in a will executed pursuant to the laws of the state of New York
23 [~~prior to the effective date of this section~~], or otherwise executed
24 pursuant to the laws of a jurisdiction outside the state of New York,
25 shall be: [~~(i) considered reflective of the intent of the decedent~~] (a)
26 deemed to be a written instrument executed pursuant to this section with
27 respect to the disposition of the decedent's remains; and [~~(ii)~~] (b)
28 superseded by a written instrument subsequently executed pursuant to
29 subdivision three of this section, or by any other subsequent act by the
30 decedent evidencing a specific intent to supersede the designation or
31 direction in such a will with respect to the disposition of the
32 decedent's remains. All actions taken reasonably and in good faith based
33 upon such authorizations and directions regarding the disposition of
34 one's remains in such a will shall be deemed valid regardless of whether
35 such a will is later probated or subsequently declared invalid.

36 [~~(b) In the absence of a written instrument made pursuant to subdivi-~~
37 ~~sion three of this section, the designation of a person for the disposi-~~
38 ~~tion of one's remains or directions for the disposition of one's remains~~
39 ~~in a will executed pursuant to the laws of the state of New York on or~~
40 ~~after the effective date of this section, shall be considered a~~
41 ~~reflection of the intent of the decedent with respect to the disposition~~
42 ~~of the decedent's remains, provided that the person who represents that~~
43 ~~he or she is entitled to control the disposition of remains of the dece-~~
44 ~~dent has complied with subdivision five and paragraph (a) of subdivision~~
45 ~~seven of this section and signed a written statement in accordance with~~
46 ~~paragraph (b) of subdivision seven of this section.]~~

47 5. A written instrument executed under this section shall be revoked
48 upon the execution by the decedent of a subsequent written instrument,

1 or by any other subsequent act by the decedent evidencing a specific
2 intent to revoke the prior written instrument ~~[and directions]~~.
3 Directions on disposition and agent designations in a ~~[will]~~ written
4 instrument made pursuant to ~~[subdivision three of]~~ this section shall be
5 superseded by a subsequently executed ~~[will or]~~ written instrument made
6 pursuant to this section, or by any other subsequent act of the decedent
7 evidencing a specific intent to supersede the direction or designation.
8 The designation of the decedent's spouse or domestic partner as an agent
9 in control of disposition of remains shall be revoked upon the divorce
10 or legal separation of the decedent and spouse, or termination of the
11 domestic partnership, unless the decedent specified in writing other-
12 wise.

13 7. No cemetery organization, business operating a crematory or colum-
14 barium, funeral director, undertaker, embalmer, or funeral firm shall be
15 held liable for actions taken reasonably and in good faith to carry out
16 the written directions of a decedent as stated in ~~[a will or in]~~ a writ-
17 ten instrument executed pursuant to this section. No cemetery organiza-
18 tion, business operating a crematory or columbarium, funeral director,
19 undertaker, embalmer or funeral firm shall be held liable for actions
20 taken reasonably and in good faith to carry out the directions of a
21 person who represents that he or she is entitled to control of the
22 disposition of remains, provided that such action is taken only after
23 requesting and receiving a written statement that such person:

24 (a) is the designated agent of the decedent designated in a ~~[will or]~~
25 written instrument executed pursuant to this section; or

26 (b) that he or she has no knowledge that the decedent executed a writ-
27 ten instrument pursuant to this section ~~[or a will]~~ containing
28 directions for the disposition of his or her remains and that such
29 person is the person having priority under subdivision two of this
30 section.

31 8. Every dispute under this section relating to the disposition of the
32 remains of a decedent shall be resolved by a court of competent juris-
33 diction pursuant to a special proceeding under article four of the civil
34 practice law and rules. No person providing services relating to the
35 disposition of the remains of a decedent shall be held liable for
36 refusal to provide such services, when control of the disposition of
37 such remains is contested, until such person receives a court order or
38 other form of notification signed by all parties or their legal repre-
39 sentatives to the dispute establishing such control.

40 9. This section does not supersede, alter or abridge any provision of
41 section four hundred fifty-three of the general business law. In the
42 event of a conflict or ambiguity, ~~[the provisions of]~~ section four
43 hundred fifty-three of the general business law shall govern.

44 § 2. This act shall take effect immediately.