

TIMOTHY P. CRAWFORD, S.C.
Your Asset Protection Law Firm

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TIMOTHY P. CRAWFORD, CELA*, CPA, CAP**
*Board Member of the National Academy
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Certified Public Accountant
***Member of the Council of
Advanced Practitioners*

Michelle M. LaCount – Of Counsel

Lynn M. Vassh – Senior Legal Secretary
Samantha A. Heft – Senior Legal Assistant
Ellen J. Ison – Legal Assistant
Nina M. Manbeck – Legal Assistant
Kay M. Tobias – Legal Assistant
Tami L. Beaugrand – Marketing Coordinator
Heather R. Pollock – Marketing Assistant
Shronda T. Barry – Receptionist

AUTHORIZATION FOR FINAL DISPOSITION

INSTRUCTIONS TO CLIENT

Attached is an “*Authorization For Final Disposition*” form. This form needs to be completed by you. Without this form being completed, you will not know who will have authority to instruct the funeral director as to what to do after your death. This is a very important form. Please complete it.

This package is being given to you free of charge by Attorney Timothy P. Crawford.

This is a free client service.

TPC/kmw/DATA-TPC/POA/AUTHORIZATION FOR FINAL DISP COVER LETTER/042511

GREATER MILWAUKEE AREA OFFICES IN BROOKFIELD, GLENDALE, MILWAUKEE & RACINE



* Attorney Timothy P. Crawford has been Nationally Board Certified as an Elder Law Attorney by The National Elder Law Foundation which has been Approved as the Sole Certifying Organization for Elder Law Attorneys by The American Bar Association.

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Who do you want to have make decisions regarding your burial?

Do you want to be cremated?

Who is going to make these decisions for you?

You may have indicated your desire to someone concerning this. You may have even told your funeral director. However, your closest heir will be making these decisions for you, unless you take action. Your closest heir would be your spouse, and if there be no spouse, then it would be your children equally. This is where the problem can come in. That may mean two children needing to agree to make a decision. Thus, you could have the problem of having one child saying you should be cremated, and the other child wanting to do a traditional in ground burial. The funeral director would have no way of deciding which one to follow. The funeral directors went to the legislature to get a new law passed whereby you can select someone to make this decision for you. This is particularly important if you are a widow with more than one child.

I would strongly encourage you to complete the attached form entitled “Authorization for Final Disposition”. I have placed the instructions with the form.

TPC/mv/DATA-TPC/POA/FINAL DISPOSITION COVER LETTER/03/10/11

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AUTHORIZATION FOR FINAL DISPOSITION INSTRUCTIONS

Purpose of the Authorization for Final Disposition:

When properly completed and signed in the presence of two competent adult witnesses or a notary public, this voluntary document allows a competent adult (the declarant) to designate another competent adult (the representative or an alternative representative) to make funeral arrangements on behalf of the declarant.

This document allows the declarant to give his or her chosen representative information about the declarant's preferences for final disposition and funeral service.

Please read and understand the following information and the form before completing the form.

Definitions from Section 154.30, Wisconsin Statutes:

- "Authorization for final disposition" means a written, signed document that is acknowledged before a notary public or is witnessed and that is voluntarily executed by a declarant under s. 154.30 (8), but is not limited in form or substance to that provided in s. 154.30 (8).
- "Cemetery authority" has the meaning given in s. 157.061 (2).
- "Credential" has the meaning given in s. 440.01 (2) (a).
- "Crematory authority" has the meaning given in s. 440.70 (9).
- "Declarant" means an individual who executes an authorization for final disposition.
- "Estranged" means being physically and emotionally alienated for a period of time, at the time of the decedent's death, and clearly demonstrating an absence of due affection, trust, and regard.
- "Final disposition" means disposition of a decedent's remains, including any of the following:
 1. Arrangements for a viewing.
 2. A funeral ceremony, memorial service, graveside service, or other last rite.
 3. A burial, cremation and burial, or other disposition, or donation of the decedent's body.
- "Funeral director" has the meaning given in s. 445.01 (5).
- "Health care provider" means any individual who has a credential to provide health care.
- "Representative" means an individual specifically designated in an authorization for final disposition or, if that individual is unable or unwilling to carry out the declarant's decisions and preferences, a successor representative designated in the authorization for final disposition to do so.

Important Information

Declarant:

1. Properly completing this document (with all required signatures) automatically revokes any prior authorization for final disposition that the declarant may have signed.
2. The declarant may revoke this authorization for final disposition at any time by executing a new authorization form; by signing and dating a statement declaring this document to be cancelled, revoked or void; by destroying or defacing this form; or by writing on this form, "I hereby revoke this declaration of final disposition," and signing and dating that statement.
3. If the declarant is physically unable to sign an authorization for final disposition, the authorization shall be signed in the declarant's name by an individual at the declarant's express direction and in his or her presence; such a proxy signing shall take place or be acknowledged by the declarant in the presence of 2 witnesses or a notary public.
4. Special Directions may include any of the following, arrangements for a viewing, funeral ceremony, memorial service, or other last rite; burial, cremation and burial or other disposition, or donation of the declarant's body after death.

Representative:

1. An individual who is authorized by this document to control the declarant's final disposition may accept the control, may decline to exercise the control, or may, after accepting the control, resign it.
2. If there is a dispute about the declarant's disposition, the probate court for the county in which the decedent last resided has exclusive jurisdiction over the case.
3. The representative signing this document is expected to carry out the directions, instructions, and suggestions for disposition specified in this document unless the directions, instructions, and suggestions exceed available resources from the decedent's estate or are unlawful or unless there is no realistic possibility of compliance.

AUTHORIZATION FOR FINAL DISPOSITION

I, _____
(Print Name)

Residing at _____
(Print Mailing Address)

being of sound mind, willfully and voluntarily make known by this document my desire that, upon my death, the final disposition of my remains be under the control of my representative under the requirements of section 154.30, Wisconsin statutes, and, with respect to that final disposition only, I hereby appoint the representative and any successor representative named in this document. All decisions made by my representative or any successor representative with respect to the final disposition of my remains are binding.

Name of Representative _____

Address _____

Telephone number (include area code) _____

If my representative dies, becomes incapacitated, resigns, refuses to act, ceases to be qualified, or cannot be located within the time necessary to control the final disposition of my remains, I hereby appoint the following individuals, each to act alone and successively, in the order specified, to serve as my successor representative:

1. Name of first successor representative _____

Address _____

Telephone number (include area code) _____

2. Name of second successor representative _____

Address _____

Telephone number (include area code) _____

SUGGESTED SPECIAL DIRECTIONS

SUGGESTED INSTRUCTIONS CONCERNING RELIGIOUS OBSERVANCES

SUGGESTED SOURCE OF FUNDS FOR IMPLEMENTING FINAL DISPOSITION DIRECTIONS AND INSTRUCTIONS

This authorization becomes effective upon my death. I hereby revoke any prior authorization for final disposition that I may have signed before the date that this document is signed.

I hereby agree that any funeral director, crematory authority, or cemetery authority that receives a copy of this document may act under it. Any modification or revocation of this document is not effective as to a funeral director, crematory authority, or cemetery authority until the funeral director, crematory authority, or cemetery authority receives actual notice of the modification or revocation. No funeral director, crematory authority, or cemetery authority may be liable because of reliance on a copy of this document.

The representative and any successor representative, by accepting appointment under this document, assume the powers and duties specified for a representative under section 154.30, Wisconsin statutes.

Signed this _____ day of _____
(Day) (Month and Year)

Signature of declarant _____

I hereby accept appointment as representative for the control of final disposition of the declarant's remains

Signed this _____ day of _____
(Day) (Month and Year)

Signature of representative _____

I hereby accept appointment as successor representative for the control of final disposition of the declarant's remains.

Signed this _____ day of _____
(Day) (Month and Year)

Signature of first successor representative _____

Signed this _____ day of _____
(Day) (Month and Year)

Signature of second successor representative _____

I attest that the declarant signed or acknowledged this authorization for final disposition in my presence and that the declarant appears to be of sound mind and not subject to duress, fraud, or undue influence. I further attest that I am not the representative or the successor representative appointed under this document that I am aged at least 18, and that I am not related to the declarant by blood, marriage, or adoption.

1st Witness (print name) _____

Signature _____

Address _____

Date (Month, Day, Year) _____

2nd Witness (print name) _____

Signature _____

Address _____

Date (Month, Day, Year) _____

In lieu of two witnesses signing this form, the declarant may sign it in the presence of a notary public.

State of Wisconsin, County of _____

On (date) _____, before me personally appeared

(name of declarant) _____ known to me or satisfactorily proven to be the individual whose name is specified in this document as the declarant and who has acknowledged that he or she executed the document for the purposes expressed in it. I attest that the declarant appears to be of sound mind and not subject to duress, fraud, or undue influence.

Notary Public Name _____ Signature _____

My commission expires (date) _____

(Seal)

A New Advance Directive: Final Disposition of Human Remains

William N. Leege

William N. Leege, S.C., Oconto
Submission Date: June 3, 2008

The Wisconsin Legislature has recently created a new Advance Directive for the final disposition of human remains. This was 2007 Assembly Bill 305 which is 2007 Wisconsin Act 58, available at www.legis.state.wi.us/2007/data/acts/07Act58.pdf. It became effective on March 19, 2008.

The Problem

It does not occur very often. However, in my years of private practice I have witnessed a number of disputes among family members and others regarding the funeral arrangements and final disposition of human remains. Funerals are emotional times and on occasion family members or friends may have disputes about a number of things with respect to the funeral and/or disposition of the body. I have seen a number of occasions where emotional comments by family members or friends have left scars that continue for many years thereafter.

I suspect that we all have witnessed one or more of these problems in our law practices. One that sticks out in my mind from a number of years ago was in regard to an elderly gentleman who retired to our county because he enjoyed trout fishing. He went through an

ugly divorce in Southeastern Wisconsin and in the process lost touch with his five children. He allegedly told a lady friend that he wanted to be cremated with his ashes placed near his favorite trout fishing stream. However, there was nothing in writing. The lady friend realized that she had no legal authority to make the determination about the final disposition. The five children then came to the scene and three of the five children decided to follow the instructions that were provided by the lady friend. However, two of the five children decided that this was not appropriate and that dad's body should be buried. Indeed, those two children hired a law firm and threatened the undertaker with litigation if dad's body was cremated. I searched for a legal solution to the problem. Unfortunately, there was none. The law indicated that the "family" would make the decision unless there was some form of a written contract that the deceased had made with the undertaker. What did that mean? Did all five children have to agree? Would it be a majority vote? Would a two-thirds vote control? The problem was finally resolved after approximately six months. Fortunately the undertaker was able to preserve the

body during that time.

Past Solutions

For many years I have encouraged clients to contact their undertakers to set forth their funeral/disposition requests. Indeed, for Title XIX planning I am sure that all of us have suggested to clients that they establish a funeral/burial trust or some form of prepaid funeral arrangement that will be exempt for Title XIX purposes. Even though nothing may be established with the undertaker, I have been told by a number of funeral directors that they will be pleased to meet with individuals to go through the funeral/disposition arrangements of a party and create a file for that party without any sale or funeral trust being necessary. Hence, I have urged many clients over the years to select their undertaker and have the undertaker start a file for them with their request in writing. I suspect that not all of my clients have followed that advice!

A number of clients want me to put these funeral directives in their Wills or other estate planning documents. I tell them that I will be pleased to do so. However, this would be meaningless in many cases due to the fact that the

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A New Advance Directive: Final Disposition of Human Remains

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Will/Trust may very well not be found until after the funeral has taken place.

I have had other clients who want to insert this authority into their Durable Power of Attorney. However, this has not worked very well due to the fact that Durable Powers of Attorney are not all that durable. They do not survive the death of the principal.

A New Solution

As noted above, 2007 Wisconsin Act 58 became effective March 19, 2008. It did a number of things that may or may not be helpful.

First, the Act has created a new Advance Directive. Indeed, the first part of the Act renames Chapter 154 of the Wisconsin Statutes from "Declaration to Physicians and Do-Not-Resuscitate Orders" to "Advance Directives." The new Subchapter IV is entitled "Authorization for Final Disposition."

A primary purpose of Subchapter IV is to provide a new Advance Directive for a person to name a representative to make any and all determinations with respect to final disposition of the remains. It is similar to the statutory health care power of attorney in that it provides for the selection of a first choice with a successor. Indeed it also provides for a second successor.

What authority does the representative have? A criticism that I might have of the statute is that it implies that the agent would only have authority with respect to "final disposition" of the remains. My first reading led me to believe that this would merely be to determine whether or not there would be a customary burial or cremation. However, the Act defines "Final disposition" at Section 154.30(1)(g) to include any (emphasis added) of the following:

1. Arrangements for a viewing.
2. A funeral ceremony, memorial service, graveside service, or other last rite.

3. A burial, cremation and burial or other disposition or donation of the decedent's body.

Hence, the agent is given authority not only to determine where the body (or ashes) will go but also has authority to determine whether or not there will be a viewing or non-viewing of the body. It also includes being able to make the arrangements for the funeral ceremony, memorial service or the like.

I know that health care providers over the years have appreciated a health care power of attorney so that they know who they will be dealing with at a critical time. Indeed, I believe that this is the reason why the health care power of attorney is limited to one person with a standby. In that fashion, the health care provider does not have to deal with a committee at a very emotional time.

Likewise, the selection of a representative to make the funeral/disposition arrangements is also very helpful to the funeral director. They will be protected under this Advance Directive so that they will know who has authority to make the decision. If this form is used, the undertaker will not be drawn into the crossfire that often exists between family members during a very emotional time in their lives.

What about the forms? Section 154.30(8)(f) sets forth the contents for the form. The statute likewise indicates that the Department of Health and Family Services shall prepare and provide copies of the authorization form for distribution in quantities to funeral directors, crematory authorities, cemetery authorities, hospitals, nursing homes, county clerks and local bar associations and individually to private persons. I am told that the Department has now prepared the form. It is available at <http://dhfs.wisconsin.gov/forms/Adv-Directives/ADFormsPOA.htm>. Hopefully, they will shortly be distributed by the Department to the various distributors set forth above.

What if No Advance Directive?

The new statute does more than provide for another Advance Directive

form. It also has language that would appear to solve a number of problems that I have had over the years including the disposition of the remains of the trout fisherman. Section 154.30(2) sets forth in priority the individuals who would have authority to make the final disposition decisions. The first choice is the agent set forth in the Authorization For Final Disposition form. The next choice is the surviving spouse, if any. The statute then deals with successive persons to make the decision in the event that there is no prior selection available. The statute specifically handles the problem of my retired trout fisherman in that it indicates that if there is more than one child of the decedent, the majority of the surviving children would have control over the final disposition. Hence, where I had three children seeking cremation and two children seeking burial, we would have had no problem under this new statute. The three seeking cremation/trout stream would have prevailed.

I hope that the new Advance Directive solves many problems. However, as we all know, if people want to fight about matters, they can always find something to fight about. I suspect that many of these Advance Directives will be executed during the declining hours of a person's life. Hence, some family members may still choose to argue that the deceased was not mentally competent when they executed the form or that the form was executed under duress. The statute provides at Section 154.30(7) that the probate court for the county in which the decedent last resided shall have exclusive jurisdiction over any litigation involving such matters.

I will still suggest to elderly clients that they select their own funeral director and make their specific arrangements with the funeral home. Nonetheless, they may also wish to execute this new Advance Directive designating a representative to make their final disposition decisions.