

THE INDIANA FUNERAL PLANNING DECLARATION

Ind. Code 29-2-19

Beginning July 1, 2009, an Indiana resident may execute a Funeral Planning Declaration (“FPD”). If validly executed, an FPD will operate to control an individual’s funeral plans and services, and even the ultimate disposition of his/her remains. A valid FPD will control . . . even against the competing wishes of a surviving spouse, children, parents, etc., . . . and even against a conflicting power of attorney or conflicting provisions in a Will.

Through the use of an FPD, an Indiana resident can acquire the right to control his/her funeral and burial. The FPD is the final and controlling document, but is limited in scope to only the specific elements of a funeral and/or disposition.

Conditions to Creating a Valid FPD

In order to be effective, and valid, an FPD must meet the following conditions:

- ◆ Be made by a person of sound mind who is at least 18 years of age (the “declarant”);
- ◆ Be voluntary;
- ◆ Be in writing;
- ◆ Name an individual to serve as the declarant’s “designee” (the person who is to carry out the declarant’s instructions);
- ◆ Be signed by the declarant or another person who acts at the declarant’s request and in the declarant’s presence;
- ◆ Be dated; and
- ◆ Be witnessed by at least two (2) competent witnesses who are at least 18 years of age.

Note: Some persons are not permitted to serve as witnesses; they are:

- ◆ Any person who signs an FPD on behalf of a declarant;
- ◆ A parent, spouse or child of the declarant; and
- ◆ An individual who is entitled to any part of the declarant’s estate (whether testate or intestate and even if a Will is declared invalid).

Who May Not be a Designee?

The following persons and/or entities may not serve as a designee:

- ◆ A provider of funeral services;
- ◆ Any person/entity given responsibility for disposition of remains; and
- ◆ Any person associated with any entity responsible for providing funeral services or the making of disposition of remains.

But, a funeral home employee or cemetery employee, for example, related to a declarant by birth, marriage or adoption may still be a designee notwithstanding the stated prohibitions.

Is an FPD Binding?

Must the Provider of Services Honor it and Act Pursuant to a Designee's Declaration?

Yes, but only if the provider of services/merchandise (funeral home, cemetery, or other person providing a services or merchandise or other property specified in the declaration) receives consideration for the service, merchandise or other property.

Any funding mechanism can be used, but as a matter of practical reality, an FPD should be coupled with a fully funded preneed contract to insure it will be carried out.

What is or May be Covered by the FPD?

The FPD may be used by a declarant to specify his/her specific wishes/instructions concerning any of the following:

- ◆ Disposition of remains after death (i.e., burial, cremation, etc.);
- ◆ The identity of the person/entity responsible for directing the disposition of remains;
- ◆ The identity of the entity who is to provide funeral services;
- ◆ A description of any ceremonial arrangements to be performed after death;
- ◆ A statement of the merchandise that the declarant prefers for the disposition of remains and any ceremonial arrangements;
- ◆ The identity of the person who is to direct ceremonial arrangements to be performed after death; and
- ◆ The declarant's preference concerning a grave memorial.

What Happens if the FPD is Incomplete and Covers Only the Funeral Service but Does Not Mention or Direct Any Specific Disposition of Remains?

An individual need not make a complete or fully descriptive FPD. It is possible to specify funeral arrangements only and not mention any aspect of disposition of remains, and vice versa. However, when this is done the law states that when no decision is made the designee is given the discretion to make the decision. But in a situation where a designee is “unable or unwilling to serve,” the following constitutes the order of priority for those matters (right to control disposition, or to make funeral arrangements, or to make other ceremonial arrangements):

- ◆ An individual specifically granted the authority in a power of attorney or health care power of attorney executed by a decedent under Indiana Code 30-5-5-16;
- ◆ The decedent’s surviving spouse;
- ◆ A surviving adult child of the decedent;
- ◆ A surviving parent of the decedent;
- ◆ A surviving sibling of the decedent
- ◆ An individual of the next degree of kinship under Indiana Code 29-1-2-1 to inherit the estate of the decedent.

Can You be Liable if You Rely on an FPD that Ultimately Turns Out to be Defective?

No. One who acts in good faith reliance on an FPD is immune from liability to the same extent as if the person had dealt directly with the declarant had he/she been alive and competent. In the absence of actual knowledge to the contrary, you may presume that:

- ◆ A declaration has been validly executed;
- ◆ The declarant was competent at the time the declaration was executed.

The directions set forth in a declaration are binding just as if the declarant were alive and competent.

The Funeral Planning Declaration Form

A sample form and instruction sheet for the consumer are included for your reference and use.

The Funeral Planning Declaration-- What you need to know before you sign

What it is.

A Funeral Planning Declaration is a legally binding document allowing a person to direct how their body is to be disposed of at the time of their death and what services are to be held. It is provided for by Indiana law, IC 29-2-19.

The instructions given in a Funeral Planning Declaration supersede and override the wishes of all others including your immediate family. A Funeral Planning Declaration is not for everyone.

Who should not execute a Funeral Planning Declaration.

If you want to allow your family to plan the funeral services that will be most meaningful to them, you do not want to execute a Funeral Planning Declaration. It will only restrict them in what they want to do.

Without a Funeral Planning Declaration, the law provides that the right of disposition falls to your family. Your husband or wife first, then your adult children, then parents, then the next degree of kinship to inherit.

If you simply want to express your wishes to them but still allow them to make the final decisions, you might consider doing this through conversation or a letter to your family.

Who should execute a Funeral Planning Declaration. It is most appropriate for those who:

- Do not have any immediate family to carry out funeral planning and disposition arrangements.
- Have strong feelings as to what should happen upon their death.
- Have wishes that are likely to be objected to by their family because those wishes break from family or religious tradition.
- Anticipate conflict between family members as to what should be done.

In order to be valid and to be assured your wishes will be carried out:

- You must be at least 18 years of age and of sound mind to execute a declaration.
- Indicating your wishes is not sufficient. You must name a person (designee) to carry out the wishes expressed in the declaration. It is also wise to name an alternate designee to carry out your wishes in the event the original designee is unavailable or unable to act. You cannot name your funeral director as your designee.
- The declaration must be signed and must be witnessed by competent witnesses over the age of 18 who are not related to you and who will not be entitled to part of your estate.
- You must provide a means of funding your wishes. One way this can be done is to execute and fund a preneed contract as provided for under Indiana law (IC 30-2-13). Your funeral director can assist you in doing this.
- You cannot expect your wishes to be carried out if they are impossible, impractical, or illegal. Also bear in mind that church or cemetery regulations may restrict what can be done. If you have an unusual request, you should check to see if it is possible before requesting it.
- The existence of the declaration must be known and it must be made available at the time of death. Do not include it in your Will or store it in a lock box or safe deposit box. Give a copy to your designee or other trusted friend or family member. Leave a copy with the funeral home you have requested to carry out the service details.
- This information is not meant to replace competent legal advice. Contact your attorney if you have any questions or concerns about a Funeral Planning Declaration before you sign one.

FUNERAL PLANNING DECLARATION FORM

Declaration made this _____ day of _____ (month, year). I, _____, being at least eighteen (18) years of age and of sound mind, willfully and voluntarily make known my instructions concerning funeral services, ceremonies, and the disposition of my remains after my death.

I hereby declare and direct that after my death _____ (name of designee) shall, as my designee, carry out the instructions that are set forth in this declaration. If my designee is unwilling or unable to act, I nominate _____ as an alternate designee.

I hereby declare and direct that after my death the following actions be taken (indicate your choice by initialing or making your mark before signing this declaration):

(1) My body shall be:

(A) _____ Buried. I direct that my body be buried at _____.

(B) _____ Cremated. I direct that my cremated remains be disposed of as follows:

(C) _____ Entombed. I direct that my body be entombed at _____.

(D) _____ I intentionally make no decision concerning the disposition of my body, leaving the decision to my designee (as named above).

(2) My arrangements shall be made as follows:

(A) I direct that funeral services be obtained from:

(B) I direct that the following ceremonial arrangements be made:

(C) I direct the selection of a grave memorial that:

(D) I direct that the following merchandise and other property be selected for the disposition of my remains, my funeral or other ceremonial arrangements:

(E) _____ I direct that my designee (as named above) make all arrangements concerning ceremonies and other funeral services.

(3) In addition to the instructions listed above, I request the following:

(4) If it is impossible to make an arrangement specified in subdivisions (1) through (3) because:

(A) a funeral home or other service provider is out of business, impossible to locate, or otherwise unable to provide the specified service; or

(B) the specified arrangement is impossible, impractical, or illegal;

I direct my designee to make alternate arrangements to the best of the designee's ability.

It is my intention that this declaration be honored by my family and others as the final expression of my intentions concerning my funeral and the disposition of my body after my death. I understand the full import of this declaration.

Signed

City, County, and State of Residence

The declarant is personally known to me, and I believe the declarant to be of sound mind. I did not sign the declarant's signature above for or at the direction of the declarant. I am not a parent, spouse, or child of the declarant. I am not entitled to any part of the declarant's estate. I am competent and at least eighteen (18) years of age.

Witness _____ Date _____

Witness _____ Date _____