

Federal and State Historic Preservation and Cemetery Laws

Note: The listing below does not comprise all historic preservation laws. However, this listing does include several that directly pertain to land use in Virginia and the operation of local governments.

Federal Laws

Section 106 of the National Historic Preservation Act [16 U.S.C. 470f]

Law Applies To: All Federally Funded, Permitted, or Licensed Undertakings

Regulating Agencies: Virginia Department of Historic Resources (DHR) & Advisory Council on Historic Preservation

Who is Responsible for Compliance: The Sponsoring Federal Agency or its Designee

Section 106 of the National Historic Preservation Act and its implementing regulations in [36 CFR Part 800](#) require Federal agencies with jurisdiction over a Federally funded, permitted, or licensed undertaking to take into account the effects of the Federal agency's actions on properties included in or eligible for inclusion in the National Register of Historic Places and, prior to approval of the undertaking, to afford the Advisory Council on Historic Preservation a reasonable opportunity to comment. The State Historic Preservation Officer, who in Virginia is the director of DHR, coordinates state participation in the implementation of the law and is a key participant in the Section 106 review process. DHR performs the primary review and provides guidance to Federal agencies and their designees in carrying out their responsibilities. **36 CFR 800 requires that local governments are given an opportunity to comment on a project as a consulting party.** For more information, see the ACHP's website at <http://www.achp.gov/work106.html> or the publication *A Citizen's Guide to Section 106 Review* at <http://www.achp.gov/docs/CitizenGuide.pdf>.

National Environmental Policy Act (NEPA) [42 U.S.C. 4321]

Law Applies To: All Federal Undertakings.

Regulating Agencies: Environmental Protection Agency and the Council on Environmental Quality

Who is Responsible for Compliance: The Sponsoring Federal Agency

Under the National Environmental Policy Act (NEPA) and its implementing regulations codified in [40 CFR Parts 1500-1508](#) Federal agencies must broadly consider the impacts of their activities on the environment, including historic properties. Although NEPA is a separate authority from the NHPA, it addresses some of the same concerns as Section 106. The ACHP has published a handbook that provides practical advice on how to integrate the NEPA and Section 106 processes. The handbook can be obtained at <http://www.achp.gov/nepa106.html>.

Section 4(f) of the Department of Transportation Act [49 U.S.C. 303]

Law Applies To: All Agencies within the U.S. Department of Transportation

Regulating Agencies: DHR, Advisory Council on Historic Preservation, and the National Park Service

Who is Responsible for Compliance: U.S. Department of Transportation

Section 4(f) of the U.S. Department of Transportation Act and its implementing regulations at [23 CFR Part 774](#) requires USDOT agencies, such as the Federal Highway Administration and the Federal Transit Administration, to consider the impacts of transportation projects funded by the U.S. Department of Transportation or approved for specific types of properties, like park and recreational lands, wildlife and waterfowl refuges, and historic properties listed in the National Register of Historic Places or eligible for listing in the National Register. Before approving or funding a project that will have an adverse effect on a qualifying resource, the USDOT agency must find that there is "no prudent and feasible alternative" to the project AND that the selection alternative minimizes harm to the cultural resource. If there exists a prudent and feasible alternative that completely avoids the qualifying resource, it must be selected. The role of DHR is to comment on the identification of historic properties and the effect of the project, review and comment on the draft Section 4(f) and least harm analyses.

The Americans with Disabilities Act of 1990 (ADA) (28 CFR Part 30)

Law Applies To: All public accommodations, commercial facilities, and state and local government entities

Regulating Agencies: U.S. Department of Justice and DHR

Who is Responsible for Compliance: Anyone who owns or operates a public accommodation, a commercial facility, or buildings owned or leased by a state or local government agency

The ADA requires that new buildings and facilities and altered portions of existing buildings and facilities be readily accessible. For existing buildings and facilities, the ADA requires that all barriers to accessibility be removed when it is "readily achievable" to do so. In the case of historic properties, the ADA provides the following: if making a "qualified historic building" accessible would threaten or destroy the historic significance of that building or facility, certain alternative minimum accessibility standards may be applied. If the alteration is part of a Federal undertaking, the responsible Federal agency should contact both the Advisory Council on Historic Preservation and DHR. If the alterations to the historic property are not federally sponsored, and the responsible party believes that full compliance with the ADA would threaten or destroy the facility's historic significance, he is required to consult with DHR. If the department agrees, the alternative minimum standards may be used.

Virginia State Laws

§ 10.1-2300. Virginia Antiquities Act

Law Applies To: Objects of antiquity located on archaeological sites on state-controlled land (§ 10.1-2302) and human burials located in the Commonwealth (§ 10.1-2305)

Permitting Agency: Virginia Department of Historic Resources

Party Responsible for Compliance: The state agency or individual initiating the archaeological field investigation or removal of human remains

The Virginia Antiquities Act prohibits damage to or removal of objects of antiquity from archaeological sites on all state-owned or state-controlled land, including historic cemeteries. It also prohibits archaeological excavation without a permit from DHR. This act does not restrict a state agency from construction or other land disturbing activities on its own land, but does prohibit all "relic hunting" or any archaeological field investigations without a permit from DHR. DHR is charged with coordinating all archaeological field investigations and surveys conducted on state-controlled lands (§10.1-2301). The department is given exclusive right and privilege to conduct field investigations on state lands, but may grant those privileges to others through a permit (§10.1-2302 and 2303). The department also has final authority to identify and evaluate the significance of sites and objects of antiquity found on state lands (§10.1-2301). General cemetery protection laws make it a felony to remove human remains from a grave without a court order or appropriate permit. Section 2305 of the Virginia Antiquities Act provides a permit process for archaeological field investigations involving the removal of human remains and artifacts from graves.

§ 10.1-1188. Virginia Environmental Impacts Report Act (SERP)

Law Applies To: Major construction initiated by a state agency or local government over \$500,000

Coordinating Agency: Department of Environmental Quality (DEQ)

Party Responsible for Compliance: The state agency or local government initiating the construction project

The Department of Environmental Quality (DEQ) provides comments on the environmental impacts of all major state or state supported projects (including acquisition of land interests for purposes of construction) costing more than \$500,000, with some exceptions specified by law. Comments are solicited from all state agencies with applicable responsibilities or interests, and organized by the regional SERP coordinator, and then given to the project proponent agency to permit modifications necessary due to environmental impact. DHR is invited to submit comments to the Department of Environmental Quality when an environmental impact report describes a project that might affect historic properties or archaeological sites.

§ 10.1-1000. Cave Protection Act

Law Applies To: Caves and rockshelters located in the Commonwealth

Regulating Agencies: Department of Conservation and Recreation (Natural Heritage Division)

Party Responsible for Compliance: Any agency or individual involved in the research within caves in the Commonwealth.

The Cave Protection Act protects from vandalism all geological, biological, and historic features in caves regardless of ownership. A permit is required from the Department of Conservation and Recreation, Natural Heritage Division, for research within caves and rock shelters. The concurrence of DHR is required before the issuance of a permit.

§ 10.1-2214. Underwater Archaeology Permits.

The permitting process protects underwater historical properties, including shipwrecks and submerged terrestrial sites.

Permits for either exploration or recovery are required from the Virginia Marine Resources Commission. DHR is consulted prior to issuance of the permit and determines which properties are historic.

§ 15.2-2283. Purpose of Zoning Ordinances.

A locality may create an ordinance to protect against destruction of or encroachment upon **historic areas** and provide for the preservation of agricultural and forestal lands and other lands of significance.

§ 15.2-2201. Definitions (“Historic Area”).

"Historic area" means an area containing one or more buildings or places in which historic events occurred or having special public value because of notable architectural, archaeological or other features relating to the cultural or artistic heritage of the community, of such significance as to warrant conservation and preservation.

§ 15.2-2224. Surveys and Studies to be Made in Preparation of Plan; Implementation of Plan.

In the preparation of a local comprehensive plan, a planning commission must either (i) survey and study historic areas, or (ii) include areas surveyed by the Virginia Department of Historic Resources (DHR).

§ 15.2-2306. Preservation of Historical Sites and Architectural Areas.

A. 1. Any locality may adopt an ordinance setting forth the historic landmarks within the locality as established by the Virginia Board of Historic Resources, and any other buildings or structures within the locality having an important historic, architectural, archaeological or cultural interest, any historic areas within the locality as defined by § [15.2-2201](#), and areas of unique architectural value located within designated conservation, rehabilitation or redevelopment districts, amending the existing zoning ordinance and delineating one or more historic districts, adjacent to such landmarks, buildings and structures, or encompassing such areas, or encompassing parcels of land contiguous to arterial streets or highways (as designated pursuant to Title 33.2, including § [33.2-319](#) of that title) found by the governing body to be significant routes of tourist access to the locality or to designated historic landmarks, buildings, structures or districts therein or in a contiguous locality. A governing body may provide in the ordinance that the applicant must submit documentation that any development in an area of the locality of known historical or archaeological significance will preserve or accommodate the historical or archaeological resources. An amendment of the zoning ordinance and the establishment of a district or districts shall be in accordance with the provisions of Article 7 (§ [15.2-2280](#) et seq.) of this chapter. The governing body may provide for a review board to administer the ordinance and may provide compensation to the board. The ordinance may include a provision that no building or structure, including signs, shall be erected, reconstructed, altered or restored within any such district unless approved by the review board or, on appeal, by the governing body of the locality as being architecturally compatible with the historic landmarks, buildings or structures therein.

2. Subject to the provisions of subdivision 3 of this subsection the governing body may provide in the ordinance that no historic landmark, building or structure within any district shall be razed, demolished or moved until the razing, demolition or moving thereof is approved by the review board, or, on appeal, by the governing body after consultation with the review board.

3. The governing body shall provide by ordinance for appeals to the circuit court for such locality from any final decision of the governing body pursuant to subdivisions 1 and 2 of this subsection and shall specify therein the parties entitled to appeal the decisions, which parties shall have the right to appeal to the circuit court for review by filing a petition at law, setting forth the alleged illegality of the action of the governing body, provided the petition is filed within thirty days after the final decision is rendered by the governing body. The filing of the petition shall stay the decision of the governing body pending the outcome of the appeal to the court, except that the filing of the petition shall not stay the decision of the governing body if the decision denies the right to raze or demolish a historic landmark, building or structure. The court may reverse or modify the decision of the governing body, in whole or in part, if it finds upon review that the decision of the governing body is contrary to law or that its decision is arbitrary and constitutes an abuse of discretion, or it may affirm the decision of the governing body.

In addition to the right of appeal hereinabove set forth, the owner of a historic landmark, building or structure, the razing or demolition of which is subject to the provisions of subdivision 2 of this subsection, shall, as a matter of right, be entitled to raze or demolish such landmark, building or structure provided that: (i) he has applied to the governing body for such right, (ii) the owner has for the period of time set forth in the same schedule hereinafter contained and at a price reasonably related to its fair market value, made a bona fide offer to sell the landmark, building or structure, and the land pertaining thereto, to the locality or to any person, firm, corporation, government or agency thereof, or political subdivision or agency thereof, which gives reasonable assurance that it is willing to preserve and restore the landmark, building or structure and the land pertaining thereto, and (iii) no bona fide contract, binding upon all parties thereto, shall have been executed for the sale of any such landmark, building or structure, and the land pertaining thereto, prior to the expiration of the applicable time period set forth in the time schedule hereinafter contained. Any appeal which may be taken to the court from the decision of the governing body, whether instituted by the owner or by any other proper party, notwithstanding the provisions heretofore stated relating to a stay of the decision appealed from shall not affect the right of the owner to make the bona fide offer to sell referred to above. No offer to sell shall be made more than one year after a final decision by the governing body, but thereafter the owner may renew his request to the governing body to approve the razing or demolition of the historic landmark, building or structure. The time schedule for offers to sell shall be as follows: three months when the offering price is less than \$25,000; four months when the offering price is \$25,000 or more but less than \$40,000; five months when the offering price is \$40,000 or more but less than \$55,000; six months when the offering price is \$55,000 or more but less than \$75,000; seven months when the offering price is \$75,000 or more but less than \$90,000; and twelve months when the offering price is \$90,000 or more.

4. The governing body is authorized to acquire in any legal manner any historic area, landmark, building or structure, land pertaining thereto, or any estate or interest therein which, in the opinion of the governing body should be acquired, preserved and maintained for the use, observation, education, pleasure and welfare of the people; provide for their renovation, preservation, maintenance, management and control as places of historic interest by a department of the locality or by a board, commission or agency specially established by ordinance for the purpose; charge or authorize the charging of compensation for the use thereof or admission thereto; lease, subject to such regulations as may be established by ordinance, any such area, property, lands or estate or interest therein so acquired upon the condition that the historic character of the area, landmark, building, structure or land shall be preserved and maintained; or to enter into contracts with any person, firm or corporation for the management, preservation, maintenance or operation of any such area, landmark, building, structure, land pertaining thereto or interest therein so acquired as a place of historic interest; however, the locality shall not use the right of condemnation under this subsection unless the historic value of such area, landmark, building, structure, land pertaining thereto, or estate or interest therein is about to be destroyed.

The authority to enter into contracts with any person, firm or corporation as stated above may include the creation, by ordinance, of a resident curator program such that private entities through lease or other contract may be engaged to manage, preserve, maintain, or operate, including the option to reside in, any such historic area, property, lands, or estate owned or leased by the locality. Any leases or contracts entered into under this provision shall require that all maintenance and improvement be conducted in accordance with established treatment standards for historic landmarks, areas, buildings, and structures. For purposes of this section, leases or contracts that preserve historic landmarks, buildings, structures, or areas are deemed to be consistent with the purposes of use, observation, education, pleasure, and welfare of the people as stated above

so long as the lease or contract provides for reasonable public access consistent with the property's nature and use. The Department of Historic Resources shall provide technical assistance to local governments, at their request, to assist in developing resident curator programs.

B. Notwithstanding any contrary provision of law, general or special, in the City of Portsmouth no approval of any governmental agency or review board shall be required for the construction of a ramp to serve the handicapped at any structure designated pursuant to the provisions of this section.

C. Any locality that establishes or expands a local historic district pursuant to this section shall identify and inventory all landmarks, buildings, or structures in the areas being considered for inclusion within the proposed district. Prior to adoption of an ordinance establishing or expanding a local historic district, the locality shall (i) provide for public input from the community and affected property owners in accordance with § [15.2-2204](#); (ii) establish written criteria to be used to determine which properties should be included within a local historic district; and (iii) review the inventory and the criteria to determine which properties in the areas being considered for inclusion within the proposed district meet the criteria to be included in a local historic district. Local historic district boundaries may be adjusted to exclude properties along the perimeter that do not meet the criteria. The locality shall include only the geographical areas in a local historic district where a majority of the properties meet the criteria established by the locality in accordance with this section. However, parcels of land contiguous to arterial streets or highways found by the governing body to be significant routes of tourist access to the locality or to designated historic landmarks, buildings, structures, or districts therein, or in a contiguous locality may be included in a local historic district notwithstanding the provisions of this subsection.

§ 15.2-744. Authority of County Board to Impose Civil Penalties for Wrongful Demolition, Razing or Moving of Historic Buildings.

The board may adopt an ordinance which establishes a civil penalty for the wrongful demolition, razing or moving of part or all of a building or structure when such building or structure has been designated as an historic structure or landmark or is part of an historic district. The civil penalty shall be imposed on the party deemed by the court to be responsible for the violation and shall not exceed twice the fair market value of the property, as determined by the county real estate tax assessment at the time of the demolition, razing or moving.

§ 55-519. Required Disclosures (to purchaser of property affected by a historic district ordinance).

With regard to transfers described in § [55-517](#), the owner of residential real property shall furnish to a purchaser a residential property disclosure statement in a form provided by the Real Estate Board stating that the owner makes the following representations as to the real property:

The owner makes no representations to any matters that pertain to whether the provisions of any historic district ordinance affect the property and purchasers are advised to exercise whatever due diligence a particular purchaser deems necessary with respect to any historic district designated by the locality pursuant to § [15.2-2306](#), including review of any local ordinance creating such district or any official map adopted by the locality depicting historic districts, in accordance with terms and conditions as may be contained in the real estate purchase contract, but in any event, prior to settlement on a parcel of residential real property.

§ 15.2-819. Demolition of Historic Structures; Civil Penalty.

A county may adopt an ordinance which establishes a civil penalty for the demolition, razing or moving of a building or structure which is located in an historic district or which has been designated by the governing body as an historic structure or landmark without the prior approval from either an architectural review board or the governing body as provided by subdivision A 2 of § [15.2-2306](#). The civil penalty imposed for a violation of such an ordinance shall not exceed the market value of the property as determined by the assessed value of the property at the time of the destruction or removal of the building or structure. It is the burden of the county to show the liability of the violator by a preponderance of the evidence.

§ 58.1-339.2. Virginia Historic Rehabilitation Tax Credit.

See Code provision for specific details.

§ 58.1-3219.4. Partial Exemption for Structures in Redevelopment or Conservation Areas or Rehabilitation Districts.

The governing body of any county, city, or town may, by ordinance, provide for the partial exemption from taxation of improvements to real estate located in a redevelopment or conservation area or rehabilitation district. A partial exemption provided by the local governing body shall be either (i) an amount equal to the increase in assessed value or a percentage of such increase resulting from the improvement to the real estate as determined by the commissioner of the revenue or other local assessing officer, or (ii) an amount up to 50 percent of the cost of such construction or improvement, as determined by ordinance. The exemption may commence upon completion of the improvement or on January 1 of the year following completion of the improvement and shall run with the real estate for a period of no longer than 15 years.

In no event, however, shall such partial exemption result in totally exempting the value of the structure. No property shall be eligible for such exemption unless the appropriate building permits have been acquired and the commissioner of the revenue or assessing officer has verified that the improvements have been completed.

Where the construction of a new structure is achieved through demolition and replacement of an existing structure, the exemption provided shall not apply when any structure demolished is a registered Virginia landmark or is determined by the Department of Historic Resources to contribute to the significance of a registered historic district.

§ 58.1-3220. Partial Exemption for Certain Rehabilitated, Renovated or Replacement Residential Structures.

The governing body of any county, city or town may, by ordinance, provide for the partial exemption from taxation of real estate on which any structure or other improvement no less than 15 years of age has undergone substantial rehabilitation, renovation or replacement for residential use, subject to such conditions as the ordinance may prescribe. The ordinance may restrict such exemptions to real property located within described zones or districts whose boundaries shall be determined by the governing body. Such ordinance may also provide for the partial exemption from taxation of multifamily residential units that have been substantially rehabilitated by replacement for multifamily use.

The partial exemption provided by the local governing body may be an amount equal to the increase in assessed value or a percentage of such increase resulting from the rehabilitation, renovation or replacement of the structure as determined by the commissioner of revenue or other local assessing officer or an amount up to 50 percent of the cost of the rehabilitation, renovation or replacement, as determined by ordinance. The exemption may commence upon completion of the rehabilitation, renovation or replacement or on January 1 of the year following completion of the rehabilitation, renovation or replacement and shall run with the real estate for a period of no longer than 15 years. The local governing body or its designee shall provide written notification to the property owner of the amount of the assessment of the property. In no event shall such partial exemption result in totally exempting the value of the structure. Where rehabilitation is achieved through demolition and replacement of an existing structure, the exemption provided shall not apply when any structure demolished is a registered Virginia landmark or is determined by the Department of Historic Resources to contribute to the significance of a registered historic district.

Virginia State Cemetery Laws

§ 54.1-2310. Definitions.

As used in this chapter, unless the context requires a different meaning:

"Cemetery" means any land or structure used or intended to be used for the interment of human remains. The sprinkling of ashes or their burial in a biodegradable container on church grounds or their placement in a columbarium on church property shall not constitute the creation of a cemetery.

"Interment" means all forms of final disposal of human remains including, but not limited to, earth burial, mausoleum entombment and niche or columbarium inurnment. The sprinkling of ashes on church grounds shall not constitute interment.

"Memorials, markers or monuments" means the object used to identify the deceased and is considered personal property.

§ 8.01-44.6. Action for injury to cemetery property.

The owner or operator of a cemetery company may bring an action to recover damages sustained, together with costs and reasonable attorneys' fees, against any person who willfully or maliciously destroys, mutilates, defaces, injures, or removes any tomb, monument, gravestone, or other structure placed within any cemetery, graveyard, or place of burial, or within any lot belonging to any memorial or monumental association, or any fence, railing, or other work for the protection or ornament of any tomb, monument, gravestone, or other structure aforesaid, or of any cemetery lot within any cemetery. The cemetery owner or operator may recover, as part of damages sustained, the cost of repair or replacement of damaged property, including any labor costs, regardless of whether the property damaged is owned by the cemetery or by another person.

§ 10.1-2305. Permit required for the archaeological excavation of human remains.

A. It shall be unlawful for any person to conduct any type of archaeological field investigation involving the removal of human skeletal remains or associated artifacts from any unmarked human burial regardless of age of an archaeological site and regardless of ownership without first receiving a permit from the Director.

B. Where unmarked burials are not part of a legally chartered cemetery, archaeological excavation of such burials pursuant to a permit from the Director shall be exempt from the requirements of §§ 57-38.1 and 57-39. However, such exemption shall not apply in the case of human burials within formally chartered cemeteries that have been abandoned.

C. The Department shall be considered an interested party in court proceedings considering the abandonment of legally constituted cemeteries or family graveyards with historic significance. A permit from the Director is required if archaeological investigations are undertaken as a part of a court-approved removal of a cemetery.

D. The Board shall promulgate regulations implementing this section that provide for appropriate public notice prior to issuance of a permit, provide for appropriate treatment of excavated remains, the scientific quality of the research conducted on the remains, and the appropriate disposition of the remains upon completion of the research. The Department may carry out such excavations and research without a permit, provided that it has complied with the substantive requirements of the regulations promulgated pursuant to this section.

E. Any interested party may appeal the Director's decision to issue a permit or to act directly to excavate human remains to the local circuit court. Such appeal must be filed within fourteen days of the Director's decision.

§ 15.2-2258 Plat of proposed subdivision and site plans to be submitted for approval.

Whenever the owner or proprietor of any tract of land located within any territory to which a subdivision ordinance applies desires to subdivide the tract, he shall submit a plat of the proposed subdivision to the planning commission of the locality, or an agent designated by the governing body thereof for such purpose. When any part of the land proposed for subdivision lies in a drainage district such fact shall be set forth on the plat of the proposed subdivision. When any grave, object or structure marking a place of burial is located on the land proposed for subdivision, such grave, object or structure shall be identified on any plans or site plans required by this article. When the land involved lies wholly or partly within an area subject to the joint control of more than one locality, the plat shall be submitted to the planning commission or other designated agent of the locality in which the tract of land is located. Site plans or plans of development required by provision 8 of 15.2-2286 shall also be subject to the provisions of 15.2-2258 through 15.2-2261, mutatis mutandis.

§ 15.2-2288.5. Meaning of "cemetery" for purposes of zoning.

- A. A "cemetery" for purposes of this chapter shall have the meaning set forth in § 54.1-2310.
- B. Nothing in this section shall exempt a licensed funeral home or cemetery from any applicable zoning regulation.
- C. The following uses shall be included in the approval of a cemetery without further zoning approval being required: all uses necessarily or customarily associated with interment of human remains, benches, ledges, walls, graves, roads, paths, landscaping, and soil storage consistent with federal, state, and local laws on erosion sediment control.
- D. Mausoleums, columbaria, chapels, administrative offices, and maintenance and storage areas that are shown in a legislative approval for the specific cemetery obtained at the request of the owner shall not require additional local legislative approval provided such structures and uses are developed in accordance with the original local legislative approval. This subsection shall not supersede any permission required by an ordinance adopted pursuant to §15.2-2306 relative to historic districts.

§ 18.2-125. Trespass at night upon any cemetery.

If any person, without the consent of the owner, proprietor or custodian, go or enter in the nighttime, upon the premises, property, driveways or walks of any cemetery, either public or private, for any purpose other than to visit the burial lot or grave of some member of his family, he shall be guilty of a Class 4 misdemeanor.

§ 18.2-126. Violation of sepulture; defilement of a dead human body; penalties.

- A. If a person unlawfully disinters or displaces a dead human body, or any part of a dead human body which has been deposited in any vault, grave or other burial place, he is guilty of a Class 4 felony.
- B. If a person willfully and intentionally physically defiles a dead human body he is guilty of a Class 6 felony. For the purposes of this section, the term "defile" shall not include any autopsy or the recovery of organs or tissues for transplantation, or any other lawful purpose.

NOTE: The penalty for conviction of a Class 4 felony is a term of imprisonment of 2-10 years and a fine up to but no more than \$100,000. The penalty for conviction of a Class 6 felony is a term of imprisonment of 1-5 years, or in the discretion of a jury or court trying the case without a jury, confinement in jail for no more than 12 months and a fine of up to but no more than \$2,500, either or both.

§ 18.2-127. Injuries to churches, church property, cemeteries, burial grounds, etc.

- A. Any person who willfully or maliciously commits any of the following acts is guilty of a Class 1 misdemeanor:
 - 1. Destroys, removes, cuts, breaks, or injures any tree, shrub, or plant on any church property or within any cemetery or lot of any memorial or monumental association;
 - 2. Destroys, mutilates, injures, or removes and carries away any flowers, wreaths, vases, or other ornaments placed within any church or on church property, or placed upon or around any grave, tomb, monument, or lot in any cemetery, graveyard, or other place of burial; or
 - 3. Obstructs proper ingress to and egress from any church or any cemetery or lot belonging to any memorial or monumental association.
- B. Any person who willfully or maliciously destroys, mutilates, defaces, injures, or removes any object or structure permanently attached or affixed within any church or on church property, any tomb, monument, gravestone, or other structure placed within any cemetery, graveyard, or place of burial, or within any lot belonging to any memorial or monumental association, or any fence, railing, or other work for the protection or ornament of any tomb, monument, gravestone, or other structure aforesaid, or of any cemetery lot within any cemetery is guilty of a Class 6 felony. A person convicted under this section who is required to pay restitution by the court shall be required to pay restitution to the church, if the property damaged is property of the church, or to the owner of a cemetery, if the property damaged is located within such cemetery regardless of whether the property damaged is owned by the cemetery or by another person.
- C. This section shall not apply to any work which is done by the authorities of a church or congregation in the maintenance or improvement of any church property or any burial ground or cemetery belonging to it and under its management or control and which does not injure or result in the removal of a tomb, monument, gravestone, grave marker or vault. For purposes of this section, "church" shall mean any place of worship, and "church property" shall mean any educational building or community center owned or rented by a church.

NOTE: The penalty for conviction of a Class 1 misdemeanor is confinement in jail for not more than twelve months and a fine of not more than \$2,500, either or both.

§ 33.1-241. Roads not to be established through cemetery or seminary of learning without owners' consent.

No road shall be established upon or through the lands of any cemetery or through the lands of any seminary of learning without the consent of the owners thereof.

§ 45.1-252(D)4. Designating areas unsuitable for coal surface mining.

D. On and after March 20, 1979, and subject to valid existing rights, no coal surface mining operations, except those which were existing on August 3, 1977, shall be permitted:

4. Within 300 feet from any occupied dwelling, unless waived by the owner thereof, nor within 300 feet of any public building, school, church, community, or institutional building, public park, or within 100 feet of a cemetery.

§ 57-22. Conveyance of land to trustees or local governing body for cemetery use.

A. Land may be conveyed to trustees, not less than five nor more than nine in number, for the use of any city, town, county, magisterial district, cemetery association, ecclesiastical or other society, as a cemetery. It shall be held by such trustees and their successors for such use and no other.

B. Land may also be conveyed to a county, city or town, in the name of the county, city or town, for use as a cemetery. Any perpetual care fund associated with the land or cemetery shall also be transferred upon such conveyance.

§ 57-27.1. Access to cemeteries located on private property; cause of action for injunctive relief; applicability.

A. Owners of private property on which a cemetery or graves are located shall have a duty to allow ingress and egress to the cemetery or graves by (i) family members and descendants of deceased persons buried there; (ii) any cemetery plot owner; and (iii) any person engaging in genealogy research, who has given reasonable notice to the owner of record or to the occupant of the property or both. No landowner shall erect a wall, fence or other structure or device that prevents ingress and egress to the cemetery or grave, unless the wall, fence or other structure or device has a gate or other means by which ingress and egress can be accomplished by persons specified in this subsection. The landowner may designate the frequency of access, hours and duration of the access and the access route if no traditional access route is obviously visible by a view of the property. The landowner, in the absence of gross negligence or willful misconduct, shall be immune from liability in any civil suit, claim, action, or cause of action arising out of the access granted pursuant to this section.

B. The right of ingress and egress granted to persons specified in subsection A shall be reasonable and limited to the purposes of visiting graves, maintaining the gravesite or cemetery, or conducting genealogy research. The right of ingress and egress shall not be construed to provide a right to operate motor vehicles on the property for the purpose of accessing a cemetery or gravesite unless there is a road or adequate right-of-way that permits access by a motor vehicle and the owner has given written permission to use the road or right-of-way of necessity.

C. Any person entering onto private property to access a gravesite or cemetery shall be responsible for conducting himself in a manner that does not damage the private lands, the cemetery or gravesites and shall be liable to the owner of the property for any damage caused as a result of his access.

D. Any person denied reasonable access under the provisions of this section may bring an action in the circuit court where the property is located to enjoin the owner of the property from denying the person reasonable ingress and egress to the cemetery or gravesite. In granting such relief, the court may (i) set the frequency of access, hours and duration of the access and (ii) award reasonable attorney fees and costs to the person denied such access.

E. The provisions of this section shall not apply to any deed or other written instrument that creates or reserves a cemetery or gravesite on private property.

§ 57-36. Abandoned graveyards may be condemned; removal of bodies.

A. When a graveyard, wholly or partly within any county, city, or town, has been abandoned, or is unused and neglected by the owners, and such graveyard is necessary, in whole or in part, for public purposes, authorized by the charter of such city or town, or by the general statutes providing for the government of counties, cities, and towns, such county, city, or town may acquire title to such burying ground by condemnation proceedings, to be instituted and conducted in the manner and mode prescribed in the statutes providing for the exercise of the power of eminent domain by counties, cities, and towns. The locality may continue to maintain all or a portion of the burying ground as a graveyard.

B. The court taking jurisdiction of the case may, in its discretion, require the county, city, or town to acquire the whole burying ground, in which event the county, city, or town may use such part thereof as may be necessary for its purposes and sell the residue. The court, however, shall direct that the remains interred in such graveyard, if possible so to do, be removed to some repository used and maintained as a cemetery.

C. Should any county, city, or town, having acquired by any means land on which an abandoned graveyard is located, including lands acquired in accordance with § 22.1-126.1 for educational purposes, initiate plans to use that land for purposes other than to maintain the graveyard, such county, city, or town shall, prior to completion of said plans, develop and engage in active public notice and participation regarding efforts to avoid adverse impacts to the graveyard or to remove the remains interred in such graveyard to an alternative repository. Such public notice and participation shall include, at minimum, publication of at least one notice in a local newspaper of general circulation, notice posted at the site of the graveyard, and notice to and consultation with any historic preservation or other such commission, as well as area historical and genealogical societies, and at least one public hearing. The locality shall make a good faith effort to identify and contact living descendants of the persons buried in the graveyard, if known. In addition, the locality is encouraged to post such notice on the Internet, including appropriate websites and through the use of social media, and to consult with the Virginia Department of Historic Resources. Having given all public comment due consideration, the county, city, or town is encouraged first to adjust plans to maintain the graveyard as part of the larger land use plan or, if that is not feasible, to request permission to proceed with removal through the court or through the Virginia Department of Historic Resources should archaeological removal be appropriate. In any event, any removal of remains should be given all due care and respect, as should the selection of and reburial in another cemetery. This requirement for public notice, consultation, consideration of comments, and following due process for removal of human remains shall apply in cases where the presence of an abandoned graveyard is discovered during either the planning or construction phases of a project.

D. Any county, city, or town that has acquired by any means land on which an abandoned cemetery or gravesite of Virginians held as slaves at the time of their deaths is located shall notify the Virginia Department of Historic Resources of the location of such cemetery or gravesite. The Department shall record the location of the cemetery or gravesite. A listing of the locations of all abandoned cemeteries and gravesites of Virginians held as slaves at the time of their deaths that have been provided to the Department shall be maintained by the Department as a public record.

NOTE: Sections C and D of §57-36 above were newly adopted in 2014.

§ 57-38.1. Proceedings by landowner for removal of remains from abandoned family graveyard.

The owner of any land on which is located an abandoned family graveyard, and there has been no reservation of rights in such graveyard, or when the beneficiaries of any reservations of rights desire to waive such rights, and in which no body has been interred for twenty-five years may file a bill in equity in the circuit court of the county or in the circuit or corporation court wherein such land is located for the purpose of having the remains interred in such graveyard removed to some more suitable repository. To such bill all persons in interest, known or unknown, other than the plaintiffs shall be duly made defendants. If any of such parties be unknown, publication shall be had the plaintiffs shall undertake active, good faith efforts to locate interested parties including, at a minimum, publication of at least one notice in a local newspaper of general circulation, notice posted at the site of the graveyard, and notice to and consultation with any historic preservation or other such commission, as well as area historical and genealogical societies. In addition, the plaintiff is encouraged to post such notice on the Internet, including appropriate websites and through the use of social media, and to consult with the Virginia Department of Historic Resources. Upon the case being properly matured for hearing, and proof being made of the propriety of the removal, the court may order the removal made and the remains properly deposited in another place, at the expense of the petitioner. Such removal and reinterment shall be done with due care and decency.

In determining the question of removal the court shall consider the historical significance of such graveyard and shall consider as well the wishes of the parties concerned so far as they are brought to its knowledge, including the desire of any beneficiaries of any reservation of rights to waive such reservation of rights in favor of removal, and so considering shall exercise a sound discretion in granting or refusing the relief prayed for.

NOTE: Portions of § 57-38.1 above were revised and newly adopted in 2014.

§ 57-38.2. Proceedings by heir at law or descendant for removal of ancestor's remains from abandoned family graveyard.

Any heir at law or descendant of a deceased person interred in an abandoned family graveyard in which no body has been interred for twenty-five years may file a bill in equity in the circuit court of the county or city wherein the land is located for the purpose of having the remains interred in the graveyard removed to some more suitable repository. The owner of the land, any beneficiaries of any reservation of rights, and all other persons in interest, known or unknown, other than the plaintiffs shall be duly made defendants. If any of such parties are unknown, notice may be given by order of publication. Upon the case being properly matured for hearing, and proof being made of the propriety of the removal, the court may order the removal and the remains properly deposited in another place, at the expense of the petitioner. The removal and reinterment shall be done with due care and decency.

The bill may be filed and relief granted regardless of whether there has been a reservation of rights in the graveyard and regardless of whether the beneficiaries of any reservation of rights desire to waive their rights. In determining the question of removal, the court shall consider the historical significance of the graveyard and the wishes of the parties concerned so far as they are brought to its knowledge, including the desire of any beneficiaries of any reservation in rights, and shall exercise sound discretion in granting or refusing the relief prayed for.

§ 57-39. Proceedings for removal of remains and sale of land vacated.

When the owners of a graveyard, or the trustees of a graveyard left in trust, by reason of the infancy or the disability of any of them or by reason of their being numerous or partly unknown, or of the residence of any of them being unknown, cannot or cannot conveniently unite in making disposition of the same, any one or more of such owners or trustees, or, in any event, any county, city or town of this Commonwealth, if a private graveyard or pauper's graveyard (potter's field), which has been dedicated for such use either by written instrument, or by use by the public for such purpose, be within the boundaries thereof and the private graveyards be not connected with any church or church property and said graveyards be in a condition of neglect or disuse, or in the case of a pauper's graveyard is in a condition of neglect, or disuse, or is located in a location which is inappropriate for its continued use as a burial ground, may file a bill in equity in the circuit court of the county or in the circuit or corporation court of the corporation wherein the graveyard is located for the purpose of having the remains interred in such graveyard removed to some more suitable repository, and the land thus vacated sold and the costs of removal and interment and the costs of suit including reasonable attorney's fees paid out of the proceeds of the sale. To such bill all owners of the graveyard or any person having a right therein, and in the case of a pauper's graveyard the dedicator thereof, his heirs or successors in interest, if known, and if not known, such unknown parties shall be made defendants by the name of "person or persons unknown who may be the owners, heirs, or successors in interest of the unknown dedicator of the pauper's graveyard which is the subject of this suit," other than the plaintiffs shall be duly made defendants.

The bill shall show the title of the land, the interest of all parties, so far as known, and the reasons why relief is sought and that it is practicable. And upon the case being properly matured for hearing, and proofs being adduced of the propriety of the removal, the court shall have power to have the removal made and the remains properly deposited in another place, and to make sale of the grounds vacated by the removal and to have the costs of removal and reinterment, including the costs of the new place of interment, and of putting it in all respects in suitable condition and erecting upon it suitable memorials and the costs of the suit paid out of the proceeds of the sale.

Such removal and reinterment shall be done with due care and decency. But, unless the bill be filed by a city, town or county, the court shall not order such removal and reinterment until due and sufficient guaranty be given it that the proceeds of sale of the grounds proposed to be sold will be sufficient to meet all costs that may be incurred unless some party to the cause or other person gives due security to make good any deficit.

In determining the question of removal or sale the court shall consider as well the wishes of the parties concerned so far as they are brought to its knowledge as the proofs, and so considering shall exercise a sound discretion in granting or, refusing the relief prayed for, except that in case the bill be filed by a city, town or county, the court shall be guided by considerations of public welfare.

The court may distribute any surplus of the proceeds of sale according to their rights among the owners of the ground sold or the parties entitled thereto, and in the case of the sale of a pauper's graveyard wherein the original owner, his heirs and successors in interest are unknown, or there has been a dedication of said land for pauper's graveyard, the court, after the due consideration, upon application of the county, city or town may permit the proceeds of the sale to be utilized for other public uses of a charitable nature including the purchase of land for parks, public offices and other municipal uses including the construction of buildings thereon.

No graveyard to which there is no right-of-way except over or through some person's land shall be sold hereunder without the consent of such person.

§ 57-39.1. Improvement of abandoned and neglected graveyards.

When the owners of any private graveyard, not connected with any church or church property, abandon the graveyard and allow it to fall into a condition of neglect and disuse, so that it is unsightly and thereby lessens the desirability and value of adjacent land, and the owners fail or refuse, when requested by the owner of adjacent land or when requested by the local governing body of the county, city or town wherein the private graveyard is located, to remedy such condition of neglect and put the graveyard into suitable condition, then any owner of adjacent land or the local governing body may file a bill in equity in the circuit court of the county or city wherein the graveyard is located, for the purpose of requiring the graveyard to be placed in a suitable condition. The owners of the graveyard or any person having a right therein shall be made defendants to such court proceedings.

The court shall not enter an order requiring the owners of a graveyard in which a grave or entombment right has never been sold to improve it or place it in a suitable condition. However, after hearing the evidence the court may allow the petitioners, at their own expense, to improve the graveyard and place it in suitable condition and may also require bond to ensure that the petitioners will not injure or remove any tomb, monument, gravestone, grave marker, or vault without having first obtained court approval. Acting pursuant to court order, the petitioners may thereafter enter upon the land and improve the graveyard and place it in suitable condition. The costs in any case involving a graveyard in which a grave or entombment right has never been sold shall be paid by the petitioners.

In any case involving a graveyard in which a grave or entombment right has been sold, the court shall determine whether the owners or petitioners shall pay the costs of improving the graveyard and may require bond to insure against injury or removal of any tomb, monument, gravestone, grave marker, or vault without court approval.

§ 57-39.1:1. Recovery of abandoned interment rights; procedure; rights of owner of record.

A. When interment rights that have been granted by the owner of a cemetery are not used for a period of 50 years or more, they shall be deemed abandoned and revert to the owner of the cemetery, provided he has complied with the provisions of subsections B, C, and D. For the purposes of this section, "interment" means the same as such term is defined in § 54.1-2310.

B. If the last known address of the record owner of an interment right or his heirs, assigns, or next of kin is known to the owner of the cemetery or may reasonably be ascertained by the owner of the cemetery, the owner of the cemetery shall send notice by certified mail, return receipt requested, to the owner of the interment right, his heirs or assigns, and any next of kin at such address. The notice shall request the owner's current address, if different from the last known address, and the addresses of the owner's heirs or assigns. If a written response is received from the person to whom notice was sent by the cemetery, the interment rights shall not be deemed abandoned and such rights shall continue for an additional 50 years from the date the response was received by the cemetery. If notice is returned undeliverable or if no response is received by the cemetery within 30 days after notice was sent, the cemetery shall publish a general notice pursuant to subsection D in a newspaper of general circulation (i) in the county or city where the cemetery is located and (ii) in the county or city of the last known address of the record owner of the interment rights.

C. In cases in which the last address for the last record owner of an interment right or his heirs, assigns, or next of kin is not known to and cannot reasonably be ascertained by the owner of the cemetery, the cemetery owner shall publish a notice, once a week for four consecutive weeks in a newspaper of general circulation in the county or city where the cemetery is located pursuant to subsection D.

D. Notice required to be published pursuant to subsections B and C shall contain the name and business address of the cemetery and the name of the last record owner of the interment rights and shall state the intent of the cemetery owner to declare the interment rights abandoned. If no response is received by the cemetery by or on behalf of the record owner or his heirs or assigns within 120 days after publication of the last required notice, the interment rights shall be deemed abandoned and shall revert to the owner of the cemetery. If a written response is received by the cemetery, the interment rights shall not be deemed abandoned and such rights shall continue for an additional 50 years from the date the response was received by the cemetery.

E. If, within 30 years after the interment rights have been deemed abandoned, the record owner, or his heirs or assigns, can prove to the cemetery or a court of competent jurisdiction that he is entitled to the interment rights, the cemetery shall, at no cost, provide a right of interment similar to the one that was abandoned.