

18 V.S.A § 5227 Vermont Statutes

Right to disposition (a) If there is no written directive of the decedent, in the following order of priority, one or more competent adults shall have the right to determine the disposition of the remains of a decedent, including the location, manner, and conditions of disposition and arrangements for funeral goods and services:

- (1) an individual appointed to arrange for the disposition of decedent's remains pursuant to chapter 231 (advance directives) of this title;
- (2) a surviving spouse of the decedent;
- (3) a sole surviving child of the decedent or a majority of the surviving children, except as provided for in subdivision (b)(1) of this section, provided that if the child is a minor, his or her interest may only be effected by a legal guardian appointed by the Probate Division of the Superior Court;
- (4) in the case of a minor or a disabled adult, the custodial parent or the parent who had been providing the primary physical care of the decedent; or, if not applicable, a sole surviving parent, or both parents, of the decedent; or either parent as provided for in subdivision (b)(2) of this section;

- (5) a sole surviving sibling of the decedent or a majority of the surviving siblings except as provided for in subdivision (b)(3) of this section;
- (6) any other family member, in descending order of kinship under the laws of descent and distribution, except that if there is more than one family member of the same degree of relation, a majority of family members of that degree, except as provided in subdivision (b)(4) of this section, may exercise the right of disposition;
- (7) a guardian of the decedent at the time of death;
- (8) any other individual willing to assume the responsibilities to act and arrange the final disposition of the decedent's remains, including the representative of the decedent's estate, after attesting in writing that a good faith but unsuccessful effort has been made to contact the individuals described in subdivisions (1) through (7) of this subsection or that those individuals have waived any interest in exercising their rights under this subchapter;
- (9) the funeral director or crematory operator with custody of the body, after attesting in writing that a good faith effort has been made to contact the individuals described in subdivisions (1) through (8) of this subsection; or

(10) the Office of the Chief Medical Examiner when it has jurisdiction and custody of the body, after attesting in writing that a good faith effort has been made to contact the individuals described in subdivisions (1) through (8) of this subsection.

(b)(1) If there is more than one surviving child of the decedent and a majority of the children is unable to be contacted, less than a majority of the surviving children may make the decisions if they have made prompt, reasonable efforts to contact all other surviving children, prompt efforts to notify them of the proposed decisions, and do not know of any opposition to those decisions.

(2) If one parent is unable to be contacted, the remaining parent may make the decisions if that parent has made prompt, reasonable efforts to contact the other parent and is not aware of any opposition by the other parent to those decisions.

(3) If there is more than one surviving sibling of the decedent and a majority of the siblings is unable to be contacted, less than a majority of the surviving siblings may make the decisions if they have made prompt, reasonable efforts to contact all other surviving siblings, prompt efforts to notify them of the

proposed decisions, and do not know of any opposition to those decisions.

- (4) If there is more than one family member in the highest applicable order of kinship under the laws of descent and distribution and a majority of these family members is unable to be contacted, less than a majority of the surviving family members in this order may make the decisions if they have made prompt, reasonable efforts to contact all other surviving family members in this order, prompt efforts to notify them of the proposed decisions, and do not know of any opposition to those decisions. (c) If the disposition of the remains of a decedent is determined under subdivision (a)(9) of this section and the funeral director or crematory operator has cremated the remains, the funeral director or crematory operator shall retain the remains for three years, and, if no interested party as provided in subdivisions (a)(1) through (8) of this section claims the decedent's remains after three years, the funeral director or crematory operator shall arrange for the final disposition of the cremated remains consistent with any applicable law and standard funeral practices. (d)(1) If the disposition of the remains of a decedent is determined under subdivision (a)(10) of this section, the Office of the Chief Medical Examiner may contract with a funeral director or crematory operator to cremate the remains of the decedent. (2)(A) If the cremation of the decedent is

arranged and paid for under 33 V.S.A. § 2301, the Department for Children and Families shall pay the cremation expenses to the funeral home, up to the maximum payment permitted by rule by the Department for Children and Families. (B) If the cremation of the decedent is not arranged and paid for under 33 V.S.A. § 2301, the Department of Health shall pay the cremation expenses to the funeral home, up to the maximum payment permitted by rule by the Department for Children and Families. (3) **The cremated remains shall be returned to the Office of the Chief Medical Examiner. The Office shall retain the remains for three years, and if no interested party, as described in subdivisions (a)(1) through (8) of this section, claims the decedent's remains after three years, the Office shall arrange for the final disposition of the cremated remains consistent with any applicable law and standard funeral practices. (Added 2007, No. 56, § 1; amended 2009, No. 154 (Adj. Sess.), § 238a, eff. Feb. 1, 2011; 2013, No. 32, § 2; 2015, No. 23, § 45.)**