



# Lechner Funeral Home



**NJ Right to Control Disposition  
Guide**

# Lechner Funeral Home

24 N. Main St.  
Medford, New Jersey 08055  
(609) 654- 2298

*Just like you, we're a family.*



**Richard B Lechner, Manager**  
NJ Lic. No. 3720

**Serving the community  
since 1981**



**Richard B Lechner, Jr.**  
NJ Lic. No. 4872

**Serving the community  
since 2000**

We're a family with values, beliefs, and traditions. We are a proud family, much like yours. We understand the special care families need during their time of loss, and beyond. We understand about families because we are one. We know how important respect and dignity are to a family. That's why we are on a personal level, not because it's our business, but because it's our way of life. As a family-owned and operated home, we take pride in providing you with more personalized services, conducted in comfortable surroundings.

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## Controlling Your Funeral

At Lechner Funeral Home, we encourage you to prearrange and prepay for your funeral. You can acquire a cemetery plot or express where you would like your ashes to be scattered. However, you cannot sign the final authorization for disposition yourself.

New Jersey, as well as other states, has what is called the Right to Control Law (N.J.S.A. 45:27-22). The law, absent what is called a “funeral agent designation” in a Will, outlines a next-of-kin hierarchy depicting who has the right to control the funeral and disposition of a deceased person. The person with the right to control is not necessarily the executor of the Will.

Unless a court of competent jurisdiction has given other directions, the right to control hierarchy is as follows:

- Funeral Agent
- Legal spouse, NJ registered domestic or civil union partner\*
- Majority of surviving children over the age of 18
- Surviving parent(s) of decedent
- Majority of surviving siblings over the age of 18
- Other relatives according to the degree of relationship
- If there are no known living relatives as outlined above, the funeral director may accept the written authorization of other interested parties (i.e., friend, neighbor, colleague)

*\* New Jersey’s Civil Union Law took effect on February 19, 2007. The law mandates that civil union couples must receive the same benefits and protections and be subject to the same responsibilities as spouses in a marriage, whether they derive from statute, administrative or court rule, public policy, common law, or any other source of law. Therefore, the New Jersey Civil Union Law extends the right to control disposition to civil union partners in exactly the same way as it extends this right to spouses.*

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# Funeral Agent

Often, individuals find themselves in situations where they have either out lived all of their relatives, are estranged from living family members, or are sure that those relatives remaining will not abide by their final wishes. Since these individuals are not able to authorize their own cremation or ground burial, what are they able to do?

In New Jersey, individuals have the right to appoint a funeral agent. Once named, these “agents” have the supreme right to arrange for the disposition of an individual’s remains. The funeral agent’s right to control supersedes the rights of all others, including spouses, civil union and domestic partners, children, parents and siblings. (Those traditionally within the right to control hierarchy.)

The executor is not automatically the funeral agent.

## Appointing a Funeral Agent

The funeral agent option is the legal way for you to appoint a specific person to arrange your funeral. Again, the executor is not automatically the funeral agent.

To appoint a valid funeral agent, it must be done in a Will or Codicil. Appointments made any other way are not acceptable. Those interested in appointing a funeral agent need to visit an attorney and inform them that they wish to designate an individual as a funeral agent according to N.J.S.A. 45:27-22.

The attorney will either draw up a Will or amend the existing Will to include language similar to this:

### *Appointment of Funeral and Disposition Representative*

*"I hereby nominate, constitute and appoint [insert name] to serve as my Funeral and Disposition Representative, pursuant to N.J.S.A. 45:27-22. My Representative shall have the authority and power to control the arrangements for my funeral and the disposition of my remains. My Executor shall notify my Representative of this appointment, and shall advise my Representative of the financial means available to carry out the Funeral and Disposition arrangements. In the event [insert name] should predecease me or for some other reason not qualify to serve as my Funeral and Disposition Representative, then I nominate, constitute and appoint [insert name of alternate] as my Funeral and Disposition Representative."*

## **Who can be a funeral agent?**

Executors of estates, friends, clergy members, social workers, specific relatives or others can be named as funeral agents. Funeral directors should NEVER be named funeral agents. If a funeral director is unknowingly designated as a funeral agent, they should waive their rights in writing, and pass them on to another individual.

If you were designated a funeral agent, you are in charge of making the funeral arrangements using money set aside for this purpose in the Will of the deceased. Following death but prior to probate, the executor of the Will must inform you of your appointment as funeral agent and let you know how much money is available for funeral expenses.

If you do not want this responsibility you may appoint someone else to arrange the funeral on your behalf or you may waive your right entirely. If you waive your right, the control of the funeral passes to other individuals in the order outlined in the right to control hierarchy.

## **Who needs a funeral agent?**

Individuals who might consider designating a funeral agent, include persons:

- Who think their relatives will not honor their funeral wishes or prearrangements.
- Who are estranged from relatives.
- Who do not know where the living relatives are located.
- Who do not have any relatives living.

## **Right to Control Forfeiture**

If the decedent had a temporary or permanent restraining order issued, or the surviving spouse or civil union or domestic partner is charged with the intentional killing of the decedent, they do not have the right to control. In these cases, the right to control the funeral and disposition of remains shall be granted to the next person in the next-of-kin hierarchy.

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## **Power of Attorney (Attorney-in-Fact)**

People holding a power-of-attorney (POA) for a relative or friend at the time of death often believe that they have the right to make funeral arrangements for the person after they die. This is not the case.

The POA is not a person. It is a legal document in which one individual (“the principal”) authorizes another individual (“the attorney-in-fact”) to act on their behalf in legal and financial matters. Under the terms of most financial POA documents, a designated attorney-in-fact can prearrange and prepay the principal’s funeral, but they cannot make at-need arrangements. The reason being that the POA document becomes null and void upon the principal’s death.

The attorney-in-fact also cannot make funeral arrangements for another person on the principal’s behalf unless he or she is also an individual, such as a spouse or child, with a relationship to the deceased as outlined in the right to control law (N.J.S.A. 45:27-22).

## **Executor**

Sometimes individuals are lead to believe that an executor of a Will or Estate has the right to control final disposition. This is not true. Being designated an executor means that the individual can control a decedent’s assets, not the final disposition. As a matter of fact, laws governing funeral homes and cemeteries assign only one role to the executor when it comes to disposition—to inform the funeral agent of their appointment in a decedent’s Will, if one in fact had been designated.

The role of an executor is limited to financial matters such as probating the Will, locating the deceased’s property, opening an estate checking account, paying bills (including the funeral bill), filing appropriate tax forms and the like.

The job of the executor ends after meeting all the obligations of the estate and disbursing any remaining inheritances to the next-of-kin and/or other named persons or groups.

## **Guardians**

A guardian may or may not have the right to control final disposition, depending on the powers vested by a probate court. This needs to be determined on a case-by-case basis.

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## **Divorced Spouse**

A divorced spouse has no legal right to control the funeral of a deceased ex-spouse or ex-civil union or ex-domestic partner unless named funeral agent or appointed by a judge. This holds true even if there are children under the age of 18 involved.

## **What if You Can't Agree?**

If you share the primary right to control the funeral with other family members (such as siblings, spouses, parents, etc.) but cannot agree, you may seek a court order that puts you in control.

To do this, ask your attorney to file an expedited order to show cause on your behalf in New Jersey Superior Court, Chancery Division. The attorney can file in the county where the funeral home is located, where the deceased lived, where the deceased died, or where you live.

If you do not have an attorney, try to find a local attorney who is familiar with the control of disposition statute N.J.S.A. 45:27-22. A decision should be reached in a few days. Any opposition will delay the process.

Once secured, your court ordered right to control disposition will supersede the rights of all others, including those of your spouse, parents, brothers, sisters or any other relatives of your deceased parent, even another funeral agent, if so named in the Will.

## **Other Interested Parties**

Other interested parties may control disposition if there are no living relatives. If there are in fact other relatives, they will need to be contacted either by the person wishing to control disposition or the funeral director. If living relatives are known to exist but cannot be found, a court order may be needed to authorize disposition.

Other interested parties will also be required to initial and sign the "Consent for Services by Authorizing Agent" form.

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## Bottom Line

We at Lechner Funeral Home are here to assist you in any way possible with planning your own funeral or the funeral of a loved one. Should any problems arise we will work with you in a sensitive and comforting manner to try and solve any issues regarding right to control disposition.



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