

Cemetery Relocation in Virginia

Prior to World War II, it was not unusual, especially in rural areas, for families to find a small corner of their property in which to bury deceased family members. Now that some of those rural areas are not so rural anymore, a property owner may be surprised to find that their property is the host to the remains of prior owners from days gone by.

The owner of land that contains a family cemetery has two options with respect to the cemetery. The first is to allow the cemetery to remain in place. The other option is to obtain a court order allowing the relocation of the cemetery.

If the owner allows the cemetery to remain in place, that owner generally has no duty to maintain the cemetery, other than any duty that local proffer requirements or zoning ordinances might impose.

If the owner desires to relocate the cemetery, there are some steps that the owner must take in order to do so.

The owner should have a title examination performed to determine whether there is a reservation of rights to the cemetery in the chain of title. A reservation of rights to a family cemetery in a deed is generally not considered a reservation of the fee simple ownership of the land that constitutes the cemetery. Rather, it is akin to an easement in gross that allows family members or other beneficiaries to make burials, visit, and maintain the cemetery. If the cemetery use is discontinued and the remains relocated, the reservation is extinguished and the beneficiaries of the reservation have no further rights to the underlying land.

The owner should also confirm that the cemetery is, in fact, abandoned. The Virginia Code also specifically requires that there has been no burials in the cemetery for a period of at least 25 years. In addition, the owner should confirm that the cemetery has not been maintained in any way for a substantial period and is in a state of disrepair.

It is also advisable to retain a genealogist to locate the descendants of those known to be buried in the cemetery and any other possible beneficiaries of any reservation of rights. The Virginia Code also has guidelines that an owner is encouraged to follow



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if not all of the descendants can be located, including publication of a notice and notifying local genealogical and historical societies.

Family cemeteries are generally not considered “historically significant” unless (1) a historically significant person is buried there, (2) there is some unique architectural aspect of the cemetery, or (3) the cemetery is directly connected to a historically significant place or event.

While not required, it is advisable to get an archeologist to perform a cemetery delineation to confirm the boundaries of the cemetery and the location of any marked and unmarked graves.

If the cemetery has no historical significance and has been abandoned, the landowner can petition the circuit court for an order allowing the relocation of the cemetery to an established cemetery where the graves would receive perpetual care and maintenance. The property owner is responsible for the cost of the relocation.

Before filing the Petition to relocate the cemetery, it is a good idea to contact the known descendants to: (1) explain to them what we are seeking to do and to try to establish some goodwill, (2) ask them if they have knowledge of other descendants who we might not have been able to identify, and (3) ask for their consent to the relocation of the graves, at no expense to them.

The Petition must name “all parties in interest”, which is not clearly defined in the Virginia Code. Therefore, it might be advisable to include “parties unknown” in the Petition. The “parties unknown” must be served through publication in a local newspaper and requires the appointment of a Guardian Ad Litem.

It is within the discretion of the circuit court to determine whether the relocation is appropriate and courts have in the past ordered relocations over the objections of some descendants. Virginia legal precedent currently favors the relocation of abandoned family cemeteries.

Once the court has entered the order and the 30-day appeal period has run, the graves can be relocated. A licensed funeral director usually handles the relocation.



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