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OVER MY DEAD BODY:

**Advising Clients on Healthcare
Decisions, Living Wills, and Organ
Donations**

Attorney Donald Bryan Ferfolia Jr.

TO GIVE OR NOT TO GIVE...

- Wife indicates on Driver's License that she wants to donate organs/tissue
- Wife tells husband that she no longer chooses to be a donor
- Wife takes no further action
- What happens next?



WHO CAN DONATE... § 2108.04

- (A) The donor, if the donor is an adult or if the donor is a minor and either of the following applies:
 - (1) The donor is emancipated.
 - (2) The donor is authorized to apply for a temporary instruction permit issued under section 4907.09 of the Revised Code because the donor is at least fifteen years and six months of age.
- (B) An agent of the donor, unless the durable power of attorney for health care or other record prohibits the agent from making an anatomical gift;
- (C) A parent of the donor, if the donor is an unemancipated minor;
- (D) The donor's guardian.

HOW IS THE GIFT MADE... § 2108.05

- (A) A donor may make an anatomical gift by doing any of the following:
 - (1) Authorizing a statement or symbol to be imprinted on the donor's driver's license or identification card indicating that the donor has certified a willingness to make an anatomical gift;
 - (2) Specifying in the donor's will an intent to make an anatomical gift;
 - (3) Specifying an intent to make an anatomical gift in the donor's declaration as described in section 2133.16 of the Revised Code;
 - (4) During a terminal illness or injury of the donor, communicating in any manner to a minimum of two adults, at least one of whom is a disinterested witness, that the donor intends to make an anatomical gift;
 - (5) Following the procedure in division (B) of this section.
- (B) A donor or other person authorized to make an anatomical gift under section 2108.04 of the Revised Code may make a gift by a donor card or other record signed by the donor or other person making the gift or by authorizing that a statement or symbol indicating that the donor has certified a willingness to make an anatomical gift be included in a donor registry. If the donor or other person is physically unable to sign a record, the record may be signed by another individual at the direction of the donor or other person and shall do both of the following:
 - (1) Be witnessed by at least two adults, at least one of whom is a disinterested witness, who have signed at the request of the donor or the other person;
 - (2) State that it has been signed and witnessed as provided in division (B)(1) of this section.
- (C) Once a donor has authorized a statement or symbol to be imprinted on the donor's driver's license or identification card indicating that the donor has certified a willingness to make an anatomical gift, the donor does not need to reverify the donor's willingness to make an anatomical gift upon renewal of the driver's license or identification card. The authorization shall remain in effect until the donor withdraws that authorization.

OTHER IMPORTANT CONSIDERATIONS



- Refusal to Make Gift
 - § 2108.07
- Actions by Someone Other than Donor
 - § 2108.08
- Anatomical Gift After Death
 - § 2108.09
- Process for Donation

I NEED TO APPLY FOR MEDICAID

- Family comes to Funeral Director and indicates that they are applying for Medicaid for their Mother
- Purchase preneed funeral contract
- They tell Funeral Director that they want to “pad” the contract for unknown expenses
- Funeral Director goes to Funeral Home Owner because he doesn't feel comfortable with this.

OHIO REVISED CODE § 4717.31

- (A) Only a funeral director licensed pursuant to this chapter may sell a preneed funeral contract that includes funeral services. Sections 4717.31 to 4717.38 of the Revised Code do not prohibit a person who is not a licensed funeral director from selling funeral goods pursuant to a preneed funeral contract. However, when a seller sells funeral goods pursuant to a preneed funeral contract, that seller shall comply with these sections unless the seller is specifically exempt from compliance under section 4717.38 of the Revised Code.
- (B) An insurance agent licensed pursuant to Chapter 3906 of the Revised Code may sell, solicit, or negotiate the sale of an insurance policy or annuity that will be used to fund a preneed funeral contract, but in so doing the insurance agent may not offer advice or make recommendations about funeral services and may not discuss the advantages or disadvantages of any funeral service, in selling, soliciting, or negotiating the sale of an insurance policy or annuity that will be used to fund a preneed funeral contract, the insurance agent may do any of the following:
 - (1) Provide the person purchasing the insurance policy or annuity with price lists from one or more funeral homes and other materials that may assist the person in determining the cost of funeral goods and services;
 - (2) Discuss the cost of funeral goods and services with the person in order to assist the person in selecting the appropriate amount of life insurance or annuity coverage;
 - (3) Complete a worksheet or other record to calculate the estimated cost of a funeral.
- (C) Activities conducted pursuant to division (B) of this section by an insurance agent licensed pursuant to Chapter 3906 of the Revised Code do not constitute funeral directing, funeral arranging, the business of directing and supervising funerals for profit, or the sale of a preneed funeral contract.

OTHER IMPORTANT CONSIDERATIONS

- All contracts must be in writing
 - § 4717.32 (A)
- Funds can be invested in insurance policy or trust
- Payment must be made directly to insurance company or trustee
 - Insurance Company - § 4717.35
 - Trust Company - § 4717.36 (C)
- Preneed Funeral Account Recovery Fund
 - § 4717.41



OTHER IMPORTANT CONSIDERATIONS — CONT'D

- Appropriate spend down of resources for Medicaid
 - Ohio Administrative Code – 5160:1-3-05.6
- Allows for the purchase of certain funeral/burial goods for immediate family members.
 - Ohio Administrative Code – 5160:1-3-05.7
- Medicaid Estate Recovery Program
 - Ohio Revised Code § 5162.21 – Estate Recovery Program
 - Ohio Revised Code § 5162.211 – Liens Against Property
 - Ohio Revised Code § 5162.22 – Personal Needs Allowance Account at Skilled Care Facility
 - Ohio Administrative Code – 5160:1-2-07



WHO IS IN CHARGE?

- Deceased is Divorced
- One Child – but estranged
- Deceased named his friend in a “Designated Agent Authorization Form”
- While Funeral Director is making arrangements with the friend, the lost son shows up.



OHIO REVISED CODE § 2108.70

(B) An adult who is of sound mind may execute at any time a written declaration assigning to a representative one or more of the following rights:

- (1) The right to direct the disposition, after death, of the declarant's body or any part of the declarant's body that becomes separated from the body before death. This right includes the right to determine the location, manner, and conditions of the disposition of the declarant's bodily remains.
- (2) The right to make arrangements and purchase goods and services for the declarant's funeral. This right includes the right to determine the location, manner, and condition of the declarant's funeral.
- (3) The right to make arrangements and purchase goods and services for the declarant's burial, cremation, or other manner of final disposition. This right includes the right to determine the location, manner, and condition of the declarant's burial, cremation, or other manner of final disposition.



OHIO REVISED CODE § 2018.81

- 1) Written Declaration
- 2) Surviving Spouse
- 3) Sole Surviving Child or ALL children collectively
- 4) Parent or Parents
- 5) Sole Sibling (whole or half blood) or ALL siblings collectively
- 6) Grandparent or Grandparents
- 7) Grandchild or ALL grandchildren collectively
- 8) Lineal Descendants
- 9) Guardian Appointed at time of death
- 10) Any other person
- 11) If indigent, then public officer or employee





PERMUTATIONS ON RIGHTS TO DISPOSITION

What happens when there is a family feud and other Issues?

OHIO REVISED CODE § 2018.75

- (A) A person shall be disqualified from serving as a representative or successor representative, or from having the right of disposition for a deceased adult pursuant to section 2108.81 of the Revised Code, if any of the following occurs:
 - (1) The person dies.
 - (2) A probate court declares or determines that the person is incompetent.
 - (3) The person resigns or declines to exercise the right as described in section 2108.80 of the Revised Code.
 - (4) The person refuses to exercise the right within two days after notification of the declarant's death.
 - (5) The person cannot be located with reasonable effort.
 - (6) The person meets the criteria described in section 2108.76 or 2108.77 of the Revised Code.
- (B) No owner, employee, or agent of a funeral home, cemetery, or crematory providing funeral, burial, or cremation services for a declarant shall serve as a representative or successor representative for the declarant unless the owner, employee, or agent is related to the declarant by blood, marriage, or adoption.
- (C) Subject to divisions (C)(2) and (D)(2) of section 2108.70 of the Revised Code, if a person is disqualified from serving as the declarant's representative or successor representative, or from having the right of disposition for a deceased adult pursuant to section 2108.81 of the Revised Code, as described in division (A) of this section, the right is automatically assigned to, and held by, the next person who has the right pursuant to the declarant's written declaration or pursuant to the order of priority in section 2108.81 of the Revised Code.

OHIO REVISED CODE § 2018.76

- (A) Except as provided in division (B) of this section, if the person named as the declarant's representative or successor representative in a written declaration was the declarant's spouse at the time the declaration was executed, but is not the declarant's spouse at the time of the declarant's death, the former spouse shall no longer be qualified to serve as the declarant's representative or successor representative.
- (B) Division (A) of this section shall not apply and a former spouse is qualified to serve as a declarant's representative or successor representative if the declarant signs and dates, after the termination of the marriage, a document stating the declarant's intent that the former spouse be the declarant's representative or successor representative. The document must be notarized or witnessed in accordance with the procedures described in section 2108.73 of the Revised Code.

OHIO REVISED CODE § 2018.77

- If the person named as the declarant's representative or successor representative in a written declaration, or the person who has a deceased adult's right of disposition pursuant to section 2108.81 of the Revised Code, meets any of the following criteria, the person shall be disqualified from serving as the representative or successor representative, or from having the right:
 - (A) (1) Subject to division (A)(2) of this section, the person has been charged with murder, aggravated murder, or voluntary manslaughter.
 - (2) If the charges against the person described in division (A)(1) of this section are dismissed or if the person is acquitted of such charges, the right is restored to the person.
 - (B) (1) Subject to division (B)(2) of this section, the person has been charged with an act of domestic violence under section 2619.26 of the Revised Code and it has been alleged in the charging instrument or accompanying papers that the act resulted in or contributed to the declarant's death.
 - (2) If the charges against the person described in division (B)(1) of this section are dismissed or if the person is acquitted of such charges, the right is restored to the person.
 - (C) The person and the declarant or deceased adult are spouses and an action to terminate the marriage pursuant to Chapter 3105 of the Revised Code was pending at the time of the declarant's or deceased adult's death.
 - (D) The person and the declarant or deceased adult are spouses and a probate court, on the motion of any other person or its own motion, determines that the declarant's or deceased adult's spouse and the declarant were estranged at the time of the declarant's or deceased adult's death. As used in this division, "estranged" means that a declarant's or a deceased adult's spouse and the declarant or deceased adult were physically and emotionally separated from each other, at the time of the declarant's or deceased adult's death, and had been separated for a period of time that clearly demonstrates an absence of due affection, trust, and regard between spouse and the declarant or deceased adult.

OHIO REVISED CODE § 2018.82

- (A) Notwithstanding section 2105.81 of the Revised Code and in accordance with division (B) of this section, the probate court for the county in which the decedent or deceased person resided at the time of death may, on its own motion or the motion of another person, assign to any person the right of disposition for a decedent or deceased person.
- (B) In making a determination for purposes of division (A) of this section and division (C) of section 2105.17 of the Revised Code, the court shall consider the following:
 - (1) Whether evidence presented to, or in the possession of the court, demonstrates that the person who is the subject of the motion and the decedent or deceased person had a close personal relationship;
 - (2) The reasonableness and practicality of any plans that the person who is the subject of the motion may have for the decedent's or deceased person's funeral, burial, cremation, or final disposition, including the degree to which such plans allow maximum participation by all persons who wish to pay their final respects to the deceased person;
 - (3) The willingness of the person who is the subject of the motion to assume the responsibility to pay for the decedent's or deceased person's funeral, burial, cremation, or final disposition and the desires of that person;
 - (4) The convenience and needs of other families and friends wishing to pay their final respects to the decedent or deceased person;
 - (5) The express written desires of the decedent or deceased person.
- (C) Except to the extent considered under division (B)(3) of this section, the following persons do not have a greater claim to the right of disposition than such persons otherwise have pursuant to law:
 - (1) A person who is willing to assume the responsibility to pay for the decedent's or deceased person's funeral, burial, cremation, or final disposition;
 - (2) The personal representative of the decedent or deceased person.

APPLICATION FOR RIGHT OF DISPOSITION

DISINTERMENT IN OHIO

What happens if we want to move a family member?

"I WOULD LIKE TO MOVE HER"

- Husband and wife have 3 children
- Husband buries wife in local cemetery
- 2 years later, husband decides to move wife to new cemetery where he has family buried.
- Husband comes to see Funeral Director regarding the transfer.
- One of the children objects to the transfer
- Funeral Director assists Husband with disinterment and transfer



OHIO REVISED CODE § 517.23

- (A) Subject to divisions (B), (D), and (E) of this section, the board of township trustees, the trustees or directors of a cemetery association, or the other officers having control and management of a cemetery or the officer of a municipal corporation who has control and management of a municipal cemetery shall disinter or grant permission to disinter any remains buried in the cemetery in either of the following circumstances:
- (1) If the surviving spouse of the decedent is eighteen years of age or older, within thirty days after the filing of an application of the surviving spouse made in accordance with division (A) of section 517.24 of the Revised Code and payment by the applicant of the reasonable costs and expense of disinterment;
- (2) On order of a probate court issued under division (B) of section 517.24 of the Revised Code and payment by the person who applied for the order under that division of the reasonable costs and expense of disinterment.





THANK YOU!

Donald B. Ferfolia, Jr.
Donald B. Ferfolia, Jr., LTD.

don@ferfolialaw.net
(440) 249-4655
