

Michigan Enacts New Funeral Representative Act

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Attending to the details of a loved one's funeral is never an easy task. In fact, it can sometimes become a source of conflict if meddlesome friends and family members get involved.

On June 27, a new Michigan law went into effect that should help clarify who has the right to make the decisions regarding funeral arrangements. Known as Funeral Representative Act, its purpose is to allow Michigan residents to designate someone they trust – not necessarily a family member – to plan their funerals.

Prior to the existence of this law, the next of kin were empowered to arrange a decedent's funeral, in the priority set forth in the previous statute. If more than one of the next of kin had authority and disagreed, the choice of the majority prevailed, even if the decision reached did not match the decedent's wishes. This often led to arguments between children of the decedent, or even arguments between children of a first marriage and the surviving second spouse.

This new law is intended to avoid these conflicts by allowing the decedent ("declarant") to appoint a "funeral representative" in his or her will, patient advocate designation, or other writing as long as it meets the following criteria:

- The writing must be dated.
- The writing must be signed before a notary public, or in the presence of two other witnesses, or both a notary and two witnesses.

Although the law states that the funeral representative maybe nominated in the decedent's will, it makes better sense to use a separate writing so that the contents of the will, specifically the dispositive provisions, remain private.

The document appointing a funeral representative allows for the nomination of a successor funeral representative in the event the primary nominee is unable or unwilling to act. The designation may be revoked in writing at any time but must be witnessed by a notary or by two witnesses. If a spouse is appointed as funeral representative, and there is a subsequent divorce, the law provides for an automatic revocation of that designation.

The limitations on who may act as a funeral representative are as follows:

- The representative must be age 18 or older.
- The representative may not be a licensed health professional, employee or a volunteer of a facility

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providing care during the declarant's final illness.

- The representative may not be an officer or employee of a funeral establishment, cemetery or crematory that provides services for the declarant (unless it is a family member).
- The representative may not be someone who has been criminally charged with the declarant's murder.

The funeral representative has the right and power to make decisions about the declarant's funeral arrangements, including:

- Whether the declarant will be buried or cremated, and if cremated, how the cremated remains will be kept or disposed of.
- The funeral representative is liable for making sure the costs associated with the disposition of the declarant's body are paid. The costs may be paid by the funeral representative, or through insurance, through the declarant's estate, or some other source, but the funeral representative is responsible for coordinating this payment.

Because of this responsibility, a funeral representative must sign an acknowledgement of his or her duties. The representative's powers become effective only upon the declarant's death, and the representative may not assign the powers and duties conveyed to someone else.

It should be noted that there is no legal way to bind the funeral representative to carry out the declarant's wishes, so it is essential that the declarant makes his or her wishes known, and that he or she chooses a representative who can be counted on to carry out those wishes.

It should also be noted that if a funeral representative is not designated, by default the following persons who are age 18 or older in the order noted are presumed to have the authority to make decisions regarding funeral arrangements and disposition of remains:

- Decedent's surviving spouse
- Decedent's children
- Decedent's grandchildren
- Decedent's parents
- Decedent's grandparents
- Decedent's siblings
- A descendant of the decedent's parents who first notifies the funeral establishment in possession of the decedent's body
- A descendant of the decedent's grandparents who first notifies the funeral establishment in possession of the decedent's body
- The personal representative or nominated personal representative

Feel free to contact your Plunkett Cooney attorney or any member of the Trusts & Estates Practice Group to discuss the new Michigan Funeral Representative Act.