

Digging Deep

Unearthing the Mysteries of
Burial and Cemetery Law



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Introduction

There is no better way to connect with the history of a place than to visit its cemetery. Indeed, when Vermont was first settled in the 1700s one of the first signs of community life was the creation of a cemetery. Many of these early cemeteries still exist today, and a visit to these old burial grounds can tell us a lot about life in Vermont at the time. While most Vermonters will visit a cemetery at one time or another, many people do not realize that most of Vermont's cemeteries are managed by volunteer boards.

There are over 1,900 cemeteries in Vermont, and we ask a lot of our cemetery commissioners and cemetery associations. The laws governing Vermont's cemeteries are complex. They are meant to protect the public health and safety, and also seek to ensure that the individuals who have bought plots and families who have loved ones buried in the cemetery, have a reasonable guarantee that the cemetery will be maintained into the future.

With this publication we hope to assist the many volunteers who oversee our cemeteries by explaining the various rules and requirements that apply to burials and cemeteries in Vermont.

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The epitaphs contained within this publication actually appear on headstones somewhere in the world!

I. Burial Law – Of Grave Concern

A. Bodies may not be buried without proper paperwork.

Vermont law prohibits burying a body without proper paperwork in place. The required paperwork generally includes a death certificate and a burial transit permit. The purpose of these requirements is to create a paper trail that establishes the cause of death and the location of the body or remains. This protects the public health and safety by ensuring that the proper authorities have been notified in the event of possible “foul play,” and that the health department is aware of any possible public health risks associated with the death. In addition, if questions arise about the circumstances of the death, or if a family member or some other interested person wishes to locate the body, the paperwork ensures that this can be easily accomplished.

1. Death Certificate. Before a body is buried or cremated a death certificate is filed with the town clerk in the town where the death occurred. The town clerk will send a certified copy to the Health Department’s vital records division. Beginning in late 2008, all deaths are registered on Vermont’s new Electronic Death Registration System (EDRS). In addition, the Health Department will be introducing a new death certificate that will be printed from the EDRS application.

a. The doctor is responsible for completing the certificate. In most cases a death certificate is filled out by either the physician who attended the deceased person right before his or her death, or by the physician in charge of the patient’s care. The physician may delegate to the funeral director the responsibility of gathering data for, and filling out, all items except the medical certification of cause of death. 18 V.S.A. § 5202. The doctor is responsible for ensuring that the funeral director, or person in charge of the body, has received a completed death certificate within 24 hours of the death.

b. Preliminary report of hospital death form may be filed if attending physician is unavailable. When death occurs to an admitted patient in a hospital and it is impossible to obtain a death certificate from an attending physician before burial or transportation, any physician who has access to the facts may complete and sign a preliminary report of hospital death form. The fact that a preliminary report of hospital death form has been completed will not relieve the attending physician from his or her responsibility of completing a death certificate and delivering it to the funeral director within 24 hours after death. 18 V.S.A. § 5202

c. Unexpected deaths require medical examiner to fill out the death certificate. If the death is unexpected, the medical examiner must review the circumstances of the death and the state’s attorney must be notified and be given charge of the body until he or she feels it is appropriate to release it for disposition. The law provides: “When a person dies from violence, or suddenly when in apparent good health or when unattended by a physician or a recognized practitioner of a well-established church, or by

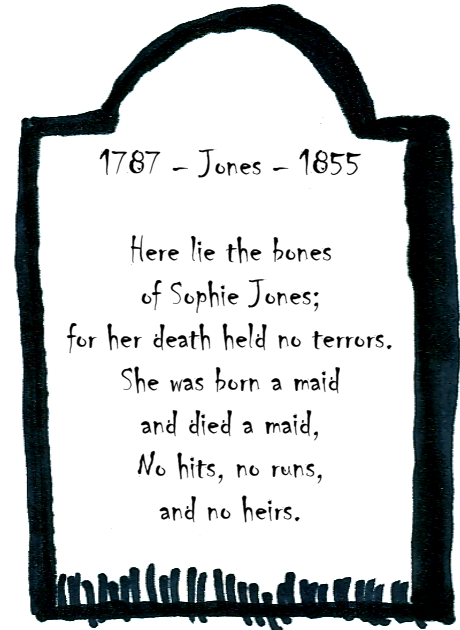
casualty, or by suicide or as a result of injury or when in jail or prison, or any mental institution, or in any unusual, unnatural or suspicious manner, or in circumstances involving a hazard to public health, welfare or safety, the head of the household, the jailer or the superintendent of a mental institution where such death occurred, or the next of kin, or the person discovering the body or any doctor notified of the death, shall immediately notify the medical examiner who resides nearest the town where the death occurred and immediately upon being notified, such medical examiner shall notify the state's attorney of the county in which the death occurred. The state's attorney shall thereafter be in charge of the body and shall issue such instructions covering the care or removal of the body as (s)he shall deem appropriate until he releases same." 18 V.S.A. § 5205.

After the medical examiner and a designated law enforcement officer investigate the death, the medical examiner shall complete and sign a certificate of death unless the cause and manner of death is uncertain. He and the designated law enforcement officer shall each submit a report of investigation to the state's attorney and the chief medical examiner. If, however, the cause or circumstances of death are uncertain (s)he shall immediately so advise the state's attorney of the county where the death occurred, and notify the chief medical examiner. 18 V.S.A. § 5205.

If it is deemed necessary, the state's attorney or chief medical examiner may order an autopsy to be performed by the chief medical examiner or under his or her direction. Upon completion of the autopsy the chief medical examiner shall submit a report to such state's attorney and the attorney general and shall complete and sign a certificate of death. 18 V.S.A. § 5205.

d. Death certificate must be delivered within 24 hours of death and then filed within 24 hours thereafter. The physician or person filling out the certificate of death must deliver it to the family of the deceased or to the person who has charge of the body within 24 hours after the death.¹ The death certificate should be filed with the town clerk where the death occurred within 24 hours of its delivery to the person who has charge of the body. This means that the death certificate should generally be filed within two days of the event. 18 V.S.A. § 5202.

e. A death certificate may be corrected within six months. A death certificate may be corrected or completed within six months of the date of the death upon



¹ Note that 18 V.S.A. § 5207 says that a death certificate must be furnished to the family or custodian of the body within 36 hours of the death. However, we believe that this was a legislative drafting oversight. In other parts of the statute the 36 hour requirement had been amended to 24 hours, and 18 V.S.A. § 5206 provides penalties for a physician who fails to furnish the certificate within 24 hours.

application by the certifying physician, medical examiner, hospital, nursing home or funeral director. 18 V.S.A. § 5202a. A town clerk may choose to refuse an application for correction or completion in which case the applicant may petition the probate court to permit the correction or completion. After the six months only the probate court may order a correction or amendment of a death certificate. However, only the medical examiner or the certifying physician may apply to correct or complete the certificate as to the medical certification of the cause of death. 18 V.S.A. § 5202a.

2. “Certificate of permission” is required before burial, entombment or removal is permitted.²

The law provides that “if it is desired to bury, entomb or otherwise dispose of a dead body within the limits of a town where the death occurred, the certificate of permission shall state plainly the time, place and manner of such burial, entombment or disposition.” 18 V.S.A. § 5210. The law also makes it clear that a cemetery, tomb or receiving vault may not receive or permit the burial or entombment of a dead body, or human remains, or the removal of a body unless he or she is presented with a “certificate of permission” to bury, entomb or remove the body. 18 V.S.A. § 5214.

a. Certificate issued after death certificate has been filed. After a death certificate has been filed with the town, the officer or person receiving the death certificate must immediately issue a certificate of permission for burial, entombment or removal of the dead body under legal restrictions and safeguards. 18 V.S.A. § 5207.

b. Certificate issued for body to be removed from town. If a dead body is to be moved from the town where the death occurred, the certificate of permission must contain the essential facts contained in the certificate of death on which it is issued, and shall accompany the body to its destination, and may be accepted as a permit for burial or entombment by a sexton or other person having the care of a cemetery, burial ground, tomb or receiving vault.

3. The burial-transit permit. A dead body may not be buried, entombed or removed from a town, or otherwise disposed of, except as provided by statute, without a burial-transit permit issued and signed by the municipal clerk, a county clerk or a deputy clerk for the town or unorganized town or gore where the dead body is located, a funeral director licensed in Vermont, and owner or manager of a crematorium licensed in Vermont who is registered to perform removals or a law enforcement officer. 18 V.S.A. § 5201. The town clerk may issue a burial-transit permit after receipt of a death certificate or a preliminary report of death form. The purpose is to track the disposition of the body to ensure that the town knows where deceased persons are laid to rest.

a. Town clerk must ensure deaths can be registered and burial-transit permits issued when the office is closed. The clerk of the

²Although the law refers to two separate certificates: a “Certificate of Permission” to bury and a “Burial-Transit permit,” these two certifications have been combined in the burial transit permit.

municipality shall provide for issuing burial-transit permits at a time when town clerks' offices are closed. The clerk must appoint one or more deputies for this purpose. The name of the deputy or deputies must be recorded in the town records and the commissioner of health must be notified of the names and residences of the deputy or deputies appointed. Note that in an unorganized town or gore the county clerk shall perform the same duties and be subject to the same penalties as a town clerk in respect to issuing burial-transit permits and registering deaths that occur in an unorganized town or gore within the county. Note that a licensed funeral director or owner or manager of a crematory authorized to perform removals may issue a burial-transit permit for any municipality or unorganized town or gore at any time, including during the normal hours of a municipal clerk.

b. Permits issued by someone other than the clerk must be forwarded to the clerk by the next business day. After a burial-transit permit is issued the person who issued the permit shall forward the death certificate or preliminary report and the record of the burial-transit permit to the municipality or county, in the case of an unorganized town or gore, where the death occurred on the first official working day thereafter.

c. Burial-transit permit may be issued to next of kin for home burial or transport to another town or state for burial. In Vermont the next of kin may choose to bury their family member at home or to transport the body or remains to another state for cremation or burial. In this situation they will be required to obtain a burial-transit permit. See section below on Home Burials.

4. Local health officer must get involved when cause of death is certain communicable diseases. In cases of death by certain communicable diseases, no burial-transit permit may be issued except in accordance with instructions issued by the commissioner of health.

5. Temporary removal of bodies without permit is permitted in some circumstance.

a. Bodies may be temporarily removed from a town without a permit to be prepared for burial, cremation or entombment. “A licensed embalmer, funeral director or a funeral director's designee may transfer the body of a deceased person to another town for preparation for burial or cremation but the remains shall be returned to the town in which death occurred within 48 hours after such removal, unless a permit for permanent removal has been secured within such period.” Health Department forms that include the name, address, license number of the embalmer or funeral director and the date and hour the body was delivered, with the institution from which or the person from whom the body was received, must be completed prior to removing the body. 18 V.S.A. § 5201.

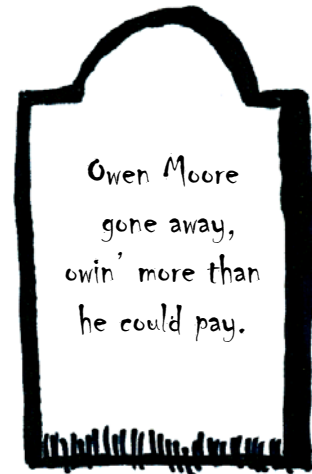
b. Body may be moved through a town for funeral service without additional permits. Once a burial-transit permit has been secured, the body may be

taken through or into another town for funeral services without additional permits from the local health officer or commissioner, except when the death occurred as a result of a communicable disease. 18 V.S.A. § 5201.

6. Cremation must wait for medical examiner certification that no further inquiry into cause and manner of death is necessary. When a person has died in Vermont the person in charge of the body may not release it for cremation until the person has received a certificate from the chief, regional or assistant medical examiner that the medical examiner has made personal inquiry into the cause and manner of death and is satisfied that no further examination or judicial inquiry concerning it is necessary. Upon request of a funeral director, the person in charge of the body or the crematory operator, the chief medical examiner must issue a cremation certificate after the autopsy has been completed. The certificate shall be retained by the crematory for a period of three years. The person requesting the cremation must pay the health department a fee of \$25. 18 V.S.A. § 5201(b).

7. Temporary burial-transit permit may be issued in some circumstances. If a dead body must be removed immediately and a death certificate or preliminary report cannot be obtained, the town clerk, deputy or law enforcement officer may issue a temporary burial-transit permit which will expire 48 hours after it is issued. This does not relieve the attending physician from the responsibility of completing a death certificate and delivering it to the funeral director within 24 hours after death. When the death certificate is received, the funeral director must apply for, and the issuing authority must issue, a burial-transit permit to replace the temporary permit. 18 V.S.A. § 5202.

8. Death certificate for member of the armed forces. When there has been an official notification of a death of a member of the armed forces while serving outside the country, not including U.S. territories, and when the remains of the member are not returned to this country, the next of kin or an interested person may file with the clerk of the town of the residence of such member a certificate of death. 18 V.S.A. § 5203. The certificate must be made on a Health Department form and must set forth the name, date of birth, and date of death, if the same can be determined, the names of the parents of the deceased and such other information as may be deemed pertinent by the office of the adjutant general. After the certificate is filed with the town clerk, the clerk must forward a certified copy of the death certificate to the adjutant general. 18 V.S.A. § 5204.



9. Bodies from out of state must have required paperwork. Whenever a dead body is brought into this state for burial or entombment it must be accompanied by a removal permit issued under the laws of the state from which such body is brought. This paperwork will be sufficient authority for burial. If a body is not accompanied by such permit, the person in charge of the body must apply to the clerk of the town in which such body is to be buried for a burial permit, and the clerk must issue such permit when furnished with such

information as is required by law of this state as to the identity and cause of death of a person dying in this state. 18 VSA § 5209.

10. Removal of a body and/or remains requires removal permit and notice. When a person wishes to disinter or remove a body from one cemetery to another cemetery or to another part of the same cemetery or from a tomb or receiving vault elsewhere, he or she must apply to the clerk of the municipality where such dead body is interred or entombed for a removal permit. 18 V.S.A. § 5212.* The applicant for the removal permit must publish notice of his or her intent to remove the remains for two successive weeks in a newspaper of general circulation in the town in which the body is interred or entombed. The notice must include a statement that the spouse, child, parent or sibling of the deceased, or the cemetery commissioner or other municipal authority responsible for cemeteries in the municipality may object to the proposed removal by filing a complaint in the probate court of the district in which the body is located. 18 V.S.A § 5212a. This provision does not apply to the removal of historic remains and removal of remains from unmarked burial sites. See 18 V.S.A. § 5217.

*The law does not limit who may apply to remove a body. However, it is generally a family member, or the cemetery association or the owner of land on which an old burial ground is located.

**There is a question of whether this statute applies to removal of cremated remains that have been buried or interred. Although the law refers to “removal of bodies” in its title, the language of the law refers to the removal of “remains.” Cremated remains are human remains, and those that have buried or interred those remains in a cemetery have the same interest in knowing of, and possibly objecting to their removal. Consequently, the safest course of action would be to require the process in this statute to be used when cremated remains that have been buried or interred are to be removed. (Of course this will not apply to cremated remains that are kept by the next of kin, that are scattered or that are otherwise disposed of.)

a. Clerk issues permit after 45 days unless objection is filed. The town clerk must issue a removal permit 45 days after the date on which notice was last published unless an objection is made in accordance with law, in which case the clerk must issue the permit upon order of the court. 18 V.S.A. § 5212.

b. Next of kin may object to removal. The list of people entitled to object to the removal includes a spouse (by marriage or civil union), child, parent or sibling of the deceased. There is no case law to tell us whether this list will include stepchildren or stepparents. The probate court will grant the request to remove the body unless it is contrary to the expressed intent of the deceased or the surviving spouse. If there is no surviving spouse then the court will consider the objections of the surviving adult children. If there is no surviving spouse or adult children the court will consider the objections of the

surviving parents; and if there are no surviving parents, adult children or spouse, the court will consider the objections of any surviving siblings of the deceased. 18 V.S.A. § 5212a.

c. Clerk may immediately issue removal permit in some circumstances. Notwithstanding the notice provisions of the law, the clerk must issue a removal permit upon application when the removal is necessary because of temporary entombment; or when required by a federal, state, county or municipal official acting pursuant to official duties; or if the applicant has written permission to remove the remains from all persons entitled to object under the law. 18 V.S.A. § 5212.

d. Removal permit must state where the body is to be moved. A removal permit must state specifically where the body is to be buried, cremated or entombed and the time and manner of its removal. A town clerk issuing such a permit shall make it in duplicate if the body is to be removed from the town, one copy of which must be delivered to the person having charge of the cemetery or tomb from which the body is to be taken and the other must be delivered to the person having charge of the cemetery or tomb where the body is to be taken. 18 V.S.A. § 5213.

e. Special rules apply to removal of remains from unmarked burial sites. The commissioner of housing and community affairs may establish rules governing the excavation and removal of remains from unmarked burial sites and the use of money from the Unmarked Burial Site Special Fund, The commissioner must approve any process developed through consensus or agreement of the interested parties, including the municipality, the governor's advisory commission on Native American affairs, and private property owners of property on which there are known or likely to be unmarked burial sites. The process must include methods for determining the presence of unmarked burial sites, including archaeological surveys and assessments and other nonintrusive techniques, methods for handling development and excavation on property on which it is known that there is or is likely to be one or more unmarked burial sites, options for owners of property on which human remains in unmarked burial sites are discovered or determined to be located, procedures for protecting, preserving or moving unmarked burial sites and human remains, and procedures for resolving disputes. 18 V.S.A. § 5212b.

11. Cemetery must, each month, certify and return burial-transit and removal permits to clerk. A sexton or other person having charge of a cemetery, tomb or receiving vault, during the first week of each month, shall deliver to the clerk of the town in which such cemetery, tomb or vault is located the burial-transit and removal permits, properly certified, which (s)he received during the preceding month. 18 V.S.A. § 5215.

B. Penalties for unauthorized burial, transit or removal.

The law provides that “A person who buries, entombs, transports or removes the dead body of a person without a burial-transit or removal permit, or in any other manner or at any other time or

place than as specified in such permit, shall be imprisoned not more than five years or fined not more than \$1,000.00, or both.” 18 V.S.A. § 5211.

“A sexton or other person having charge of a cemetery, tomb or receiving vault who permits the burial or entombment of a body without a certificate of permission, or who fails to return the properly certified permits to the clerk each month shall be fined not more than \$500.00 nor less than \$20.00.” 18 V.S.A. § 5216.

C. Embalming is not required.

There is no general rule that bodies must be embalmed prior to burial. The Attorney General’s Office issued an opinion in 1974 that reaffirmed this fact. However, the opinion also mentions the power of the local board of health and town health officer to regulate burial for purposes of abating public nuisances. The board of health may order embalming if it believes that otherwise there would be a threat to the public health. 1974 Op. Atty. Gen. 127.

D. Legal requirements for disposing of the remains of the dead.

1. The law limits how the remains of the dead may be disposed. “The permanent disposition of the remains of the human dead shall be by interment in the earth or deposit in a chamber, vault or tomb formed wholly or partly above the surface of the ground of a cemetery conducted and maintained pursuant to the laws of the state, by deposit in a crypt of a mausoleum or by cremation.” 18 V.S.A. § 5319(a).

2. Burial must generally be at least five feet deep. “No interment of any human body in the earth shall be made unless the distance from the bottom of the outside coffin shall be at least five feet below the natural surface of the ground, excepting only infants under four years of age, whose bodies shall be so interred that the bottom of the outside coffin enclosing them shall be at least three and one-half feet below the natural surface of the ground.” 18 V.S.A. § 5319(b).

3. Bodies may not be deposited in a mausoleum, vault or above ground tomb unless it meets statutory requirements. “No deposit of the remains of the human dead shall be made in a single chamber, vault or tomb wholly or partly above the surface of the ground unless the part thereof below the natural surface of the ground be of a permanent character, constructed of materials capable of withstanding extreme climatic conditions, be waterproof and air tight, and can be sealed permanently so as to prevent all escape of effluvia. That portion of the same above the natural surface of the ground shall be constructed of natural stone of a standard not less than that required by the United States government for monuments erected in national cemeteries, of durability sufficient to withstand all conditions of weather, and of a character to insure its permanence.” 18 V.S.A. § 5319(c).

4. State law does not limit the disposition of cremated remains. The law does not limit how a family may choose to dispose of cremated remains. Indeed, the family may keep the urn of cremated remains on their mantelpiece, or they may sprinkle the cremated remains where they or the deceased has expressed a wish to do so. The law provides that “The remains of a human body after cremation may be deposited in a niche of a columbarium, in a crypt of a mausoleum, be buried or disposed of in any manner not contrary to law.” 18 V.S.A. § 5319(a).

a. Proper paperwork is required before a body is to be cremated. A burial-transit permit must be obtained before a body is taken to be cremated. A medical examiner’s permit to cremate is also required to ensure that there are no more questions about the cause of death. 18 V.S.A. § 5201. Generally, the crematory certifies and files the burial-transit permit with the town clerk, however if the cremated remains are to be buried, the cemetery should keep a record of this as well.

b. No permit is required for scattering cremated remains. No law requires a permit for scattering the cremated remains of a body.

E. Rules for burials of paupers.

1. State burial. When a person who is receiving public assistance under Title IV or XVI of the Social Security Act, or nursing home care under Title XIX of the Social Security Act, or assistance under state aid to the aged, blind or disabled, or an honorably discharged veteran of any branch of the U.S. military forces to the extent funds are available and to the extent authorized by department regulations, or who is in the custody of a state institution, or who is an honorably discharged veteran, dies in Vermont, the department of human services (or the agency that has custody of the individual) will pay the burial expenses up to a certain cost to be determined by the department of human services.

2. Town burial. When a person other than one described in the section above dies without sufficient known assets to pay for burial, the burial shall be arranged and paid for by the town. The department of human services will reimburse the town up to \$250.00 for expenses incurred. 33 V.S.A. § 2301. In all other cases the department of human services will arrange for and pay for the burial of individuals who die in this state or residents of this state who die elsewhere, when they do not have known assets to pay for their burial.

3. Use of body to advance science. Under certain circumstances described in statute, prior to burial, the body of a person who dies without sufficient assets to pay for a burial may first be delivered to a physician for the advancement of anatomical science. 33 V.S.A. § 2301.

4. Headstone required. When a pauper dies in town and is to be buried there, the town must provide a suitable headstone, if one is not otherwise available through family, friends, or the estate. 18 V.S.A. § 5371. The marker or headstone must be erected within three years of the

date of burial, and must include the name of the deceased and the dates of birth and death, if they are known.

F. Rules for disposition of fetal remains.

There are special rules governing the disposition of fetal remains which are found in 18 V.S.A. § 5224.

1. Fetal remains may be disposed of by burial, cremation or in another manner that will not create a public health hazard. Fetal remains shall be disposed of by burial or cremation unless released to an educational institution for scientific purposes or disposed of by the hospital or as directed by the attending physician in a manner which will not create a public health hazard. Permission shall be obtained from one of the parents, if competent, for disposition in all cases where a funeral director is not involved. 18 V.S.A. § 5224.

2. Death report must be completed by physician or medical examiner to permit final disposition of the fetal remains. A copy of the fetal death report must be printed in such manner that completion and signing by the physician or medical examiner shall constitute permission to make final disposition of the fetal remains. 18 V.S.A. § 5224.

3. Proper paperwork must be submitted when fetal remains are to be buried or cremated. The law provides that “When a funeral director is involved or when the fetal remains are to be privately buried or disposed of by a commercial crematory, the funeral director or other person taking charge of the remains shall obtain from the hospital or physician the disposition permit portion of the report and shall deliver it to the sexton or other person having care of the cemetery, tomb, vault, or crematory before burial or other disposition takes place.” These permits must be delivered each month to the clerk of the town in which burial or disposition took place, in the same manner as permits for burial of dead bodies. 18 V.S.A. § 5224.

4. When fetal remains are disposed of by a hospital they must submit a report to the health commissioner. When disposition of fetal remains is by means other than private burial or cremation and a funeral director is not involved, the disposition permit copy of the report shall be completed by the appropriate official of the hospital or by the physician or other person in charge of disposition and sent to the commissioner of health within ten days of such disposition. These permits may be destroyed after five years. 18 V.S.A. § 5224.

II. Cemetery Law – Tales from the Crypt

A. General rules for cemeteries.

1. Definition of cemetery: A "cemetery" is "any plot of ground used, or intended to be used, for the burial or disposition permanently of the remains of the human dead in a grave, a mausoleum, a columbarium, a vault, or other receptacle." 18 V.S.A. § 5302.

2. The authority of a cemetery is narrowly drawn: The object, purposes and activities of a cemetery shall be restricted only to those acts that are necessary to enable it to accomplish the purposes for which it is created. 18 V.S.A. § 5303.

3. Cemeteries may not act for individual profit or gain. There is no such thing as a "for-profit" cemetery in Vermont. The law provides that "A cemetery may not be conducted for the purpose of private gain either directly or indirectly to any of the members of the agencies engaged in such business." 18 V.S.A. § 5303.

4. Cemeteries may be operated by religious and ecclesiastical societies, cemetery associations and by municipalities. There are three kinds of cemeteries in Vermont; those operated by a municipality, those operated by a cemetery association (an "incorporated cemetery") and those operated by a religious institution or ecclesiastical society. The law was written to ensure that old cemeteries that were organized prior to 1933 continued to be lawful, even if they did not technically comply with current requirements of law. 18 V.S.A. § 5303. However, the law is clear that "every cemetery established after June 1, 1933, which is not owned and operated by a town or by a religious or ecclesiastical society must be established, owned and operated by a cemetery association." 18 V.S.A. § 5431. Note that the law also recognizes private burial grounds which are generally a portion of private land that has been used as a family burial ground. 18 V.S.A. § 5322.



5. Burial records are open to the public.

Whether a cemetery, community mausoleum or columbarium is municipal, incorporated or religious, the cemetery must make the record of burials, interments and cremations available for public inspection at all reasonable times. 18

V.S.A. § 5313. The agency must provide and maintain a suitable place to keep and preserve the records and files of such cemetery, community mausoleum or columbarium, preventing their loss and destruction. 18 V.S.A. § 5313.

B. Town cemeteries.

Town cemeteries are also referred to as public burial grounds. A town is not required to provide a public burial ground for the residents of the town. However, many towns choose to create and maintain a town cemetery. The town cemetery functions like a department of the town and those who manage it are subject to the laws that apply generally to municipalities including town personnel policies, the open meeting law and access to public records laws.

1. Towns may establish and enlarge its cemeteries. To establish or enlarge a municipal cemetery the town must begin by acquiring the necessary land. The law permits the selectboard to accept land for a cemetery by gift or grant, or land may be purchased by the town. 18 V.S.A. §§ 5481, 5361.

a. Voter approval will generally be necessary to establish or enlarge a cemetery. Because starting or enlarging a cemetery generally costs money, in most cases the selectboard or cemetery commissioners will need to go before the voters to ask for them to appropriate the necessary funds to pay for new land and the costs of maintaining the cemetery. If a town must purchase property for a cemetery, unless there is already money in the budget or in a designated fund to support the purchase, the selectboard must warn an article for a special or annual town meeting to appropriate the money that will be needed to pay for the land.

b. Eminent domain can be used to obtain land. If the town believes that a particular parcel of land is necessary for cemetery purposes, but it cannot come to an agreement with the landowner about its purchase, the law permits the town to exercise its right of eminent domain. To take land by eminent domain the town must follow the same process that is used to lay out a highway. 18 V.S.A. § 5482-5483.

c. Residents may require selectboard to consider establishing or enlarging a cemetery. If three or more residents of the town apply in writing to the selectboard, asking the board to lay out or enlarge a public burial ground, with a description of the land they believe would be necessary for the purpose, the selectboard must conduct a hearing to consider the request. The board should hold a public hearing on the matter and should issue a decision that considers whether the public good would require granting the application. If the board denies the request, the residents may appeal the decision to district court. The district court will appoint commissioners to make a determination of public necessity and will decide whether to order the town to establish or enlarge the cemetery as requested. 18 V.S.A. § 5483. 19 V.S.A. Chapter 7.

2. Selectboard or cemetery commissioners control town cemeteries. The selectboard of a town has oversight and control over the public burial grounds unless the town has voted to elect cemetery commissioners. Once a town votes to elect cemetery commissioners, those commissioners will be responsible for the care and management of the town cemeteries. They will be authorized to “exercise all the powers, rights and duties with respect to such care and management” and the selectboard will no longer be responsible for

overseeing and managing the town cemeteries. 18 V.S.A. § 5373. If the voters later change their mind, they may vote to put the responsibility for the town cemeteries back under the control of the selectboard, at which time the office of cemetery commissioner will cease. 18 V.S.A. § 5381.

a. Cemetery commissioners are elected by the voters. When a town votes to place its public burial grounds under the charge of cemetery commission, it must decide whether it will elect a board of three or a board of five commissioners. The voters may vote to enlarge a three member board to five, or reduce a five member board to three. Boards with five commissioners serve five-year staggered terms (so that only one new commissioner is elected each year.) Boards with three commissioners serve three-year terms, staggered so that one new board member is elected each year. 18 V.S.A. § 5374. Cemetery commissioners must be voters in the town where they serve. 17 V.S.A. § 2646.

b. Commission vacancies are filled by the remaining commissioners. Unlike the general law that permits the selectboard to fill vacancies in town offices, there is a specific law that applies to filling vacancies on the cemetery commission. The law provides that vacancies on the board may be filled by the remaining commissioners until the next annual meeting. 18 V.S.A. § 5374.

c. Commission may only act by majority vote. Individual cemetery commissioners have no independent authority to act on behalf of the board. Rather, the board may only take action by agreement of the majority. 1 V.S.A. § 172. The board of cemetery commissioners may draw orders on the town treasurer to pay the expenses of the cemetery from money appropriated to it by the town, and from trust funds established for the care and management of the cemetery (See Finance section below). 18 V.S.A. § 5385.

d. The open meeting law will apply to cemetery commission meetings. The open meeting law requires all meetings of a public body to be open to the public. 1 V.S.A. § 310 et seq. Indeed, whenever a quorum of a public body meets to discuss the business of the board, it must be at a publicly announced open meeting. Vermont's open meeting law has three basic requirements. All public bodies that hold meetings must provide notice of the meeting (including an agenda), provide the public with an opportunity to participate in the meeting, and minutes of the meeting must be taken in order for a record of the business of the meeting and actions taken to be available at a later date. Routine day-to-day administrative matters that do not require action by the public body may be conducted outside a duly warned meeting, provided that no money is appropriated, expended, or encumbered. 1 V.S.A. § 312(g). For more information about the open meeting law please refer to the *Pocket Guide to Open Meetings*, which can be obtained from the Secretary of State's office by calling 802-828-2148, or online at <http://www.sec.state.vt.us/municipal/handbooks.htm>.

e. Penalty for willful disregard of duties. A selectboard member or cemetery commissioner who willfully disregards his or her duties will be subject to a penalty of up to \$200. 18 V.S.A. § 5363.

3. A town may construct temporary receiving vaults. The voters may vote (at a regular or special town meeting, duly warned for that purpose) to permit the town to construct and maintain, on town land, temporary receiving vaults for the temporary disposition of dead bodies. Bodies placed in the temporary receiving vault may only remain there for a period not to exceed one year. 18 V.S.A. § 5320.

4. Bylaws. The cemetery commission or selectboard may make and change necessary bylaws and regulations relating to the burial grounds, and interment of the dead so long as it is not inconsistent with law. 18 V.S.A. § 5378. The bylaws and regulations must be recorded in the office of the town clerk, and no bylaw or regulation may restrain a person in the free exercise of his religious sentiments as to the burial of the dead. 18 V.S.A. § 5378. This means that if an individual makes a special request due to a religious belief or practice, it is advisable for the board or commission to first consult with its attorney to determine whether the bylaws or regulations unduly restrict the exercise of religion, or whether there is a reasonable public health or safety reason to deny the request.

5. Public report and audit. Every year the board or commission must provide a written report to the town auditors as to the condition and needs of the burial grounds under its charge and of its doings, including a detailed statement of its receipts and expenditures and of the amount and disposition of the funds in its hands or subject to its control. 18 V.S.A. § 5379. The town auditors must audit this statement, file it in the office of the town clerk and include it in whole or in summary in their annual report. 18 V.S.A. § 5380.

6. Finances. There are many laws that govern the finances of the town cemetery that are designed to ensure that money given or appropriated for cemetery use is used for the purpose it was given or appropriated. It also ensures that there is accountability to the voters.

a. Town appropriations and town votes. A town may appropriate money for “purchasing, holding and keeping in repair suitable grounds and other conveniences for burying the dead.” 18 V.S.A. § 5361. A town may vote to receive and hold money in trust, the income of which is to be used for the care and improvement of its burial grounds, or of private lots within such burial grounds or elsewhere. 18 V.S.A. § 5383.

b. Endowment and special funds. Endowment funds should be kept in separate accounts, identified for each separate trust fund. In addition, all income derived from the sale of lots by the town should be placed into a separate fund, as 20 V.S.A. § 5377 requires that this income shall be “paid into the town treasury in trust, and the income thereof be expended in caring for such lots and the structures thereon.” The same is true of income from endowment funds pursuant to 18 V.S.A. § 5382, 5383, and 5385.

c. Drawing orders from the town accounts. Money budgeted by the town for maintenance and upkeep of cemeteries and voted as part of the budget or as a separate article at town meeting should be kept in the general fund of the town, although separate books should be kept on the amount appropriated and expended for cemetery purposes. 24 V.S.A. § 1524. Orders should be drawn by the board of cemetery commissioners and then

paid by the town treasurer directly to the recipient of those funds. See 24 V.S.A. § 1576 and 18 V.S.A. § 5385.

d. Money received by the town for cemetery purposes must be paid to the treasurer. All moneys received by a town for cemetery purposes must be paid to the town treasurer who gives receipts to those turning the money over to them. 18 V.S.A. § 5384. Unless otherwise directed by the donor, “all moneys received by a town for cemetery purposes must be paid to the town treasurer who shall give a receipt therefore, which shall be recorded in the office of the town clerk in a book kept for that purpose. In such book shall also be stated the amount received from each donor, the time when, and the specific purpose to which the use thereof is appropriated.” 18 V.S.A. § 5384.

e. Money received for cemetery purposes may be invested. All money received by a town for cemetery purposes may be invested and reinvested by the treasurer, with the approval of the selectboard, or by the trustee of public funds. The types of permitted investments are strictly limited by state law. See 18 V.S.A. § 5384 for the list of permitted investments. Note that the income from these investments must be expended for the purpose and in the manner designated by the donor.

d. No perpetual care fee is required for town cemeteries. There is no statutory authority for establishing a mandatory perpetual care fee. Presumably people who have had family members buried in town have paid their share when they have purchased lots, and the town has an ongoing obligation to keep the cemetery in good repair. 18 V.S.A. § 5375.

7. Fences. The selectboard and cemetery commissioners have the authority to take steps to ensure that there is adequate fencing around a cemetery. 18 V.S.A. § 5361. Indeed, Vermont law provides that “when the selectmen or cemetery commissioners neglect to keep in repair the fence around a public burial ground, the town may be prosecuted for such neglect and fined not more than \$400.00. The fine shall be expended in repairing the fences around such burial grounds under the direction of a commissioner appointed by the court.” 18 V.S.A. § 5364. The town may be liable to a person or a person’s estate if it fails to repair a fence for 20 days after written notice of the problem and that, as the result of the failure, damage is caused by farm animals breaking into the public burial ground and injuring a grave, headstone, monument, shrubbery or flowers. In such a situation the person or estate may recover from the town double the amount of damages. 18 V.S.A. §§ 5366, 5365.

8. Keeping cemeteries in good repair. The law requires the town to spend at least \$500 a year on the upkeep of its cemeteries. (Which is not much today – but when this provision was first enacted, it was a meaningful amount of money.) It provides that: “When lots or walks in a public burial ground become unsightly with weeds or by an unchecked growth of grass or from any other cause, or when headstones or monuments have become displaced or out of repair, the selectboard or cemetery commissioners shall cause such lots and walks to be cleared of weeds and grass, the headstones or monuments to be replaced or repaired or other disfigurements removed, and may draw orders on the town treasurer for the expenses incurred.

The amount drawn from the treasury of a town for such purpose in any year shall not exceed \$500.00.” 18 V.S.A. § 5362. In addition, when a headstone or monument is to be replaced, the selectboard or cemetery commissioners shall notify relatives of the deceased, if known, of the date of the removal and that the relative may claim the removed headstone or monument within 30 days after the date of the notice.

9. Maintaining abandoned burial grounds. When three voters of a town make a request to the selectboard or cemetery commissioners to maintain a private burial ground that has been abandoned and which has become “unsightly” or has displaced headstones and monuments, the board is required take some action. First it must publish a notice in a newspaper of general circulation in the town for three consecutive weeks, calling on any person who is interested in the burial grounds to put the cemetery into proper condition within three months of the notice. After the expiration of the three months, if no one has come forward to repair and maintain the cemetery, the selectboard must proceed as though it were a public burial ground. 18 V.S.A. § 5321. Note that a “private burial ground” is generally considered a burial ground that is on property that is otherwise dedicated to a non-cemetery use, such as a farm or a homestead.

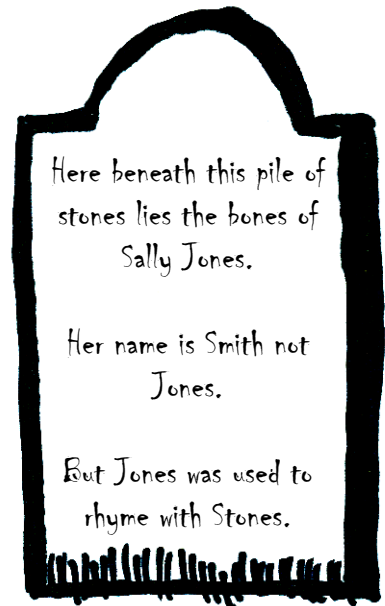
C. Home burials and private burial grounds.

According to state statute and a 1973 Attorney General’s opinion, families in Vermont may care for their own dead. This includes transporting the deceased, burial on private property, and/or cremation. Vermont law does not require embalming.

1. Home burials are permitted in Vermont.

Vermont law provides that a private individual may set aside a portion of land he or she owns to use as a burial space for immediate family members, so long as this use does not violate the health laws and regulations of the state and the town in which such land is situated. 18 V.S.A. § 5319. For example, if death occurs from a communicable disease, the department of health may require certain precautions to be taken. In addition, some towns may have local ordinances regarding home burials. We are not aware of any towns that, by ordinance, prohibit home burials altogether. It is unclear whether, absent an articulated public health or safety concern, a town could do so.

2. Record a map of the burial site. A map of the burial site should be drawn and recorded in the land records of the town clerk's office. It is also a good idea to add an easement to the deed permitting access to the burial ground; however, if this has not been done it is possible to request permission from the selectboard who may grant temporary access to the burial ground. 18 V.S.A. § 5322.



3. Burial-transit permit is required. Before a body may be buried in a family burial ground a death certificate must be submitted to the town clerk or a deputy and a burial-transit (certificate of permission) permit must be obtained from the clerk. After the burial is completed this permit must be certified and returned to the clerk. 18 V.S.A. § 521, 5201.

4. Statutory requirements regarding burials must be followed. Those living outside a village or city limits can usually create a family burial ground so long as the site is 150 feet from a water supply (100 feet from a drilled well) and 25 feet from a power line. It is also a good idea to avoid areas with a high water table and to bury at least 20 feet from the setback on the property. 18 V.S.A. § 5319.

5. The town may grant temporary access to private burial grounds. A person who wishes to have a temporary right of entry over private land in order to enter a graveyard enclosure to which there is no public right-of-way may apply to the town for permission. The person must apply in writing to the selectboard or cemetery commissioners, state the reason for the request and the period of time that they wish to visit the cemetery. They must also notify in writing the owner or occupier of the land over which the right-of-way is desired. If the selectboard or cemetery commissioners find that the request is reasonable, they may issue a permit for a temporary right of entry designating the particular place where, and the manner in which, the land may be crossed. The owner or occupier of the land may recommend a place of crossing which, if reasonable, should be the place designated by the selectboard or cemetery commissioners. 18 V.S.A. § 5322. Note that a landowner or occupier who refuses to comply with a permit may be liable for reasonable costs and attorney fees expended to enforce the permit. 18 V.S.A. § 5322.

6. Removal of Marked Historic Remains. A new law adopted in 2010 created a process for removing historic remains. For the purpose of the law, “historic remains” means remains of a human being who has been deceased for 100 years or more, and the remains are marked and located in a publicly known or marked burial ground or cemetery. 18 V.S.A. § 5217.

a. Application for a removal permit and notice. A person may apply for a removal permit to disinter or remove historic remains by filing an application with the clerk for the municipality in which the historic remains are located. The application must identify where the remains are located and where the remains will be reburied as well as the reasons for the removal and a statement of public good (why removal will benefit the municipality and the property where the remains are located). The applicant must mail a notice to the cemetery commissioner or other municipal authority responsible for cemeteries in the municipality in which the historic remains are located, all historical societies located within the municipality in which the historic remains are located, any descendant known to the applicant and the state archeologist.. The applicant must also contact the Vermont Historical Society, the Vermont Old Cemetery Association, the Vermont Cemetery Association, and any veterans’ organization operating within the county in which the historic remains are located in order to ascertain the whereabouts of any known descendants.

b. Objections to removal. A cemetery commissioner or municipal authority responsible for cemeteries, a historical society, a descendant, or the state archeologist may file an objection to the proposed removal of historic remains with the probate court in the district in which the historic remains are located and with the clerks of the municipality in which the historic remains are located within 30 days after the date the notice was mailed. If no objection is received within 30 days after the date the notice was last published as required by subsection (c) of this section, the municipal clerk shall issue a removal permit.

c. Probate court process. If the probate court receives an objection within the 30-day period, the court shall notify the clerk for the municipality in which the historic remains are located and schedule a hearing on whether to allow removal as described in the application. The probate court, after hearing, shall order the municipal clerk to grant or deny a permit for removal of the historic remains. The court shall consider the impact of the removal on the public good. The permit shall require that all remains, markers, and relevant funeral-related materials associated with the burial site be removed, and the permit may require that the removal be conducted or supervised by a qualified professional archeologist in compliance with standard archeological process. All costs associated with the removal shall be paid by the applicant.

D. Unmarked Burial Sites.

1. Unmarked Burial Site Definition. An unmarked burial site” means the location of any interment of human remains, evidence of human remains, including the presence of red ochre, associated funerary objects, or a documented concentration of burial sites, but does not include a cemetery, mausoleum, or columbarium or any other site that is clearly marked as a site containing human remains. 18 VSA § 5215b.

2. Reporting Unmarked Burial Sites. When an unmarked burial site is first discovered, the discovery must be reported immediately to a law enforcement agency. If, after completion of an investigation pursuant to 18 VSA § 5205, the law enforcement agency determines that the burial site does not constitute evidence of a crime, the law enforcement agency must immediately notify the state archeologist who may authorize appropriate action regarding the unmarked burial site. 18 VSA § 5215b.

3. Unmarked Burial Sites Treatment Committee. An unmarked burial site treatment plan committee made up of nine members specified by law must develop procedures for responding to reports of a discovery of an unmarked burial site and develop various treatment plans for addressing issues that attend the discovery of an unmarked burial site on private property. A treatment plan is an outline of the process for providing appropriate and respectful treatment of the burial site while considering the rights of the landowner. It must include methods for determining whether there is an unmarked burial site, methods for handling development and excavation on property where such a site exists (or potentially exists), options for the land owner and procedures for protecting, preserving or moving the burial site and human remains, time frames for implementation and procedures for resolving disputes among stakeholders. 18 VSA § 5215b.

4. Unmarked burial site fund. There is an unmarked burial sites special fund established by the state for the purpose of protecting, preserving, moving or reintering human remains discovered in unmarked burial sites. 18 V.S.A. § 5212b. The funds are may be used to monitor excavation of unmarked burial sites, to protect, preserve, move or reinter unmarked burial sites and human remains, to perform archaeological assessments and field investigations designed to determine the presence of human remains, to provide for dispute resolution services, to purchase property or development rights in some circumstance, and for other appropriate purposes.

E. Cemetery Associations: Incorporated Cemeteries.

Every cemetery that is not owned and operated by a town or by a religious or ecclesiastical society must be established, owned and operated by a nonprofit corporation which is called a cemetery association. 18 V.S.A. §§ 5431, 5432.

1. Formation. A cemetery association is formed by filing articles of incorporation with the Secretary of State. (See <http://sec.state.vt.us/corps/corpindex.htm> for forms and information) Once the articles of incorporation are filed, the incorporators and other members will form “a body corporate” with “perpetual succession and with capacity to perform all acts within the state not repugnant to law.” 18 V.S.A. § 5433. Cemetery associations may merge upon a vote of the majority of the trustees or directors of each corporation. 18 V.S.A. § 5440.

2. Functions are limited to cemetery purposes. 18 V.S.A. § 5304 provides that “the business of cemeteries shall not include among its corporate powers, either by express grant or as an incident thereto, the right to engage in any business enterprise or occupation such as is usually pursued by private individuals. Nevertheless, this provision shall not exclude the right of cemeteries to sell corner posts and other implements to define the boundaries of lots or other subdivisions of such cemeteries, and articles incident to the care and maintenance of lots and burial spaces, and the right of cemeteries to furnish or sell materials necessary for a complete cemetery burial service.”

3. Tax exemption. Cemetery lands, buildings and property and the proceeds thereof which have been platted and devoted or held exclusively for cemetery purposes, including funds held for the improvement, maintenance, repair and ornamentation of such cemetery are exempt from taxation. 18 V.S.A. § 5317.

4. Cemetery association may make rules and regulations. A cemetery association may make rules and regulations for the use, care, management and protection of cemeteries, including determinations of who may be buried or deposited therein. 18 V.S.A. § 5305. The cemetery bylaws and its rules and regulations will determine how the association is run, how decisions are made, and ensures that the purpose and goals of the corporation are achieved.

5. Acquisition of land. The law provides that “a cemetery association may acquire by gift, purchase at its fair cash market value, or devise, such lands as may be necessary for its cemetery purposes.” In some cases the cemetery association may obtain land or enlarge a cemetery by obtaining additional land through a condemnation procedure. To start a condemnation procedure the cemetery association must first try to purchase the property for a reasonable amount, and then it may apply to the superior court for the appointment of commissioners who will determine whether condemnation is appropriate and what the appropriate compensation would be for the property. 18 V.S.A. § 5488.

6. Town permission. The creation of a new cemetery requires the written consent of the selectboard of the town and the local board of health. 18 V.S.A. § 5487. There may also be land use regulations that apply, requiring the association to go through the municipal development review process.

7. Perpetual care funds. Vermont law permits a cemetery association to accept gifts of land and property and to set up a perpetual care fund. It does not require the establishment of a perpetual care fund. However, if a cemetery establishes a perpetual care fund, it must do so in accordance with the requirements of state law. The law provides that “an agency engaged in the cemetery business shall have the right to acquire by gift, devise, or otherwise, land and property of every name and nature and to set aside surplus funds, to be held in trust as a perpetual care fund, the income thereof to be used according to the directions of the trust, where such directions are given, and where no specific directions are given, or, where given, and the purpose is incapable of performance, or there is a surplus of income after the directions of the trust have been fully complied with and performed, to use the same for the purpose of building, repairing, maintaining, adorning and beautifying buildings or parts thereof, fences, graves, vaults, mausoleums, monuments, walks, cemetery lots, grounds, drives, or avenues, as the interests of the lot owners and cemetery shall appear. The duty upon all agencies organized to establish a perpetual care fund according to the terms hereinafter set forth is hereby imposed.” 18 V.S.A. § 5306.

a. Cemetery association treasurer must post bond. When perpetual care trust funds are not deposited with a bank chartered by the state or a national bank, the treasurer must post a bond to secure the association against loss occasioned by mismanagement of the funds. The law provides that “the custodian or depositary thereof, unless otherwise directed by the terms of the trust or other provisions of this chapter, shall be the treasurer of the agency owning, operating or controlling the cemetery in which lots or burial spaces are sold, or in which mausoleums or columbarium are located, who shall furnish and file with such agency, at its expense, a good and sufficient bond or bonds with surety or sureties approved by the probate court, indemnifying and securing such agency against loss occasioned by the failure of the treasurer to properly protect, preserve and administer such funds under his control. Such funds shall be invested and the income therefrom expended upon the written orders of the directors or trustees of such agency.” 18 V.S.A. § 5308.

b. Perpetual care fund must be carefully invested. The law regulates the investment of perpetual care funds to protect the interest of individuals who paid into the

fund. It provides that “the principal sum of such funds shall be invested in bonds of the United States or the state of Vermont, or in the bonds or in notes issued in anticipation of taxes and authorized by vote of any town, village or city in this state, or loaned upon first mortgage on real estate in this state a sum not in excess of 60 percent of the value of such real estate, or upon collateral of any of the above securities of equal value with the loan, or in shares of a savings and loan association of this state or share accounts of a federal savings and loan association with its principal office in this state and to the extent to which the withdrawal or repurchase value of such shares or accounts may be insured by the Federal Savings and Loan Insurance Corporation, or stock in a federal bank, a safe deposit company or a national bank or state bank or trust company organized and doing business in the United States. Up to 35 percent of the association's assets may be invested in common or preferred stocks of corporations organized and existing under the laws of any state of the United States of America, or may be invested in the manner required for the investment of trust funds, unless otherwise authorized by the donor.” 18 V.S.A. § 5309

c. Cemetery association assets may not be loaned to association members or directors. In order to protect the interests of those who paid into the perpetual care fund, and to ensure that the assets are preserved for cemetery purposes, the law makes it clear that no assets of the association may be loaned to a member, officer, trustee or director of any such cemetery agency. 18 V.S.A. § 5309.

8. Dissolution of a cemetery. The law provides that if a cemetery association dissolves, the cemetery becomes a public burial ground. “A cemetery association, which is not owned and operated by a church, or by a religious or ecclesiastical society may be dissolved. Upon dissolution, all lands owned or held by it for cemetery purposes and all perpetual care funds, trust funds, and all other property held or owned by it, less dissolution expenses, may be transferred to the town in which the lands are located, and thereafter these lands may become public burial grounds, and the town shall hold the perpetual care funds and trust funds in trust for the care, improvement and embellishment of the lots therein, according to the terms upon which they were held by the association.” 18 V.S.A. § 5439. Note that religious or ecclesiastical cemeteries cannot be dissolved.

F. Religious and Ecclesiastical Cemeteries.

Vermont law does not specify how a religious or ecclesiastical cemetery must be legally organized. A religious cemetery may be organized under 11 V.S.A., Chapter 13 (Religious Associations) or it may be organized as a nonprofit corporation under 11B V.S.A., Chapter 3. Indeed, most of the churches that predate current law governing incorporation and legal formation have cemeteries.

Many of the rules that govern Vermont cemeteries apply to all cemeteries. For example, no burial or removal may take place without the required paperwork; the records of the cemetery must be open to public viewing; perpetual care funds must be invested as required by statute; the cemetery must be a nonprofit enterprise; and a plat of the cemetery must be filed before lots may be sold. Generally speaking, unless the law is specifically addressing town cemeteries,

incorporated cemeteries or private burial grounds, the requirement will also apply to religious and ecclesiastical cemeteries.

G. Plats and plots.

Before a cemetery may begin selling lots it must first make and record a plat of the cemetery. The law provides that “A lot, section, subdivision, crypt, niche or any part of the cemetery, community mausoleum or columbarium shall not be sold, contracted for sale, or offered for sale, until and unless a plat shall be made and recorded in accordance with the [law].” 18 V.S.A. § 5312.

1. Cemetery must create a plat of the cemetery. Every cemetery, community mausoleum or columbarium, whether municipal, religious or incorporated must make a plat of its grounds, showing the parts that are improved or in use, and that parts that are being held for future cemetery use. The plat of the improved part must show the land laid out in sections, lots, driveways, walks and paths, sections to be designated by symbols, and the lots shall be numbered. In the case of a community mausoleum or columbarium, the plat must show the sections, halls, rooms, corridors, elevators or other subdivisions with their descriptive names and numbers. 18 V.S.A. § 5310.

2. Cemetery plat must be filed in the town clerk’s office. Every cemetery must file its cemetery plat for record in the office of the town clerk of the town in which the cemetery, community mausoleum or columbarium is located. 18 V.S.A. § 5310. The town clerk must record the original or photocopied plat by inserting or binding it in a book provided for that purpose. The cemetery may be charged for the actual cost of the work of such recording, plus \$3.00. 18 V.S.A. § 5311. In the event that the clerk records a cemetery plat provided by an agency that does not have authority to provide cemetery, community mausoleum or columbarium services, or the plat does not conform to the requirements of the law, Vermont law makes that recording void and of no affect. 18 V.S.A. § 5311.

3. Sales of plats and proceeds. After recording the plat (and subject to statutes governing the sale of lots, crypts, and niches) the cemetery may sell lots, crypts and niches. The cemetery association, municipality or religious organization may make rules and regulations about the sales and the use of the cemetery lots. However, the law provides that no part of the proceeds from the sales of lots, crypts and niches, or other income shall ever be divided among the members of the cemetery association or religious organization, but they shall be used exclusively for the purposes of the cemetery, community mausoleum or columbarium, or placed in the perpetual care fund, so that the income from the fund may be so used. 18 V.S.A. § 5314.

4. Owner of lots may leave lots to relatives in will. The owner of a cemetery lot may leave the lot, by will, to any relative who may survive him or her. The owner may also leave the lot to the cemetery, in trust, for the use and benefit of any person designated in his or her will. If the lot is not mentioned in the will, the lot will pass to the owner’s heirs as though

he or she had died without a will (rather than going to the residuary beneficiary identified in his or her will.) 18 V.S.A. § 5531.

5. Husbands and wives are generally entitled to be interred in a lot or tomb owned by the spouse. The law provides that “a wife shall be entitled to a right of interment for her own body in any burial lot or tomb of sufficient size and space to permit such interment, of which her husband was seized at any time during coverture, which shall be exempt from the operation of the laws regulating conveyance, descent and devise, but may be released by her in the same manner as dower. A husband shall have the same rights in the burial lot or tomb of his wife as a wife has in that of her husband. A husband or wife living separate from the other, and owning a burial lot or tomb in which the other but for this section would have no right of burial or interment, at least thirty days before the death of the other, may file with the agency conducting the cemetery in which such burial lot or tomb is located a written objection to the interment of the other and thereupon there shall be no right of interment of such husband or wife under this section.”

6. When the owner of a lot or his or her heirs are unknown for 20 years the lot will revert to the cemetery, after court process. Vermont law permits a cemetery to bring a petition in probate court when the whereabouts of a person or his or her heirs having title to a wholly unoccupied burial lot has been unknown for 20 years. After notice and a hearing, the court can decide that the lot will return to the cemetery’s ownership. 18 V.S.A. § 5533-5536. If an heir or other person who is entitled to a lot appears within 17 years from the date of the court’s decree and files a claim to the lot in probate court, the lot may be returned to the heir, or if it was sold, the cemetery will have to pay the proceeds from the sale to the heir (without interest and after deducting charges and costs incurred by the agency in connection with the lot.) 18 V.S.A. § 5537.

Note that where there is a dispute about these provisions of law, the probate court will make a determination. In addition, the cemetery may by rule, regulation, deed or contract, limit the persons or classes of persons having the right of burial in the cemetery, and it may prohibit or restrict the resale of any lot or burial space.

H. Sale or encumbrance of property by the cemetery.

1. Unneeded cemetery property may be sold. Either before or after recording the cemetery plat, if the cemetery decides that some of the lands it acquired for cemetery purposes are unsuitable for burial purposes, such lands may be sold. The proceeds of the sale must be applied to the purchase of other lands or to general cemetery purposes. Land sold by a cemetery is returned to the tax lists for taxation. Note, however, that in the case of land acquired by condemnation proceedings, the land may not be sold, but rather, must be disposed of under the law governing the disposal of land acquired by condemnation proceedings. 18 V.S.A. § 5315.

2. Cemetery property may not be mortgaged. Vermont law prohibits a cemetery from mortgaging or encumbering a public mausoleum, crematorium, columbarium, the land or lot or right of burial. 18 V.S.A. § 5316.

3. Cemeteries may not be taken for public use without legislative act.

A public highway or railroad may not be laid through a burial ground without the consent of the cemetery, the town or the general assembly. The law provides that no part of a burial ground may be taken for public use without special authority from the legislature. 18 V.S.A. § 5318.

I. Community Mausoleum.

1. Definition. A "community mausoleum" is a structure or building of "durable and lasting construction, used or intended to be used, for the permanent disposition in crypts or spaces therein of the remains of deceased persons" The crypts or spaces in a community mausoleum must be made available to individuals or the public for a price. 18 V.S.A. § 5302. A community mausoleum does not include structures containing crypts erected or controlled by churches and religious societies and used only as a repository for the remains of the clergy or dignitaries of such churches or religious societies. 18 V.S.A. § 5571.

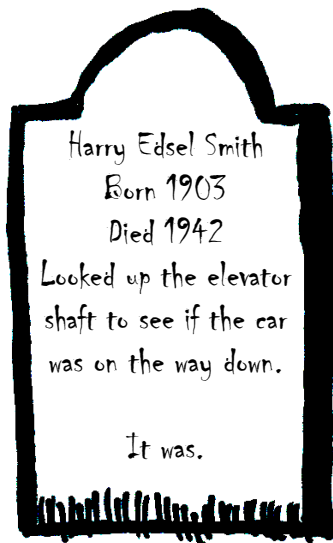
2. Location of community mausoleum. A community mausoleum may be located only within an established cemetery containing less than five acres and which has been in operation for at least five years prior to its erection. 18 V.S.A. § 5571. This same rule applies to a columbarium (a structure or room that contains cremated remains) or other structure intended to hold or contain the bodies or remains of the dead, the spaces, crypts or niches of which are available to the public.

3. A plat must be filed before constructing a mausoleum or columbarium. Before a cemetery begins building or constructing a mausoleum or columbarium the cemetery must make and file a plat of the structure, in the same manner that a plat is made and filed for the cemetery. 18 V.S.A. § 5572. See also 18 V.S.A. §§ 5310, 5311.

4. The state board of health's permission is required to build a community mausoleum or columbarium. The law provides that "a community mausoleum or columbarium, the crypts or niches of which are available to the public, shall be constructed and erected only with the consent and approval of the state board of health. Before commencing the building, construction or erection of any such structure, full detailed plans and specifications shall be presented to the state board of health."* 18 V.S.A. § 5573. If the board of health approves of the construction it must provide a written and signed certificate to that effect. In addition, the law provides that a building not used for the permanent disposition of the human dead may not be altered or changed for such use, and existing community mausoleums or columbarium may not be added to unless they are constructed in such a way that will "insure durability and permanence as well as the safety, convenience, comfort and health of the community in which it is located, as dictated and determined at the time by modern mausoleum construction and engineering science." 18 V.S.A. § 5573.

*Note that the law goes on to say that “a community mausoleum, columbarium or any structure intended to hold or contain permanently the bodies of the dead, and to which the public shall have access, shall not be constructed or erected.” We are not sure whether this was a drafting error in the law or whether it was intended to prohibit public access to columbarium and community mausoleums.

5. Control of state board of health. The state board of health has supervisory control over the construction of community mausoleums and columbarium. The state board of health must require compliance with the approved plans and specifications, and a board of health inspector (whose services are paid for by the cemetery or firm erecting the community mausoleum or columbarium) must be appointed to oversee compliance. If the cemetery wishes to depart from the original plans and specifications it must receive written approval from the state board of health. 18 V.S.A. § 5574.



6. Perpetual care fund must be established before mausoleum or columbarium may be used.

The law prohibits the use of a community mausoleum or columbarium until its construction is complete and until a perpetual care fund has been established that conforms to the requirements of the law. 18 V.S.A. § 5575. The law requires perpetual care funds for a community mausoleum to include “not less than \$100 from the proceeds received from the sale of each crypt and ten percent of the proceeds received from the sale of each room; and in case of niches in a community mausoleum or

columbarium, used as a repository for the remains of deceased persons after cremation, a sum which shall be equivalent to ten percent of the sale price of each niche.” 18 V.S.A. § 5578.

7. Sales of crypt, rooms or niches before completion of structure is limited.

A cemetery may only sell or offer to sell a crypt or room in a community mausoleum, or niche in a columbarium prior to the completion of the structure if it enters into an agreement with the purchasers that all money paid, plus legal interest, will be refunded in the event that it fails to complete construction within a reasonable time. In addition, a bank or trust company must be made a trustee for the purchaser and a bond must be secured to guarantee repayment. The selection of the trustee, and the amount of bond and its terms must be approved by the probate court. 18 V.S.A. § 5576.

8. If a mausoleum becomes untenable the bodies must be removed.

Vermont law requires the owner of a mausoleum, vault or crypt to keep the structure in a condition to prevent “a menace to public health,” and in the event they fail to do so, the owner may be ordered to remove the bodies for interment in an appropriate cemetery. The statute provides that “if, in the opinion of the state board of health, a mausoleum, vault, crypt or structure containing one or more deceased human bodies becomes a menace to public health,

and the owner or owners thereof fail to remedy or remove the same to the satisfaction of the state board of health, a court of competent jurisdiction may order the person, firm or corporation owning such structure to remove the body or bodies for interment in some suitable cemetery at the expense of the person, firm or corporation owning such mausoleum, vault or crypt. When such person, firm or corporation can not be found in the county where such mausoleum, vault or crypt is located, then such removal and interment shall be at the expense of the cemetery or cemetery association, city or town where such mausoleum, vault or crypt is situated.” 18 V.S.A. § 5577.

J. Penalties.

1. Failure to comply with cemetery law requirements. Vermont statutes provide that a selectboard member, cemetery commissioner or trustee, who violates the statutes, or who willfully neglects any of the duties imposed by law shall be fined not more than \$200.00 unless other penalties are provided. 18 V.S.A. § 5363.

2. Failure to comply with laws relating to community mausoleums and columbarium. Vermont statutes provide that “a person who violates a provision of sections 5571-5578 of this title shall be fined not less than \$100.00 nor more than \$500.00 or be imprisoned in the state correctional facility not less than ten days nor more than three months, or both, for each offense.” 18 V.S.A. § 5579.

3. Doing business as a cemetery association without authority. Anyone who, without legal authority “shall exercise or attempt to exercise any powers, privileges, or franchises which are specified or may be granted under this chapter to incorporated cemetery associations, or who shall by any device attempt to evade the provisions of this chapter applicable to cemetery associations in respect to the sale of burial lots or burial spaces and the disposition of the proceeds thereof, shall be fined not less than \$1,000.00 nor more than \$10,000.00, and may be enjoined from further doing of such acts at the suit of any taxpayer of the state.” This penalty provision will not alter any rights or obligations that apply to people, firms, corporations, associations or trusts that are under contract with an incorporated cemetery association, “nor shall the performance of the provisions of such contract or contracts subject parties thereto to the penalties imposed by this section.” 18 V.S.A. § 5434.

4. Failure to provide death certificate. A physician who fails to furnish a death certificate within 24 hours after the death of a person “containing a true statement of the cause of such death, and all the other facts provided for in the form of death certificates, so far as these facts are obtainable,” may be subject to a fine of up to \$100.00. 18 V.S.A. § 5206.



For more information about Vermont cemeteries:

Vermont Cemetery Association

PO Box 1508

Stowe, VT 05672

802-253-7776

<http://vermontcemeteryassociation.org/>

Vermont Cemetery Consumer Services Committee

For information about the Vermont Cemetery Consumer Services Committee or the Vermont Cemetery Association, contact Patrick Healy (802) 223-5352 or Joy Fagan (802) 253-7776.

Vermont Old Cemetery Association

PO Box 266

Weston, VT 05161

<http://www.sver.net/~hwdbry/voca/index.htm#memb>

Vermont Cemetery Lists online: <http://www.geovillage.net/VTCem.htm>

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