

FLORIDA INTER VIVOS AUTHORIZATION AND DIRECTION OF LEGALLY AUTHORIZED PERSON TO MAKE FUNERAL ARRANGEMENTS AND DISPOSE OF CREMATED REMAINS.

by E. Steven Lauer, Esq.

If you think that your Personal Representative named in your Will is in charge of your funeral arrangements and the disposition of your body in Florida, you are wrong. Florida has two statutes governing this topic, Section 497.005(43), which deals with funeral arrangements, and Section 497.607, which deals with disposition of your cremated remains.

Section 497.005(43), which provides Definitions for Chapter of the Florida Statute which regulates Funeral, Cemetery and Consumer Services, provides the following:

“Legally authorized person” means, in the priority listed:

- (a) The decedent, when written inter vivos authorizations and directions are provided by the decedent;
- (b) The person designated by the decedent as authorized to direct disposition pursuant to Pub. L. No. 109-163, s. 564, as listed on the decedent’s United States Department of Defense Record of Emergency Data, DD Form 93, or its successor form, if the decedent died while in military service as described in 10 U.S.C. s. 1481(a)(1)-(8) in any branch of the United States Armed Forces, United States Reserve Forces, or National Guard;
- (c) The surviving spouse, unless the spouse has been arrested for committing against the deceased an act of domestic violence as defined in s. 741.28 that resulted in or contributed to the death of the deceased;
- (d) A son or daughter who is 18 years of age or older;
- (e) A parent;
- (f) A brother or sister who is 18 years of age or older;
- (g) A grandchild who is 18 years of age or older;
- (h) A grandparent; or
- (i) Any person in the next degree of kinship.

In addition, the term may include, if no family member exists or is available, the guardian of the dead person at the time of death; the personal representative of the deceased; the attorney in fact of the dead person at the time of death; the health surrogate of the dead person at the time of death; a public health officer; the medical examiner, county commission, or administrator acting under part II of chapter 406 or other public administrator; a representative of a nursing home or other health care institution in charge of final disposition; or a friend or other person not listed in this subsection who is willing to assume the responsibility as the legally authorized person. Where there is a person in any priority class listed in this subsection, the funeral establishment shall rely upon the authorization of any one legally authorized person of that class if that person represents that she or he is not aware of any objection to the cremation of the deceased's human remains by others in the same class of the person making the representation or of any person in a higher priority class."

Section 497.607 provides the following:

Cremation; procedure required.—

(1) At the time of the arrangement for a cremation performed by any person licensed pursuant to this chapter, the legally authorized person contracting for cremation services shall be required to designate her or his intentions with respect to disposition of the cremated remains of the deceased in a signed declaration of intent which shall be provided by and retained by the funeral or direct disposal establishment. A cremation may not be performed until a legally authorized person gives written authorization, which may include the declaration of intent to dispose of the cremated remains, for such cremation. The cremation must be performed within 48 hours after a specified time which has been agreed to in writing by the person authorizing the cremation.

(2) Cremated remains are not property, as defined in s. 731.201(32), and are not subject to partition for purposes of distribution under s. 733.814. A division of cremated remains requires the consent of the legally authorized person who approved the cremation or, if the legally authorized person is the decedent, the next legally authorized person pursuant to s. 497.005(43). A dispute regarding the division of cremated remains shall be resolved by a court of competent jurisdiction.

(3)(a) With respect to any person who intends to provide for the cremation of the deceased, if, after a period of 120 days from the time of cremation the cremated remains have not been claimed, the funeral or direct disposal establishment may dispose of the cremated remains. Such disposal shall include scattering them at sea or placing them in a

licensed cemetery scattering garden or pond or in a church columbarium or otherwise disposing of the remains as provided by rule.

(b) A reasonable effort shall be made before such disposal to determine whether the cremated remains are those of a veteran of the United States Armed Forces, United States Reserve Forces, or National Guard eligible for burial in a national cemetery or a spouse or dependent child of a veteran eligible for burial in a national cemetery.

(c) If the unclaimed cremated remains are those of an eligible veteran or the spouse or dependent child of an eligible veteran, the funeral or direct disposal establishment shall arrange for the interment of the cremated remains in a national cemetery. A funeral or direct disposal establishment may use the assistance of a veterans' service organization for this purpose. A funeral or direct disposal establishment or veterans' service organization acting in good faith is not liable for any damages resulting from the release of required information to determine eligibility for interment.

(d) This subsection does not require a funeral or direct disposal establishment to:

1. Determine whether the cremated remains are those of a veteran if the funeral or direct disposal establishment is informed by a legally authorized person that the decedent was not a veteran.

2. Relinquish possession of the cremated remains to a veterans' service organization if the funeral or direct disposal establishment is informed by a legally authorized person that the decedent did not desire any funeral, ceremony, or interment-related services recognizing the decedent's service as a veteran.

(e) For purposes of this subsection, the term:

1. "Reasonable effort" includes contacting the National Cemetery Scheduling Office, the county veterans service office, the regional office of the United States Department of Veterans Affairs, or a veterans' service organization.

2. "Veterans' service organization" means an association, corporation, or other entity that qualifies under s. 501(c)(3) or (19) of the Internal Revenue Code as a tax-exempt organization, that is organized for the benefit of veterans' burial and interment, and that is recognized by the Memorial Affairs Division of the United States Department of Veterans Affairs. The term includes a member or employee of an eligible nonprofit veterans' corporation, association, or entity that specifically assists in facilitating the identification, recovery, and interment of the unclaimed cremated remains of veterans.

(4) Pursuant to the request of a legally authorized person and incidental to final disposition, cremation may be performed on parts of human remains.

(5) In regard to human remains delivered to the control of the anatomical board of this state headquartered at the University of Florida Health Science Center, the provisions of

this subsection and chapter shall not be construed to prohibit the anatomical board from causing the final disposition of such human remains through cremation or otherwise when performed in facilities owned and operated by such anatomical board or the University of Florida Health Science Center pursuant to and using such processes, equipment, and procedures as said anatomical board determines to be proper and adequate.

Therefore, in order to make provisions for your funeral and for cremation, you should not make these provisions in your Will. As a practical matter, your Will may not be found or read until after you are gone and buried! Instead, you should make provisions for your funeral and cremation and name a “Legally authorized person” to carry out your wishes in an “inter vivos” (lifetime) document. The following is a form that I drafted for this purpose:

**Florida Inter Vivos Authorization and Direction of Legally
Authorize Person to Make Funeral Arrangements and Dispose of
Cremated Remains**

I, NAMEOFDECLARANT (“Declarant”), being of sound mind, do hereby make the following authorization and direction:

1. I intend for my funeral arrangements to be governed by the laws of the State of Florida in existence at the time of this document.
2. I intend for the disposition of my cremated remains to be governed by the laws of the State of Florida in existence at the time of this document.
3. I have/have not made pre-arrangements for my cremation and/or my funeral with NAMEOFFUNERALHOME and have/have not pre-paid for these arrangements.
4. If no pre-arrangements have been made, I intend for my funeral to be conducted as follows:

(insert funeral intentions)

5. If no pre-arrangements have been made, I intend for my body to be disposed of as follows:

(insert intentions, such as cremation)

6. I intend for my “Legally authorized person” named in paragraph 5 below to follow my pre-arrangements referred to in paragraph 3 or if none have been made, my intentions expressed in paragraphs 4 and 5 above. In case of a conflict between my pre-arrangements and my intentions expressed in paragraphs 4 and 5, the later dated document shall prevail.

7. I do hereby designate, NAMEOFLEGALLYAUTHPER, to be my “Legally authorized person” under the provisions of Section 497.005 (43) of the Florida Statutes to make funeral arrangements and Section 497.607 of the Florida Statutes to dispose of my cremated remains.

8. If NAMEOFLEGALLYAUTHPER declines to serve or ceases to act, I designate NAMEOFALTFLEGALLYAUTHPER to be my “Legally authorized person” under the provisions of Section 497.005 (43) of the Florida Statutes to make funeral arrangements and Section 497.607 of the Florida Statutes to dispose of my cremated remains.

9. My Legally authorized person named above shall not be entitled to a fee for acting in such capacity but shall be entitled to be reimbursed for out of pocket expenses, such as travel fees and attorney’s fees in defending his or her actions, to be paid by the personal representative of my estate without order of Court.

Dated this ___ day of _____, 20__.

NAMEOFDECLARANT

This instrument was signed, sealed, published, and declared by the Declarant as her Inter Vivos Declaration in our joint presence, and at her request we have signed our names as attesting

witnesses in her presence and in the presence of each other on the date shown above.

Name

Address

WITNESS1

Vero Beach, Florida

WITNESS2

Vero Beach, Florida

STATE OF FLORIDA
COUNTY OF INDIAN RIVER

I, NAMEOFDECLARANT, declare to the officer taking my acknowledgment of this instrument, and to the subscribing witnesses, that I signed this instrument as my Inter Vivos Declaration.

NAMEOFDECLARANT

We, WITNESS1 and WITNESS2, have been sworn by the officer signing below, and declare to that officer on our oaths that the Declarant declared the instrument to be her Inter Vivos Declaration and signed it in our presence, and that we each signed the instrument as a witness in the presence of the Declarant and of each other.

WITNESS1

WITNESS2

Acknowledged and subscribed before me by the Declarant, NAMEOFDECLARANT, who is personally known to me, and sworn to and subscribed before me by the witnesses, WITNESS1 and WITNESS2, both of whom are personally known to me, and subscribed by me in the presence of the Declarant and the witnesses, all on _____, 20__.

Notary Public, State of Florida
(Stamp Name, Commission # and Expiration below)