

Code of Virginia (1950)

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

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.

(Code 1950, § 18.1-244; 1960, c. 358; 1975, cc. 14, 15; 1982, c. 561; 1983, c. 579; 1990, c. 510; 2004, c. 203.)

§ 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.

(Code 1950, § 18.1-181; 1960, c. 358; 1975, cc. 14, 15.)

§ 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.

(Code 1919, § 50; 1997, c. 132.)

§ 57-23. Appointment, change or removal of trustees.

On the application of the governing body of a city or town, the attorney for the Commonwealth of a county, ten citizens of a magisterial district, or the proper authorities of any such association or society, for whose use such cemetery is held, the circuit court of the county in which the cemetery is situated may, from time to time, appoint, change, and remove the trustees, as provided in § 57-8, whenever it may seem to the court proper to effect or promote the purposes of the trust.

(Code 1919, § 51.)

§ 57-24. Powers and duties of trustees.

Such trustees and their successors shall have power to make such rules and regulations for the burial of the dead, the laying off, assignment and sale of burial lots, and the management, care, preservation and improvement of the grounds, as they may deem proper. They may take and hold personal property and money for the purposes of the

trust, and what is so acquired and all money received from the sale of lots shall be accounted for by them and faithfully applied to such purposes.

(Code 1919, § 52.)

§ 57-24.1. Trustee for purpose of suit.

In the case of any private or family graveyard, where no trustees have been designated, and it appears that the interest of justice may be served by the appointment of a trustee or trustees for the purpose of suing or being sued, on the petition of any interested party, the court of record wherein deeds are recorded of the county or city in which such cemetery is located, may appoint a trustee or trustees for the purpose of suing or being sued. The petitioner shall bear the expense of such proceedings, provided that in the event a recovery is effected on behalf of such trustee or trustees, costs shall be taxed as provided by law.

(1970, c. 94.)

§ 57-25. Condemnation of land for cemeteries.

If it is desired at any time to establish a cemetery for the use of a city, town, county or magisterial district, or to enlarge any such cemetery already established, and the title to land needed cannot be otherwise acquired, land sufficient for the purpose may be condemned. Application for the condemnation shall be made by the governing body of the city or town, the attorney for the Commonwealth of the county, or any ten citizens of the magisterial district, as the case may be, to the circuit court of the county or city in which the land lies, and the proceedings shall be according to the provisions of Title 25.1 for condemnation of land thereunder, so far as they can be applied to the case. The title to any land acquired under the proceedings, if for the enlargement of an existing cemetery, shall vest in the county, city or town, or in the trustees of such cemetery, as appropriate; and if for the establishment of a new cemetery, the title shall vest in the county, city or town, or in the trustees to be appointed under § 57-23, as appropriate. The land shall be held as provided by § 57-22.

(Code 1919, § 53; 1997, c. 132.)

§ 57-26. Restrictions as to location of cemeteries and as to quantity of land.

(1) Restrictions as to location. - No cemetery shall be hereafter established within a county or the corporate limits of any city or town, unless authorized by appropriate

ordinance subject to any zoning ordinance duly adopted by the governing body of such county, city or town; provided that authorization by county ordinance shall not be required for interment of the dead in any churchyard or for interment of members of a family on private property; nor shall any cemetery be established within 250 yards of any residence without the consent of the owner of the legal and equitable title of the residence; provided that subject to the foregoing if the location for the proposed cemetery is separated from any residence by a state highway, it may be established upon such location without the consent of the owner of such residence if it be not less than 250' from the residence at its nearest point thereto; provided such prohibition and restriction shall not apply where the tract of land intended for use as a cemetery is separated from any residence by a state highway and now contains a public or private burial ground and is not within the corporate limits of any city or town; and no cemetery shall be hereafter established, and no burial made in any part of any cemetery, other than a municipal or city cemetery, located within 300 yards of any property owned by any city, town or water company, upon which or a portion of which are now located driven wells from which water is pumped or drawn from the ground in connection with the public water supply.

(2) Quantity of land. - Nothing contained in §§ 57-22 to 57-25 shall be so construed as to authorize a conveyance of more than 300 acres or the condemnation of more than 2 acres of land for the use of a cemetery.

(3) Action for damages. - When damage is done to adjacent land by the establishment of such cemetery, whether established by purchase or condemnation, the owners whose lands have been damaged shall have a right to action for such damage against any person, firm, corporation, or municipality, establishing the cemetery; provided such action be instituted within one year from such establishment.

(4) Exceptions. - The prohibitions and restrictions as to the location or establishment of cemeteries shall not apply to the town of Stuart, in Patrick County, to the town of Gretna, in Pittsylvania County, to the town of Shenandoah in Page County, or to the Woodbine Cemetery in the city of Harrisonburg, Rockingham County. And if the location for the proposed cemetery be in Norfolk County it may be established on such location if consent thereto be given by the owners of every residence within 250' thereof at its nearest point to any such residence, or if the location for the proposed cemetery is separated from any such residence by a state highway it may be established upon such location without the consent of the owner of such residence if it be not less than 150' from the residence at its nearest point thereto.

(Code 1919, § 56; 1926, p. 866; 1934, p. 13; 1942, p. 102; 1944, p. 462; 1948, p. 492; 1952, c. 108; 1954, c. 10; 1960, c. 161; 1994, c. 229.)

§ 57-27. City of Richmond may prohibit burials in certain cemeteries.

The governing body of the City of Richmond may, by ordinance, prohibit the burial of dead bodies in the cemeteries known as Ham's, Cedarwood, Methodist, Union Mechanics', Ebenezer, and Sycamore cemeteries, respectively, and may by such ordinance provide for penalties for violations of the same by fine not exceeding fifty dollars, or imprisonment in jail not exceeding six months.

(Code 1919, § 57.)

§ 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. 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 set the frequency of access, hours and duration of the 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.

(1993, c. 713; 2004, c. 831.)

§ 57-27.2. Correction of interment errors.

A. In any instance where the operator of a cemetery is informed or becomes aware that it has interred or permitted the interment of a body or cremains in the wrong burial space, it shall disinter the burial container wrongfully interred, identify the burial container, and reinter it in the proper burial space. The cemetery shall give reasonable notice, in advance of the disinterment, to the nearest known next of kin of the deceased person and, if requested, the owner of such burial space. For the purposes of this section, "interment" means the same as such term is defined in § 54.1-2310.

B. At the time specified for the disinterment and reinterment, the cemetery shall permit the nearest known next of kin and, if requested, the owner of such burial space to witness the disinterment and reinterment.

C. The cemetery shall bear all costs of the disinterment and reinterment.

(1997, c. 74.)

§ 57-27.3. Authorization for interment.

A cemetery may accept the notarized signature of one next of kin of a decedent for the purpose of authorizing the interment or entombment, and for erecting a memorial on the grave, crypt or niche, unless the cemetery is on written notice that there exists a dispute between next of kin over such interment, entombment or memorialization. In the case of such a dispute, the cemetery shall have no obligation to perform the interment, entombment or memorialization until there is agreement of all next of kin, or a court order adjudicating the issue among all necessary parties.

For purposes of this section, "next of kin" means any of the following persons, regardless of the relationship to the decedent: any person designated to make arrangements for the disposition of the decedent's remains upon his death pursuant to § 54.1-2825, the legal spouse, child over 18 years of age, custodial parent, noncustodial parent, siblings over 18 years of age, guardian of minor child, guardian of minor siblings, maternal grandparents, paternal grandparents, maternal siblings over 18 years of age and paternal siblings over 18 years of age, or any other relative in the descending order of blood relationship.

(2004, c. 247.)

§ 57-28. Cities and counties may establish.

Any city and county, or any number of cities and counties, may jointly purchase or otherwise acquire land for the purpose of improving and establishing a jointly owned cemetery or cemeteries, and the governing bodies of the cities and counties purchasing or acquiring land for joint cemetery purposes shall have the power to plan any such cemetery and amend and revise any plans so made, to determine the perpetual upkeep requirements of such cemetery and of perpetual upkeep lots therein, to fix the purchase price of all lots therein, and to designate pauper lots and lots with and without perpetual care.

(1944, p. 326; Michie Suppl. 1946, § 53a.)

§ 57-29. Trustees.

After acquiring and planning such cemetery or cemeteries, the circuit court of the county wherein the cemetery is located shall appoint not less than five nor more than nine trustees, who shall reside in the city or county, for the purpose of managing and controlling such cemetery. The trustees shall have the power to convey lots in the cemetery in accordance with the plan thereof, without authority of court, and to include in deeds of conveyance such reasonable restrictions and conditions as they deem advisable, and shall have all other powers granted by general law to trustees of cemeteries. Such trustees shall, before entering upon the performance of their duties, give bond with approved security and in such penalty as the court determines for the faithful performance of their duties.

(1944, p. 326; Michie Suppl. 1946, § 53a.)

§ 57-30. Funds from sale of lots and for perpetual upkeep.

The trustees shall, upon delivery of a deed for any lot or portion thereof, except a pauper lot, collect the purchase price and pay it to the designated treasurer of either the county or city establishing the cemetery. The amounts received from the sale of lots or portions thereof as herein determined shall be used by the city and county to pay for the cost of the land and improvements. All funds for perpetual upkeep shall be properly invested under the direction of the governing bodies of the city and county. The balance of the purchase price of lots or portions thereof, and so much of the income from invested perpetual care funds as may be needed, shall be paid annually to the trustees, to be used by them along

with all other funds received by them for the maintenance, operation and upkeep of the cemetery and of the perpetual care lots therein.

(1944, p. 326; Michie Suppl. 1946, § 53a.)

§ 57-31. May be in perpetuity.

No disposition of property heretofore or hereafter made for the maintenance or care of any cemetery, burial ground, burial lot in a cemetery, or monument, or other erections about such cemetery or burial lot, shall fail by reason of such disposition having been made in perpetuity, but shall be valid.

(Code 1919, § 59; 1918, p. 103; 1920, p. 10.)

§ 57-32. Who may hold such property.

Any cemetery company chartered under the laws of the Commonwealth, or a church, or any trustees holding title to a cemetery, or burial ground, may take and hold any property granted, bequeathed, devised, or given upon trust to apply its income to the improvement, repair, or embellishment of the cemetery, or any burial lot or monument or tomb or vault or other erections in such cemetery, according to the terms of such grant, bequest, devise, or gift.

(Code 1919, § 59; 1918, p. 103; 1920, p. 10; 2005, c. 772.)

§ 57-33.

Repealed by Acts 1995, c. 255.

§ 57-34. Amount to defray original cost not limited.

Nothing contained in this article shall be construed as limiting the amount which may be given, bequeathed or devised to defray the original cost of the cemetery, burial lot, monument, vault or other like erection or structure, nor shall this article be construed as affecting any estate that has been distributed or settled on the basis of the law then existing.

(Code 1919, § 59; 1918, p. 103; 1920, p. 10.)

§ 57-35. Trusteeship for administering funds for perpetual care.

The board of directors of any incorporated cemetery company may by bylaw establish a trusteeship for holding and administering all funds paid to such cemetery company for the perpetual care of any lot or lots in the cemetery conducted by the company, and such trusteeship, once established, shall only be revoked, annulled or modified by and with the consent of the circuit court of the county or the corporation court of the city within whose jurisdiction the cemetery is situated.

(Code 1919, § 59; 1918, p. 103; 1920, p. 10.)

§§ 57-35.1. through 57-35.10.

Repealed by Acts 1989, c. 631.

§§ 57-35.11. through 57-35.35.

Repealed by Acts 1998, cc. 708 and 721, effective July 1, 2000.

§ 57-35.36. Cemeteries owned by localities; good faith effort required prior to interment.

Notwithstanding the exemptions provided for in § 54.1-2312, a cemetery operated by a county or city shall keep accurate records of the ownership of cemetery lots and shall make a good faith effort to ensure, prior to interment, that the ownership of a cemetery lot is vested in the decedent's estate or that permission for the interment has been granted by the person holding such ownership. This section shall not apply to lots or cemeteries which are dedicated for the burial of indigents.

(1991, c. 614.)

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

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 court taking jurisdiction of such 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.

(Code 1919, § 54; 1985, c. 95.)

§ 57-37. Costs of suits, removal and reinterment; how surplus above costs disposed of.

In the event that the proceeds from the condemnation are insufficient to defray the costs of the suit and removal, and reinterment of the remains, then the additional amount necessary therefor shall be paid by the county, city or town instituting the suit. If, after the payment of proper costs, there be any residue, the same shall be paid to the parties entitled thereto, and if there be any parties unknown who are entitled to such proceeds, the county, city or town shall hold such amount in trust for the parties so entitled, but such county, city or town shall not be charged with any interest on such amount so held. If the amount so held is not claimed by or paid to the parties entitled thereto within seven years from the date of sale of such burying ground, or part thereof, then such amount shall pass to and become a part of the Literary Fund of the Commonwealth, as provided by the statute of escheats.

(Code 1919, § 55; 1985, c. 95.)

§ 57-38. Exemption from §§ 57-36 and 57-37.

Sections 57-36 and 57-37 shall not apply to any graveyard or cemetery owned by a church, or controlled by trustees, in which sections are sold.

(Code 1919, § 55.)

§ 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. 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.

(1966, c. 444; 1970, c. 377.)

§ 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.

(1990, c. 562.)

§ 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.

(1946, p. 407; Michie Suppl. 1946, § 58a; 1968, c. 83.)

§ 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.

(1950, p. 91; 1986, c. 55; 1990, c. 675.)

§ 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 fifty years or more, they shall be deemed abandoned and revert to the owner of the cemetery, provided he has complied with the provisions of subsection B. For the purposes of this section, "interment" means the same as such term is defined in § 54.1-2310.

B. 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 known to the cemetery. The notice shall be sent to the last known address of the owner requesting the owner's current address, if different than 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 fifty 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 thirty days after notice was sent, the cemetery shall publish a general notice of its intent to declare the interment rights abandoned 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. Such notice shall contain the name and business address of the cemetery and the name of the last record owner of the interment rights. If there is no response thereto by or on behalf of the record owner or his heirs or assigns within 120 days after publication of the 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 fifty years from the date the response was received by the cemetery.

C. If, within thirty 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.

(1997, c. 74.)

§§ 57-39.2. through 57-39.7.

Not set out. (1962, c. 264. —Amendments - § 57-39.2: 1964, c. 111; 1985, c. 414; 1986, c. 118. § 57-39.3: 1964, c. 111; 1986, c. 118. §§ 57-39.4 through 57-39.6: 1964, c. 111. § 57-39.7: 1964, c. 111; 1985, c. 414.])

§§ 57-39.8. through 57-39.18.

Repealed by Acts 1989, c. 631.

§ 57-39.19. Application of Title 32.1, Chapter 8, Article 4.

The provisions of Article 4 (§ 32.1-305 et seq.) of Chapter 8 of Title 32.1 shall apply to the cremation of any dead human body.

(1979, c. 724.)

§ 57-39.20. Definitions.

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

"Burial right" means the right of interment.

"Interment" means the disposition of pet remains by earth burial, entombment in a mausoleum, or inurnment in a columbarium.

"Operator" means any person engaged in the business of selling or offering for sale any burial or interment right in a pet cemetery and representing to the public that such cemetery, single burial or interment right therein will be perpetually cared for.

"Perpetual care fund" means a fund created to provide income to a pet cemetery to provide care, maintenance, administration and embellishment of the pet cemetery.

"Pet" means an animal that has been adapted or tamed to live in intimate association with or for the pleasure of people and includes but is not limited to dogs, cats, birds, rabbits, and hamsters.

"Pet cemetery" means land, together with any structures, facilities, or buildings appurtenant thereto provided to members of the public for use or reservation for use for the individual interment, above or below ground, of pet remains. "Pet cemetery" does not include land used exclusively for landfilling or the communal burial of pets, but does include an area where a portion of the land is used for the communal burial of pets.

(1996, c. 957.)

§ 57-39.21. Duty to file declaration of land use restriction.

The owner of any land used or to be used as a pet cemetery shall file in the office of the clerk of the circuit court for the locality where the land is located a declaration restricting the use of the land to use as a pet cemetery. The owner shall execute the declaration in the same manner and with the same effect as a conveyance of an interest in land. The clerk shall record the declaration in the deed book and index it in the name of the owner. The restriction established in such a recorded declaration may be removed only as provided in § 57-39.24. Unless a restriction is so removed, no person shall use land restricted pursuant to this section for any purpose other than as a pet cemetery.

(1996, c. 957.)

§ 57-39.22. Certain representations unlawful; perpetual care trust fund required.

A. Effective July 1, 1996, it shall be unlawful to sell or offer for sale in the Commonwealth any burial right in a pet cemetery, and in connection therewith to represent to the public, in any manner, express or implied, that the entire pet cemetery or any burial or interment right therein will be perpetually cared for, unless adequate provision has been made for the perpetual care of the cemetery and all burials and interment rights therein as to which such representation has been made.

B. Each pet cemetery operator shall establish in a bank, savings and loan or other federally insured investment banking institution doing business in the Commonwealth an irrevocable trust fund in the amount of at least \$12,000 before the first lot, parcel of land, burial or interment right is sold. This fund shall be designated the perpetual care fund.

C. The moneys of a perpetual care fund shall be invested as provided by §§ 26-40 through 26-44.1 and Article 2 (§ 26-44.3 et seq.) of Chapter 3 of Title 26, except as provided otherwise herein.

D. The income from the perpetual care fund shall be used only for the maintenance, supervision, improvement, and preservation of the grounds, lots, markers, memorials, buildings, equipment, statuary, and other real and personal property of the pet cemetery and for the payment of real property taxes. Annual reports of all the assets and investments of the perpetual care fund shall be prepared and maintained by the operator, and shall be available for inspection at reasonable times to any owner of a burial right in the pet cemetery. Such records shall be subject to examination by the commissioner of revenue.

(1996, c. 957; 1999, c. 772.)

§ 57-39.23. Change of address required from owner of burial right.

It shall be the duty of a purchaser of a burial right in a pet cemetery to notify the operator of a change in address.

(1996, c. 957.)

§ 57-39.24. Removal of restriction on land.

A. After a declaration has been filed pursuant to § 57-39.21, the restriction may be removed in accordance with this section by order of the circuit court for the locality where the land is located in a proceeding brought by the pet cemetery owner or his heirs or assigns.

B. The circuit court may remove the restriction on the land upon proof satisfactory to the court that either of the following has occurred:

1. No interments have been made in the land from which the restriction is sought to be removed; or
2. If, after notice sent by registered mail, return receipt requested, to the last known address of a person who owns a burial right in a pet cemetery, the owner of the pet cemetery has received from such persons written authorization, acknowledged before a notary public, to remove the restriction from the land. If no response is received by the cemetery owner after thirty days from the date of the notice, consent to remove the restriction from the land shall be presumed. Any person granting this authorization who wishes to have a pet that is already interred in the pet cemetery removed and reinterred elsewhere shall so state on the authorization, and the pet cemetery owner shall provide proof of this removal and reinterment. A pet cemetery owner need not obtain the authorization described in this subdivision from a person who has purchased a burial right in the pet cemetery but who has not yet used that right for the interment of a pet, if the owner refunds to the purchaser or his heirs or assigns all moneys taken for the burial right, plus interest accrued in six-month increments, at a rate equal to the Federal Reserve Board discount rate as of January 1 of each year, beginning January 1, 1996.

C. A holder of a lien on the restricted land may object to the removal of the restriction, and the circuit court shall consider any such objection before issuing an order to remove the restriction.

D. An order issued by the circuit court removing a restriction pursuant to this section shall be filed in the office of the clerk of the circuit court for the locality where the land is located. The clerk shall record the order in the deed book.

(1996, c. 957.)

§ 57-39.25. Violation a misdemeanor.

It shall be unlawful for any person to violate the provisions of § 57-39.22 of this article. Any such violation shall be deemed a Class 3 misdemeanor, and any person convicted of such violation shall be punished in accordance with the provisions of § 18.2-11.

(1996, c. 957.)

§§ 57-40. through 57-47.

Repealed by Acts 1974, c. 574.
