

## **IC 23-14-55**

Chapter 55. Authorization for Interment, Entombment, or Inurnment

### **IC 23-14-55-1**

#### **Warranty and liability of individual signing authorization**

Sec. 1. (a) An individual who signs an authorization for the cremation, interment, entombment, or inurnment of any human remains:

- (1) is considered to warrant the truthfulness of:
  - (A) any fact set forth in the authorization;
  - (B) the identity of the person for whose remains cremation, interment, entombment, or inurnment is sought; and
  - (C) the individual's authority to order the cremation, interment, entombment, or inurnment; and
- (2) is personally and individually liable to pay damages in compensation for harm that:
  - (A) is caused by; or
  - (B) results from;the signing of the authorization for cremation, interment, entombment, or inurnment.

(b) A cemetery or crematory that relies in good faith on a signed authorization for the cremation, interment, entombment, or inurnment of human remains is not civilly or criminally liable or subject to disciplinary actions for carrying out the disposition of the decedent in accordance with the instructions in the authorization.

*As added by P.L.52-1997, SEC.29. Amended by P.L.34-2011, SEC.2.*

### **IC 23-14-55-2**

#### **Priority of persons acting as an authorized agent; persons prohibited from being an authorized agent; liability; disputes concerning final disposition**

Sec. 2. (a) Except as provided in subsection (c), the owner of a cemetery is authorized to inter, entomb, or inurn the body or cremated remains of a deceased human upon the receipt of a written authorization of an individual who professes either of the following:

- (1) To be (in the priority listed) one (1) of the following:
  - (A) An individual granted the authority to serve in a funeral planning declaration executed by the decedent under IC 29-2-19, or the person named in a United States Department of Defense form "Record of Emergency Data" (DD Form 93) or a successor form adopted by the United States Department of Defense, if the decedent died while serving in any branch of the United States Armed Forces (as defined in 10 U.S.C. 1481) and completed the form.
  - (B) An individual specifically granted the authority in a power of attorney or a health care power of attorney executed by the decedent under IC 30-5-5-16.
  - (C) The individual who was the spouse of the decedent at the time of the decedent's death, except when:

(i) a petition to dissolve the marriage or for legal separation of the decedent and spouse is pending with a court at the time of the decedent's death, unless a court finds that the decedent and spouse were reconciled before the decedent's death; or

(ii) a court determines the decedent and spouse were physically and emotionally separated at the time of death and the separation was for an extended time that clearly demonstrates an absence of due affection, trust, and regard for the decedent.

(D) The decedent's surviving adult child or, if more than one (1) adult child is surviving, the majority of the adult children. However, less than half of the surviving adult children have the rights under this clause if the adult children have used reasonable efforts to notify the other surviving adult children of their intentions and are not aware of any opposition to the final disposition instructions by more than half of the surviving adult children.

(E) The decedent's surviving parent or parents. If one (1) of the parents is absent, the parent who is present has authority under this clause if the parent who is present has used reasonable efforts to notify the absent parent.

(F) The decedent's surviving sibling or, if more than one (1) sibling is surviving, the majority of the surviving siblings. However, less than half of the surviving siblings have the rights under this clause if the siblings have used reasonable efforts to notify the other surviving siblings of their intentions and are not aware of any opposition to the final disposition instructions by more than half of the surviving siblings.

(G) The individual in the next degree of kinship under IC 29-1-2-1 to inherit the estate of the decedent or, if more than one (1) individual of the same degree of kinship is surviving, the majority of those who have the same degree. However, less than half of the individuals who have the same degree of kinship have the rights under this clause if they have used reasonable efforts to notify the other individuals who have the same degree of kinship of their intentions and are not aware of any opposition to the final disposition instructions by more than half of the individuals who have the same degree of kinship.

(H) If none of the persons described in clauses (A) through (G) are available, any other person willing to act and arrange for the final disposition of the decedent, including a funeral home that:

(i) has a valid prepaid funeral plan executed under IC 30-2-13 that makes arrangements for the disposition of the decedent; and

(ii) attests in writing that a good faith effort has been made to contact any living individuals described in clauses (A)

through (G).

(2) To have acquired by court order the right to control the disposition of the deceased human body or cremated remains. The owner of a cemetery may accept the authorization of an individual only if all other individuals of the same priority or a higher priority (according to the priority listing in this subsection) are deceased, are barred from authorizing the disposition of the deceased human body or cremated remains under subsection (c), or are physically or mentally incapacitated from exercising the authorization, and the incapacity is certified to by a qualified medical doctor.

(b) An action may not be brought against the owner of a cemetery relating to the remains of a human that have been left in the possession of the cemetery owner without permanent interment, entombment, or inurnment for a period of three (3) years, unless the cemetery owner has entered into a written contract for the care of the remains.

(c) If:

(1) the death of the decedent appears to have been the result of:

(A) murder (IC 35-42-1-1);

(B) voluntary manslaughter (IC 35-42-1-3); or

(C) another criminal act, if the death does not result from the operation of a vehicle; and

(2) the coroner, in consultation with the law enforcement agency investigating the death of the decedent, determines that there is a reasonable suspicion that a person described in subsection (a) committed the offense;

the person referred to in subdivision (2) may not authorize the disposition of the decedent's body or cremated remains.

(d) The coroner, in consultation with the law enforcement agency investigating the death of the decedent, shall inform the cemetery owner of the determination referred to in subsection (c)(2).

(e) If a person vested with a right under subsection (a) does not exercise that right not less than seventy-two (72) hours after the person receives notification of the death of the decedent, the person forfeits the person's right to determine the final disposition of the decedent and the right to determine final disposition passes to the next person described in subsection (a).

(f) A cemetery owner has the right to rely, in good faith, on the representations of a person listed in subsection (a) that any other individuals on the same degree of kinship have been notified of the final disposition instructions.

(g) If there is a dispute concerning the disposition of a decedent, a cemetery owner is not liable for refusing to accept the remains of the decedent until the cemetery owner receives:

(1) a court order; or

(2) a written agreement signed by the disputing parties;

that determines the final disposition of the decedent. If a cemetery agrees to shelter the remains of the decedent while the parties are in dispute, the cemetery may collect any applicable fees for storing the

remains, including legal fees that are incurred.

(h) Any cause of action filed under this section must be filed in the probate court in the county where the decedent resided, unless the decedent was not a resident of Indiana.

(i) A spouse seeking a judicial determination under subsection (a)(1)(C)(i) that the decedent and spouse were reconciled before the decedent's death may petition the court having jurisdiction over the dissolution or separation proceeding to make this determination by filing the petition under the same cause number as the dissolution or separation proceeding. A spouse who files a petition under this subsection is not required to pay a filing fee.

*As added by P.L.52-1997, SEC.29. Amended by P.L.102-2007, SEC.2; P.L.3-2008, SEC.170; P.L.143-2009, SEC.6; P.L.101-2010, SEC.2; P.L.34-2011, SEC.3.*