

Disposition of Remains in New York – One Act Passed, but No Resolution Yet

New York, as has the other 49 states, adopted the Uniform Anatomical Gift Act. The act provides that any adult may make an anatomical gift. If no anatomical gift has been designated, the spouse or another family member or guardian may make an anatomical gift. The list of those who may make the decision consists of:

- (1) the donor, if the donor is an adult or if the donor is a minor and is:
 - (A) emancipated; or
 - (B) authorized under state law to apply for a driver's license because the donor is at least old enough to obtain a driver's license;
- (2) an agent of the donor, unless the power of attorney for health care or other record prohibits the agent from making an anatomical gift;
- (3) a parent of the donor, if the donor is an unemancipated minor; or
- (4) the donor's guardian.

The Uniform Anatomical Gift Act preempted Public Health Law § 4201, which provided for a list of those who could make other decisions with regard to the remains of a decedent (other than decisions affecting anatomical gifts). To date, the state legislature has not rectified the situation, but bills are pending to reinstate a policies and procedures for other decisions to be made about a decedent's remains. Once legislation is passed on this issue, an update will be posted on the Morrissey & Morrissey, LLP website.

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