

Managing Legal and Financial
Responsibilities Surrounding the

Death of a Loved One



One of the most confusing and conflicting time for many of us is the period surrounding the death of a family member. There are many tasks and decisions to handle – from end-of-life healthcare decisions to arranging for the disposition of bodily remains, from funeral arrangements to handling unpaid bills – all when emotions and stress are high, and time and energy may be low.

These issues are not minor and can be very complicated if there hasn't been adequate advance planning. This Guidebook is designed to help if you are reacting in the critical time surrounding the death of a family member. While there may be many issues you need to resolve, our goal is to provide some clarity by explaining your legal rights and obligations. By helping to organize a few of the details, you may help reduce uncertainty and defuse conflicts for you and your family.

Our goal is to provide a valuable first step to help you resolve your concerns. If you have additional questions after reading this document, your ARAG® legal plan can help. If you have ideas on how to improve this document, please share them with us at Service@ARAGlegal.com

If you're not an ARAG member, please feel free to review this information and contact us to learn how ARAG can offer you affordable legal resources and support.

Sincerely,

ARAG Customer Care Team

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Glossary

Durable Power of Attorney. Written authorization to act on someone else's behalf in financial or property matters.

Fiduciary. A person under obligation to act in another's interest to the exclusion of the fiduciary's own interest.

Health Care Power of Attorney. Written instructions that specify health decisions and actions to be taken in the event that a person is no longer able to make decisions due to illness or incapacity.

Living Will. A written authorization document stating an individual's preferences for healthcare and end-of-life care if severely disabled or suffering terminal illness.

Pay on Death Account . An arrangement created when a person deposits money in his or her own name in a bank account which is made payable to another on the death of the named account holder. This is also known as a "transfer on death account."

Personal Representative/Executor. A person appointed to carry out the terms of a will.

Pre-need Arrangement. Written instruction regarding goods or services that are paid for in advance of need. Generally refers to goods or services that are needed for final disposition of bodily remains.

Transfer on Death Account. See "pay on death account."

Trustee. Someone appointed to hold onto property for the benefit of another.

Honoring Intentions

In the final days before or shortly after your loved one's death, you may be asked to guide or authorize important decisions. Here are documents to look for, what they do and what to expect if they don't exist.

Advance Directive. An Advance Directive appoints someone to make health care decisions for another and offers specific guidance to that person regarding end-of-life care decisions. These documents are commonly known as a "Health Care Power of Attorney" although they may have a different title in your state.

If you are appointed to make serious health care decisions for another, you need to act according to that person's requests. If these issues weren't discussed, you need to act according to what you believe that person would really want done in that critical time. Often there is not a lot of time to weigh alternatives. Important questions to consider include:

- What loss of function would make life too burdensome for this person?
- What procedures would be simply out-of-bounds for this person to have to endure?
- What values guide this person's health care decision-making?

If advance directives don't exist, then state law determines who makes those decisions for your loved one if he or she is unable to do so. Typically, state law sets an order in which family members will receive authority, specifies the procedures for confirming each family member's authority and suggests the procedure for resolving indecision among family members within the same level of priority. See the table [Laws regarding Disposition of Bodily Remains and Funeral Preferences](#) at [ARAGLegalCenter.com](#).

Organ Donation

If your loved one has indicated that he or she wants to donate organs or tissues after death, you are obliged to follow those requests, regardless of your personal beliefs. If preferences in regard to organ donation are not made, state laws permit certain agents and relatives (in a specified order of priority) to make those decisions. Full details on state laws on can be found at www.organdonor.gov/legislation_micro/

Durable Power of Attorney. You may be appointed as agent in a Durable Power of Attorney. After proving your authority to act, you would have authority to access your loved one's accounts. This authority would end at your loved one's death.

Power of Attorney –Account Specific. If you are appointed as the agent with Power of Attorney rights for specific accounts, both you and your loved one have access to the accounts as long as no changes were made in the title. Your access ends at your loved one's death.

Joint Account. If you and your loved have a joint account listed in both your names, you may freely access the account before and after your loved one's death. As a joint account holder, you are free to treat the account as your own after your loved one's death. If this is an account your loved one wants available for post-mortem and pre-probate costs, they may want to consider keeping only sufficient funds available (e.g. \$5,000).

Revocable Trust. If your loved one has a Revocable Trust in which he or she is named as the Trustee and you are listed as a successor Trustee, you will become the Trustee upon your loved one's incapacity or death.

If adequate arrangements have not been made in advance, and the financial affairs for your loved one need to be managed during their incapacity, then guardianship or conservatorship proceedings could be necessary. Be aware

that these proceedings may be costly and time consuming, and may result in appointments of persons as guardians or conservators based on family rank rather than ability or availability.

Exceptions. If you have acted as agent for your loved one (under a Durable Power of Attorney, or as a co-signatory to an account) your authority to act ends at your loved one's death, in almost all instances. Exceptions include:

- You and your loved one are co-owners of an account or asset or joint owners with survivorship rights.
- The agent is listed as the "pay on death" or "transfer on death" beneficiary of an asset. Then the agent, as the succeeding owner, could continue to access and use the account or asset.
- The agent is a Co-Trustee or successor Trustee of a Trust (revocable or irrevocable) set up by the deceased family member.
- In certain states, an agent named in certain planning documents (such as Health Care Powers of Attorney or Declaration for Disposition of Bodily Remains) may carry out a specific directive relating to the disposition of bodily remains.

Death Certificate

A death certificate is typically requested from the issuing authority by the funeral home. You'll want to request multiple copies to cover insurance policies and other notifications. To obtain a death certificate, you may need information such as the deceased's Social Security card, his or her parent's names, mother's maiden name, surviving spouse's name, burial location, occupation at time of death and most recent address.

Making Final Arrangements

If your loved one did not prepare any instructions or pre-need arrangements, then the law of each state assigns responsibility among family members as to who makes decisions regarding the disposition of bodily remains, funeral arrangements and payment. Often these decisions need to be made quickly and without any real sense of costs and available resources.

Further, the ultimate financial responsibility for the costs of bodily disposition and any funeral arrangements will fall on the person who makes those arrangements with the service providers. This is typically an expense that can be charged to and paid out of the estate, if there is an estate opened and if there are enough assets. Look to the laws of the state where the expenses are incurred since the states make cost responsibility assignments. See the table *Laws regarding Disposition of Bodily Remains and Funeral Preferences* at ARAGLegalCenter.com.

An Attorney's Front Line Perspective

"There is ample anecdotal evidence from family after family that these decisions have caused intra-family quarrels over the mode of disposition and the extent of the ceremonials that are necessary. Often the known desires of a deceased family member are overridden on the assertion that "these things are really for the living". But ill-considered arrangements can strain the resources of the family, especially if the deceased family member left a little or no estate. In short, there is a real price to pay for last rites. It is in the best interest of the surviving family members to know who will be responsible for the decisions made."

Chris G.
Dunedin, Florida

What does a funeral cost?

According to the National Funeral Directors Association the average cost of an adult funeral in the US reached \$6,560 in 2010. This does not include any of the costs for matters outside the funeral itself.

¹National Funeral Directors Association, General Price List Survey, 2010

Cremation. If your loved one requested that remains be cremated, you will need to find a pre-need arrangement that documents that choice. If a preference for cremation is not documented, some states require the written consent of the surviving spouse, or if no spouse, then all surviving children.

Consumer protection for funeral expenses

The Federal Trade Commission created a consumer protection rule relating to funeral services, contracts, and pricing disclosures. The Rule, and supporting materials can be found at www.ftc.gov/bcp/rulemaking/funeral/

Specifically, the FTC's Funeral Rule gives consumers the right to:

- Buy goods and services separately. Consumers do not have to buy a pre-packaged arrangement.
- Receive price information on the telephone without giving a name or contact information.
- Receive a list of all items and services offered and the cost of each.
- See a separate container price list. (Outer burial containers are not required by law, but may be required by the cemetery.)
- Receive a written statement showing what's being purchased and its cost.
- Receive a written description of any legal, cemetery or crematory requirement that requires the consumer to buy specific goods or services.

Managing Financial Responsibility

Debt. Nearly everyone will leave behind some lifetime debts, whether a home, credit cards or end-of-life hospital or hospice expenses. The question for surviving family members is whether they have any personal responsibility for those debts (especially if they receive contacts from collection agencies). And, if they have no responsibility, how do they handle payment on debts prior to opening of the estate?

The basic rule on responsibility is this: the lifetime debts of your deceased family member are the responsibility of the deceased family member or his/her estate (whether that estate is a probate estate or an administered trust). In other words, those lifetime debts will be paid by the probate personal representative/executor or the trustee in the course of, and in accordance with the rules of, the state's probate or trust administration procedures.

Lifetime debts are not the personal responsibility of surviving family members. Some debts, however, may become a surviving family member's personal responsibility if they held joint obligations, such as a loan made by both you and your loved one; or a credit card issued to your loved one but also used by you.

Debts Paid by the Estate. State laws create a system of exemptions and debt priorities which affect how much of the estate may be used to satisfy debts and which debts get a higher payment ranking. If there are not enough funds or property in the estate to satisfy all or any of the debts, especially debts not secured by collateral (e.g., debts on credit cards, or for services), those debts will be uncollectible.

Debt Collectors. While debt collectors may potentially contact surviving family members, the estate bears responsibility for payment (if non-exempt assets are available). If contacted, family members are within their rights to decline to assume any responsibility or make any payments. If collection contacts continue, family members may want to consider consulting an attorney to pursue options to end the contact.

Debts Secured by Collateral. Debts that are secured by collateral (such as mortgages or car loans) present a special issue because the collateral might be important to either the estate or to the surviving family members. A family member's voluntary payment of an installment or two in the period prior to opening the estate can prevent foreclosure or repossession. Such payments would be the family member's claim for reimbursement from the estate.

Anyone contemplating such a payment needs to determine if the estate will want to retain this property or if there is a different, specifically named beneficiary for this property. Before making a payment, consider if it is worth it to spend your personal funds for something that may be surrendered or passed directly to another.

In addition, keep in mind that any obligation with a security interest in collateral actually involves two separate things:

- the debt itself (represented by a promissory note or installment contract)
- the security interest (represented by a mortgage on realty or a security interest lien on personal property).

A family member making a payment does not become obligated on the debt but merely is ensuring that there is no basis for taking action under the security interest.

If the terms of the obligation required the owner to maintain insurance on the collateral, it may be possible to maintain the insurance with the estate's formal fiduciaries or with the person who will acquire the collateral.

Unsecured Obligations. If your loved one had unsecured obligations, they are generally not something you or other family members will want to make payments on; however, certain unsecured obligations might well be paid if necessary to protect other assets for eventual estate handling.

For example, if the deceased family member lived in an apartment and had valuable furniture, art or collectibles there, by continuing to pay the rent you would preserve a holding area for those assets. Similarly, making utility payments or keeping alarm services active may protect the residence and property from burglary or damage from cold or heat.

If you or any family member makes voluntary payments, let the payee know, in writing, that making a payment does not indicate an intent to assume personal responsibility. Further, anyone making payments needs to keep full records of payments made, and should advise and be directed by formal fiduciaries once the estate is opened.

Contacting Service Providers. If your deceased family member had entities that provide services to his or her properties (such as utility services or property maintenance) these entities will likely continue to provide services until they are told to discontinue them or a scheduled payment is missed.

In the post-death, pre-estate administration period, if funds are not accessible to pay these service providers, one or more surviving family members will need to make payment, with the expectation that they would be repaid from the estate.

Surviving family members will need to consider what services are necessary to preserve the assets of the estate or to fulfill continuing responsibilities.

- Services that are unnecessary may be canceled according to the service contract.
- Services that are necessary to protect the property, especially if now vacant, or services required under contracts, could be continued. Payments for services need to be properly documented for reimbursement.

Keep in mind that such obligations provide a strong argument for opening the estate administration process as soon as possible so that decisions can be made in light of the estate's total obligations, assets, and the best interests of all beneficiaries.

Obligations Due to a Lawsuit. If your deceased family member was involved in a lawsuit at the time of death, you will need to notify the deceased family member's attorney. If not represented, then you may want to consider contacting an attorney to protect your interests and the interests of the estate, at least until formal fiduciaries are appointed.

Income. In addition to expenses, your deceased family member may have different sources of income that need to be stopped or redirected to the estate or beneficiary.

Shareholder or Partnership Deposits. If your loved one was a key shareholder, member or partner of an entity such as a corporation or limited liability company, then there may be a governing document in place that provides for how the entity needs to adjust. A direct successor may be named, but more likely the estate will be involved. If there is such an artificial entity, then the surviving family members should not attempt to manage those assets but should defer them to the managing persons of the entities or to the estate fiduciaries.

Savings, Checking and Investment Payouts. If your loved one was the sole owner of any savings, checking, or investments accounts, surviving family members will be denied access to funds in those accounts. The institutions will look instead to the estate fiduciaries. Situations when the funds may pass to someone outside of the estate include:

- Ownership in the account was set up using a "pay on death" or "transfer on death" option. The named beneficiary will receive those funds upon death.
- The account is a joint account with survivorship rights named for another family member.

Surviving family members are within their rights to contact the financial institution to confirm whether the particular account had any of these survivorship terms.

Governmental Benefit Payments. Governmental payments such as Social Security benefits, Veterans benefits, unemployment or workers compensation typically end at death. Surviving family members need to notify the payor of the fact and date of death. This will prevent improper payments that would otherwise have to be returned.

Private Entity Payments. The family also needs to notify the payor of the fact and date of death if the deceased family member was receiving payments from private entities such as annuity payments, structured settlement payments, dividends or interest payments, rents, or loan repayments. This will prevent improper payments that would otherwise have to be returned.

Some payments (such as dividends, interest, rents, loan repayments, etc.) are obligations of the payors that will continue after death even if the beneficiary of those payments is someone other than your deceased family member. While access to bank accounts may be blocked, those accounts can likely continue to receive deposits. If a surviving family member receives a payment, it could be safely direct-deposited into the account, with proper documentation of the source so that the funds can be traced for later distribution to a specific beneficiary.

If your deceased family member receives payments on an obligation that is held jointly with a surviving family member, or with an artificial entity (such as a corporation or limited liability company), then the proper handling depends on how the ownership of the obligation is stated. If it is reasonably clear that the obligation is one which remains, at least in part, as one your deceased family member owns, then the payment is the property of the estate to the extent of your deceased family member's ownership.

Trust Payments. If the payment reflects an asset held by a Trust your deceased family member set up, then the payment can be given to the currently acting trustee of the Trust holding the asset. Once a formal estate fiduciary has been authorized, the safest course for handling the payments is to consult with the fiduciary and generally redirect all payments which were your deceased family member's, either solely or jointly.

In general, payments are best seen as property of the estate, not the property of surviving family members, at least until the legal proceedings for handling the estate begin and proper distribution can be made.



Conclusion

The death of a family member not only brings the sense of loss we all can understand, but also can trigger a range of difficult and potentially contentious legal matters and expenses. The law offers some framework for settling those matters and allocating those expenses for the family. By understanding your legal rights and responsibilities, you can help mitigate some of the expense and much of the stress to the rest of the surviving family members.



Checklist

The following checklists, while not comprehensive, can help you organize your loved one's information and create a plan for tasks you may need to manage. Doing so helps ensure your loved one's intentions will be honored, and may help ease stress while dealing with your loss.

Task Checklist

Notify:

- Immediate family and close friends
- Attending physician, coroner or funeral home
- Rabbi, priest or pastor as appropriate
- Attorney, Executor and Agents listed under Power of Attorney or other documents
- Employer, Social Security, Medicare and/or others who provided income
- Fraternal organizations
- Branch of Military Service

Locate the following documents:

- Funeral and disposition wishes
- Wills, codicils and trusts
- Life insurance policies
- Bank and credit union records and investments
- Credit card statements and other bills
- Assets and property deeds
- Partnership agreements and business financial records if applicable
- Death certificate

Arrange for care of:

- Children, elderly parents or other dependents
- Pets
- Perishable property (food, plants, etc.)

Cancel or arrange for:

- Home deliveries
- Mail
- Social media accounts, emails, etc.
- Utilities
- Landlord and/or other living arrangements
- Newspapers and other subscriptions

Make Final Arrangements:

- Arrange for Funeral home, cemetery, burial or cremation, as appropriate
- Plan final services, viewings, wakes or memorials
- Write obituary and distribute to local papers

Manage Financial Obligations:

- Locate safe deposit box(es); follow state specific procedures
- Keep records of all payments for funeral and other expenses
- Investigate Social Security benefits
- Find out about employee benefits
- Consult with an attorney, accountant, financial advisor and/or insurance agent
- Locate any veteran's burial allowance and other benefits
- Notify fire, theft, liability and auto insurance
- Notify life insurance, pension and any employer benefits
- Review credit cards, debts and other installment payments; cancel if appropriate
- Arrange for Trust allocations
- Arrange for final income tax returns and estate tax return

Let us help you

If you need additional help or guidance, ARAG is here for you. Simply contact a Customer Care Specialist who can help you understand the benefits available to you. For more information:



Visit the Education Center at:
ARAGLegalCenter.com, call
1-800-247-4184 or email
Service@ARAGlegal.com







Resources For More Information

The following websites were used as resources in developing this guidebook and provide additional information.

Uniform Law Commission: www.uniformlaws.org

U.S. Department of Health and Human Services: OrganDonor.gov

Uniform Anatomical Gift Act: <http://www.uniformlaws.org/Act.aspx?title=Anatomical%20Gift%20Act%20%282006%29>

National Funeral Directors Association: www.nfda.org

Federal Trade Commission (Specifically, rules relating to funeral services and consumer protections in this area): <http://www.consumer.ftc.gov/articles/0300-ftc-funeral-rule>

Government Accountability Office (Specifically, Report GAO 03-757 and Report GAO 12-65): www.gao.gov/products/GAO-03-757 and www.gao.gov/products/GAO-12-65

Funeral Consumers Alliance: funerals.org

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¹National Funeral Directors Association, General Price List Survey, 2010



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800-247-4184