# WEST VIRGINIA CODE CHAPTER 37 ARTICLE 13

WV Legislature

## §37-13-1. Jurisdiction to permit and order removal, etc.

The circuit court of any county shall have jurisdiction and authority to permit and order the removal, transfer and reinterment, or other disposition, of remains in any graves located upon privately owned land within the boundaries of such county under the provisions hereinafter set forth: Provided, That the provisions of this article shall not apply to any grave or grave area where title or color of title to the same exists as a matter of public record in any person or persons not a plaintiff or plaintiffs instituting an action pursuant to this article: Provided, however, That when title or color of title of public record to such grave or grave area exists in such plaintiff or plaintiffs, the provisions of this article may be available in addition to any other rights or remedies provided by law for the removal, transfer and disposition of remains in graves or grave areas.

WV Legislature

§37-13-1a. Improvement, construction or development upon privately owned lands containing graves.

No improvement, construction or development shall commence upon privately owned lands on which a cemetery or graves are located if such improvement, construction or development would destroy or otherwise physically disturb the cemetery or graves located on the land unless the owner first files a petition in accordance with the provisions of section two of this article and an order is entered pursuant to section five of this article providing for the disposition of the remains.

WV Legislature

## §37-13-2. Action; contents of petition.

Any owner of private lands, may, as plaintiff, institute an action for the purposes set forth in section one of this article by filing a petition before the circuit court of the county in which the lands affected are located. Such petition shall show the title to such lands, the condition of the graves in question, the interests of all persons in such lands and in the remains in such graves, so far as known, the reasons why removal is sought, and the proposed disposition of such remains. The petition shall further show that plaintiffs have made reasonable and diligent effort to ascertain the identity of each deceased and each deceased's surviving next of kin, heirs-at-law, administrator, executor or personal representative. The court may, if deemed necessary, appoint a guardian ad litem to protect the interests of known or unknown persons in interest, whether living or dead.

WV Legislature

## §37-13-3. Parties; notice.

All owners, lessees and other persons having an interest in such lands, other than plaintiffs, and also the surviving next of kin, heirs at law, administrator, executor, or personal representative of each deceased, so far as can be determined through reasonable and diligent effort, shall be made defendants in such action. Insofar as possible all defendants shall be served with notice of the institution of the action and the date of the first hearing upon the same, such service to be made in the same manner provided by law for the service of process in other civil actions. If the address of any defendant be unknown, or, if there be any unknown next of kin, heirs at law, administrator, executor or personal representative of any known or unknown person whose remains may be interred within any such grave, then, in such event, a copy of said notice shall be published prior to the hearing upon the same as a Class II legal advertisement in compliance with the provisions of article three, chapter fifty-nine of this code, and the publication area for such publication shall be the county.

WV Legislature

## §37-13-4. Hearing; discretion in granting or refusing relief; order.

No sooner than three weeks from the filing of such petition the court shall take evidence upon relief sought, together with any evidence presented in opposition thereto. In granting or denying such relief the court shall consider, as well as other evidence adduced, evidence as to the wishes of all persons concerned, whether living or deceased, and shall exercise a sound discretion in granting or refusing, in whole or in part, the relief sought. If the court is satisfied with the propriety of the relief sought by plaintiffs it shall enter an order granting the same, either in whole or in part.

WV Legislature

## §37-13-5. Procedure upon removal.

Such order permitting removal, transfer and disposition of remains in any grave shall provide that the same shall be done with care, decency and reverence for the remains of the deceased, may require that the services of a licensed funeral director shall be utilized and may be upon any other terms and conditions as the court may deem fit and proper, including the method and manner of disposition of such remains.

WV Legislature

## §37-13-6. Costs.

In the event that the plaintiff or plaintiffs shall be granted the relief sought, then all costs of such action shall be borne by plaintiffs. In the event that such relief is not granted, or is granted only in part, then such costs may be allocated between the parties as the court shall deem equitable and just. In any event wherein any relief is granted, the costs of removal, transfer and disposition shall be borne by the plaintiffs, including the cost of erecting appropriate memorials to the deceased as the same may be ordered by the court.

WV Legislature

## §37-13-7. Remedy herein provided cumulative.

This article and the rights and remedies herein provided for shall be cumulative and in addition to other existing rights. The right of eminent domain and the remedy of condemnation of lands shall not be affected hereby. This article shall not apply to burial grounds governed by the provisions of article five, chapter thirty-five of this code or by the provisions of section eight-a, article one, chapter twenty-nine of this code.

WV Legislature