

The question of whether a cemetery fence is required by law when there is no risk of grazing animals, etc. is an interesting one—and the language in statute is not crystal clear, nor is there any case law directly on point that I have found. However, the implication of various sections of 18 V.S.A. chapter 121 when read together suggests that a fence is required (except in the case of a natural burial ground).

18 V.S.A. § 5364 states, “[w]hen the selectboard or cemetery commissioners neglect to keep in repair **the** fence around a public burial ground, the town may be prosecuted for such neglect and fined not more than \$400.00. The fine shall be expended in repairing the fences around such burial grounds under the direction of a commissioner appointed by the court.” The use of the word “the” in this section (versus “a”) seems to assume that a fence will surround a public burial ground.

A recent amendment to VT’s cemetery law in 2015 pertained to natural burial grounds. In that act, the General Assembly created exceptions to generally applicable cemetery law for natural burial grounds, including the following in 18 V.S.A. § 5323:

(a) A natural burial ground shall not be subject to the following provisions of this chapter:

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(3) section 5364 of this title, to the extent that selectboard members or cemetery commissioners need not **maintain** or repair a fence around a public natural burial ground so long as the perimeter of the natural burial ground is marked in a less obtrusive manner, such as by survey markers; and

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This implies that § 5364 is seen as imposing a generally applicable requirement to “maintain” a fence to which natural burial grounds were granted an exception.

Indeed, the Secretary of State’s resource on cemetery law ([Digging Deep](#)), agrees with this interpretation (“A town that operates a public natural burial ground need not comply with 18 V.S.A. §5362 (cemetery repair requirements), nor must it maintain or repair a fence around the natural burial ground, **as 18 V.S.A. §5364 would otherwise require...**”).

Unfortunately, absent an amendment to statute that clearly requires a fence or a judicial interpretation to provide further guidance, we are left interpreting the words themselves and in this case they seem to favor a fencing requirement regardless of the presence of grazing animals.