



WILLS, TRUSTS & ESTATES: Plain And Simple

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TALES FROM THE CRYPT: WHO DECIDES WHAT
HAPPENS TO YOUR REMAINS?

Sometimes family members cannot agree on how a loved one's remains should be laid to rest. Imagine the following scenario.

Mom and dad died several years apart and were both cremated in accordance with their desires. They had three children, and the urns containing their ashes currently reside in their son, John's, apartment. John also has the urn containing his mom's cat, Sparky's, ashes in his apartment. John's sister, Harriet, wants dad's ashes buried under first base at Yankee Stadium, and his other sister, Julie, wants dad's ashes scattered someplace in Italy and mom's ashes buried in a cemetery close to home. John, on the other hand, knows that his dad wanted his remains to be kept with mom's remains once they both died, and that mom

wanted to be buried with her beloved Sparky's ashes. John suggests that mom's, dad's and Sparky's ashes all be laid to rest together on a hill in a local pet cemetery overlooking Long Island Sound. What should they do?

What happens to someone's remains after death is governed by the New York Public Health Law. In the absence of a written direction appointing someone to make this decision, the law sets forth a prioritized list of people who have the right to direct the disposition of a person's remains after death. The list of who has priority to make this decision, in descending order, is as follows: (1) the surviving spouse, (2) the surviving domestic partner, (3) surviving children over 18 years of age, and (4) surviving siblings who are over 18 years of age. No matter who has priority, or has been specifically appointed, the courts in New York have made clear that the decision as to the decedent's final resting place must be made in a manner consistent with the decedent's wishes and intent.

In the scenario posed above, to avoid lawsuits and the like among the siblings, John, Harriet and Julie would have to seek the direction of the New York Courts to ultimately determine their parent's final resting place in accordance with the wishes of mom and dad, which may differ. Whether or not you have appointed an agent to make the decision, in order to avoid controversy after your death, you may wish to address your desires in a brief statement in your Will to make your intent for disposition of your remains clear. This may be especially important in circumstances involving second marriages and mixed family situations.

If there is a trusts or estates topic that you would like to know more about, please feel free to email me at pmarcin@farrellfritz.com with your suggestion and I will do my best to cover it in a future column.

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"I'm so glad we updated our wills. Farrell Fritz helped us understand all the recent changes and the best part is, we minimized our estate taxes. I feel so much more secure about our family's future."



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