

LEGAL AND REGULATORY NOTES, JULY 2015

How does the new law on natural burial grounds affect towns?

This year's passage of Act 24 (H.25), which allows for the natural burial of human remains, imposes no additional responsibilities upon municipalities other than those already imposed by the laws regarding internment or final disposition by other legal means (e.g., a coffin, chamber, vault, tomb, or cremation). Natural burial grounds are distinguished from standard burials in that the body is either unembalmed or embalmed using nontoxic fluids and is placed at least five feet below the natural surface of the ground by itself or in a "nontoxic, nonhazardous, plant-derived burial container or shroud." 18 V.S.A. § 5302(11). As with all other burials, the municipal clerk (or his or her appointed deputy when the clerk's office is closed), upon receipt of the death certificate or a preliminary report of death form, must sign and issue a burial-transit permit prior to the body being buried, entombed, removed or otherwise disposed of. 18 V.S.A. §§ 5201, 5207.

The law (1) establishes new standards (setback distances from bodies of water); (2) creates exemptions from others (use of nonstandard methods of locating human remains enabling demarcation in the town land records of the exact location and identity of each buried body); (3) imposes a restriction, with certain exemptions, on constructing improvements on property used as a natural burial ground; and (4) requires that a deed transferring rights in property used as a natural burial ground sets forth the restrictions on construction. The responsibility to adhere to the above standards and requirements rests on those carrying out the final wishes of the decedent, rather than the municipality in which the burial takes place.

In fact, the new natural burial law may result in fewer responsibilities for a municipality. For instance, a municipality does not have to maintain or repair the fence around a natural burial ground as it would otherwise have to do with a municipal burial ground, "so long as the perimeter of the natural burial ground is marked in a less obtrusive manner, such as by survey markers." 18 V.S.A. § 5323(a),(3). Nor does a municipality have to erect a marker on the grave of a person who doesn't have a known estate (as would otherwise be required under 18 V.S.A. § 5371) unless "the regulations governing a particular natural burial ground require a marker on a person's grave..." 18 V.S.A. § 5323(a),(4). The law also exempts, without qualification, a municipality from having to clear weeds and grass from a natural burial ground and from repairing or replacing any headstones or monuments when they have become damaged or displaced. 18 V.S.A. § 5323(a),(2).

The end result therefore is a new law that, on paper at least, doesn't alter or add to the administrative burden already born by a municipality in processing a burial. We will have to just wait and see how the law plays out on the ground.

The Act is archived at <http://legislature.vermont.gov/assets/Documents/2016/Docs/ACTS/ACT024/ACT024%20As%20Enacted.pdf>

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