

**Chapter 8. Right of Disposition of Remains**

**Sec. 801. Purpose.**

The Tribal Executive Board declares that it is the public policy of the Fort Peck Tribes to provide an orderly and uniform system to determine which individuals hold the right to direct and carry out funeral and disposition arrangements for the remains of deceased individuals.

**Sec. 802. Prepaid funeral arrangements - disposition directions - definition.**

(a) A person who is 18 years of age or older and of sound mind, by entering into a prepaid funeral contract with any licensed mortuary or by providing disposition directions may direct the location, manner, and conditions of disposition of the person’s remains and the arrangements for funeral goods and services to be provided upon the person’s death.

(b) The funeral prearrangements that are prepaid and contracted for with a licensed mortuary or the disposition directions may not be canceled or substantially revised unless the cancellation or substantial revision has been ordered by a person appointed by the decedent in the prepaid funeral contract or the disposition directions as the person authorized to cancel or revise the terms of the prepaid funeral contract or the disposition directions.

(c) As used in this section, the term “disposition directions” means:

(1) a video provided in a replayable format of the person who is the subject of the disposition directions in which the person describes the wishes for disposition and that is accompanied by a written attestation of the video accuracy by two witnesses who are a least 18 years of age; or

(2) a legible written instrument signed by the person who is the subject of the disposition directions and by two people who are at least 18 years of age who have witnessed the signing by the person. The written instrument may be but is not limited to a letter of instructions, a will, a trust document, or advance directives. A written instrument that does not name a person with the right to control the decedent’s disposition must follow the priority of rights of disposition provided in Section 1403.

**Sec. 803. Priority of rights of disposition.**

(a) A person who is 18 years of age or older and of sound mind wishing to authorize another person to control the disposition of the person’s remains may execute an affidavit or a written instrument before a notary public in substantially the following form:

“State of Montana     ] ss  
County of .....     ]

I, ..... [person designating another person to control the disposition of the person’s remains] do hereby designate ..... [person who is provided with the right to control the disposition] with the right to control the disposition of my remains upon my death. I ..... have or ..... have not attached specific directions concerning the disposition of my remains with which the designee shall substantially comply, provided the directions are lawful and there are sufficient resources in my estate to carry out the directions. Subscribed and sworn to before

me this ..... day of the month of ..... of the year.....”

(b) Except as provided in Section 1402, Section 1406 and subsection (a) of this section, the right to control the disposition of the remains of a deceased person, including the location, manner and conditions of the disposition and arrangements for funeral goods and services, vests in the following persons in the order named if the named person is 18 years of age or older and is of sound mind:

(1) for a decedent who was on active duty in the armed forces of the United States, a member of the Montana national guard, or a member of the federal reserves of the armed forces of the United States at the time of the decedent’s death, any person named by the decedent as the person with the right to control the decedent’s disposition in a Department of Defense Form 93;

(2) a person designated by the decedent as the person with the right to control the decedent’s disposition in an affidavit or written instrument executed in accordance with subsection (a);

(3) the surviving spouse;

(4) the sole surviving child, if the child is 18 years of age or older, of the decedent or, if there is more than one child, who are 18 years of age or older, of the decedent, the majority of the surviving children who are 18 years of age or older. However, less than one-half of the surviving children, who are 18 years of age or older, may be vested with the rights and duties provided in this section if those surviving children, who are 18 years of age or older, have used reasonable efforts to notify all other surviving children, who are 18 years of age or older, of their instructions and they are not aware of opposition to their instructions on the part of more than one-half of all surviving children who are 18 years of age or older..

(5) the surviving parent or parents of the decedent. If one of the surviving parents is absent, the remaining parent may be vested with the rights and duties provided in this section if that parent’s reasonable efforts have been unsuccessful in locating the absent surviving parent.

(6) the surviving sibling of the decedent or, if there is more than one sibling of the decedent, the majority of the surviving siblings. However, less than one-half of the surviving siblings may be vested with rights and duties provided in this section if those siblings have used reasonable efforts to notify all other surviving siblings of their instructions and they are not aware of any opposition to their instructions on the part of more than one-half of all surviving siblings.

(7) the surviving grandparent of the decedent or, if there is more than one surviving grandparent, the majority of the grandparents. However, less than one-half of the surviving grandparents may be vested with the rights and duties provided in this section if those grandparents have used reasonable efforts to notify all other surviving grandparents of their instructions and are not aware of any opposition to their instructions on the part of more than one-half of all surviving grandparents.

(8) the guardian of the decedent at the time of the decedent’s death, if a guardian had been appointed;

(9) the personal representative of the estate of the decedent;

(10) the person in classes of the next degree of kinship, in descending order, under the laws of descent and distribution to inherit the estate of the decedent. If there is more than one person of the same degree, any person of that degree may exercise the right of disposition.

(11) if the disposition of the remains of the decedent is the responsibility of the Fort Peck Tribes, the public administrator of the Fort Peck Tribes; and

(12) in the absence of any person provided for in subsections (b)(1) through (b)(12), any

other person, including the mortician with custody of the remains, who is willing to assume the responsibility to act and arrange the disposition of the decedent's remains after attesting in writing that a good faith effort has been made to contact the individuals provided for in subsections (b)(1) through (b)(12).

**Sec. 804. Arrangements provided by survivors.**

The provisions of Sec. 1402 and 1403(a) do not prevent the decedent's survivors, in the order listed in Sec. 1403 from pursuing, at their own expense, meaningful services and making arrangements for funeral services that do not conflict with the decedent's instructions for disposition made in accordance with Sec. 1402 and 1403(a).

**Sec. 805. Loss of right of disposition.**

A person entitled to the right of disposition under Sec. 1403 forfeits that right and the right is passed on to the next qualifying person listed in Sec. 1403 under the following circumstances:

(a) the person is charged with murder or negligent homicide in connection with the decedent's death. However, if the charges against the person are dismissed or if the person is acquitted of the charges, the right of disposition is returned to the person.

(b) the person does not exercise the person's right of disposition within 2 days after notification of the death of the decedent or within 3 days of the decedent's death, whichever is earlier;

(c) the person and the decedent are spouses and a petition to dissolve the marriage was pending at the time of the decedent's death; or

(d) the Tribal Court, pursuant to Sec. 1406, determines that the person entitled to the right of disposition and the decedent were estranged at the time of death. For purposes of this subsection, "estranged" means a physical and emotional separation from the decedent existing at the time of death and that existed for a period of time prior to death that clearly demonstrates an absence of affection, trust, and regard for the decedent.

**Sec. 806. Disputes.**

(a) The Court may award the right of disposition to the person determined by the Court to be the most fit and appropriate to carry out the right of disposition and make decisions regarding the decedent's remains if those sharing the right of disposition under Sec. 1403 cannot agree.

(b) The following provisions apply to the Court's determination under subsection (a):

(1) If the persons holding the right of disposition are two or more persons with the same relationship to the decedent and they cannot, by majority vote, make a decision regarding the disposition of the decedent's remains, any of the persons or a mortician with custody of the remains may file a petition asking the Court to make a determination in the matter.

(2) In making a determination, the Court shall consider the following:

(A) the reasonableness and practicality of any proposed funeral arrangements and disposition;

(B) the degree of personal relationship between the decedent and each of the persons claiming the right of disposition;

(C) the desires of the person or persons who are able and willing to pay the cost of the funeral arrangements and disposition;

(D) the convenience and needs of other family and friends wishing to pay respects;

(E) the desires of the decedent;

(F) the degree to which the funeral arrangements would allow maximum participation by all those wishing to pay their respects.

(c) (1) In the event of a dispute regarding the right of disposition, a mortician may not be held liable for refusing to accept the remains or to inter or otherwise dispose of the remains of the decedent or complete the arrangements for final disposition of the remains until the mortician receives a court order or a written agreement signed by the parties to the disagreement that decides the final disposition of the remains.

(2) If the mortician retains the remains for final disposition while the parties are in disagreement, the mortician may embalm or refrigerate and shelter the body, or both, in order to preserve the body while awaiting the final decision of the Court and may add the cost of embalming or refrigeration and sheltering, or both, to the final disposition costs.

(3) If a mortician files a petition under this section for an order of disposition from the Court, the mortician may add the legal fees and court costs associated with the petition to the final disposition costs.

(4) This section may not be construed to require or to impose a duty upon a mortician to bring an action under this section. A mortician may not be held criminally or civilly liable for choosing not to bring an action under this section.

(d) Except to the extent that it may be considered by the Court under subsection (b)(2)(C), the fact that a person has paid or agreed to pay for all or part of the funeral arrangements and disposition does not give that person a greater right of disposition than the person would otherwise have.

(e) The personal representative of the estate of the decedent does not have, by virtue of being the personal representative, a greater claim to the right of disposition than the person would otherwise have under the provisions of this part.

### **Sec. 807. Right to rely.**

(a) A person who signs a funeral agreement, cremation authorization form, or other authorization for disposition must be considered as warranting the truthfulness of any facts set forth in the agreement, form or authorization, including:

- (1) the identity of the decedent whose remains are subject to the disposition; and
- (2) the person's authority to order the disposition.

(b) A mortician may rely on the funeral service agreement, cremation authorization form, or other authorization and may carry out the instructions of the person or persons who the mortician reasonably believes hold the right of disposition.

(c) A mortician is not responsible to contact or to independently investigate the existence of any next of kin or relatives of the decedent.

(d) If a class includes two or more persons who are equal in priority, a mortician may rely on and act according to the instructions of the first person in the class to make funeral and disposition arrangements if another person in the class has not provided to the mortician written notice of the person's objections to the arrangements and the mortician does not have knowledge of any objections to the arrangements by other members of the class.

### **Sec. 808. Immunity.**

A mortuary or mortician who relies in good faith on the instructions of an individual claiming the right of disposition is not subject to criminal or civil liability or subject to disciplinary action

for carrying out the disposition of the remains in accordance with the instructions.  
**(AS PER RESOLUTION NO. 29-1057-2018-11, DATED 11/13/2018)**