

# VIRGINIA ACTS OF ASSEMBLY -- 2019 SESSION

## CHAPTER 195

*An Act to amend and reenact §§ 57-36, 57-38.1, and 57-38.2 of the Code of Virginia and to amend the Code of Virginia by adding in Article 4 of Chapter 3 of Title 57 a section numbered 57-35.35:1, relating to previously unidentified cemeteries.*

[H 2238]

Approved March 5, 2019

**Be it enacted by the General Assembly of Virginia:**

**1. That §§ 57-36, 57-38.1, and 57-38.2 of the Code of Virginia are amended and reenacted and that the Code of Virginia is amended by adding in Article 4 of Chapter 3 of Title 57 a section numbered 57-35.35:1 as follows:**

Article 4.

~~Abandonment;~~ *Abandoned or Previously Unidentified Cemeteries; Removal of Remains.*

**§ 57-35.35:1. Definitions.**

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

*"Previously unidentified cemetery" means a cemetery that, notwithstanding the fact that it is known to researchers, members of the community, or descendants of those buried there, has not been identified in the Virginia Cultural Resources Information System or has not been officially located in the land records of the locality.*

**§ 57-36. Abandoned or previously unidentified graveyards may be condemned; removal of bodies.**

A. When a graveyard, wholly or partly within any ~~county, city, or town~~ locality, has been abandoned, ~~or~~ is unused and neglected by the owners, ~~or is a previously unidentified graveyard~~, and such graveyard is necessary, in whole or in part, for public purposes, authorized by the charter of such ~~city or town~~ locality, or by the general statutes providing for the government of ~~counties, cities, and towns~~ localities, such ~~county, city, or town~~ locality 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~~ localities. The locality may continue to maintain all or a portion of the burying ground as a graveyard.

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

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

D. Any ~~county, city, or town~~ locality that has acquired by any means land on which ~~an~~ *a* previously unidentified or abandoned cemetery or gravesite of ~~Virginians held as slaves at the time of their deaths~~ *any Virginian held as a slave at the time of his death* is located shall notify the Virginia Department of Historic Resources of the location of such cemetery or gravesite. The Department shall record the

location of the cemetery or gravesite. A listing of the locations of all *previously unidentified or abandoned* cemeteries and gravesites of Virginians held as slaves at the time of their deaths that have been provided to the Department shall be maintained by the Department as a public record.

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

The owner of any land on which is located *a previously unidentified graveyard* or 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, the plaintiffs shall undertake active, good faith efforts to locate interested parties including, at a minimum, publication of at least one notice in a local newspaper of general circulation, notice posted at the site of the graveyard, and notice to and consultation with any historic preservation or other such commission, as well as area historical and genealogical societies. In addition, the plaintiff is encouraged to post such notice on the Internet, including appropriate websites and through the use of social media, and to consult with the Virginia Department of Historic Resources. Upon the case being properly matured for hearing, and proof being made of the propriety of the removal, the court may order the removal made and the remains properly deposited in another place, at the expense of the petitioner. Such removal and reinterment shall be done with due care and decency.

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

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

Any heir at law or descendant of a deceased person interred in *a previously unidentified graveyard* or an abandoned family graveyard in which no body has been interred for ~~twenty-five~~ 25 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.