

Numerous Decisions Must be Made After Death of Loved One

After the death of a loved one, many people are surprised how many decisions there are to be made and who makes the decisions. The decisions to be made include everything from embalming, to the details concerning the funeral or memorial service, to where the remains are to be held.

The absence of a clear plan or decision maker in place can create many problems. These problems are exacerbated with the increase of divorce and subsequently, the mechanics of decision making within a blended family, along with the geographic mobility of our current population. Times are changing; thus, burial in the family's local cemetery is increasingly not the obvious choice. One can imagine the emotional turmoil in the instance of a second marriage of a widowed parent, when the children expect their recently deceased parent to be buried next to their mom or dad, only to find out that the new spouse controls the decision regarding their parent's final resting place.

There are several steps that can be taken to ensure that decisions after death avoid turmoil and are made in line with your wishes. Fortunately, Texas recognizes the right to leave specific instructions regarding the disposition of remains. Decisions can be made by written instructions in 1) a Will, 2) a document appointing an agent to control the disposition of remains or 3) a pre-paid funeral contract.

The document known as the Designation of Agent to Control the Disposition of Remains permits one to designate an agent who shall make arrangements for a funeral or memorial service and the disposition of remains, including cremation, interment, entombment, memorialization or some combination, upon one's death. When deciding who will have the ability to make these decision, it is important to choose someone you trust and who knows your wishes well.

The document must be in writing and notarized. Additionally, the agent that you choose must agree to their appointment in writing. The document can only be revoked by a subsequent written document.

Another way to predetermine how your remains will be handled at your death and avoid the potential for family conflict is to pre-plan your service with the purchase of a pre-paid funeral plan. In a pre-paid plan, one can decide the type of service and disposition of remains, spare family members from making decisions during a time of emotional turmoil, as well as limit costs by paying for it with today's dollars.

If a person does not designate an agent to control the disposition of remains, the law in Texas does identify those individuals with the legal right and authority to make final arrangements for a deceased individual. The right to act on behalf of the deceased party is limited in time. These persons include the following individuals in the following order: deceased person's spouse, followed by any adult child, either of the deceased person's parents, any adult sibling, executor or administrator of decedent's estate, and then an heir. You can see that although we have a statute in Texas providing some clarity regarding decisions post-death, problems can still arise in blended families and in families with more than one adult child.

No one likes to think about death, let alone plan for it. In many families it is a taboo topic. However, it is a topic that should be discussed and planned for in advance. It is a good idea to discuss your plan with your estate planning attorney. Pre-planned funerals or executing the document known as the

Designation of Agent to Control the Disposition of Remains should be a key element to many, if not most, estate plans.

You may email your questions to education@wrightabshire.com or visit our website at www.wrightabshire.com. Wesley E. Wright and Molly Dear Abshire are attorneys with the firm Wright Abshire, Attorneys, P.C., with offices in Bellaire, the Woodlands, and Carmine. Both Wright and Abshire are Board Certified by the Texas Board of Legal Specialization in Estate Planning and Probate Law and are certified as Elder Law Attorneys by the National Elder Law Foundation. Nothing contained in this publication should be considered as the rendering of legal advice to any person's specific case, but should be considered general information.