

Next-Of-Kin Law Power of Attorney Language

Starting today (Aug 28, 2008) people can include language in a *Durable Power of Attorney* that allows them to choose who will handle their final disposition after they die. This designation, if done properly, takes precedence over everyone else even spouses, children or other relatives. The person designated must be 18 years old or older and must be willing to take financial responsibility for the final disposition. The person designated does not have to be a lawyer. It CAN be a relative, but does not have to be. Whoever is designated in the Power of Attorney (POA) becomes the "next-of-kin" of the deceased. **FUNERAL DIRECTORS SHOULD NOT DRAFT OR PREPARE A POWER OF ATTORNEY FOR ANYONE.** This could result in the unauthorized practice of law and open you up to potential liability. Your families should meet with an attorney to make sure the Power of Attorney is in proper format and meets all of the other requirements of a Power of Attorney. There ARE forms available on the web for people to do their own POA's but these will not have the language needed to handle the final disposition/next-of-kin issue. At some point we hope the Missouri Bar will be providing a POA free of charge that includes the next-of-kin language but, if that happens, it will not be until next year as the change must be approved by a number of committees.

You CAN, however, give your families the letter below that explains the new law and gives suggested language they may wish—on their own—to give to an attorney or use in a POA. As mentioned in the letter, I will be happy to talk with you, your families or attorneys regarding this.

MFDEA would like to thank all of those legislators that assisted with the effort over the past several years in getting this law changed including Representative Deeken, Representative Meadows, Representative Wasson, Representative and Speaker Jetton, Senator Scott, Senator Gibbons, Senator Goodman, Senator Rupp, Senator Ridgeway and all those that voted for this important change.

(see below sample)



Missouri Funeral Directors
& Embalmers Association
Over a Century of Strength

Dear Funeral Home Consumer:

The Missouri Funeral Directors and Embalmers Association is pleased to let you know that, after many years of trying to change the law, you now have the right to choose who will handle your funeral, burial, cremation or other final disposition. You are no longer bound by the statutory "next-of-kin" list found in the law.

The right to control the burial or other final disposition of someone is called the "Right of Sepulcher" and you can now give this right to whomever you wish provided that it is done in a *Durable Power of Attorney*; is in the proper format; and the person who is granted this right is 18 years of age or older, competent, and willing to take responsibility for handling the arrangements.

Please note that this is just an option—there is no requirement that you have a Power of Attorney. If you do not choose this option, the standard statutory "next-of-kin" order will apply.

A Durable Power of Attorney is a legal document and MFDEA suggests that you meet with your lawyer to draft such a document should you wish this option. The Power of Attorney can also include other important items such items as health care directives and anatomical donations. If you wish to explore this option, here is suggested language that can be inserted into a Durable Power of Attorney to meet the new law:

I further appoint _____ (insert name) as my Attorney in Fact pursuant to Chapter 194.119 of the Revised Statutes of Missouri and grant him/her the Right of Sepulcher over my body after my death, to be my designated "next-of-kin" under Missouri Law and to have the power of custody, control and disposition of my remains.

We hope this language will be helpful to you and your lawyer in drafting a Durable Power of Attorney to choose who will handle your funeral arrangements. If you or your attorney have any questions about the law, please feel free to call me at (573) 635-1661.

Donald C. Otto, Jr.
General Counsel, Missouri Funeral Directors and Embalmers Association.