

Letter Requesting Access to a Cemetery on Private Land

The following are recommendations for writing a letter requesting access to a cemetery on privately-owned land. Please keep in mind that the law does not require a landowner to respond to a request made in person or by phone. It does require them to respond to a written request - or just allow the visit as requested. It is probably best to **send the letter via Certified mail**. That costs about \$1.00 and you will get a receipt when the landowner receives the letter and can then prove they signed for it. Keep a couple of copies of your letter, too.

1. State that you are requesting access in accordance with **newly enacted sections of WV Code 37-13A-2 and 37-13A-5** (see below).
2. Demonstrate that you are one of the "authorized persons" referred to in the law by stating that your purpose is:
 - to visit the graves of your ancestors in the cemetery (name at least one of them) or
 - to clean or maintain a family cemetery, or inspect a plot that you own or
 - to do genealogical research
3. Making your request for access:
 - **State the date and time you would like to visit.**
 - The day you are requesting access must be **at least ten days away** - It would be best to make it two weeks away, just to be sure the landowner has gotten the letter and can't argue there was inadequate notice.
 - If the date you are requesting has **special significance**, state that. (The deceased's birthday, anniversary, etc.)
 - State **how long you would like to visit**, to provide them a time frame. Remember that this law covers "reasonable access." Asking to stay for a couple of hours should be fine if you're just visiting. If you want to clean up the cemetery, maybe longer.
 - If the landowner cannot accommodate you on the date you choose, they are supposed to respond **with an alternate date within five days of receipt of your letter**.
 - If they don't respond at all within ten days, and you have your Certified Mail receipt, you should be able to assume they have received the notice of your intended visit. You will note in the Code as it is written, that if they intend to allow you access on the date you chose, the law doesn't seem to require them to respond to say "OK." In that event, arrive at the time you stated **with a copy of the letter you sent, and a copy of the new code section in hand**.
 - If they deny access at that point, you can talk to the judge about an injunction. It could, however, be possible that the landowner has not heard about the new law. If they state that they were not aware, you can decide about trying to work with them on selecting another mutually agreeable

date, or whether you want to seek an injunction. If you think the landowner was genuinely ignorant of what they were supposed to do and will work with you, that would certainly be easier than going to court.

4. As the landowner, **they can set the terms of the visit.** That is very clear in the law. As long as they are not absolutely refusing access, you have little choice but to accept the terms they offer as to date, time, etc. It may be best to do so as long as they are not being unreasonable. (For instance, asking you to come at 2:00 AM, or saying you can stay only 5 minutes.) Or you can try to negotiate a different date and time you can both agree upon.

§37-13A-2. Definitions.

In this article:

(1) "Authorized person" means:

(A) A family member, close friend or descendant of a deceased person;

(B) A cemetery plot owner; or

(C) A person engaged in genealogy research.

(2) "Governmental subdivision" means any county commission or municipality.

(3) "Reasonable ingress and egress" or "reasonable access" means access to the cemetery or grave site within ten days of the receipt of written notice of the intent to visit the cemetery or grave site. If the property owner cannot provide reasonable access to the cemetery or grave on the desired date, the property owner shall provide reasonable alternative dates when the property owner can provide access within five days of the receipt of the initial notice.

(4) "Reasonable notice" means written notice of the date and time the authorized person intends to visit the cemetery or grave site delivered to the property owner at least ten days prior to the date of the intended visit.

§37-13A-5. Cause of action for injunctive relief.

(a) An authorized person denied reasonable access under the provisions of this article, including the denial of permission to use vehicular access, may institute a proceeding in the circuit court of the county in which the cemetery or grave site is located to enjoin the owner of the private lands on which the cemetery or grave site is located, or his or her agent, from denying the authorized person reasonable ingress and egress to the cemetery or grave site for the purposes set forth in this article. In granting relief, the court may set the frequency of access, hours and duration of the access.

(b) The court or the judge thereof may issue a preliminary injunction in any case pending a decision on the merits of any application filed without requiring the filing of a bond or other equivalent security.

Joe Jones
357 Main St.
Charleston, WV 25302

ABC Coal Company
P.O. Box 75
Pringleville, WV 25745

Dear Sir:

I am writing to request access to the Shumate Cemetery, Route 7, Ludlow, West Virginia, under the terms of WV Code 37-13A-2 and 37-13A-5.

I would like to visit the cemetery from 2:00 to 3:00 PM on Saturday, July 10, 2011, the birthday of my grandfather Percy B. Shumate, who is buried there. If the afternoon is not a convenient time on that date, please let me know an alternate time, or if necessary another acceptable date and time for my visit.

If I do not hear from you with an alternate time or date within five days, as required by the law, I will assume that this visit can take place according to my request.

Thank you for your consideration.

Sincerely,

Joe Jones