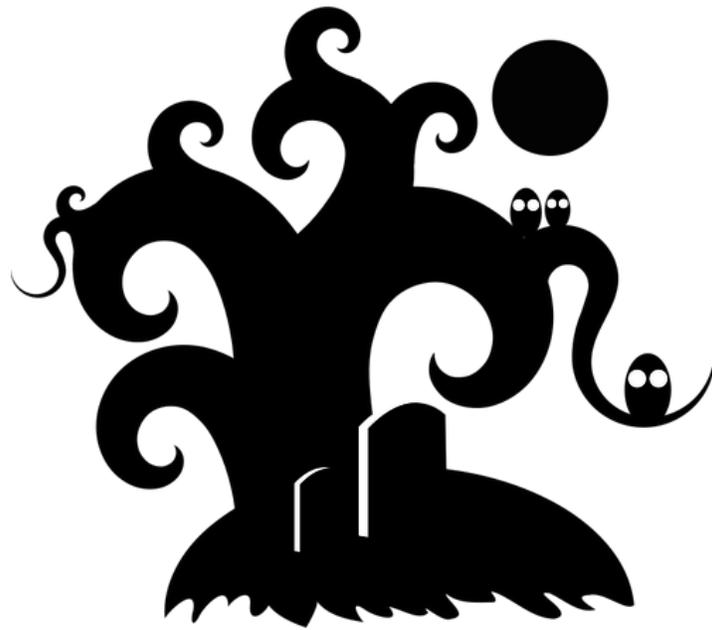


Digging Deep

Unearthing the Mysteries of Burial and Cemetery Law



Published by

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Revised October 2017

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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 much 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. With over 2000 cemeteries and burial grounds in Vermont, we ask a lot of our cemetery commissioners and cemetery associations.

The complex laws governing Vermont's cemeteries are intended to protect the public health and safety. They are also meant to ensure that individuals who have bought plots and families with loved ones buried in a Vermont cemetery have a reasonable guarantee that the cemetery will be maintained into the future. With this publication, we hope to assist all Vermonters, and especially the volunteers who oversee our cemeteries, by explaining the laws that apply to burials and cemeteries in Vermont.

We thank the Office of Vital Records at the Vermont Department of Health for its review of and contributions to this updated version. Please let me know if there are ways that we can improve future editions.



James C. Condos

James C. Condos
Secretary of State

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The epitaphs found within this publication are real epitaphs that can be found in Vermont!

I. Burial Law: Of Grave Concern

A. Authorization for burial, transit, and removal

Vermont law prohibits burying a human body without proper paperwork in place. The required paperwork, which includes a death certificate to establish the cause of death and a burial-transit permit to track the location of the remains, serves several purposes. First, the public's health and safety is protected by ensuring that the Department of Health is aware of possible public health risks associated with the death and that the appropriate authorities have been notified in the event of possible foul play. In addition, a written record can be helpful if subsequent questions arise about the circumstances of death, or if a family member or other interested person wishes to locate the body.

Please note that the Vermont General Assembly has recently amended Vermont's vital records laws as they pertain to birth and death records.

See 2017 Acts and Resolves, No. 46:

<http://legislature.vermont.gov/bill/status/2018/H.111>.

Act 46 transfers registration responsibilities from town clerks to the State Registrar of Vital Records. It also imposes limits on who is authorized to issue copies of these records and who is eligible to obtain them. Most provisions of Act 46, including those mentioned here, will take effect on July 1, 2018.

1. Death certificates

All deaths occurring within Vermont must be reported using Vermont's Electronic Death Registration System (EDRS), administered by the Office of Vital Records at the Vermont Department of Health. EDRS, accessible at <http://www.healthvermont.gov/health-statistics-vital-records/vital-records-population-data/vital-records-reporting-edrs>, is a web-based application that licensed health care professionals and funeral directors use to submit the medical and demographic information required to create a death record. Once all necessary information is submitted, the portion of the death record that is not confidential under law becomes a registered death certificate. See 18 V.S.A. § 5000, as amended by 2017 Acts and Resolves No. 46; 18 V.S.A §§ 5014 and 5016, as added by 2017 Acts and Resolves No. 46.

Town clerks can access EDRS and can print certified copies of the death certificate as soon as it has been registered. The death certificate must be made available, upon request, to the family of the deceased, the undertaker, or the person who has charge of the body. 18 V.S.A. § 5207.

a. Completing and filing the report of death

When a death occurs in Vermont, the licensed health care professional who attended the deceased person right before death must complete the medical portion of the report of death within 24 hours. This responsibility may, in some cases, be transferred to another licensed health care professional who has more familiarity with the deceased person and can more accurately report the cause of death. 18 V.S.A. §§ 5202(a), (b); 5206. In most cases, a funeral director assumes the responsibility for completing the nonmedical, demographic portion of the report of death.

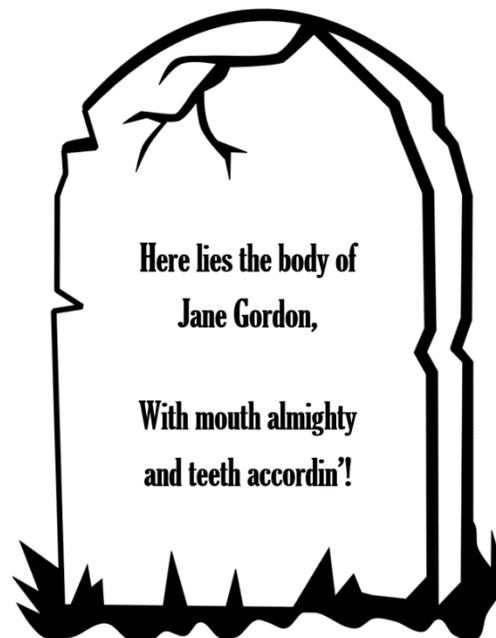
If a death is unattended by a physician or religious practitioner, involves a threat to public health or safety, or occurs under accidental or suspicious circumstances, the report of death is completed and signed by a Department of Health medical examiner. Depending on the circumstances, involvement of the state's attorney and law enforcement may also be required. 18 V.S.A. § 5205.

b. Preliminary report of death

When a death certificate is not available prior to burial or transportation of a body, any licensed health care professional with access to the facts may complete and sign a preliminary report of death. Completion of this preliminary report suffices for the purposes of issuing a burial-transit permit, but the report of death must still be registered with EDRS within 24 hours of the death. 18 V.S.A. § 5202(a), (b).

c. Altering death certificates

Until July 1, 2018, town clerks may correct or complete the death certificate within six months after a death, upon application by the certifying physician, medical examiner, hospital, nursing home, or funeral director. (Only the certifying physician or medical examiner may apply to correct or complete the medical certification of the cause of death.) 18 V.S.A. § 5202a(a), (c). Correction requests are submitted to the Vermont Department of Health's Office of Vital Records and processed in the EDRS. If the town clerk refuses an application for correction or completion, or in any case after six months have passed from the date of death, the applicant may petition the probate court to authorize the change. 18 V.S.A. § 5202a(a), (b).



Beginning on July 1, 2018, it is the State Registrar who is authorized to alter death certificates as warranted. If the State Registrar decides against making an alteration, the applicant may appeal in probate court. 18 V.S.A. § 5202a, as amended by 2017 Acts and Resolves No. 46.

2. Burial-transit permits and certificates of permission

A burial-transit permit is generally required to bury, entomb, remove, or otherwise dispose of a dead body in Vermont. 18 V.S.A. § 5201. The purpose of the burial-transit permit is to track the disposition of the body so that we know, or can find out, where deceased persons are laid to rest.

Burial law also occasionally refers to the certificate of permission, which must be presented in order to remove a dead body from the town where the death occurred and must accompany the body to its receiving cemetery, tomb, or vault. By law, the certificate of permission must plainly state the time, place, and manner of the burial, entombment, or other disposition, and it must contain the essential facts of the death certificate. 18 V.S.A. §§ 5210, 5214. In practice, the certificate of permission has been consolidated into the burial-transit permit, so that only a burial-transit permit is needed.

a. Issuing burial-transit permits

The following officers and persons are authorized to issue burial-transit permits: the town clerk; the town clerk's deputy; the county clerk, if the body is located in an unorganized town or gore; a funeral director licensed in Vermont; an owner or manager of a crematorium licensed in Vermont and registered to perform removals; or a law enforcement officer (including state and municipal police officers, as well as sheriffs, deputy sheriffs, and town constables with law enforcement powers). 18 V.S.A. § 5201(a); 20 V.S.A. § 2358(c)(1). Once a death certificate is in hand, the applicable officer or person must issue the burial-transit permit "immediately." 18 V.S.A. § 5207.

The town clerk must provide for issuing burial-transit permits at times when the clerk's office is closed. For this purpose, the clerk must appoint one or more deputies. 18 V.S.A. § 5201(a)(1).

The county clerk has the same duties as municipal clerks in respect to issuing burial-transit permits that occur in an unorganized town or gore within the county. 18 V.S.A. § 5201(a)(2).

A licensed funeral director, or an owner or manager of a licensed crematory authorized to perform removals, may issue a burial-transit permit for any municipality or unorganized town or gore at any time, even during the normal business hours of a municipal clerk. 18 V.S.A. § 5201(a)(3). The majority of burial-transit permits are issued by these folks.

Burial-transit permits issued by someone other than the municipal clerk must be forwarded to the clerk by the next business day. Specifically, the person issuing the permit must, on the "first

official working day thereafter,” forward both the death certificate or preliminary report of death and a copy of the burial-transit permit to the clerk of the municipality where the death occurred. If the death occurred in an unorganized town or gore, the person issuing the permit must instead forward these documents to the county clerk. 18 V.S.A. § 5201(a)(4).

b. Limitation on issuing burial-transit permits

In cases of death by certain communicable diseases, as defined by the Commissioner of Health, the local health officer must be consulted. In this situation, no burial-transit permit may be issued except in accordance with instructions issued by the Commissioner. 18 V.S.A. § 5201(a)(5).

c. Issuance of burial-transit permits to next of kin

In Vermont, the next of kin may choose to bury their family member at home (see section II, F-1 on private burial grounds and home burials) or to transport the body to another state for cremation or burial. In this situation, the next of kin must obtain a burial-transit permit.

d. Transportation of bodies through and into other towns

Once a burial-transit permit is secured, the body may be taken through or into another Vermont town for funeral services without additional permits from the local health officer or Commissioner. The only exception is for deaths caused by certain communicable diseases, as noted above. 18 V.S.A. § 5201(a)(6).

e. Sexton’s duty to deliver burial-transit permits

The sexton or other person in charge of a Vermont cemetery, tomb, or receiving vault must, during the first week of each month, deliver to clerk of the town where the cemetery, tomb, or vault is located the burial-transit permits he or she received in the preceding month. 18 V.S.A. § 5215.

3. Removal permits and objections to removal

a. When removal permits are necessary

Removal permits are required whenever a body is moved from one location to another, regardless of whether the locations are both in the same cemetery, town, or state. Although the law refers separately to “removal permits” and “burial-transit permits,” in practice removal permits are issued using the burial-transit permit form.

There is some question whether the statute concerning removal permits, 18 V.S.A. § 5212, applies to removal of cremated remains that have been buried or interred. Although the statute

refers to “removal of bodies” in its title, the language of the law discusses “removal of remains.” Cremated remains are human remains, and the persons who have buried or interred cremated remains in a cemetery have the same interest in knowing about, and possibly objecting to, their removal. Consequently, the safest course of action is 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 does not apply to cremated remains that are kept or scattered by the next of kin. See section I, B-4 on cremation.)

Note that the general provisions of statute concerning removal do not apply to the removal of historic remains or to the removal of remains from unmarked burial sites. 18 V.S.A. § 5212(e). These specific types of removals are subject to different provisions of Vermont law, as detailed in section I-A-5 below.

b. Applying for a removal permit

When a person wishes to disinter or remove a body from one cemetery to another cemetery, 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 the body is interred or entombed for a removal permit. 18 V.S.A. § 5212(a). The law does not limit who may apply to remove a body. Generally, the applicant is a family member, a cemetery association, or the owner of private land on which an old burial ground is located.

In order to acquire a removal permit, certain public notice requirements apply. Specifically, the applicant for the removal permit must publish notice of his or her intent for two successive weeks in a newspaper of general circulation in the town in which the body is interred or entombed. 18 V.S.A. § 5212(b). (Publication once a week, for two weeks, in either a daily, semiweekly, or weekly newspaper suffices. If a daily or semiweekly newspaper is used, the notice must be published on the same day each week. 1 V.S.A. § 174.) The notice must contain a statement that the spouse, child, parent, sibling, or descendent of the deceased, or the town cemetery commissioner or other authority responsible for cemeteries in the municipality, may object to the proposed removal by filing a complaint in probate court. 18 V.S.A. § 5212(b).

c. Issuing and delivering removal permits

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 probate court, in which case the clerk must issue the permit upon order of the court. 18 V.S.A. § 5212(c).

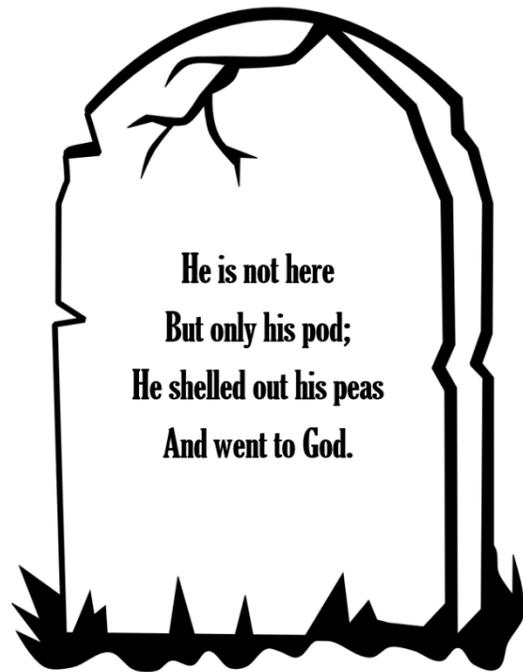
Notwithstanding the notice requirements in 18 V.S.A. § 5212, the clerk must issue a removal permit upon application under certain specified circumstances: when removal is necessary because of temporary entombment; when required by a federal, state, county, or municipal official acting pursuant to official duties; or when the applicant has acquired permission to

remove the remains, in writing, from all family members entitled to object to the removal in court. 18 V.S.A. § 5212(d).

The removal permit that is issued must state specifically where the body is to be buried, cremated, or entombed, and the time and manner of its removal. If the body is being removed from one town to another, the clerk must make two copies, delivering one to the person in charge of the cemetery or tomb from which the body is to be taken and the other to the person in charge of the cemetery and tomb where the body will be placed. 18 V.S.A. § 5213.

d. Objecting to a removal

The list of those entitled to object in court to a disinterment or removal includes the deceased person's spouse, children, parents, and siblings. (The statute does not specify whether this includes step-children, step-parents, or step-siblings.) To object, the family member must file a complaint in the probate court of the district where the body is interred or entombed within 30 days after the last publication of notice. A copy of the complaint must also be filed with the local town clerk. After holding a hearing, the probate court will grant the request to remove the body unless it is contrary to the expressed intent of the deceased or objected to by the surviving spouse. If there is no surviving spouse, then the court will consider the objections of the surviving adult children. If no surviving spouse or adult children exist, the court will consider the objections of the surviving parents; and if there is no surviving spouse, parent, or adult child of the deceased, the court will consider the objections of surviving siblings. 18 V.S.A. § 5212a(b).



e. Sexton's duty to deliver removal certificates

The sexton or other person in charge of a Vermont cemetery, tomb, or receiving vault must, during the first week of each month, deliver to clerk of the town where the cemetery, tomb, or vault is located the removal certificates he or she received in the preceding month. 18 V.S.A. § 5215.

4. Removal of human remains: Special cases

a. Removal or transit of bodies from out-of-state into Vermont

Whenever a body is brought into Vermont for burial or entombment, it should be accompanied by a removal permit issued under the laws of the state from which the body is brought. This paperwork is sufficient authority for burial. 18 V.S.A. § 5209.

If the body is not accompanied by a removal permit, the person in charge of the body must apply to the town clerk of the town in which burial is to take place for a burial-transit permit. The clerk must then issue the permit after receiving the identity and cause of death information as required under Vermont law for persons who died in Vermont. 18 V.S.A. § 5209.

b. Removal of historic remains

A special process exists 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 that are marked and located in a publicly known or marked burial ground or cemetery. 18 V.S.A. § 5217(a).

i. Applying for a removal permit; 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, where they will be reburied, and the reasons for removal. The application must also include a statement of public good, that is, explain how the municipality and the property where the remains are located will be benefited by removal.

The applicant must mail notice to the following: the cemetery commission or other municipal authority responsible for cemeteries in the municipality where the historic remains are located; all historical societies in the municipality; the State Archeologist; and any descendant known to the applicant. To ascertain the whereabouts of descendants, the applicant must also contact the Vermont Historical Society, the Vermont Old Cemetery Association, the Vermont Cemetery Association, and any veterans’ organization in the county. 18 V.S.A. § 5217(a)–(c).

ii. Objections to removal; issuance of removal permit

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. The objection must be filed with both the probate court and the clerk of the municipality in which the historic remains are located within 30 days after the date notice was mailed. If no timely objection is received, the town clerk must issue a removal permit.

If the probate court receives a timely objection, the court will schedule a hearing on whether to allow removal as described in the application, specifically considering the impact of the removal on the public good. Ultimately, the court will order the town clerk to grant or deny the removal permit. 18 V.S.A. § 5217(d)–(g).

If a removal permit is granted, the permit must require that all remains, markers, and relevant funeral-related materials associated with the burial site be removed. The permit may require that removal be conducted or supervised by a qualified professional archeologist in compliance with standard archeological process. The applicant must pay all costs associated with the removal. 18 V.S.A. § 5217(h).

c. Removal of remains from unmarked burial sites

When an unmarked burial site is first discovered, it must be reported immediately to a law enforcement agency. If law enforcement determines that the burial site does not constitute evidence of a crime, it must immediately notify the State Archeologist, who may authorize further appropriate action. 18 V.S.A. § 5212b(f).

If a municipality, landowner, Native American group with connection to the remains, or other interested party wishes to excavate an unmarked burial ground, or to remove and reinter the remains, funds from the Vermont Department of Commerce and Community Development may be available. 18 V.S.A. § 5212b. See section II, F-2 on unmarked burial sites.

5. Penalties for unauthorized burial, transit, or removal

A person who buries, entombs, transports, or removes a human body without a burial-transit permit or removal permit may be imprisoned up to five years, fined up to \$1000, or both. The same penalties apply if a person buries, entombs, transports, or removes a body in any other manner, or at any other time or place, than the burial-transit or removal permit specifies. 18 V.S.A. § 5211.

Additionally, a sexton or other person in charge of a Vermont cemetery, tomb, or receiving vault who permits burial or entombment without a certificate of permission shall be fined between \$20 and \$500. These fines also apply if the sexton or other person fails to return the properly certified burial-transit and removal permits to the town clerk each month. 18 V.S.A. § 5216.

Steeper penalties exist for intentional removal of human remains without legal authorization. A person who intentionally disinters, removes, or carries away an interred or entombed human body or remains without legal authority may face up to 15 years in prison, a fine of up to \$10,000, or both. The same penalties apply for taking away an object buried with a body and for assisting with illegal intentional disinterment. 13 V.S.A. § 3761.

B. Legal requirements for disposing of remains

The law limits how the remains of the dead may be disposed. Human remains must be either interred in the earth; deposited in an above-ground chamber, vault, or tomb in a cemetery; deposited in a crypt of a mausoleum; or cremated. 18 V.S.A. § 5139(a). If the deceased person did not have an advanced directive or other written indication of his or her wishes, one or more adult family members generally has the right to determine the disposition of the remains. 18 V.S.A. §§ 5227–5233.

1. Burial

Burial of a human body must be at least three and one-half feet deep, measured from the natural surface of the ground to the bottom of the outside coffin. This minimum requirement applies to burial of adults and children alike. 18 V.S.A. § 5319(b).

Vermont statute explicitly permits home burials. Specifically, a property owner may set aside a portion of his or her land to use as a burial space for immediate family members, so long as this use does not violate state and local health laws. 18 V.S.A. § 5319(a). See section II, F-1 on home burials for more information.

For burial in a natural burial ground, a body must be buried without a coffin or, alternately, in a nontoxic, nonhazardous, plant-derived burial container or shroud. 18 V.S.A. § 5302(11). For more information on natural burial grounds, see section II, A-12.

2. Deposit in mausoleums, vaults, and above-ground tombs

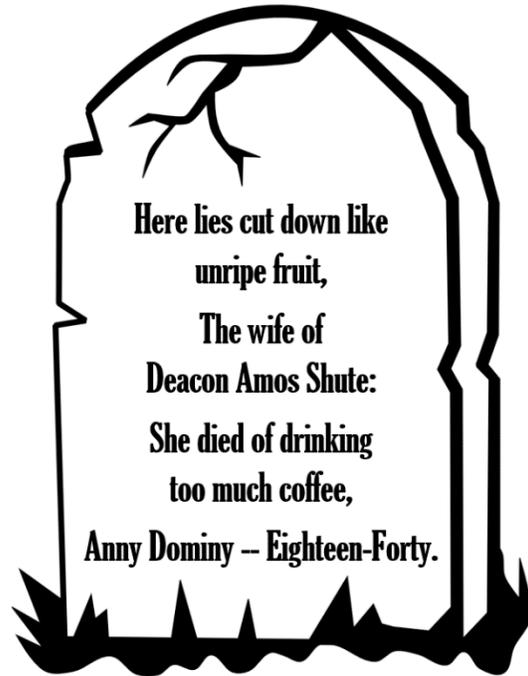
To deposit human remains in a single chamber, vault, or tomb that is at least partly above the surface of the ground, certain statutory requirements must be met. Any part of the chamber, vault, or tomb that is below the natural surface of the ground must be of a permanent character, constructed of materials that are capable of withstanding extreme climatic conditions, be waterproof and air tight, and have the capability of being sealed permanently so as to prevent the escape of effluvia. Any portion above the ground must be constructed of natural stone meeting U.S. national cemetery standards, have durability sufficient to withstand all conditions of weather, and be of a character to ensure its permanence. 18 V.S.A. § 5319(c).

Towns may construct and maintain temporary receiving vaults on town land with voter approval. A body may be temporarily deposited in one of these temporary vaults for up to one year. 18 V.S.A. § 5320.

3. Embalming

There is no general rule that bodies must be embalmed prior to burial. The Attorney General's office issued an opinion in 1974 reaffirming that fact. The opinion, however, also mentions the power of the local board of health and the town health officer to regulate burial for purposes of abating public nuisances. The local board of health may order embalming to prevent a threat to the public health. 1974 Op. Atty. Gen. 127.

If a body is to be buried in a natural burial ground, it must either remain unembalmed or be embalmed using nontoxic embalming fluids. 18 V.S.A. § 5302(11). For more information on natural burial grounds, see section II, A-12.



4. Cremation

a. Authorization for cremation

i. Burial-transit permits and cremation certificates

A burial-transit permit must be obtained before a body is taken to be cremated. See section I, A-4. The crematory generally certifies and files the burial-transit permit with the town clerk; however, if cremated remains are to be buried, the cemetery should keep a record of this as well.

A medical examiner's cremation permit (referred to as a "cremation certificate" in statute) is also required to ensure that there are no more questions about the cause of death. The cremation permit must be retained by the crematory for three years. 18 V.S.A. § 5201(c).

ii. Delay of cremation

Crematory facility operators must wait at least 24 hours following a person's death to cremate the body, unless a Department of Health rule or order requires quicker dispatch due to concerns about communicable disease. The Attorney General or a state's attorney may request delay of cremation until after a civil or criminal investigation into the cause of death can be completed. 18 V.S.A. § 5201(b).

iii. Cremation of bodies transported from out of state

To cremate the body of a person who died outside Vermont, the crematory operator must obtain from the requestor a removal or cremation permit issued by the other state. The operator must also comply with the laws of the state in which the person died, including obtaining a copy of the out-of-state medical examiner's permit if one is required. If compliance with the other state's laws is achieved, no additional approval from the Office of the Chief Medical Examiner is required. 18 V.S.A. § 5201(d).

b. Disposition of cremated remains

Vermont law does not limit how a family may choose to dispose of cremated remains. The family may keep the urn of cremated remains on their mantelpiece, or they may sprinkle the cremated remains where they wish or in compliance with the deceased's expressed wishes. No permit is required for scattering cremated human remains.

Cremated remains may also be deposited in a niche of a columbarium, deposited in a crypt of a mausoleum, or buried or disposed of in any other manner not contrary to law. 18 V.S.A. § 5319.

For information on removal of cremated remains that have been buried in a cemetery, see section I, A-4.

C. Burial of persons with insufficient assets

If a person without sufficient assets to pay for burial dies in Vermont, or if a Vermonter without sufficient assets dies here or elsewhere, the Vermont Department for Children and Families (DCF) will pay the burial expenses under certain circumstances. In particular, the deceased must have been either a recipient of public assistance under certain specified state or federal programs or an honorably discharged veteran of any branch of the U.S. Armed Forces. If the deceased meets all requirements, DCF will pay for interment or cremation of the body and any directly-related ceremonies at the gravesite, to the extent that funds are available (and reduced by what the deceased's estate and spouse can pay). Funeral homes are responsible for determining from the person making burial arrangements whether the deceased individual was a veteran or a recipient of state or federal aid. All payments are made directly to the appropriate funeral director. 33 V.S.A. § 2301.

Alternatively, if an inmate of a state institution dies without sufficient known assets to pay for burial, that state institution will arrange and pay for his or her burial. 33 V.S.A. § 2301(b).

Towns no longer share responsibility with the State for arranging and paying for burials of individuals without sufficient assets. Towns may choose, however, to set aside a portion of town burial grounds to accommodate burial of these persons. 18 V.S.A. § 5375. Towns remain responsible for providing a suitable headstone or marker for persons who die without known

assets, if one is not otherwise available through family, friends, or the estate. The headstone or marker must be erected within three years after the burial, and it must include the deceased's name, birth date, and date of death if known. 18 V.S.A. § 5370. (Please note that the headstone requirement does not apply to natural burial grounds unless the regulations governing a particular natural burial ground require a marker on a person's grave. 18 V.S.A. § 5323(a)(4). See section II, A-12 for more information on natural burial grounds.)

D. Disposition of fetal remains

When a fetal death occurs, fetal remains must generally be buried or cremated. Alternatively, the remains can be released to an educational institution for scientific purposes, or disposed of by the hospital or as directed by the attending physician, in a manner that will not create a public health hazard. Parental permission is generally required. 18 V.S.A. § 5224(a).

When fetal remains are to be buried or cremated, the funeral director or other person making arrangements must obtain a burial-transit permit for fetal remains from the hospital or physician and deliver it to the cemetery or crematory before burial or cremation takes place. As is required with other types of burial permits, these permits must be delivered each month to the town clerk in the town where burial or cremation took place. 18 V.S.A. § 5224(b). (Please note that the provisions of law requiring burial-transit and removal permits for dead bodies also generally apply to fetal remains. See section I, A-1 through A-3.)

If a hospital or physician is in charge of the disposal of fetal remains, the appropriate hospital official or the physician or other person in charge of disposition must complete a burial-transit permit for fetal remains and send it to the Commissioner of Health within 10 days of disposition. These permits may be destroyed after five years. 18 V.S.A. § 5224(c).

II. Cemetery Law: Tales from the Crypt

A. General requirements for cemeteries

In Vermont, 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). A community mausoleum is a structure or building used for permanent disposition of human remains in crypts or spaces. 18 V.S.A. § 5302(5). A columbarium is room or other space in a building or structure that is used to contain cremated human remains. 18 V.S.A. § 5302(4).

1. Authority of cemeteries

The authority of a cemetery is narrowly drawn. Under statute, a cemetery’s object, purposes, and activities are restricted to only those acts necessary to enable it to accomplish the purposes for which it is created. 18 V.S.A. § 5304.

2. Limitations on cemetery powers

Cemeteries may not act for individual profit or gain—there is no such thing as a “for-profit” cemetery in Vermont. Under Vermont statute, a cemetery “shall 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. “Agencies” means anyone engaged in the business of a cemetery, including towns, religious or ecclesiastical societies, and cemetery associations. 18 V.S.A. § 5302(1). The business of cemeteries does not include any right to engage in business enterprises or occupations that are typically pursued by private individuals. Cemeteries may, however, sell corner posts and other implements to define lot and subdivision boundaries, articles incident to the care and maintenance of lots and burial spaces, and materials necessary for a burial service. 18 V.S.A. § 5304.

3. Who may operate a cemetery

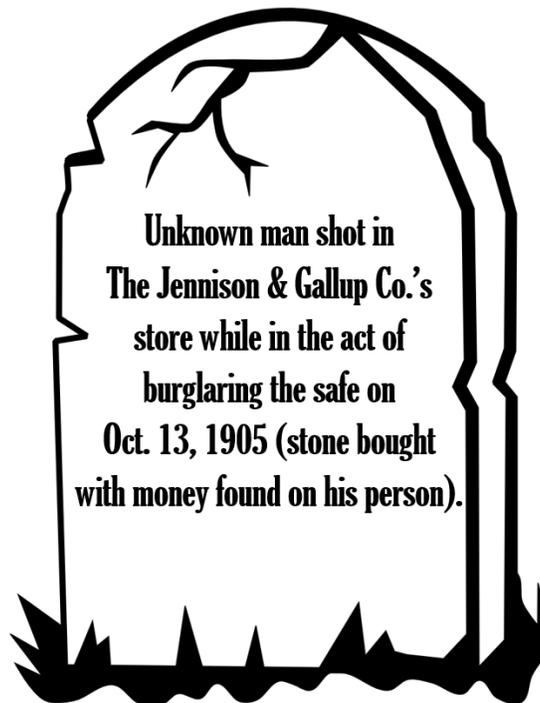
There are three kinds of cemeteries in Vermont: those operated by a municipality; those operated by a cemetery association (an “incorporated cemetery”), and those operated by a religious institution or ecclesiastical society. The law was written to ensure that old cemeteries organized prior to 1933 continue to be lawful, even if these old cemeteries do not technically comply with current statutory requirements. 18 V.S.A. § 5303. However, the law is clear that “[e]very 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 corporation as hereinafter prescribed.” 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 for family burials. 18 V.S.A. § 5319(a). See section II, F-1 for more information on private burial grounds and home burials.

4. Burial records

Burial records are open to the public. Whether a cemetery is municipal, incorporated, or religious, the cemetery must make its records of burials, interments, and cremations available for public inspection at all reasonable times. The cemetery organization must provide and maintain a suitable, safe place to keep and preserve these records in order to prevent loss and destruction. 18 V.S.A. § 5313.

Vermont's Public Records Act, 1 V.S.A. §§ 315–320, also applies to the records of municipal cemeteries. Our office's publication on access to public records is available at <https://www.sec.state.vt.us/media/560403/a-matter-of-public-record-2014.pdf>.



5. Acquisition of cemetery property; tax exempt status

Towns, cemetery associations, and religious or ecclesiastical societies may acquire land and property for cemetery purposes, whether through acceptance of a gift or grant or by purchase.

18 V.S.A. §§ 5306, 5481. In general, cemetery lands, buildings, lots, property, and funds, as well as income generated from these holdings, are exempt from taxation. 18 V.S.A. §§ 5317, 5376.

6. Cemetery plats

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 terms of [18 V.S.A. chapter 21].” 18 V.S.A. § 5312.

The plat of a cemetery’s grounds must show both the parts that are improved or in use and the parts held for future use. The plat of the improved part must show the land laid out in sections, lots, driveways, walks, and paths, with sections designated by symbols and lots numbered. Community mausoleum and columbarium plats must show sections, halls, rooms, corridors, elevators, or other subdivisions with descriptive names and numbers. 18 V.S.A. § 5310. (Note that natural burial grounds are not subject to certain platting method requirements. 18 V.S.A. § 5323(a)(1). For more information on natural burial grounds, see section II, A-12.)

Every cemetery must file its cemetery plat with its town clerk. 18 V.S.A. § 5310. The town clerk must record the original or photocopied plat. If the clerk records a cemetery plat provided by an organization that lacks authority to provide cemetery services, or the plat does not conform to legal requirements, Vermont statute makes that recording void and of no effect. 18 V.S.A. § 5311.

7. Sale of cemetery property

a. Sale of cemetery lots for interment

After recording the plat, the cemetery may sell lots, crypts, and niches for the sole purpose of interment of human remains. Subject to statutes governing sale of lots, crypts, and niches, the cemetery organization may make rules about sales and use of cemetery lots. However, the law provides that no part of the proceeds from these sales—or other cemetery income—may be divided among organization members. Rather, proceeds from sales and other income must be used exclusively for the purposes of the cemetery, or else placed in the perpetual care fund so that the income from the fund can be so used. 18 V.S.A. § 5314.

b. Sale of property for non-burial purposes; encumbrance of property

If a cemetery organization determines that land it has acquired is unsuitable for cemetery purposes, it may sell that land. The proceeds of the sale must be applied to the purchase of other lands or to general cemetery purposes. The land that is sold loses its tax-exempt status

post-sale. 18 V.S.A. § 5315. Note that if the land was acquired by condemnation proceedings, it must be disposed of in accordance with the laws relating to condemnation. 18 V.S.A. § 5315.

Vermont law prohibits a cemetery from mortgaging or otherwise encumbering cemetery property. 18 V.S.A. § 5316. No public highway or railroad may be laid through a burial ground without consent of the cemetery organization or the General Assembly. More broadly, no part of a burial ground may be taken for public use without special authority from the General Assembly. 18 V.S.A. § 5318.

8. Ownership of cemetery lots

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 the owner had died without a will (rather than going to the residuary beneficiary identified in the will). 18 V.S.A. § 5531(a).

In general, a husband or wife is entitled to be interred in a lot or tomb owned by his or her spouse. 18 V.S.A. § 5531(b). If two spouses live separately, and one spouse owns a burial lot or tomb to which the other has no other legal right to share, the owner-spouse may defeat the other spouse's right to interment by filing a written objection with the cemetery organization at least 30 days before the other spouse dies. 18 V.S.A. § 5531(b).

When the owner of a cemetery lot, or his or her heirs, are unknown for 20 years, the lot may revert to the cemetery. In this situation, Vermont law permits a cemetery to bring a petition in probate court. After notice by newspaper publication and a hearing, the court may decide that the lot will return to the cemetery's ownership. 18 V.S.A. §§ 5533–5536. If an heir or other person entitled to a lot appears within 17 years after the court's decree and files a claim to the lot in probate court, the lot may be returned to the heir. Alternately, if the lot was sold, the cemetery may 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 a dispute exists involving the above statutory provisions, the probate court has jurisdiction to decide the question. 18 V.S.A. § 5531(c). In addition, the cemetery has some rights to limit the persons or classes of persons who may be buried in the cemetery, and to prohibit or restrict the resale of any lot or burial space, pursuant to its own rules, regulations, deeds, or contracts. 18 V.S.A. § 5531(d).

9. Protection of cemeteries

Vermont statute prohibits unlawful disturbance of burial sites, whether on public or private land. No one may intentionally excavate, disinter, remove, or carry away human remains, or

any accompanying objects, that are interred or entombed in Vermont. A person who does so or who assists with these acts may receive a prison term of up to 15 years, a fine of up to \$10,000, or both. 13 V.S.A. § 3761.

Vermont law also forbids excavating, stealing, removing, injuring, or destroying a gravestone, cemetery monument, or all or part of a grave, tomb, or burial site. Further, no one may steal, cause to be stolen, or intentionally and unlawfully remove, break down, injure, or destroy any ornament, token, flag holder, or emblem that is being used to decorate or mark a grave or tomb. These items, if gained by unlawful means, may not be bought, sold, or bartered. Vermont statute additionally prohibits the above actions with regards to flowers, trees, or other plants used to decorate or mark cemetery property, including a grave or tomb. 13 V.S.A. § 3766. Violation of these statutory provisions may carry a prison sentence of up to a year, a fine of up to \$500, or both. 13 V.S.A. §3767. Moreover, a person who violates one of these provisions may be liable for damages and attorney's fees in a suit brought by the injured property owner, the estate of the deceased, or the entity that operates the cemetery. 13 V.S.A. § 3769.

10. Perpetual care funds

Any agency engaged in the cemetery business may set up a perpetual care fund where it may set aside surplus funds in trust. Income generated from the fund must be used according to the directions of the trust, if any. If no directions are given, if the purpose is incapable of performance, or if there is a surplus after directions have been fully complied with and performed, income must be used to build, repair, maintain, adorn, and beautify cemetery buildings, fences, graves, vaults, mausoleums, monuments, walks, cemetery lots, grounds, drives, or avenues. 18 V.S.A. § 5306.

When perpetual care trust funds are not deposited with a bank chartered by the State or a national bank, the cemetery's treasurer must post a bond to secure against loss occasioned by mismanagement of funds. 18 V.S.A. § 5308.

Perpetual care funds must be carefully invested, in order to protect the interest of individuals who paid into the fund. See 18 V.S.A. § 5309 for restrictions on how these funds may be invested. No assets of the cemetery organization may be loaned to a member, officer, trustee, or director. 18 V.S.A. § 5309.

11. Water standards for new and expanded cemeteries

Cemeteries that are created on or after July 1, 2015, as well as existing cemeteries that opt to expand their boundaries on or after that date, must comply with new standards for setbacks from water sources. The burial boundaries of a new or expanded cemetery must be specified distances from wells and other groundwater sources that are part of certain water supplies or public water systems. The boundaries must also be outside river corridors and flood hazard areas. 18 V.S.A. § 5319.

12. Natural burial grounds

Vermont law permits natural burial of human remains. Under statute, a natural burial ground is one that is maintained using ecological land management practices, without vaults. Bodies are either unembalmed or embalmed using nontoxic fluids, and they are buried either without a burial container or in a nontoxic, nonhazardous, plant-derived burial container or shroud. 18 V.S.A. § 5302(10), (11). A natural burial ground may be established on or after July 1, 2015. See 2015 Acts and Resolves No. 24.



Natural burial grounds are exempt from certain specified provisions of Vermont cemetery law, and in some cases must meet slightly different requirements instead. Regardless of 18 V.S.A. § 5310 (cemetery plats), the operator of a natural burial ground may make a plat using any nonstandard method of locating human remains that enables demarcation in the town land record of the exact location and identity of each buried body, such as by mapping, surveying, or use of a global positioning system. A town that operates a public natural burial ground need not comply with 18 V.S.A. § 5362 (cemetery repair requirements), nor must it maintain or repair a fence around the natural burial ground, as 18 V.S.A. § 5364 would otherwise require, if the perimeter is marked in a less obtrusive manner. Similarly, a town need not

furnish headstones for persons without financial means buried without them, as 18 V.S.A. § 5371 generally requires, unless the regulations governing a particular natural burial ground require grave markers. 18 V.S.A. § 5323(a).

The law prohibits constructing improvements on property used as a natural burial ground, except for improvements that serve as a winter storage facility or that have an educational or devotional purpose while maintaining the land's character. This prohibition must be set forth in any deed transferring rights in property used as a natural burial ground. 18 V.S.A. § 5323(b).

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 its residents or others. Many towns do, however, 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 the open meeting laws (1 V.S.A. §§ 310–314) and the public records act (1 V.S.A. §§ 315–320). A town may also have a charter, a conflict of interest ordinance or policy, or a personnel policy (or some combination of these) that applies.

1. Establishment and enlargement of cemeteries

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

a. Voter approval

Voter approval will usually be necessary to establish or enlarge a cemetery. Because starting or enlarging a cemetery generally costs money, in most cases the cemetery commissioners or selectboard will need to go before the voters to ask them to appropriate the necessary funds to pay for new land and for 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 town must warn an article for a special or annual town meeting to appropriate the money that will be needed to pay for the land. See 18 V.S.A. § 5361.

b. Eminent domain

Eminent domain can also 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 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 it uses to lay out a highway. 18 V.S.A. §§ 5482–5483; see also 19 V.S.A. chapter 7.

c. Freeholders’ rights concerning cemetery establishment and enlargement

Vermont statute gives town “freeholders” the right to require the town to consider establishing or enlarging a cemetery. (“Freeholder” is not defined in statute.) If three or more freeholders of the town apply in writing to the board of cemetery commissioners or selectboard, as appropriate, asking the board to lay out or enlarge a public burial ground, and describing the land they believe would be necessary for the purpose, the board must notice and conduct a hearing to consider the request. After the hearing, the board should issue a decision that weighs whether the public good requires granting the request. If the board denies the request, the freeholders may appeal the decision to the superior court. The superior court will appoint commissioners to determine 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.

On the other hand, if a person who owns or has an interest in lands taken for a burial ground is dissatisfied with the taking or with the damages received, he or she may appeal to the superior court, in the same manner as when an appeal is taken relating to the laying out of a highway. 18 V.S.A. § 5485; 19 V.S.A. chapter 7.

2. Cemetery governance

The town selectboard has control and oversight over the town's public burial grounds unless the town has voted to elect cemetery commissioners. 18 V.S.A. § 5367. Once a town votes to elect cemetery commissioners, the cemetery commissioners automatically assume all duties for care and management of town cemeteries that were previously fulfilled by the selectboard. 18 V.S.A. § 5373. If the voters later change their minds, they may vote to move the responsibility for town cemeteries back under the selectboard's control, at which time the office of cemetery commissioner will cease. 18 V.S.A. § 5381.

a. Election of cemetery commissioners; vacancies

When a town votes to place its public burial grounds under the charge of cemetery commissioners, it must decide whether it will elect a board of three or five commissioners. The voters may subsequently vote to enlarge a three-member board to five or to reduce a five-member board to three. 18 V.S.A. § 5373. 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 staggered terms. 18 V.S.A. § 5374.

Cemetery commissioners must be residents of the town in which they serve. 17 V.S.A. § 2646(14). A cemetery commissioner may not simultaneously serve as town auditor, treasurer, or manager. 17 V.S.A. § 2647(a).

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. That law provides that vacancies on the cemetery board may be filled by the remaining commissioners until the next annual meeting. 18 V.S.A. § 5374. Though the cemetery commissioners have discretion over whether to fill the vacancy, they must still post notice of the vacancy within 10 days of its creation. 24 V.S.A. § 961(a).

b. Powers and duties of cemetery commissioners

i. Overview of responsibilities

Cemetery commissioners have all the powers and responsibilities regarding cemeteries that were formerly under the charge of the selectboard. 18 V.S.A. § 5373. Their primary duties include, very generally: care and management of cemetery property, including fence repair, 18 V.S.A. §§ 5361, 5362, 5364–5366; laying out, sale, and conveyance of cemetery lots,

18 V.S.A. §§ 5376–5377; and oversight of cemetery finances, including submission of an annual report to town auditors, 18 V.S.A. §§ 5379, 5382–5387. On occasion, cemetery commissioners may also be called to manage abandoned private burial grounds, 18 V.S.A. § 5321; provide lots or headstones for burial of indigent people, 18 V.S.A. §§ 5371, 5375; issue permits to allow individuals to access a burial ground on private property, 18 V.S.A. § 5322; or close a cemetery, 18 V.S.A. §§ 5369–5370.

ii. Cemetery bylaws

The cemetery commission, or the selectboard if the voters have not created a cemetery commission, may make and change necessary bylaws and regulations relating to the town’s burial grounds, so long as these bylaws are not inconsistent with state law. Bylaws and regulations must be recorded in the town clerk’s office. 18 V.S.A. §§ 5361, 5378. Vermont law explicitly states that 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 commission or board to first consult with the town 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.

iii. Authority to act

A cemetery commission may only act by majority vote. Like members of a selectboard or other public body, individual cemetery commissioners have no independent authority to act on behalf of the commission. Rather, the commission may only take action by agreement of the majority. 1 V.S.A. § 172.

iv. Penalty for willful disregard of duties

A cemetery commissioner or selectboard member who violates state cemetery laws or willfully neglects his or her duties concerning town cemeteries is subject to a penalty of up to \$200. 18 V.S.A. § 5363.

c. Powers of voters

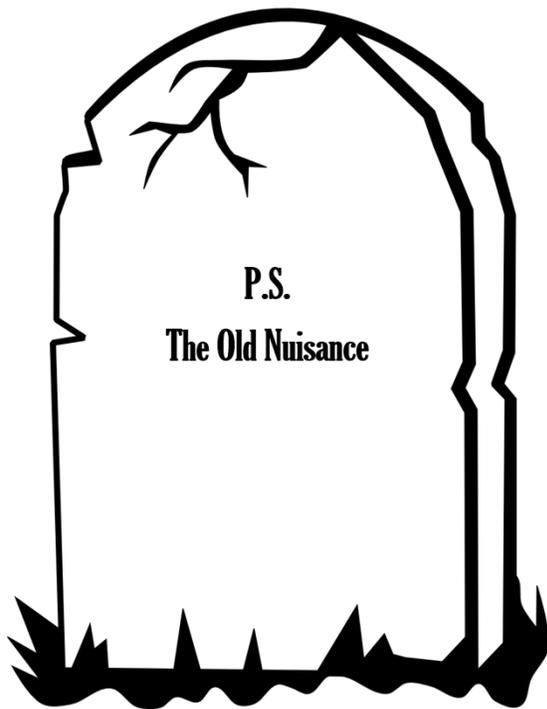
Town residents are granted many opportunities to vote on cemetery matters. For example, town voters may vote on whether to: create a cemetery commission and elect commissioners, and subsequently to return these responsibilities to the selectboard, 18 V.S.A. §§ 5373, 5381; appropriate sums of money for purchase or maintenance cemetery grounds, 18 V.S.A. § 5361; appropriate sums of money to a cemetery association that has ownership or control of a cemetery in town, 18 V.S.A. § 5372; receive and hold money in trust, using the income to care for and improve burial grounds or private lots, 18 V.S.A. § 5383; and construct and maintain

temporary receiving vaults on town land for the temporary disposition of dead bodies, 18 V.S.A. § 5320.

A handful of individuals (residents, voters, or property owners, depending on the statutory provision) may also compel the cemetery commission or selectboard to take up or act on certain specific cemetery matters, including: acquiring land to establish or enlarge a public burial ground, 18 V.S.A. § 5483; acquiring gravel to raise all or a portion of a burial ground, 18 V.S.A. § 5483; and managing abandoned private burial grounds, 18 V.S.A. § 5321.

Additionally, any one person may ask the cemetery commissioners for temporary access to a private burial ground, 18 V.S.A. § 5322, or may notify commissioners that a cemetery fence is out of repair, triggering liability, 18 V.S.A. § 5366.

d. Application of the open meeting law



Vermont’s open meeting law, 1 V.S.A. §§ 310–314, applies to cemetery commission meetings. The open meeting law requires, with few exceptions, that all meetings of a public body be open to the public. Indeed, whenever a quorum of a public body gathers to discuss its business or make a decision, this gathering must occur at a publicly-announced open meeting. More specifically, the law requires that public bodies provide the public with advance notice of meetings, including a meeting agenda; an opportunity to participate in the meeting; and the option to view the meeting minutes five days later. Routine day-to-day administrative matters that do not require action by the public body may, however, be conducted outside a duly-warned meeting, provided that no money is appropriated, expended, or encumbered. For more information about the open meeting law,

please refer to our office’s *A Guide to Open Meetings*, available online at <https://www.sec.state.vt.us/media/786069/oml-rev-sept-2016.pdf>.

3. Cemetery care and maintenance

a. Grass, weeds, and headstones

The cemetery commission, or the selectboard if the voters have not created a cemetery commission, must care for the cemetery grounds. When lots or walks become unsightly due to

grass or weeds, the commission must clear them of overgrowth. When headstones or monuments become displaced or out of repair, the commissioners must repair or replace them. 18 V.S.A. § 5363(a). (If replacing a headstone or monument, the commissioners must notify the relatives of the deceased, if known, that the relatives may claim the removed headstone or monument within 30 days after the stated date of removal. 18 V.S.A. § 5363(b).) The commission may also lay out unoccupied portions of the cemetery with paths and plant them with trees, shrubs, and flowers. 18 V.S.A. § 5375.

b. Fencing

The cemetery commission has the authority to take steps to ensure that there is adequate fencing around a cemetery. 18 V.S.A. § 5361. Indeed, the commission may be fined up to \$400 for neglecting to repair the fence around a public burial ground. 18 V.S.A. § 5364. In addition, the town may be liable for damage caused by domesticated animals to graves, headstones, monuments, shrubbery, or flowers due to lack of a legal fence around a public burial ground. 18 V.S.A. § 5365. The commission's liability is triggered 20 days after receipt of written notice that a fence is out of repair. 18 V.S.A. § 5366. The commission may make necessary regulations addressing fencing, as well as cemetery care and maintenance more generally. 18 V.S.A. § 5361.

c. Maintaining abandoned private burial grounds

When three voters of a town make a request to the cemetery commission to maintain a private burial ground that has been abandoned and has become "unsightly" or has displaced headstones or monuments, the commission is required to take some action. First, it must publish a newspaper notice 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 expiration of the three months, if no one has come forward to repair and maintain the cemetery, the commission 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 homestead. For more information on private burial grounds, see section II, F-1.

4. Laying out, sale, and conveyance of cemetery lots

Cemetery commissioners are responsible for laying out, selling, and conveying cemetery lots. 18 V.S.A. §§ 5367, 5375. The board is authorized to fix lot prices and to make regulations relating to sale and care of lots, as well as regulations more generally concerning burial grounds. 18 V.S.A. §§ 5377, 5378. One cemetery commissioner, appointed by the commission, may grant and convey lots in the town's name. The deeds to these lots must be recorded in the clerk's office of the town where the lots lie. 18 V.S.A. § 5376. (Note that cemetery lots are tax exempt. 32 V.S.A. § 3802(7).)

The proceeds from sales of lots, and the income derived from these proceeds, must be used for maintaining, improving, and embellishing the burial grounds. The town may vote to sell lots upon condition that the proceeds from these sales are paid into a town trust, with the income to be spent on caring for these lots and the structures contained on them. 18 V.S.A. § 5377. The proceeds from grants, gifts, or bequests of property that the town holds in trust may also be used to care for and embellish the burial grounds, according to the terms of the trust. 18 V.S.A. §§ 5382, 5385.

5. Cemetery finances

There are many laws that govern the finances of the town cemetery. These laws are designed to ensure that money given or appropriated for cemetery use is spent for the purpose it was given or appropriated. They also ensure 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 also 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 these 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. 18 V.S.A. §§ 5382, 5383, 5385. (Note that a town may be fined up to \$100 for neglecting to spend income pursuant to the conditions of a trust. 18 V.S.A. § 5385.) In addition, all income derived from the sale of lots by the town should be placed in a separate fund. 18 V.S.A. § 5377.

c. Receipt and investment of moneys

All moneys received by a town for cemetery purposes must be paid to the town treasurer, who gives receipts to those turning money over to him or her. These moneys may be invested and reinvested by the treasurer with the commission’s approval or by the trustee of public funds; the treasurer or trustee may delegate management and investment of town cemetery funds to an agent if prudent under law or the terms of the related trust or endowment. 18 V.S.A. § 5384.

The types of permissible investments are strictly limited by state law, and income from these investments must be expended for the purpose and in the manner designated by the donor. See 18 V.S.A. § 5384 for the list of permissible investments.

d. Drawing orders from town accounts

Money budgeted by the town for 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 cemetery commission and then paid by the town treasurer directly to the recipient of those funds. See 18 V.S.A. §5385; 24 V.S.A. § 1576.

e. No perpetual care fee required

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.

f. Public report and audit

Every year the cemetery commission must provide a written report to the town auditors that provides information on the condition and needs of town burial grounds and the activities of the commission. The report must include a detailed statement of receipts and expenditures, and of the amount and disposition of funds that the commission holds or controls. 18 V.S.A. § 5379. The town auditors must audit this statement, file it with the town clerk, and include it in whole or in summary in their annual report. 18 V.S.A. § 5380.

6. Closing a cemetery

When it is impracticable to preserve a burial ground in proper condition, the cemetery commissioners have the discretion to remove the human remains from that burial ground and re-inter them in a more suitable public burial ground. 18 V.S.A. § 5369. Before removing remains, the commission must notify any known kindred personally or by registered mail, allowing 30 days' notice for relatives who live in Vermont and 60 days' notice for those who live elsewhere. 18 V.S.A. § 5370. The commission should also consult with the Department of Health before removal. Note that when remains of the dead are removed, the commission must, if necessary, put up suitable headstones or monuments in memory of the deceased or to mark the place of interment. 18 V.S.A. § 5370.

C. Cemetery Associations

Every cemetery in Vermont 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 called a cemetery association. 18 V.S.A. §§ 5431, 5432. Cemetery associations are bound by the general requirements in statute for all Vermont cemeteries and the entities that operate them,

some of which we review below. (See section II, A for more information on general requirements for cemeteries.) Certain provisions of law specific to cemetery associations additionally apply.

1. Formation

A cemetery association is formed as a nonprofit corporation under 11B V.S.A. chapter 2 by filing articles of incorporation with the Secretary of State. Information on starting or registering a Vermont business is available on our website:

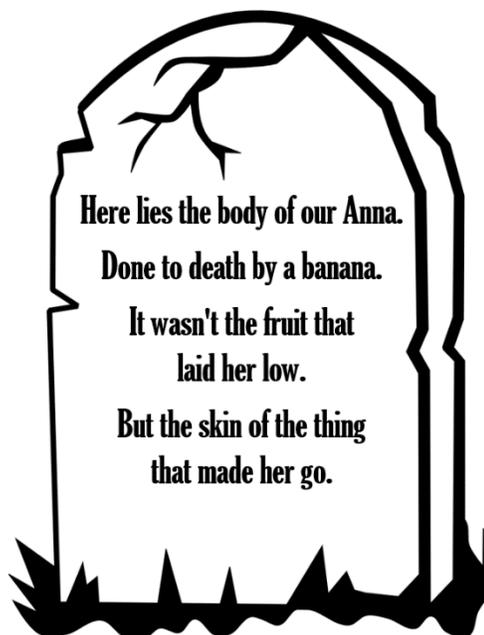
<https://www.sec.state.vt.us/corporationsbusiness-services/business-registration-services/start-or-register-a-business.aspx>.

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 lawful acts within the state. 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

Like other entities that operate cemeteries, the functions of a cemetery association are limited to cemetery purposes. The business of cemeteries does not include any right to engage in business enterprises or occupations that are typically pursued by private individuals. All cemeteries may, however, sell corner posts and other implements to define lot and subdivision boundaries, articles incident to the care and maintenance of lots and burial spaces, and materials necessary for a burial service. 18 V.S.A. § 5304.



3. Tax exemption

The general tax exemption for cemetery lands, buildings, property, and funds held exclusively for cemetery purposes applies to cemetery associations. 18 V.S.A. § 5317.

4. Rules and regulations

Like other entities that operate cemeteries, cemetery associations may make rules and regulations for the use, care, management, and protection of cemeteries, including determinations of who may be buried or deposited there. 18 V.S.A. §§ 5305, 5435(b). The

cemetery's bylaws, and its rules and regulations, will determine how the association is run, how decisions are made, and the manner in which cemetery purposes and goals are achieved.

5. Acquisition of land

A cemetery association may acquire the land necessary for its cemetery purposes through gift, purchase at fair cash market value, or devise. 18 V.S.A. § 5487. In some cases, the cemetery association may get land or enlarge a cemetery by obtaining additional land through condemnation procedures. To start a condemnation proceeding, the cemetery association must first try to buy the property for a reasonable amount, and then may apply to the superior court for the appointment of commissioners who will determine whether condemnation is appropriate and the amount of appropriate compensation. 18 V.S.A. §§ 5487–5494.

6. Town permission to create a new cemetery

A cemetery association needs the written consent of the town's selectboard and local board of health to create a new cemetery. 18 V.S.A. § 5487. Local land use regulations may also apply, requiring the association to go through the municipal development review process. (Note that town voters may also vote to appropriate sums of money to a cemetery association that owns or controls a cemetery in town for the purposes of that cemetery. 18 V.S.A. § 5372.)

7. Sale of lots, crypts, and niches

After making and recording a plat of the cemetery (see section II, A-6), a cemetery association may sell its lots, burial spaces, crypts, and niches. The association may make reasonable rules for disposing of and conveying these lots, spaces, crypts, and niches. 18 V.S.A. § 5435(a).

8. Care and maintenance of cemetery property

Cemetery associations may adopt bylaws concerning improving and beautifying their lots and grounds. An association may provide that the cost of improvements be paid out of the regular funds of the corporation. 18 V.S.A. § 5435(b).

9. Finances

a. Income and debts

All cemetery income, whether from the sale of lots, crypts, or niches, or from donations or otherwise, must be used exclusively for cemetery purposes. Specifically, income must be used to pay for cemetery land or property; to lay out, preserve, and embellish cemetery land or property; to erect buildings necessary for cemetery purposes; to establish a fund to care permanently for the cemetery's upkeep and repair; and to pay necessary expenses of the association. 18 V.S.A. § 5435(a).

A cemetery association may only contract a debt in anticipation of future receipts for its original purchase of land, mausoleum, or columbarium, or to lay out, enclose, and embellish its grounds. This type of debt may not exceed \$50,000. 18 V.S.A. § 5435(a).

b. Perpetual care funds

A cemetery association established before June 1, 1933 may create a perpetual care fund out of surplus money on hand or that it has received by will, devise, or otherwise. A cemetery association established after that date must create a perpetual care fund by applying to it 20 percent of the initial sale price of each lot or burial space sold. The association may add surplus money or property to the fund at any time. 18 V.S.A. § 5436. These trust funds must be invested and the income generated used in accordance with 18 V.S.A. § 5309 (investment of funds). 18 V.S.A. § 5437. Note that cemetery association assets may not be loaned to association members, officers, trustees, or directors. 18 V.S.A. § 5309.

c. Cemetery accounts

A cemetery association must keep and maintain adequate, correct accounts of its business transactions. These accounts must be open for inspection by any member of the association at all reasonable times. 18 V.S.A. § 5438(a). An association's perpetual care funds and accounts must be kept separate and apart from its other funds and accounts. 18 V.S.A. § 5438(a).

d. Annual report

The association's treasurer must make an annual report, countersigned by its president, concerning the affairs of the association and the perpetual care funds. The report must contain the amount of the treasurer's bond; a true statement of the total amount of fund or funds received and set aside for perpetual care; a list of the securities in which these funds are invested; the income received from these funds; all disbursements from this income; and the balance of money or property held in these funds. A copy of the annual report must be filed with the town clerk and with the probate court. 18 V.S.A. § 5438(b).

10. Dissolution

A cemetery association may be dissolved under the provisions of 11B V.S.A. chapter 14 (dissolution of nonprofit corporations). Upon dissolution, all lands, property, and funds may be transferred to the town in which the lands are located, and the cemetery may become a public burial ground.

11. Penalties

No one may do business as a cemetery association without authority. Anyone who does, or attempts to do so, may be sued by a taxpayer or the State. The court may enjoin the offender from doing business without authority and impose a fine. 18 V.S.A. § 5434.

D. Religious and ecclesiastical cemeteries

Vermont law does not specify how a religious or ecclesiastical cemetery must be legally organized. Indeed, most of the churches that predate current law governing incorporation and legal formation have cemeteries. Therefore, a religious or ecclesiastical cemetery may be organized as a religious association under 11 V.S.A. Chapter 13 or as a nonprofit corporation under 11B V.S.A. Chapter 2.

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 cemetery must be a nonprofit enterprise; the records of the cemetery must be open to public viewing; perpetual care funds must be invested as required by statute; and a plat of the cemetery must be filed before lots may be sold. Generally speaking, unless a burial or cemetery law specifically addresses town cemeteries, incorporated cemeteries, or private burial grounds, the law's requirements will also apply to religious and ecclesiastical cemeteries.

E. Community mausoleums and columbaria

A "community mausoleum" is a structure or building of durable and lasting construction that is used, or intended to be used, to permanently house human remains in crypts or spaces that are made available to individuals or the public for a price. 18 V.S.A. § 5302(5). This definition does not include structures containing crypts that are erected or controlled by religious organizations and used only as a repository for the remains of their clergy or dignitaries. 18 V.S.A. § 5571.

A "columbarium" is a structure, room, or other space in a building or structure of durable and lasting fireproof construction that is used, or intended to be used, to contain cremated human remains. 18 V.S.A. § 5302(4).

1. Location

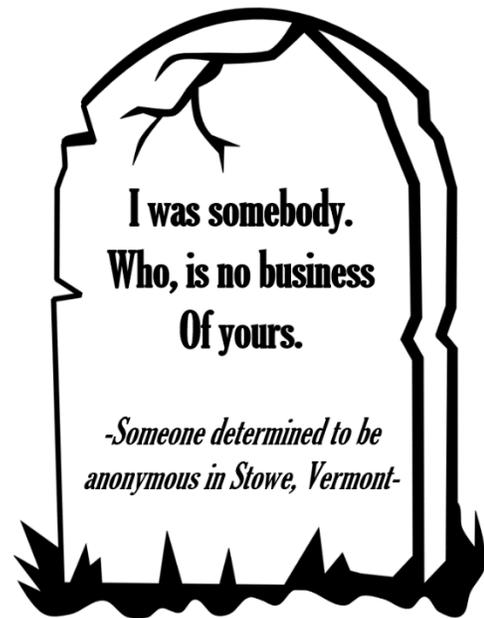
A community mausoleum may be located only within an established cemetery that contains less than five acres and that has been in operation for at least five years prior to the mausoleum's erection. This same rule applies to columbaria with spaces, crypts, or niches available to the public. 18 V.S.A. § 5571.

2. Plats

Before a cemetery begins building or constructing a mausoleum or columbarium, the cemetery must make and file a plat of the structure. This is done in the same manner in which a plat is made and filed for the cemetery. 18 V.S.A. § 5572; see also 18 V.S.A. §§ 5310, 5311.

3. Construction; State Board of Health permission and control

The permission of the State Board of Health, housed within the Vermont Department of Health, is required to build a community mausoleum or columbarium. Before commencing construction, the cemetery must submit full detailed plans and specifications to the Board of Health for approval. In addition, the law provides that an existing building not used for the permanent disposition of the dead may not be altered or changed for this use. Additions to existing community mausoleums or columbaria may only be made if constructed of material and workmanship that ensures durability and permanence, as well as the community's health, safety, comfort, and convenience under modern construction and engineering standards. 18 V.S.A. § 5573.



The State Board of Health maintains supervisory control over the construction of community mausoleums and columbaria. The Board of Health must require compliance with the approved plans and specifications, and a Board inspector (whose services are paid for by the cemetery) must be appointed to oversee compliance. Departing from the original plans and specifications requires written approval from the Board of Health. 18 V.S.A. § 5574.

4. Perpetual care funds

The law prohibits use of a community mausoleum or columbarium until its construction is complete and until a proper perpetual care fund has been established. 18 V.S.A. §§ 5575, 5578. The perpetual care funds for a community mausoleum must include not less than \$100 from the proceeds received from the sale of each crypt; 10 percent of the proceeds received from the sale of each room; and 10 percent of the sale price of each niche (a recess used to house cremated remains). 18 V.S.A. §5578.

5. Sale of crypts, rooms, and niches

A cemetery may only sell or offer to sell a crypt or room in a mausoleum, or a niche in a columbarium, prior to completion of the structure if it agrees with the purchaser that all money paid, plus legal interest, will be refunded should construction not be completed in a reasonable time. In addition, a bank or trust company must act as trustee for the purchaser, and a bond must be secured to guarantee repayment. The selection of the trustee, and the amount of the bond and its terms, must be approved by the probate court. 18 V.S.A. § 5576.

6. Removal of remains

Vermont law requires the owner of a mausoleum, vault, or crypt to keep the structure in a condition that prevents “a menace to public health.” If the owner fails to do so in the view of the State Board of Health, a court may order the owner to remove the bodies for interment in an appropriate cemetery at the owner’s expense. If the owner cannot be found, removal will nonetheless be performed, and at the owner’s expense. 18 V.S.A. § 5577.

7. Penalties

Anyone who violates the laws relating to mausoleums and columbaria is subject to fines, imprisonment, or both, for each offense. 18 V.S.A. § 5579.

F. Other burial grounds

1. Private burial grounds and home burials

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

a. Creating, expanding, and using a private burial ground

Vermont law provides that a landowner may set aside a portion of his or her land to use as a burial space for immediate family members, so long as this use does not violate state and town health laws and regulations. 18 V.S.A. § 5319. For example, if a 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 prohibit home burials altogether by ordinance; it is unclear whether, absent an articulated public health or safety concern, a town could do so.

A landowner who wishes to create or expand a private burial ground should be aware of statutory requirements regarding locating burial grounds in relation to water, water supplies, and power lines. See 18 V.S.A. § 5319(b)(2).

A landowner should have a map of any burial site located on his or her property drawn and record it 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.

Before a body may be buried in a family burial ground, a death certificate must be registered and a burial-transit permit obtained. 18 V.S.A. § 5201; see section I, A.

b. 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 no public right-of-way exists may ask the town for permission. The person must apply in writing to the cemetery commission or to the selectboard, as the case may be, stating the reason for the request and the period of time that he or she wishes to visit the cemetery. The person must also notify in writing the owner or occupier of the land over which the right-of-way is desired. 18 V.S.A. § 5322(a).

If the cemetery commission or selectboard finds that the request is reasonable, it 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. If the owner or occupier recommends a place of crossing, the commission or board must designate this place if reasonable. 18 V.S.A. § 5322(a). 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(b).

2. Unmarked burial sites

Because unmarked burial sites can be fragile and vulnerable to accidental disturbance, Vermont statute requires that certain precautions be taken when these sites are discovered, assessed, excavated, or developed. 18 V.S.A. § 5212b.

a. Discovery of unmarked burial sites

When an unmarked burial site is first discovered, the discovery must be reported immediately to a law enforcement agency. The law enforcement agency will determine whether the burial site constitutes evidence of a crime, and, if not, must notify the State Archeologist. The State Archeologist may authorize further appropriate action. 18 V.S.A. § 5212b(f).

b. Funds for protecting and preserving unmarked burial sites

A State Unmarked Burial Sites Special Fund exists for the purpose of protecting, preserving, moving, or reintering human remains discovered in unmarked burial sites. 18 V.S.A. § 5212b(a). The Commissioner of Commerce and Community Development has the power to authorize disbursement from the Fund for use in any municipality where human remains are

discovered in unmarked burial sites, in accordance with a process that the Commissioner approves. The process, which is intended as a means to ensure appropriate and respectful treatment of the site while considering the rights of the landowner, may be developed through consensus of interested parties, including municipalities, Native American groups historically based in Vermont with a connection to the remains, and owners of land on which there are known or likely unmarked burial sites. Any process must include methods for determining the presence of these sites and handling development and excavation; options for landowners; procedures for protecting, preserving, and moving these sites and human remains; and procedures for handling disputes. 18 V.S.A. § 5212b(c). The funds may be used to monitor excavations, protect and move sites and remains, perform archeological assessments and investigations, provide dispute resolution, and acquire property rights. 18 V.S.A. § 5212b(e).

Appendix: Burial and Cemetery Resources

For help from the Secretary of State's Office with municipal questions, please contact:

Jenny Prosser
General Counsel & Director of Municipal Assistance
(802) 828-1027
jenny.prosser@sec.state.vt.us
<https://www.sec.state.vt.us/municipal.aspx>

Chris Winters
Deputy Secretary of State
(802) 828-2124
chris.winters@sec.state.vt.us

Other Vermont burial and cemetery resources include:

Office of Vital Records, Vermont Department of Health
(802) 863-7275
VitalRecords@vermont.gov
http://healthvermont.gov/research/records/vital_records.aspx

Vermont Cemetery Association: <http://vermontcemeteryassociation.org/>

Patrick Healy, President
39 Main Street
Montpelier, VT 05652
(802) 223-5352

Stuart Alexander, Treasurer
22 Barber Farm Road
Jericho, VT 05465
(802) 899-311

Vermont Old Cemetery Association: <http://voca58.org/>

Tom Giffin, President
61 East Washington St.
Rutland, VT 05701
(802) 733-3253
tgifvt@msn.com

Vermont Historical Society's Index to Known Cemetery Listings in Vermont:
<https://vermonthistory.org/documents/digital/CemeteryIndex5.pdf>

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