

Tools for Protecting Your Wishes for Your Funeral

After death, will your wishes be respected? Other people may make many decisions about the disposition of your body and funeral arrangements. In a state that doesn't respect or recognize the marriages or partnerships of same-sex couples, you don't want to risk that your legally recognized "next of kin"—such as a parent, sibling or even a more distant relative—excludes your partner or spouse from decisions about your funeral. To be sure that the person you want to guide this planning is legally empowered and knows what you want, you should act now. Lambda Legal plaintiff Sherry Barone had planned ahead with life partner Cindy Friedman to have their documents in order. It's a good thing they did, because after Cindy died, a Pennsylvania cemetery refused to carry out her wish to engrave "Beloved Life Partner" on her headstone when her mother objected. Because Cindy had put her wishes in writing, Lambda Legal could enforce her wishes in court. Cindy's headstone now says exactly what she wanted it to say.

Please note: This document offers general information only and is not intended to provide guidance or legal advice regarding anyone's specific situation.

FIRST STEPS

1. Think about what you want to happen to your body after you die, whether you want a funeral or other memorial service and what kind, and who you want to control the carrying out of those wishes. Be sure to discuss your wishes with that person to make him or her aware of what you are asking.
2. For legal help, consult Lambda Legal's Help Desk at 866-542-8336, www.lambdalegal.org/help or the other resources in "Tools for Selecting an Attorney."

FUNERAL AND REMAINS

Take the power!

Take the power! Create a document—known as a **funeral directive** or “**disposition of remains**” **directive**—that lists your instructions for any funeral arrangements, including who should be in charge, and for what to do with your body.

Why do I need this power

tool? If you do not record your wishes in a legal document, the law defaults to the person or people your state defines as your “next of kin” to make these decisions for you—usually a blood relative. If you have a spouse or registered domestic partner legally recognized in your state or the state where the death occurs, that person probably will stand ahead of your blood relatives. You’ll want to establish who will be in charge, and also make your wishes about the arrangements clear in writing so as to prevent arguments. If you do not leave binding written instructions, someone you haven’t chosen could decide everything from whether your organs will be donated to whether you will be buried or cremated, from what your memorial service will be to the clothing you will be buried in, from the language of your headstone to how your gender identity is listed in an obituary. In Nebraska, Lambda Legal client Doreen Moritz had to fight with the blood relatives of her deceased partner, Elsa Friendt, when they demanded the opposite of what Elsa had put in writing. They told the funeral home to host a viewing of Elsa’s body, to hold a religious ceremony, to prevent any mention

of Doreen during the service and in Elsa’s obituary, and to deliver Elsa’s ashes to them. Doreen objected and was told by the funeral home director that she wasn’t “family” under law. But Doreen had the necessary documents for a quick and successful threat of legal action.

How it works: In a written document, detail your wishes regarding any anatomical gifts, your remains generally, and funeral arrangements. Depending on the state you live in, that document can stand alone or it can be incorporated into other documents such as a will and/or health care proxy. Things to remember:

- Putting details about your remains and funeral arrangements in a will may not be enough, because the will may not be opened until the funeral is over and because a funeral home director may not respect the will until it goes through the legal process called “probate,” which settles a deceased person’s affairs. Having confirmation of your funeral directive instructions in your will can, however, be helpful if there is a dispute.
- If there is a copy of the will that can be shown, it may also help if it says that your estate will only pay for funeral-related expenses when your separate list of instructions has been followed. That may give pause to a funeral home director or obstructive relatives who would be responsible for funeral expenses if the estate does not pay.

- Some states let you empower a health care proxy (or medical power of attorney) to make funeral-related decisions on your behalf. If yours does, ask your attorney whether it’s a good idea also to have a separate document that specifies how you want that authority used, in case there is a dispute about the continued validity of the health care proxy after death.
- You should not only sign and date your document with instructions for remains and funeral arrangements, but also have the signing witnessed by a notary public.

Below is a checklist of questions to consider for your document about funeral arrangements. Keep in mind that after you determine who has authority, and responsibility, to carry out your wishes, you may want to leave some decisions to that person or to specify exactly what you wish done. Sometimes it is helpful to tell your loved ones in detail what you would like, and sometimes others can find comfort in making these arrangements. It is sensible to think ahead about what will best meet your needs and the needs of those closest to you.

CHECKLIST:

- Who should have authority over your remains?
- Do you wish to be an organ donor? If so, have you indicated that on your driver's license? In your health care proxy and/or funeral directive? Do you wish to make any restrictions on the organs available for donation and are those wishes documented?
- Who should have authority to make funeral-related decisions?
- Do you have wishes for a particular funeral home and how much money should be spent? Do you have particular wishes for a casket?
- Do you want a wake or "viewing"? If so, do you have preferences as to whether your casket is open or closed, or what clothing and makeup should be used?
- Do you want cremation?
- Do you want burial, regardless of whether or not you are cremated?
- Do you have strong feelings about what should happen at your memorial service? Do you want your service to invoke a religious tradition?
- Do you have wishes about a particular cemetery, headstone and maintenance of the plot, or about some alternative way that you wish to be remembered in the future?
- If you have a spouse or partner, how do you want that person described in your obituary? How would you like your gender identity described and what name and pronouns should be used? Do you have any other specific wishes for how you and your life are described?

