

45a-318. (Formerly Sec. 45-253). Document directing or designating individual to have custody and control of disposition of deceased person's body. Funeral director's reliance on document. Individuals entitled to custody and control of disposition. Revocation. Form. Petition to court of probate.

Connecticut Statutes

Title 45A. PROBATE COURTS AND PROCEDURE

Chapter 802B. DECEDENTS' ESTATES

Current through the 2013 Legislative Session

45a-318. (Formerly Sec. 45-253). Document directing or designating individual to have custody and control of disposition of deceased person's body. Funeral director's reliance on document. Individuals entitled to custody and control of disposition. Revocation. Form. Petition to court of probate

- (a) Any person eighteen years of age or older, and of sound mind, may execute in advance of such person's death a written document, subscribed by such person and attested by two witnesses, either: (1) Directing the disposition of such person's body upon the death of such person, which document may also designate an individual to have custody and control of such person's body and to act as agent to carry out such directions; or (2) if there are no directions for disposition, designating an individual to have custody and control of the disposition of such person's body upon the death of such person. Such disposition shall include, but not be limited to, cremation, incineration, disposition of cremains, burial, method of interment and cryogenic preservation. Any such document may designate an alternate to an individual designated under subdivision (1) or (2) of this subsection.
- (b) No person may challenge a funeral director's decision to carry out the directions for disposition contained in a document executed for the purposes of subsection (a) or (f) of this section if the funeral director's decision and conduct in carrying out such directions for disposition in reliance on such document was reasonable and warranted under the circumstances.
- (c) In the absence of a written designation of an individual pursuant to subsection (a) of this section, or in the event that an individual and any alternate designated pursuant to subsection (a) of this section decline to act or cannot be located within forty-eight hours after the time of death or the discovery of the body, the following individuals, in the priority listed, shall have the right to custody and control of the disposition of a person's body upon the death of such person, subject to any directions for disposition made by such person pursuant to subdivision (1) of subsection (a) of this section:

- (1) The deceased person's spouse, unless such spouse abandoned the deceased person prior to the deceased person's death or has been adjudged incapable by a court of competent jurisdiction;
 - (2) The deceased person's surviving adult children;
 - (3) The deceased person's surviving parents;
 - (4) The deceased person's surviving siblings;
 - (5) Any adult person in the next degree of kinship in the order named by law to inherit the deceased person's estate, provided such adult person shall be of the third degree of kinship or higher;
 - (6) Such adult person as the Probate Court shall determine.
- (d) A document executed by a person for the purposes of subsection (a) or (f) of this section shall revoke any document previously executed by such person for the purposes of said subsection or any prior cremation authorization or other authorization for the disposition of remains executed by such person.
- (e) A document executed by a person for the purposes of subsection (a) of this section may be in substantially the following form, but the use of such form shall not preclude the use of any other form:

DISPOSITION OF REMAINS AND

APPOINTMENT OF AGENT

I, , of , being of sound mind, make known that upon my death my body shall be disposed of in the following manner:

(Insert desired disposition directions)

I appoint , having an address and telephone number of , to have custody and control of my body to act as my agent to carry out the disposition directions expressed in this document, and in the absence of disposition directions, to have custody and control of my body and to determine the disposition of my body. If shall decline to act or cannot be located within forty-eight hours of my death or the discovery of my body, then , having an address and telephone number of , shall act in that person's place and stead.

Executed at (insert location of execution), Connecticut on (insert date of execution).

.....

(Signature)

Signed in our presence by who, at the time of the execution of this document, appeared to be of sound mind and over eighteen years old.

. . . . of

. . . .

(Signature of witness)

. . . . of

. . . .

(Signature of witness)

- (f) A DD Form 93, "Record of Emergency Data", executed by a member of the armed forces of the state or the United States shall be given the same legal effect as a document executed for the purposes of subsection (a) of this section.
- (g) The court of probate for the district of the domicile or residence of a deceased person shall have jurisdiction to hear and decide any issue regarding the custody, control or disposition of the deceased person's body, upon the petition of any individual designated by the deceased person pursuant to subsection (a) or (f) of this section, the individual entitled to custody and control under subsection (c) of this section if no designation is made pursuant to subsection (a) of this section, the first selectman, chief executive officer or director of health of the town in which the deceased person's body is being held, or the funeral director or any other person or institution holding the deceased person's body, and upon such notice to interested parties as the court shall determine.
- (h) This section shall not (1) apply to the disposition of the body of a deceased person under the provisions of sections 19a-270 and 54-102, (2) affect the powers and duties of the Chief Medical Examiner under the provisions of sections 19a-406 to 19a-408, inclusive, or (3) affect the making of anatomical gifts under the provisions of sections 14-42 and 19a-289 to 19a-289v, inclusive.

Cite as Conn. Gen. Stat. 45a-318

Source:

(1949 Rev., S. 7036; P.A. 76-4; P.A. 80-476, S. 297; P.A. 93-407, S. 13; P.A. 94-25; P.A. 01-131; P.A. 05-197, S. 1; P.A. 06-196, S. 274.)

History. Amended by P.A. 12-0087, S. 1 of the 2012 Regular Session, eff. 6/6/2012.

Amended by P.A. 10-0123, S. 30 of the February 2010 Regular Session, eff. 10/1/2010.

P.A. 76-4 added provisions governing cases where deceased resident leaves no spouse or next of kin, where spouse or next of kin cannot be contacted or refuses to assume custody and control; P.A. 80-476 divided section into Subsecs. and made minor changes; Sec. 45-253 transferred to Sec. 45a-318 in 1991; P.A. 93-407 added provision permitting decedent, in a duly acknowledged writing, to designate person other than next of kin to have custody and control of his remains; P.A. 94-25 deleted phrase "for the time being" in Subsec. (a); P.A. 01-131 added new Subsec. (a) re execution of cremation authorization in advance of death on form authorized by Department of Public Health and re notification of spouse, next of kin or designated person at time of death, redesignated existing Subsec. (a) as Subsec. (b) and amended same to add provisions re good faith reliance on cremation instructions and cremation by funeral director if actions reasonable and warranted and to make a technical change for purposes of gender neutrality, and redesignated existing Subsec. (b) as Subsec. (c); P.A. 05-197 replaced former provisions re cremation authorization and custody of remains of deceased person with new Subsec. (a) re document directing disposition of deceased person's body or designating individual to have custody and control of disposition of body, new Subsec. (b) re funeral director's decision in reliance on document, new Subsec. (c) re individuals entitled to custody and control of body in certain circumstances, new Subsec. (d) re revocation of previous document or authorization and form of document, new Subsec. (e) re petition to court of probate and new Subsec. (f) re applicability of section; P.A. 06-196 made a technical change in Subsec. (c), effective June 7, 2006.

Case Notes:

Annotations to former section 45-253:

Control extends to removals and reinterments. 81 C. 599. Cited. 133 C. 730. Purpose of statute is to avoid unseemly controversy over remains of deceased persons. 137 C. 450. Cited. 194 C. 635.

A person's expressed wish or direction as to the disposal of her body after death is entitled to respectful consideration by the court and should be carried out as far as possible. 26 CS 290. The right of sepulture is not absolute, but must yield when in conflict with the public good or when the demands of justice require such subordination. *Id.*