

**58-9-605 Disputes.**

- (1) Notwithstanding Sections 58-9-601 through 58-9-604, the probate court for the county in which the decedent resided may:
  - (a) 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
  - (b) make decisions regarding the decedent's remains if those sharing the right of disposition cannot agree.
- (2) The following provisions apply to the probate court's determinations under this section:
  - (a) 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 those persons or a funeral service director with custody of the remains may petition the probate court to make the decision;
  - (b) in making a determination the probate court shall consider:
    - (i) the reasonableness and practicality of the proposed funeral arrangements and disposition;
    - (ii) the degree of the personal relationship between the decedent and each of the persons claiming the right of disposition;
    - (iii) the desires of the person or persons who are ready, able, and willing to pay the cost of the funeral arrangements and disposition;
    - (iv) the convenience and needs of other families and friends wishing to pay their respects;
    - (v) the desires of the decedent; and
    - (vi) the degree to which the funeral arrangements would allow maximum participation by all who wish to pay their respects.
- (3)
  - (a) In a dispute regarding the right of disposition, until the funeral service director receives a court order or other written agreement signed by the parties to the dispute that decides the final disposition of the remains, the funeral service director is not liable for refusing to:
    - (i) accept the decedent's remains;
    - (ii) inter or otherwise dispose of the decedent's remains; or
    - (iii) complete the arrangements for the final disposition of the decedent's remains.
  - (b) If, during a dispute, a funeral service director retains a decedent's remains for final disposition, the director may:
    - (i) embalm or refrigerate and shelter the body, or both, to preserve it while awaiting the final decision of the probate court; and
    - (ii) add the costs incurred under Subsection (3)(b)(i) to the final disposition costs.
- (4) The legal fees and court costs incurred by a funeral service director for petitioning the probate court under Subsection (2)(a) may be added to the final disposition costs.
- (5)
  - (a) This section does not require or impose a duty upon a funeral service director to bring an action under Subsection (2)(a).
  - (b) A funeral service director may not be held criminally or civilly liable for failing to bring an action under Subsection (2)(a).
- (6) Except to the degree that it may be considered by the probate court under Subsection (2)(b)(iii), the fact that a person has paid for or agreed to pay for all or part of the decedent's funeral arrangements and final disposition does not give that person a higher priority to the right of disposition than the person would otherwise have.
- (7) The personal representative of the decedent's estate does not, by virtue of being the personal representative, have a greater claim to the right of disposition than the personal representative would otherwise have.

Enacted by Chapter 144, 2007 General Session