

CEMETERY COMMISSIONER

Roles and Responsibilities

Generally, town cemetery matters are the responsibility of the selectboard. However, the voters may decide to put the town's public cemeteries under the charge of cemetery commissioners. 18 V.S.A. § 5373. The voters then elect a board of three or five cemetery commissioners. 18 V.S.A. § 5374. This board is responsible for the care and management of the town's cemeteries, which includes the following tasks:

- The cemetery commission may grant and/or convey by deed lots in the cemetery and may make regulations governing the sale, price and care of the lots. 18 V.S.A. §§ 5376, 5377.
- Cemetery commissioners may set aside a portion of the cemetery for the burial of indigent persons, and may make regulations for the use of this special area. 18 V.S.A. § 5375.
- Cemetery commissioners may maintain the public cemeteries and hire someone to perform this work. The expenses, not to exceed \$500 per year of town funds, may be paid by the commissioners drawing orders on the town treasury. 18 V.S.A. § 5362.
- Cemetery commissioners may grant a temporary right-of-way over private land to reach a graveyard to which there is no public right of way. 18 V.S.A. § 5322.
- Cemetery commissioners must keep in repair the fence around a public burial ground. 18 V.S.A. § 5364.
- Cemetery commissioners must submit an annual report to the town auditors, including a detailed financial statement and a listing of the work of the commissioners and the needs of the cemetery. 18 V.S.A. §§ 5379, 5380.
- The cemetery commissioners (and not the selectboard) may appoint individuals to fill vacancies on the board. 18 V.S.A. § 5373.
- A cemetery commissioner may be fined \$400 for failure to keep a fence in repair after written notification of its disrepair, and may be fined \$200 for the willful neglect of his or her duties. 18 V.S.A. §§ 5363, 5364.

Creation of a Board of Cemetery Commissioners. When a town votes to place its public cemeteries under the charge of cemetery commissioners it must elect a board of either three or five members. 18 V.S.A. § 5373.

When a five-person board of cemetery commissioners is first elected, one commissioner must be elected for a five-year term, a second for a four-year term, the third for a three-year term, and so on. When the term of each of these commissioners expires, his or her successor will be elected for a five-year term. A three-member board is elected for a three-year term, with staggered terms created in a similar manner as the five-member

board. 18 V.S.A. § 5374. Any vacancies on the board are filled by the remaining board members until the next annual town meeting.

If the town wishes to return the care and control of the cemeteries to the selectboard, it may vote to do so, at which time the terms of office of the commissioners will terminate. 18 V.S.A. § 5381.

Powers of the Board of Cemetery Commissioners. Cemetery commissioners have all the powers, rights and duties formerly exercised by the selectboard in regards to cemeteries. 18 V.S.A. § 5373. These duties include the following:

- **Care and management of cemeteries.** The board is responsible for the care and management of the cemeteries owned by the town. A town may vote such amounts of money as it deems “necessary for purchasing, holding and keeping in repair suitable grounds and other conveniences for burying the dead.” 18 V.S.A. § 5361. Specifically, in the case of unsightly weeds, unchecked growth of grass, or headstones displaced or in need of repair, the commissioners shall make the necessary repairs and may draw orders not to exceed \$500 per year to pay for the expenses incurred. When a headstone or monument is to be replaced, the commissioners must notify relatives of the deceased, if known, of the date of removal and that the relative may claim the removed headstone or monument within 30 days after the date of the notice. 18 V.S.A. § 5362.
- **Keeping fences in repair.** Cemetery commissioners have a special obligation to keep the fences that surround public burial grounds in good repair. In fact, failure to repair such a fence within 20 days after receiving a written notice that a fence is out of repair could result in liability for the damage done as a result of the disrepair, plus a penalty of up to \$400. (The fine amount shall be used to repair the fence, under the direction of a commissioner appointed by the court.) 18 V.S.A. §§ 5365, 5366.
- **Laying out, selling and conveying cemetery lots.** In addition to being responsible for the care and maintenance of public cemeteries, the commissioners are also charged with laying out, selling and conveying cemetery lots. The commissioners are authorized to make all necessary bylaws and regulations concerning the burial grounds and the internment of the dead, so long as they are not inconsistent with law and do not restrain a person in the free exercise of his or her religion as to the burial of the dead. 18 V.S.A. § 5378. Such regulations must be recorded in the town clerk’s office. The board may also fix the prices of lots and make regulations as to the sale and care of the lots. 18 V.S.A. § 5377.

One board member, appointed by the cemetery commission for this purpose, may grant or convey cemetery lots in the name of the town. The deeds of these lots must be recorded in the office of the town clerk. The commissioners may also accept legacies, bequests and gifts whose proceeds, along with the proceeds of any sales of lots, must be used to improve and embellish the grounds of the cemetery. 18 V.S.A. §§ 5376, 5377, 5382.

- **Managing proceeds of sale of lots.** The proceeds from the sale of lots must be paid into the town treasury, but are kept in a separate account, to be used solely for the care, maintenance and improvement of the burial grounds. If the town so votes, the cemetery commission may also sell lots upon condition that the proceeds therefrom shall be paid into the town treasury in trust, and the income thereof be expended in caring for such lots and the structures thereon. 18 V.S.A. § 5377.

Note that cemetery lots are exempt from property taxation. 32 V.S.A. § 3802(7).

- **Closing a cemetery.** When it is impractical to preserve a burial ground in a proper condition, the commissioners may cause the remains of the dead therein to be removed and interred in a more suitable public burial ground. 18 V.S.A. § 5369. If there is known kindred of the deceased, such remains may not be removed until after 30 days notice of the intention to do so if the kindred live in the state, or 60 days notice of the intention to do so if the kindred live out of state. The notice must be given personally or by registered mail. 18 V.S.A. § 5370. When the remains are removed, the board must cause suitable headstones or monuments to be erected in memory of the deceased, or to designate the place of internment. 18 V.S.A. § 5370. The Vermont Department of Health should be consulted any time a body is disinterred.
- **Providing lots for the burial of indigent people.** The board of cemetery commissioners may set aside a portion of the public burial grounds as a place for the burial of individuals who cannot afford to purchase a lot. It may make all necessary regulations governing the granting of such lots and may set out paths and embellish this area of the burial grounds with trees, shrubs and flowers, as it deems appropriate. 18 V.S.A. § 5375. When an individual is buried and has no known estate and has no suitable marker or gravestone erected at his or her grave within three years after burial, the commissioners may cause to be erected a suitable marker or headstone with the name of the deceased and the dates of his or her birth and death, if known. 18 V.S.A. § 5371.
- **Managing abandoned private burial grounds.** In certain circumstances the cemetery commissioners may manage private burial grounds. According to statute, when the use and care of a private burial ground has been abandoned and such ground becomes unsightly, or when headstones and monuments have been displaced, the board of cemetery commissioners may treat the graveyard as a public burial ground. 18 V.S.A. § 5321. To do so, however, the commissioners must receive a written request by three legally qualified voters of the town, and must publish a notice in a newspaper of general circulation in the town calling upon any person with an interest in the burial grounds to put it in proper condition within three months of the date of the notice. After the three months have expired, assuming that the cemetery remains in poor condition, the commissioners may treat it as though it were a public burial ground. 18 V.S.A. § 5321.

- **Issuing permits to cross private property to visit a burial ground.** Cemetery commissioners are authorized to issue a permit to cross over private property to an individual who wishes to have access to a graveyard that is on private property, and to which there is no public right of way. The individual who desires such a permit must apply in writing to the commissioners, and must specify the reason for the request and the period of time for which the right is to be exercised. This individual must also notify the owner or occupier of the private property over which the right-of-way is desired. If the commissioners find that the request is reasonable, they may issue a permit for a temporary right of entry, designating the particular place and manner of entry. The owner or occupier of the land may recommend a place of crossing, which, if reasonable, must then be the place designated by the cemetery commissioners. 18 V.S.A. § 5322.

An owner or occupier of land who refuses to comply with a permit may be liable for reasonable attorney's fees and costs expended to enforce the permit. 18 V.S.A. § 5322(b).

- **Making an annual report to the auditors.** Each year the cemetery commissioners must submit to the town auditors a report to be included in the annual town report. This report should include a detailed listing of the work of the commissioners, their needs for the coming year, and a financial statement. 18 V.S.A. § 5379.

Cemetery commissioners who willfully neglect any of their statutory duties may be fined up to \$200 (unless other penalties are provided). 18 V.S.A. § 5363.