

40 KAR 2:145. Funeral planning declaration form.

RELATES TO: KRS 311.1911 et seq., 367.93101, 367.93103, 367.93105, 367.93107, 367.93109, 367.93111, 367.93113, 367.93115, 367.93117, 367.93121, 367.97501, 367.97514, 367.97524, 367.97527

STATUTORY AUTHORITY: KRS 367.93101(3)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 367.93101(3) requires the Office of the Attorney General to promulgate administrative regulations to prescribe a funeral planning declaration form. This administrative regulation prescribes the funeral planning declaration form identified in KRS 367.93101(3) and described in KRS 367.93101 to 367.93121, by which an individual declarant may set forth the declarant's preferences regarding the manner of disposition of the declarant's remains.

Section 1. Funeral Planning Declaration. The Funeral Planning Declaration, Form FPD-1, required by KRS 367.93101(3), shall contain:

- (1) The date the declaration is made;
- (2) The name of the declarant;
- (3) A statement providing that the declarant shall be at least eighteen (18) years of age and of sound mind;
- (4) A statement providing that the declarant willingly and voluntarily makes known the declarant's instructions concerning funeral services, funeral and cemetery merchandise, ceremonies, and the disposition of the declarant's remains after the declarant's death;
- (5) A statement that by executing the declaration any previous declaration is revoked;
- (6) Statements informing the declarant of the following concerning a designee:
 - (a) A designee is an individual designated and directed by the terms of the declaration to carry out the declarant's funeral plan or make arrangements concerning disposition of the declarant's remains, funeral services, cemetery merchandise, funeral merchandise, or ceremonies;
 - (b) If the declarant does not designate a designee in the declaration, the declarant shall provide instructions concerning funeral services, ceremonies, and the disposition of the declarant's remains;
 - (c) A person is not considered to be entitled to any part of the declarant's estate solely by virtue of being designated in the declaration to serve as the declarant's designee;
 - (d) The declarant's designee shall not be a provider of funeral or cemetery services, or employed by any entity responsible for providing funeral or cemetery services or disposing of the declarant's remains, unless the designee is related to the declarant by birth, marriage, or adoption;
 - (e) A designee shall not be a witness to the declaration; and
 - (f) If the designee or alternate designee fail to assume an obligation set forth in the Funeral Planning Declaration, Form FPD-1, within five (5) days of notification of the declarant's death, the authority to make arrangements shall devolve pursuant to the terms of the Funeral Planning Declaration, Form FPD-1, or KRS 367.93117;
- (7) If the declarant elects, a statement identifying the name of a designee who shall carry out the instructions that are set forth in the declaration;
- (8) If the declarant elects to name an alternate designee, a statement identifying the name of an alternate designee if the designee is unwilling or unable to act;
- (9) If the declarant elects to not select a designee, a statement that the declarant elects to not select a designee and that the declarant directs that the instructions listed in the declaration for funeral services, ceremonies, and the disposition of the declarant's remains be fol-

lowed;

(10) Instructions for actions to be taken after the declarant's death, indicating by initials or marks beside each instruction selected by the declarant, from the following:

(a) Concerning disposition of the declarant's body, one (1) of the following:

1. The declarant directs that the declarant's body be buried and, if so, where;

2. The declarant directs that the declarant's cremated remains be disposed of by one (1) of the following methods, or, if no method of disposition is selected, the declarant leaves the decision to the designee:

a. By placing the cremated remains in a grave, crypt, or niche and, if so, where;

b. By scattering them in a scattering area; or

c. On private property with the consent of the owner;

3. The declarant directs that the declarant's body be entombed and, if so, where;

4. The declarant directs that the declarant's body be donated as an anatomical gift pursuant to KRS 311.1911, et. seq., if the declarant has not selected another method for donation of the declarant's body; or

5. The declarant intentionally makes no decision concerning the disposition of the declarant's body and leaves the decision to the designee;

(b) Concerning arrangements, any of the following selected by the declarant:

1. The declarant directs that funeral services be obtained and, if so, from whom, or, if no person from whom to obtain funeral services is selected, then the designee may decide;

2. The declarant directs that funeral and ceremonial arrangements are to be made and, if so, providing instructions regarding the funeral and ceremonial arrangements;

3. The declarant directs the selection of a grave memorial, monument, or marker, and, if so, providing instructions regarding the grave memorial, monument, or marker;

4. The declarant directs the selection of funeral and cemetery merchandise and other property for the disposition of the declarant's remains, funeral, or other ceremonial arrangements, and, if so, providing instructions regarding the funeral and cemetery merchandise and other property for the disposition of the declarant's remains, funeral, or other ceremonial arrangements; or

5. The declarant directs that the designee make all arrangements concerning ceremonies and other funeral or burial services;

(c) Any additional instructions requested by the declarant; and

(d) A statement that the declarant directs that the declarant's designee make alternate arrangements to the best of the designee's ability if it is impossible to make an arrangement specified in the Funeral Planning Declaration, Form FPD-1, because:

1. A funeral home or other service or merchandise provider is out of business, impossible to locate, or otherwise unable to provide the specified service; or

2. The specified arrangement is impossible, illegal, or exceeds the funds available or is inconsistent with the terms of the pre-arranged funeral or cemetery contract;

(11) A statement that it is the declarant's intention that the declarant's Funeral Planning Declaration, Form FPD-1, be honored by the declarant's family and others as the final expression of the declarant's intentions concerning the declarant's funeral and the disposition of the declarant's body after the declarant's death, and that the declarant understands the full import of this declaration;

(12) Concerning execution of the Funeral Planning Declaration, Form FPD-1:

(a) The signature of the declarant or another person in the declarant's presence and at the declarant's direction, the signature date, and the city, county, and state of the declarant's residence; and

(b) If applicable, the printed name of the person who signed at the declarant's direction;

(13) The signatures of two (2) witnesses, printed name, and date of signature of each witness, immediately following a statement that each witness believes;

(a) The declarant to be of sound mind and to have willfully and voluntarily executed the Funeral Planning Declaration, Form FPD-1;

(b) That the witness did not sign the declarant's signature or at the direction of the declarant;

(c) That the witness is not a designee of the declarant;

(d) That the declarant signed the declaration in the presence of the witness; and

(e) That the witness is competent and at least eighteen (18) years of age; and

(14) An acknowledgement before a notary public or other person authorized to administer oaths, including the signature and title of the notary public or other person authorized to administer oaths, and the date of the signature, immediately following a statement that the declarant appeared before the notary public or other person authorized to administer oaths and acknowledged that the declarant voluntarily dated and signed the Funeral Planning Declaration, Form FPD-1, or directed the Funeral Planning Declaration, Form FPD-1, to be signed and dated in the declarant's presence, and the date of the acknowledgement.

Section 2. Incorporation by Reference. (1) "Funeral Planning Declaration", Form FPD-1, 04-17, is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Office of the Attorney General, Office of Consumer Protection, 1024 Capital Center Drive, Suite 200, Frankfort, Kentucky 40601, Monday through Friday, 8:00 a.m. to 4:30 p.m. (43 Ky.R. 358, 674; eff. 12-2-2016; 44 Ky.R. 9; eff. 8-4-2017.)