

OHIO RIGHT OF DISPOSITION GUIDE

A. PRIORITY LIST. The priority list of who holds the right of disposition is established by Sections 2108.70 and 2108.81 of the Ohio Revised Code. From top to bottom, the list is in the following order:

1. A representative who has been appointed in a written declaration by the decedent to arrange the disposition. The specific requirements for the written declaration are listed in Section 2108.72.
2. The surviving spouse.
3. A majority of the adult children who can be located.
4. The adult parents or if one cannot be located, the parent who can be located.
5. The majority of the adult siblings who can be located.
6. The majority of the surviving grandparents who can be located.
7. The majority of the adult surviving grandchildren who can be located.
8. The lineal descendants of the decedent's grandparents as set forth in Section 2105.06
9. The decedent's guardian at the time of death.
10. Any person, including the funeral director, willing to carry out the disposition after attesting in writing that a good faith effort has been made to locate anyone in the above classes.
11. If the decedent is an indigent or person under the responsibility of the State of Ohio or a political subdivision, the public officer or employee responsible for arranging the final disposition.

(please see reverse side for important information regarding loss of rights and rules)

B. LOSS OF RIGHT. Set forth below are ways that the person holding the right of disposition will lose that right, together with the statutory citation:

1. The person refuses to exercise the right within two days after notification of the decedent's death. (2108.75(A)(4)).
2. The person cannot be located with reasonable effort. (2108.75(A)(5)).
3. The person has been charged with murder, aggravated murder, or voluntary manslaughter for causing the death of the decedent. (2108.77(A)(1)).
4. The person has been charged with an act of domestic violence which contributes to the death of the decedent. (2108.77(B)(1)).
5. The person is the spouse and an action to terminate the marriage is pending in the court system at the time of the death. (2108.77 (C)).
6. The person is the spouse and a probate court finds that the spouse was estranged from the decedent at the time of death (2108.77(D)).
7. The person is not yet 18 years of age or is not of sound mind.

C. IMPORTANT RULES. The following are important rules that should be followed in determining who holds the right of disposition:

1. Adopted, Half & Stepchildren & Siblings. Adopted and half-blood children and siblings are on the same level as full-blooded children and siblings. Stepchildren and step-siblings have no rights.
2. Effect of Adoption. If a child has been given up for adoption, he or she is no longer the child of the biological parents. Likewise, the biological parents are no longer the parents of the adopted child under the law.
3. Executor. Simply because a person is the executor of the estate does not provide any special rights.
4. Disputes. In the event of a dispute or if a funeral director has a question regarding the accuracy of a claim of right of disposition, the statute permits the funeral director to stop all funeral and disposition services until the matter is resolved by the probate court or an agreement among the parties in a dispute. Any such agreement should be in writing and signed by the parties in the dispute.
5. Probate Court. All right of disposition matters are handled by the probate court in the county where the decedent was a resident at the time of his or her death.
6. Appointed Representatives. Funeral homes, crematories, cemeteries, and their employees may not be appointed as a representative to carry out the right of disposition unless they are related to the decedent by blood, marriage or adoption.
7. Reliance on Statements. Unless a funeral director is carrying out the right of disposition of an unclaimed body, he or she may rely upon statements from family members that they have conducted a search and have been unable to contact family members with a superior or equal right. Such statements should always be in writing and included in a cremation authorization form or other authorization form.