

RESOLUTION 41-2013

DISPOSITION OF BODIES  
BURIAL OF PERSONS ON PRIVATE PROPERTY

WHEREAS, State statute does not prohibit burial of human remains on private property;

WHEREAS, the State and its citizens have an obligation to protect from disturbance or destruction all human skeletal remains, burial sites, and burial material, including those in marked, unmarked, unrecorded, registered, or unregistered graves or burial grounds located on state or private lands that are not protected as cemeteries or graveyards under existing state law as provided by §22-3-802, MCA;

WHEREAS, Madison County wishes to promote and protect health, safety and welfare of its citizens; and

WHEREAS, unregulated burial of human remains upon private property in Madison County can lead to health concerns, law enforcement concerns, land-planning concerns and property disputes between neighbors; and

WHEREAS, Madison County understands that burial upon private property may not be unlawful, but, private property burial is not recommended. Cemeteries exist for legal burial of bodies. Once legally dedicated to cemetery purposes, land so dedicated remains sacred and may not be used for any other purpose. Those contemplating private property burial should consider the extent to which the burial ground will remain sacred to future owners of the property.

NOW THEREFORE, BE IT RESOLVED, that the Madison County Commission hereby creates the following policy in regards to the burial of human remains upon private property in Madison County outside of a cemetery district.

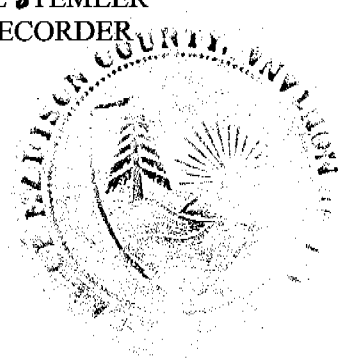
- A. Only a person possessing the right to determine the method of disposition of the deceased human's remains under Montana Code Annotated Title 37, Chapter 19, Part 9 (the "Responsible Party") and the owner of the private land to be used for burial of the human remains (the "Landowner") may jointly authorize burial of human remains on private non-cemetery land.
- B. Prior to burial, one must contact the County Coroner to verify proper notification and recording.
- C. The location of a burial site must be owned outright or permission must be granted in writing by all lien-holders.
- D. A Private Family Burial Grounds Notice including: the name of the deceased, specific location of burial per GPS coordinates, legal description and survey indicating location of burial shall be recorded in the County Clerk and Recorder's Office within ten (10) days of demise. Further, a new deed for the real property shall be executed that includes notice of burial of a body on that property with a survey or legal description and GPS location of the burial at the time of the filing of the Private Family Burial Grounds Notice.
- E. Guarantee of future access, by easement or other means, is the responsibility of the party contributing the burial, by way of an appropriate recording at the Clerk and Recorder's office.

- F. Burial sites must have a grave marker that is well-kept and written information on the deceased shall be placed in a waterproof container that shall be attached to the casket or in the casket for identification purposes.
- G. Human remains must be placed in the ground at least six (6) feet vertically above the ground-water table with a minimum fill of four (4) feet covering the body.
- H. Burials must include the body being placed in a casket built with wood or some stronger material to permit the removal of a body if necessary in the future.
- I. A minimum lot size of one (1) acre is required for a body to be buried on private property. The burial site must be at least one hundred (100) feet down gradient from any private water well, stream or open water and three hundred (300) feet down gradient from any public, shared or community water well. The burial site shall not be upon a 100 year flood plain.
- J. Burial plots shall be located at least one hundred (100) feet from all property boundaries or street lines and at least fifty (50) feet radius from any structures or buildings.
- K. A maximum of five (5) bodies may be buried upon private property without designating the site a cemetery per Montana Statute.
- L. The care and maintenance of the burial site is the responsibility of the family and/or landowner, and not the responsibility of the County or of a Cemetery Association or District.
- M. In accordance with 37.116.103, A.R.M., a body must be buried within forty-eight (48) hours after the time of death or the body must be embalmed or kept refrigerated inside at thirty-five (35) degrees Fahrenheit or colder. Until burial, a body must be covered or shielded from public view unless during a funeral.
- N. If the burial site is removed or changes locations, a new recording of such notice as well as a new deed shall be filed with the Clerk and Recorder's Office after contacting the County Coroner.
- O. Any violation of this policy may result in the removal of said body by Madison County with cost of removal and re-burial assessed to said property-owner.

Done and dated this 1 day of Oct, 2013.

ATTEST:

  
 PEGGY KAATZ STEMLER  
 CLERK AND RECORDER



  
 JAMES P. HART, CHAIRMAN

  
 DAVID SCHULZ, COMMISSIONER

  
 DAN A. HAPPEL, COMMISSIONER

**Private Family Burial Grounds Notice**

Name of Deceased: \_\_\_\_\_

Name of Property Owner(s): \_\_\_\_\_

Location: \_\_\_\_\_

GPS Coordinates: \_\_\_\_\_

Legal Description: \_\_\_\_\_

Certificate of Survey: Document # \_\_\_\_\_ Folio # \_\_\_\_\_

Signature of All Property Owner(s) and/or lien holders:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

SUBSCRIBED AND SWORN to before me this \_\_\_\_\_ day of \_\_\_\_\_.

Notary Public for the State of Montana  
Residing at \_\_\_\_\_  
My Commission Expires: \_\_\_\_\_

\_\_\_\_\_  
Printed Name of Notary

**Family Member Requesting:**

Name: \_\_\_\_\_

Address: \_\_\_\_\_

Phone Number: \_\_\_\_\_

Signature: \_\_\_\_\_ Date: \_\_\_\_\_

This information must be returned to the Madison County Clerk and Recorder's Office within ten (10) day of demise.

**Approved by the Madison County Coroner's Office.**

Signature: \_\_\_\_\_ Date: \_\_\_\_\_

**Approved by the Madison County Sanitarian's Office.**

Signature: \_\_\_\_\_ Date: \_\_\_\_\_

STATE OF MONTANA MADISON COUNTY

RECORDED: 10/01/2013 3:45 KOI: MADISON CO

Peggy Kaatz Stemler CLERK AND RECORDER

FEES: \$0.00

BY: *Chantel Williams*

TO: FILE 101-E 5 PGS,

*pm*

**RESOLUTION 2013-41**

**Disposition of Bodies  
Burial of Persons on  
Private Property**