

Historic Resources is required (\$10.1-2305). Unless otherwise ordered by the court, you will be responsible for all costs incurred during the disinterment and relocation process.

For Additional Information:

Fauquier County Department of Community Development, Planning Division: (540) 422-8210, wendy.wheatcraft@fauquiercounty.gov

Virginia Department of Historic Resources: www.dhr.virginia.gov/homepage_general/faq_cem_presv.htm

Note: This information is provided as a service to Fauquier County citizens and should not be construed as legal advice. If you have questions about Virginia's burial laws or your rights as a citizen, we strongly urge you to contact a legal professional.

Unmarked Burials:

It is important to remember that most cemeteries in Fauquier County include unmarked burials or burials marked with other objects besides inscribed markers (e.g. field stones). Although difficult to identify on the landscape, they are still a part of the cemetery and under the purview of the Code of Virginia.

FAUQUIER COUNTY

**DEPARTMENT OF
COMMUNITY DEVELOPMENT**

PLANNING DIVISION

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Additional information available online at www.fauquiercounty.gov

Virginia State Cemetery Laws



FAUQUIER COUNTY

**DEPARTMENT OF COMMUNITY
DEVELOPMENT**



Historic burial grounds and cemeteries are often the oldest surviving remnants from the earliest years of a community and represent its social, historic, architectural and archeological record.

As Virginia citizens, we have legal responsibilities for the protection and care of cemeteries.

Frequently Asked Questions

What do I do if I find human remains or an unmarked grave?

First, do not touch or remove anything.

Displacing human remains is a Class 4 felony under Virginia law (§18.2-126). Conviction is punishable by two to ten years in prison and up to \$100,000 in fines. This law applies to all human burials, whether prehistoric, historic, or modern. If you find human remains (or even bones that appear to be human), you should leave them in place and report your discovery to the local or state police immediately.

What do I do if I see willful damage to gravestones, cemetery fences, or monuments?

The police should also be contacted if you know of gravestones, cemetery fences, or sculptures/monuments, or other burial ornaments that are being damaged or desecrated. Willful or malicious damage to cemeteries is also against the law. It is punishable by one to five years in prison and up to \$25,000 in fines (§18.2-127). Take photographs if you can, and contact your local law enforcement agency or Commonwealth Attorney to report possible vandalism of a cemetery.

Someone else now owns the land where my ancestors are buried. What are my rights regarding this cemetery?

Unless a deed of sale for the property specifies conditions regarding the cemetery or otherwise indicates the cemetery is not a part of the land parcel, then most rights go to the new property owner. Virginia law requires landowners to allow access to cemeteries on private property for the purpose of visitation by family members/descendants and for genealogical research. You must give reasonable notice and abide by any restrictions the landowner may place upon frequency, hours, and duration of access (§57-27.1).

If your property lies adjacent to the property containing your family cemetery and you feel that the cemetery has fallen into neglect, you may petition the Fauquier County Circuit Court for relief, including permission to access the property and maintain the cemetery (§57-39.1). Heirs and descendants may petition the Court for permission to relocate your ancestors' remains from an abandoned family cemetery (§57-38.2).

What is a reservation of rights?

You may wish to determine whether or not your ancestors placed a reservation of rights on a family cemetery. This means that someone reserved the right to access and maintain the cemetery at some time in the past on a deed or document of deed transfer, which should be on file with the Fauquier County Circuit Court Clerk. Make certain that you search as far back as possible in the chain of title. If the reservation of rights was inadvertently omitted at some point, no subsequent deed will contain this information.

I have an old abandoned cemetery on my property. What are my legal rights and obligations?

As the owner of property that includes a cemetery, you are obligated to leave the burials alone and not damage or desecrate gravestones, cemetery fencing, monuments, etc. Virginia law protects all cemeteries from willful and malicious damage, whether by the property owner or by others (§18.2-127). You may maintain the cemetery if you wish or allow descendants or other parties to do so. You are required to allow access to the cemetery for visitation by family members or descendants and others who wish to conduct genealogical research (§57-27.1). You are required to create an access easement to the cemetery.

What are the legal means for removing and relocating human remains from a cemetery?

While the preferred treatment of cemeteries is preservation in place and relocation of burials should be considered a last resort, there are specific instances when sensitive removal is considered to be in the public interest (for example, when a cemetery is endangered or when descendants request relocation).

Should you decide to remove and relocate graves, you are required to file a bill in equity with the county circuit court for permission (§57-36, §57-38.1, §57-38.2, and §57-39). This petition will require (1) a good faith effort to identify and contact the families or descendants of the persons interred and (2) publication of a notice of intent in a local newspaper. If you wish to have remains recovered by a professional archaeologist, a permit from the Virginia Department of