

1 manner and conditions of disposition, and arrangements for funeral
2 goods and services vests in the following order, provided the person
3 is eighteen (18) years of age or older and of sound mind:

4 1. ~~The person or persons designated in subsection B of Section~~
5 ~~1151 of this title. decedent, provided the decedent has entered into~~
6 a pre-need funeral services contract or executed a written document
7 that meets the requirements of the State of Oklahoma;

8 2. ~~If the deceased was married at the time of his or her death,~~
9 ~~the duty of burial devolves upon the spouse of the deceased. A~~
10 representative appointed by the decedent by means of an executed and
11 witnessed written document meeting the requirements of the State of
12 Oklahoma;

13 3. ~~If the deceased was not married, but left any kindred, the~~
14 ~~duty of burial devolves upon any person or persons in the same~~
15 ~~degree nearest of kin to the deceased, being of adult age, and~~
16 ~~possessed of sufficient means to defray the necessary expenses. The~~
17 surviving spouse;

18 4. ~~If the deceased left no spouse, nor kindred, answering to~~
19 ~~the foregoing description, the duty of burial devolves upon the~~
20 ~~officer conducting an inquest upon the body of the deceased, if any~~
21 ~~such inquest is held; if none, then upon the persons charged with~~
22 ~~the support of the poor in the locality in which the death occurs.~~
23 The sole surviving adult child of the decedent whose whereabouts is

1 reasonably ascertained or if there is more than one adult child of
2 the decedent, the majority of the surviving adult children whose
3 whereabouts are reasonably ascertained;

4 ~~5. In case the person upon whom the duty of burial is cast by~~
5 ~~the foregoing provisions omits to make such burial within a~~
6 ~~reasonable time, the duty devolves upon the person next specified,~~
7 ~~and if all omit to act, it devolves upon the tenant, or, if there be~~
8 ~~no tenant, upon the owner of the premises where the death occurs or~~
9 ~~the body is found~~ The surviving parent or parents of the decedent,
10 whose whereabouts are reasonably ascertained;

11 6. The surviving adult brother or sister of the decedent whose
12 whereabouts is reasonably ascertained, or if there is more than one
13 adult sibling of the decedent, the majority of the adult surviving
14 siblings, whose whereabouts are reasonably ascertained;

15 7. The guardian of the person of the decedent at the time of
16 the death of the decedent, if one had been appointed;

17 8. The person in the classes of the next degree of kinship, in
18 descending order, under the laws of descent and distribution to
19 inherit the estate of the decedent. If there is more than one
20 person of the same degree, any person of that degree may exercise
21 the right of disposition;

22 9. If the decedent was an indigent person or other person the
23 final disposition of whose body is the financial responsibility of

1 the state or a political subdivision of the state, the public
2 officer or employee responsible for arranging the final disposition
3 of the remains of the decedent; and

4 10. In the absence of any person under paragraphs 1 through 9
5 of this section, any other person willing to assume the
6 responsibilities to act and arrange the final disposition of the
7 remains of the decedent, including the personal representative of
8 the estate of the decedent or the funeral director with custody of
9 the body, after attesting in writing that a good faith effort has
10 been made to no avail to contact the individuals under paragraphs 1
11 through 9 of this section.

12 SECTION 2. NEW LAW A new section of law to be codified
13 in the Oklahoma Statutes as Section 1151a of Title 21, unless there
14 is created a duplication in numbering, reads as follows:

15 Any person entitled by law to the right to dispose of the body
16 of the decedent shall forfeit that right, and the right shall be
17 passed on to the next qualifying person as listed in Section 1158 of
18 Title 21 of the Oklahoma Statutes, in the following circumstances:

19 1. Any person charged with first or second degree murder or
20 voluntary manslaughter in connection with the death of the decedent,
21 and whose charges are known to the funeral director; provided,
22 however that if the charges against such person are dropped, or if

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UNDERLINED language denotes Amendments to present Statutes.
BOLD FACE CAPITALIZED language denotes Committee Amendments.
~~Strike thru~~ language denotes deletion from present Statutes.

1 such person is acquitted of the charges, the right of disposition
2 shall be returned to the person;

3 2. Any person who does not exercise the right of disposition
4 within three (3) days of notification of the death of the decedent
5 or within five (5) days of the death of the decedent, whichever is
6 earlier; or

7 3. If the district court, pursuant to Title 58 of the Oklahoma
8 Statutes, determines that the person entitled to the right of
9 disposition and the decedent were estranged at the time of death.
10 For purposes of this paragraph, "estranged" means a physical and
11 emotional separation from the decedent at the time of death that
12 clearly demonstrates an absence of due affection, trust and regard
13 for the decedent.

14 SECTION 3. NEW LAW A new section of law to be codified
15 in the Oklahoma Statutes as Section 1158a of Title 21, unless there
16 is created a duplication in numbering, reads as follows:

17 The district court for the county where the decedent resided may
18 award the right of disposition to the person determined by the court
19 to be the most fit and appropriate to carry out the right of
20 disposition, and may make decisions regarding the remains of the
21 decedent if those sharing the right of disposition cannot agree.
22 The following provisions shall apply to the determination of the
23 court under this section:

1 1. If the persons holding the right of disposition are two or
2 more persons with the same relationship to the decedent and cannot,
3 by majority vote, make a decision regarding the disposition of the
4 remains of the decedent, any of the persons or a funeral director
5 with custody of the remains may file a petition asking the district
6 court to make a determination in the matter;

7 2. In making a determination under this section, the district
8 court shall consider the following:

- 9 a. the reasonableness and practicality of the proposed
10 funeral arrangements and disposition,
- 11 b. the degree of the personal relationship between the
12 decedent and each person claiming the right of
13 disposition,
- 14 c. the desires of the person or persons who are ready,
15 willing and able to pay the cost of the funeral
16 arrangements and disposition,
- 17 d. the convenience and needs of other families and
18 friends wishing to pay respects,
- 19 e. the desires of the decedent, and
- 20 f. the degree to which the funeral arrangements would
21 allow maximum participation by all wishing to pay
22 respect;

1 3. In the event of a dispute regarding the right of
2 disposition, a funeral director shall not be liable for refusing to
3 accept the remains or to inter or otherwise dispose of the remains
4 of the decedent or complete the arrangements for the final
5 disposition of the remains until the funeral director receives a
6 court order or other written agreement signed by the parties in the
7 disagreement that decides the final disposition of the remains. If
8 the funeral director retains the remains for final disposition while
9 the parties are in disagreement, the funeral director may embalm,
10 refrigerate, or shelter the body in order to preserve it while
11 awaiting the final decision of the district court and may add the
12 cost of embalming, refrigeration or sheltering to the final
13 disposition costs. If a funeral director brings an action under
14 this section, the funeral director may add the legal fees and court
15 costs associated with a petition under this section to the cost of
16 final disposition. This section shall not be construed to require
17 or to impose a duty on a funeral director to bring an action under
18 this section. A funeral director shall not be held criminally or
19 civilly liable for choosing not to bring an action under this
20 section; and

21 4. Except to the degree it may be considered by the district
22 court under subparagraph c of paragraph 2 of this section, the fact
23 that a person has paid or agreed to pay for all or part of the
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1 funeral arrangements and final disposition does not give that person
2 a greater right to the right of disposition than the person would
3 otherwise have. The personal representative of the estate of the
4 decedent does not, by virtue of being the personal representative,
5 have a greater claim to the right of disposition than the person
6 would otherwise have.

7 SECTION 4. NEW LAW A new section of law to be codified
8 in the Oklahoma Statutes as Section 1158b of Title 21, unless there
9 is created a duplication in numbering, reads as follows:

10 Any person signing a funeral service agreement, cremation
11 authorization form, or any other authorization for disposition shall
12 be deemed to warrant the truthfulness of any facts set forth
13 therein, including the identity of the decedent whose remains are to
14 be buried, cremated, or otherwise disposed of, and the authority of
15 the person to order such disposition. A funeral establishment shall
16 have the right to rely on such funeral service contract or
17 authorization and shall have the authority to carry out the
18 instructions of the person or persons who the funeral director
19 reasonably believes holds the right of disposition. The funeral
20 director shall have no responsibility to contact or to independently
21 investigate the existence of any next of kin or relative of the
22 decedent. If there is more than one person in a class who are equal
23 in priority and the funeral director has no knowledge of any

1 objection by other members of such class, the funeral director shall
2 be entitled to rely on and act according to the instructions of the
3 first person in the class to make funeral and disposition
4 arrangements; provided that no other person in such class provides
5 written notice of objections to the funeral director.

6 SECTION 5. NEW LAW A new section of law to be codified
7 in the Oklahoma Statutes as Section 1158c of Title 21, unless there
8 is created a duplication in numbering, reads as follows:

9 A funeral director shall have complete authority to control the
10 final disposition and to proceed under this act to recover
11 reasonable charges for the final disposition when both of the
12 following apply:

13 1. The funeral director has actual knowledge that none of the
14 persons described in paragraphs 1 through 7 of Section 1158 of Title
15 21 of the Oklahoma Statutes exist or that none of the persons so
16 described whose whereabouts are reasonably ascertained, can be
17 found; and

18 2. The appropriate public or court authority fails to assume
19 responsibility for disposition of the remains within thirty-six (36)
20 hours after having been given written notice of the facts. Written
21 notice may be delivered by hand, United States mail, facsimile
22 transmission or electronic mail.

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1 SECTION 6. NEW LAW A new section of law to be codified
2 in the Oklahoma Statutes as Section 1158d of Title 21, unless there
3 is created a duplication in numbering, reads as follows:

4 No funeral establishment or funeral director who relies in good
5 faith upon the instructions of an individual claiming the right of
6 disposition shall be subject to criminal or civil liability or
7 subject to disciplinary action for carrying out the disposition of
8 the remains in accordance with the instructions.

9 SECTION 7. This act shall become effective November 1, 2011.

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11 COMMITTEE REPORT BY: COMMITTEE ON JUDICIARY, dated 02-22-2011 - DO
12 PASS, As Coauthored.

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