

### **A Will Is NOT A Written Inter Vivos Authorization!**

Licenses who sell or provide cremation services are well aware of the definition of Legally Authorized Person set forth at s. 497.005(43), F.S. That definition establishes the priority of persons able to make decisions regarding a decedent's remains. At the top of the list is, "the decedent, when written inter vivos authorizations and directions are provided by the decedent."



Recently, a lawyer for a family member of a decedent argued that the will, which gave "authorization to make all final arrangements" to a friend of the decedent controlled over the wishes of the decedent's spouse. He also told me that all the Florida funeral homes he has dealt with for his clients have accepted the will as a written authorization to cremate. I informed him that the law requires written "authorizations and directions" and that the will qualifies as "written directions." However, there would still need to be a written cremation authorization before cremation could occur and the wife of the decedent objected to cremation.

No licensee should cremate without a valid cremation authorization, which contains an affirmative statement by the person signing the authorization which says, "I am not aware of any person in my class, or a higher priority class, who objects to the cremation of the deceased's human remains."

Unfortunately for Florida residents and licensees, Florida does not have a "Right to Control Disposition of Human Remains" law like many other states do. Therefore, at present, any person who sets forth their desires in a will or a preneed contract regarding the disposition of their remains has only made a "wish list." A will is not binding on a ch. 497 licensee, written directions in another form are not binding, even a preneed contract (even where the decedent has signed a cremation authorization) can be cancelled after decedent's death per s. 497.460, F.S. and therefore is not binding.

**Takeaway: always require a Cremation Authorization form executed by a legally authorized person who makes the affirmation described above.**

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