

HISTORIC CEMETERIES IN THE STATE OF TENNESSEE

General Information, Laws, And Guidelines

The purpose of this brief information sheet is two-fold: (1) to provide general guidance for landowners, developers, family members, and/or other concerned citizens when faced with the discovery, identification, care, disposition, and/or removal of a historic cemetery; and (2) to inform citizens of the Tennessee Division of Archaeology's role regarding historic cemeteries on private property. For the reader's information, all human remains in Tennessee (whether modern or ancient) are protected under state law. *Please note the guidelines, laws, and procedures presented in this sheet are for the convenience of interested parties, and should not be used in place of legal counsel.*

Desecration

There are several state statutes relevant to historic cemeteries. The primary cemetery statutes consist of T.C.A. 39-17-311 (Desecration of a venerated object) and T.C.A. 39-17-312 (Abuse of corpse). Desecration of a place of burial is a Class A misdemeanor; to disinter a corpse without legal authority is a Class E Felony.

Relocation of a Cemetery

State law provides a process by which a landowner or family can request permission from the local court to relocate a grave to another cemetery. The cemetery must be abandoned, or in a neglected condition, or the new proposed use of the existing cemetery must be inconsistent with proper respect and reverence for the dead. The relatives of the deceased must be given legal notice, but they do not have to give their permission. It is the right of the property owner to remove and relocate the graves, at his or her expense. The removal must be done with due care and decency, and the landowner must provide a suitable place for reinterment of the removed remains.

The primary statute to remove and relocate graves is T.C.A. 46-4-101-104 (termination of land use as cemetery). Also, a disinterment order from the State Department of Health, State Registrar, Office of Vital Records (T.C.A. 68-3-508 and Rule 1200-7-1-.08) may be required prior to the removal of any human remains.

Archaeologist or Funeral Home for Removal

Archaeological techniques are better for graves that have been abandoned, or in areas where it is difficult to find the graves. Archaeologists have more experience in identifying artifacts (such as coffin hardware or jewelry), and may have a better chance of identifying the deceased in locations with poor preservation conditions. Modern (post 1925) graves are better handled by funeral homes.

Discovery of Human Skeletal Remains

If human skeletal remains are accidentally exposed by construction or some other activity, then the contractor or landowner is required to stop all work in the area and call the medical examiner or coroner, as well as local law enforcement (T.C.A. 11-6-107d). The Division of Archaeology should also be notified. These steps should be followed any time human remains are discovered.

Does a Cemetery Exist on my Property?

Persons interested in property for purchase or development should be aware of the potential presence of cemeteries. Helpful ways to determine if a cemetery is located on a particular tract of land include: (1) check old deeds and other property records; (2) check old maps; (3) talk with long-time residents of the area; (4) look for sunken areas that are oriented east-west; (5) look for *vinca minor*, also known as cemetery ivy; and (6) look for tombstones or plain stone markers.

If a cemetery exists (or is determined to be present) on a particular piece of property, then the landowner has certain obligations that must be followed. For example, construction must allow a ten-foot buffer around the perimeter of the graves, five-foot buffer around a crypt (T.C.A. 46-8-103). Also, family members have a right to

visit the graves of their ancestor, even though someone else may own the property. In addition, if a cemetery is shown on a deed, the immediate owner and future buyers have an obligation to protect the graves from disturbance.

To protect an ancestral burial ground, family members should make sure the cemetery is well marked with a fence and a sign. Also, the cemetery should be surveyed by a professional surveyor and recorded on the deed. These actions will help ensure that the cemetery will be part of the public record.

The Tennessee Division of Archaeology and Historic Cemeteries Located on Private Property

Each year the Division of Archaeology receives numerous reports from public and private interests of human skeletal remains exposed as a result of various ground-disturbing activities (construction, farming, erosion, etc.). We respond to these reports with an initial evaluation whether or not human skeletal remains are present. In those cases where human remains are exposed (or have the potential to be disturbed), the Division provides technical advice to help landowners understand their obligations and options under the state's cemetery statutes.

On private property, it is always the landowner's responsibility to follow the state cemetery laws. The Division of Archaeology cannot force a private landowner to conduct a burial investigation. Our involvement is limited to technical advice unless human skeletal remains are actively disturbed. At this time, the Division of Archaeology does not have the available resources to conduct field evaluations (locate a cemetery, assess cemetery boundary, determine the number of graves, etc.) on private property. There are, however, a number of private archaeological consultants that can provide such services. The Division has a list of consultants working in the state of Tennessee that can be provided upon request.

Helpful Resources

The following resources may be of assistance to persons interested in historic cemeteries across the state of Tennessee.

Archaeological consultants working in Tennessee: <http://www.tdec.net/hist/pdf/archaeol.pdf>

Davidson County Cemetery Survey: <http://davidsoncocemeterysurvey.com/>

Endangered Cemeteries in Tennessee: <http://members.aol.com/genny1/CEM/new.htm>

Links to Resources on Cemetery History and Preservation: <http://www.potifos.com/cemeteries.html#preservation>

Tennessee Code Annotated: <http://www.tsc.state.tn.us>

Tennessee State Burial Law: <http://www.tngenweb.org/law/cemetery-law.html>

Tennessee State and County Medical Examiners: <http://www2.state.tn.us/health/smep/>

Tennessee State Library & Archives (find public libraries and historical societies): <http://www.tennessee.gov/tsla/>

Tennessee Tombstone Transcription Project: <http://www.rootsweb.com/~cemetery/tennessee/tenn.html>

The Association for Gravestone Studies: <http://www.gravestonestudies.org/>