

Removing cremated remains from a cemetery

From time to time, disagreements might occur over the cremated remains (cremains, or ashes) of a loved one in a cemetery. Sometimes disputes arise among family members, or between a cemetery and family members. A family member might, unilaterally and without an order of disurnment from probate court or notice to the cemetery, remove the urn and ashes so they may repose in his or her house.

Perhaps that family member's motivation is to control access to the loved one's ashes, to the prejudice of other family members. Possibly, the family member believes that the deceased would be happier or more peaceful entombed in another cemetery near a former spouse, surviving children, or in the neighborhood where the deceased spent his or her childhood. The motivation could also be a financial or maintenance dispute with the cemetery.

A common misconception is that family members own the cremains of a loved one entombed in a cemetery and can do with them as they please. In fact, anyone who removes cremains from a cemetery without an order of disurnment is subject to criminal prosecution for several serious offenses. Ohio law is very clear on this issue: The county probate court has exclusive jurisdiction over determining who has the right to possess cremains.

A person who is not the surviving spouse and seeks to obtain a disurnment order from probate court must notify all persons who would have been entitled to inherit from the decedent of the requested disurnment. Any interested party may appear in probate court to oppose a decedent's surviving spouse from having the remains of a decedent disurned.

Ohio law defines disinterment as the recovery of human remains by exhumation, disinterment or disurnment ([Section 517.23\(F\)\(2\) of the Ohio Revised Code](#)). If there are competing claims for possession of cremains entombed in a cemetery, the probate court will hold a hearing to resolve such claims and award custody of the cremains.

After family members decide to place the cremains of a loved one in an urn and entomb that urn in a cemetery—typically in a small niche or crypt—no one, including family members, can lawfully remove those cremains from the cemetery without an order of disurnment from a probate court ([Ohio Revised Code Sections 517.23 and 517.24](#)). The unauthorized removal of cremated remains from a cemetery is a disturbing concept to many and starts us down a slippery slope. Cemeteries strive to protect the peace and dignity of those buried/entombed there.

Criminal prosecution for removal of cremains without a disurnment order could constitute several serious offenses, including, but not limited to, breaking and entering, desecration of a grave/burial space ([Section 4717.99 of the Ohio Revised Code](#)), theft, receiving stolen property, trespass, complicity, aiding and abetting, conspiracy and vandalism ([Section 2909.05\(C\) and \(D\) of the Ohio Revised Code](#)). Some of these charges are felonies. Plus, the cemetery could seek, in a separate civil action, money damages from any person who destroys/disrupts cemetery property in the course of breaking into or prying open a niche or crypt to remove an urn of ashes.

Once a person obtains a probate court order of disurnment, a cemetery is obligated to return the cremains to the person who obtained the order. Under [Section 517.23\(A\)](#) of the Ohio Revised Code, the person obtaining the order of disurnment must pay the cemetery the reasonable costs and expense of disurnment.

Under no circumstances should anyone use any self-help methods to remove the cremains of a loved one from a cemetery. Go to probate court first and obtain an order of disurnment.

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