

CHAPTER 7. CEMETERY CARE FUND

§ 451. Corporate operation

It shall be unlawful to operate a perpetual or endowed care cemetery in this state except by means of a corporation organized in accordance with the laws of this state. This Section, however, shall not apply to any person, firm or corporation which, prior to August 1, 1962, owned and operated a cemetery in which the persons, firm or corporation had sold or contracted to sell interment spaces with a provision for perpetual or endowed care, if the person, firm or corporation has complied with the provisions of R.S. 8:457.

Acts 1974, No. 417, § 1. Amended by Acts 2001, No. 468, § 1. Amended by Acts 2022, No. 574, § 1.

§ 452. Certification of trust fund in articles of incorporation; amendments

No certificate of authority shall be issued to a corporation organized for the purpose of maintaining and operating a perpetual or endowed care cemetery unless its articles of incorporation provide for the establishment of a trust fund for such care in accordance with the provisions of this Chapter. Prior to commencing business, the corporation shall execute a written instrument establishing the trust fund and the trustee therein designated shall acknowledge in writing receipt of the minimum deposit required by this Chapter. The trust agreement shall be open for inspection and a copy of such agreement and any amendments thereto, as well as the receipt of the trustee, shall be filed with the board for approval within thirty days of execution.

Acts 1974, No. 417, § 1. Amended by Acts 1980, No. 428, § 1. Amended by Acts 1997, No. 921, § 1.

§ 453. Cemeteries in existence on August 1, 1962; acts prohibited

No owner of a cemetery in existence on August 1, 1962, who previously to such date has not sold or contracted to sell any interment space in the cemetery with a provision for perpetual or endowed care shall thereafter advertise or otherwise hold out to the public that the cemetery or any individual interment space therein is entitled to perpetual or endowed care unless the owner has established a trust fund for perpetual or endowed care as provided by this Chapter.

Acts 1974, No. 417, § 1. Amended by Acts 2022, No. 574, § 1.

§ 454. Trust funds required; master trust funds

A. No corporation hereafter organized for the operation of a perpetual or endowed care cemetery and no cemetery authority not operating prior to August 1, 1962 as a perpetual or endowed care cemetery shall advertise or sell interment spaces in the cemetery under the representation that such cemetery or any individual interment space therein is entitled to perpetual or endowed care, until there has been established a trust fund to provide for such care in the sum of fifty thousand dollars in cash, or in lieu thereof securities listed upon a national exchange or obligations of the United States government, any state, parish, county or municipality, having a fair market value equal to said amount of cash on the date of deposit.

B. The trust fund so created shall be evidenced by an instrument in writing and shall be placed with a designated trustee which shall be a federally insured financial institution or trust company located in Louisiana

and authorized to exercise trust or fiduciary powers under the laws of Louisiana or the United States.

C. (1) Notwithstanding any provision of law to the contrary, for the purposes of collective investment and administration and with written consent of each participant in a master trust fund, a designated trustee of two or more trust funds may apply to the board to establish a master trust fund in which deposits are made pursuant to the provisions of this Title.

(2) The master trust fund shall be subject to the following requirements:

(a) The designated trustee of a master trust fund shall maintain separate records of principal and income for each participant in the master trust fund.

(b) The income and associated expenses of the master trust fund shall be divided among the participants in the master trust fund based on the proportion that each participant contributes to the balance of the master trust fund.

(c) The annual report by the designated trustee of the master trust fund shall include an itemized separate accounting for each participant in the master trust fund. Such annual report shall comply with the provisions of R.S. 8:456.

(d) The operation of the master trust fund shall be subject to the provisions of this Title and the rules and regulations of the board.

Amended by Acts 2001, No. 468, § 1. Amended by Acts 2003, No. 501, § 1. Amended by Acts 2018, No. 391 § 1. Amended by Acts 2023, No. 22 § 1.

§ 454.1 Administration of trust funds; maintenance; exemption from seizure

A. The principal of the trust fund shall remain permanently intact and only the income therefrom shall be expended. The income shall be used solely for the care of those portions of the cemetery in which interment spaces have been sold with a provision for perpetual or endowed care, including the expenses necessary to carry out the purposes and administration of the trust. It is the intent of this Section that the net income of the fund shall be paid to the cemetery authority and used exclusively for the care of interment spaces sold with a provision for perpetual or endowed care and for the care of other portions of the cemetery immediately surrounding the spaces as may be necessary to preserve the beauty and dignity of the spaces sold. Income distributions within a perpetual care trust fund means the net income or total return distribution method as provided for in R.S. 8:454.2. The fund or its income shall never be used for the development, improvement or embellishment of unsold portions of the cemetery so as to relieve the cemetery authority of the ordinary cost incurred in preparing such property for sale. All funds held in trust for perpetual care purposes shall be administered by the trustee in accordance with this Chapter and the Louisiana Trust Code.

B. The cemetery shall be maintained in a reasonable condition which shall include but not be limited to leveling of grounds where interments have been made, removal of all debris, mowing and edging, resulting in a well-kept appearance at all times.

C. After the establishment of the trust fund, a minimum of ten percent of the gross sales price received for any interment space sold or transferred under the representation that such interment space shall receive

perpetual or endowed care shall be deposited in the trust fund; however, in computing the amount to be deposited therein for property sold after the creation of the fund, the cemetery authority shall be entitled to credit for the amount originally deposited upon creation of the trust fund. For each interment space provided without charge, the deposit shall in no event be less than ten percent of the fair market value of said interment space.

D. Notwithstanding any provision of law to the contrary, the principal of the trust fund and all income therefrom shall be exempt from seizure, under any writ, mandate, or process whatsoever, by the creditors of the beneficiaries, the trustee, and the cemetery authority or any person owning, operating, managing, conducting or providing perpetual or endowed care to or for, the cemetery for which the trust fund was created.

Added by Acts 2001, No. 468, § 1. Amended by Acts 2022, No. 574, § 1. Amended by Acts 2023, No. 29, § 1. Amended by Acts 2023, No. 381 § 1.

§ 454.2. Income distribution methods; application; restrictions

A. For the purposes of this Section, the following terms have the following meanings ascribed to them:

(1) "Average fair market value" means the average of the fair market value of assets held by the trust fund on the last day of the current calendar year and the last day of each of the two preceding calendar years or the average of the fair market value for the entire term of the trust fund if there are less than two preceding years.

(2) "Inception" means the first day of the calendar year on which distributions from the perpetual care trust fund are first made based on the total return distribution method.

(3) "Net income" means interest and dividends reduced by permissible fees and taxes.

(4) "Total return distribution" means the distribution of funds from the perpetual care fund based on the average fair market value of the fund assets multiplied by the total return percentage.

(5) "Total return percentage" means the annual percentage selected by the cemetery authority and approved by the board in accordance with this Section. The total return percentage shall not exceed four percent of the average fair market value of the trust fund.

B. Income distributions from perpetual care trust funds shall be made with consideration of either net income or total return distribution.

C. A trustee of a perpetual care trust fund may elect to use the total return distribution method only if the trust fund is administered by either a qualified institutional trustee as provided for by R.S. 8:454(B), for trusts established in accordance with R.S. 8:457, or where the trustee or investment advisor managing the funds demonstrates sufficient knowledge and expertise related to total return investing and distributions.

D. (1) The cemetery authority shall apply to the board at least ninety days prior to the effective date of the election to use the total return distribution method. The cemetery authority or trustee shall provide the board with all of the following:

(a) A written investment policy with investment goals to achieve principal growth through permissible investment pursuant to this Title for perpetual care trust funds and with a secondary goal of achieving current income.

(b) An amended perpetual care trust agreement on board-approved forms that clearly states the selection of the total return distribution method.

(c) A written distribution policy establishing the total return percentage and initial estimated average fair market value, using the most recent month end balances as the estimate for the current calendar year, signed by the cemetery authority or trustee.

(2) The board may require such information, supporting documentation, and proof as it deems reasonable concerning the applicant's compliance with this Title and the rules and regulations of the board.

(3) The board shall determine that the cemetery authority or trustee has met the requirements provided for in this Section prior to approving the application to implement a total return distribution method. If the board refuses to approve the application, such notification shall contain details of the information needed to remedy any deficiencies with the application. The board shall notify the cemetery authority no later than ninety days after receiving the application. An application that is submitted ninety days prior to the beginning of the calendar year, once approved by the board, shall be retroactive to the beginning of that calendar year.

(4) The cemetery authority shall submit the information required in this Subsection on an application from prescribed by the board, accompanied by an application fee set by the board not to exceed one thousand five hundred dollars to cover the board's reasonable and ordinary expenses associated with determining compliance with applicable provisions of this Title.

E. A cemetery authority may select a distribution method by delivering written instructions to the trustee of the fund no later than thirty days prior to the beginning of the calendar year. Once approved by the board, the distribution method and the total return distribution rate shall remain in effect unless the cemetery authority notifies the trustee of its desire to effect a change, provides an application for such change to the board, and provides copies of such documentation to the trustee. In the event that the trustee does not receive written instructions from the cemetery authority informing the trustee of the distribution method chosen, the trustee shall calculate and distribute based on the net income distribution method.

F. The approved total return distribution percentage may be reduced by the cemetery authority but may not be increased unless an additional application is made to the board with documentation demonstrating the rate of return of the perpetual care funds over the last three years to support an increase in the percentage.

G. A cemetery authority that has implemented the total return distribution method may elect to reconvert to a net income distribution method by submitting written documentation to the board in support of the reconversion, including a copy of the trust agreement, a written notification on the proposed effective date of the reconversion, and any additional information required by the board. No cemetery authority may change its distribution method more than once within a three-year period unless required by the board.

H. (1) The board shall require corrective measures to be taken, including reducing the approved total return percentage, requiring a distribution of only net income for a calendar year, or requiring a monthly retest

outlined in Subparagraph (c) of this Paragraph applies and whereby no distribution of any income is made until the failed test is passed, if any of the following circumstances occur:

(a) The average fair market value of the trust fund at the end of the most recent rolling three-year period, as compared to the average fair market value of the previous rolling three-year period, declines by ten percent or more.

(b) The fair market value of the trust fund at the end of a calendar year is less than ninety percent of the sum of the fair market value of the fund at inception plus all deposits made since inception.

(c) A cemetery authority has failed to meet the test in Subparagraph (a) or (b) of the Paragraph, and after a full calendar year of distributing only net income, still fails to meet the tests in this Subsection.

(d) There is an uncorrected financial or investment-related perpetual care deficiency as determined by the board after review of the annual trust fund report or onsite examination.

(2) If a cemetery authority fails to take any required action, it shall be subject to any and all enforcement actions or penalties pursuant to this Chapter.

1. In the event that permissible fees paid from the perpetual care fund exceed one and one-half percent of the fair market value in a given year, the amount in excess shall be deducted from the approved total return distribution.

Added by Acts 2023, No. 29 § 1.

§ 454.3. Merger of cemetery trust funds

A. Two or more trust funds, owned by the same cemetery authority, that provide for perpetual or endowed care for one cemetery may be merged into one trust fund by the cemetery authority executing a plan of merger by authentic act or by act under private signature executed in the presence of two witnesses duly acknowledged by the cemetery authority or by the affidavit of one of the attesting witnesses. The plan or merger shall be approved by the board of directors or other governing authority of the cemetery authority.

B. The plan of merger shall include all of the following:

(1) The name of each of the trust funds to be merged.

(2) The date of creation of each trust fund.

(3) The manner of transferring and combining the assets of the trust funds.

(4) The effective date of the merger.

(5) A true copy of the instruments creating each trust fund, including any amendments.

(6) Any amendments to the trust instrument of the surviving trust fund.

(7) The terms and conditions of the merger.

C. Articles of merger shall be signed by an officer or other duly authorized representative of the cemetery authority and shall be delivered to the board within thirty days of the effective date of the merger. The articles shall set forth all of the following:

(1) The names of the trust funds that were merged.

(2) The trust instrument of the surviving trust fund and any amendments thereto.

(3) The effective date of the merger.

(4) The name of the surviving trust fund.

(5) A statement that the plan of merger was approved by the board of directors or other governing authority of the cemetery authority.

D. When the merger becomes effective, all of the following shall apply:

(1) The separate existence of every trust fund that is merged into the surviving trust fund ceases.

(2) All property owned by, and every contract right possessed by, each trust fund that merges into the surviving trust fund is vested in the surviving trust fund without any transfer, assignment, reversion, or impairment.

(3) All liabilities of each trust fund that is merged into the surviving trust fund are vested in the surviving trust fund.

(4) The trust instrument of the surviving trust fund is amended to the extent provided in the plan of merger.

(5) The trustee of each of the non-surviving trust fund shall provide the surviving trust fund with a final accounting of the trust fund and cause all property of the trust fund to be delivered to the trustee of the surviving trust fund on the effective date of the merger.

(6) The merger does not create a new trust fund and is the continuation of the surviving trust fund.

(7) If all or part of the cemetery was in existence on August 1, 1962, and prior to such date operated as a perpetual or endowed care cemetery provided through the surviving trust fund, the provisions of R.S. 8:451, 453, 454, 457, 461, and 466 shall continue to apply.

Added by Acts 2024, No. 785, § 1.

§ 455. Annual report by cemeteries

All cemeteries subject to the provisions of this Chapter shall file with the trustee, as defined in this Chapter, not later than ninety days after the close of the business year, a report setting forth the volume and

the gross selling price of sales upon which a deposit with the trustee is required by this Chapter. For the purposes of this Chapter, the business year is any consecutive twelve-month period determined by the cemetery authority and designated in the report. The cemetery authority may change its business year by filing an interim report for a period less than twelve months. The board shall be notified of such change within thirty days of the effective date of the change.

Acts 1974, No. 417, § 1. Amended by Acts 2022, No. 574, § 1. Amended by Acts 2023, No. 381 § 1.

§456. Annual report by trustee; final accounting by trustee required

A. (1) Not later than sixty days after the receipt of the report required by R.S. 8:455, the trustee shall file with the board an annual report on a form prescribed by the board setting forth all of the following:

(a) All receipts and disbursements of cash, all receipts and deliveries of other trust property during the regular business year of the cemetery authority, and a detailed list of all items of trust property in the trust at the end of each year.

(b) A statement showing the total amount of the endowment and perpetual care trust funds invested in each of the investments authorized by law, and the amount of cash on hand not invested.

(2) The report shall be verified by the president or vice president and one other officer of the cemetery authority.

B. Within sixty days of the resignation of a trustee and transfer of the trust fund to the successor trustee, the resigning trustee shall file with the board a final accounting showing in detail all receipts and disbursements of cash and all receipts and deliveries of other trust property, and set forth a detailed list of all items of trust property in the trust from the last reporting period through the date of resignation and transfer of the trust fund to the successor trustee.

C. Notwithstanding any provision of law to the contrary, the annual report and final accounting shall be open for public inspection and upon request, a copy of the annual report and final accounting shall be made available.

D. The annual report by the trustee shall be for the same period as the report received from the cemetery authority report pursuant to R.S. 8:455.

Acts 1974, No. 417, § 1. Amended by Acts 1997, No. 921, § 1. Amended by Acts 2014, No. 88, § 1. Amended by Acts 2015, No. 222, § 1. Amended by Acts 2018, No. 391 § 1. Amended by Acts 2023, No. 381 § 1.

§456.1. Resignation of trustee; orderly transfer of trust fund

Whenever a trustee resigns, the following documentation shall be filed with the board to insure an orderly transfer of the trust fund from the resigning trustee to the successor trustee:

(1) A written statement from the cemetery authority to the present trustee, requesting it resign as trustee of the trust fund, if the trust agreement permits, or a written statement from the cemetery authority accepting the resigning trustee's resignation.

(2) A written statement from the present trustee stating it will resign as trustee of the trust fund for the cemetery authority or a written statement from the present trustee advising it wishes to resign as trustee of a trust fund, if the trust agreement permits.

(3) A written statement from the successor trustee, qualified under R.S. 8:454(B)(1), accepting the trust fund.

(4) A final accounting from the resigning trustee, and a copy of the transmittal letter forwarding the assets of the trust fund to the successor trustee.

(5) A written statement from the successor trustee acknowledging receipt of the assets of the trust fund. A list of the assets should be contained in the statement.

Added by Acts 1997, No. 921, § 1.

§ 457. Application of Chapter

A. Any cemetery in existence on August 1, 1962, which, prior to such date, sold or contracted to sell interment spaces with a provision for perpetual or endowed care, qualifies for the exceptions set forth in this Chapter if the owner of the cemetery filed in the office of the recorder of mortgages for the parish in which the cemetery is located, a sworn affidavit executed by the owner, or its principal officer, setting forth all of the following:

(1) That a care fund was in existence for the cemetery, the principal of which was equal to a minimum of ten percent of the gross sales of interment spaces made by the cemetery since its inception or since January 1, 1961, whichever date is later.

(2) The nature and character of the assets comprising such care fund.

(3) The name of the financial institution or trustees or other entity which had custody and control of such fund.

B. A like affidavit shall be filed with the board at the end of each fiscal year thereafter for the operation of such cemetery.

C. No cemetery in existence on August 1, 1962, which prior to such date had sold or contracted to sell lots in the cemetery with a provision for perpetual or endowed care shall continue to operate as a perpetual or endowed care cemetery without having filed and without filing the affidavits required by this Section. However, an affidavit filed by a cemetery before July 31, 1974, and recorded in the mortgage records of the parish of its domicile, setting forth that the perpetual care or endowed care fund has been properly and continually maintained since January 1, 1961, shall be considered conclusive proof that the provisions of this Section have been complied with and shall place the cemetery authority within the excepted cemeteries.

Acts 1974, No. 417, § 1. Amended by Acts 1983, No. 525, § 1. Amended by Acts 2001, No. 468, § 1. Amended by Acts 2018, No. 391 § 1. Amended by Acts 2022, No. 574, § 1.

§ 458. Prohibited acts; injunctions

No person or cemetery authority shall offer for sale or sell any interment space in any cemetery with a provision for perpetual or endowed care, or in any manner represent, advertise, or hold out to the public that the cemetery, or any portion thereof, is entitled to perpetual or endowed care unless such person or authority has complied with the provisions of this Chapter. The board, by a majority vote of its members, may institute legal proceedings to enjoin any person or cemetery authority from violating the provisions of this Section.

Acts 1974, No. 417, § 1. Amended by Acts 1980, No. 428, § 1. Amended by Acts 2022, No. 574, § 1. Amended by Acts 2023, No. 381 § 1.

§ 459. Cemeteries exempt

The provisions of this Chapter shall not apply to any family burial ground or religious, fraternal, municipal, state, or federal cemetery.

Acts 1974, No. 417, § 1. Amended by Acts 2022, No. 574, § 1.

§ 459.1. Trust fund transfers

A. The provisions of R.S. 8:459 notwithstanding, whenever the ownership or management of a cemetery is transferred and by virtue of such transfer becomes a family burial ground or a religious, fraternal, municipal, state, or federal cemetery, the existing perpetual care trust fund of such transferred cemetery shall remain permanently intact and only the income therefrom shall be expended. The income shall be used solely for the upkeep and maintenance of the cemetery.

B. The trustee of any such perpetual care trust fund shall be a federally insured financial institution or trust company located in Louisiana and authorized to exercise trust or fiduciary powers in accordance with the laws of Louisiana or the United States.

C. No further contributions to such fund shall be required except for payments on those contracts in existence at the time of such transfer.

D. The provisions of this Chapter shall apply to the use and administration of such funds.

E. The provisions of this Section shall not apply to the transfer of ownership or management of a cemetery from one religious, fraternal, municipal, state, or federal cemetery authority to another religious, fraternal, municipal, state, or federal cemetery authority, where both transferor and transferee are exempt from the provisions of this Chapter as provided in R.S. 8:459.

Added by Acts 1986, No. 113, § 1. Amended by Acts 2001, No. 468, § 1. Amended by Acts 2004, No. 67, § 1. Amended by Acts 2022, No. 574, § 1.

§ 460. Penalties

Whoever violates any of the provisions of this Chapter, shall, upon conviction, be fined not more than one thousand dollars, or imprisoned for not more than six months, or both.

Acts 1974, No. 417, § 1. Amended by Acts 2022, No. 574, § 1.

§461. Examination of endowment funds; expenses

A. The board shall examine the endowment care funds of each cemetery authority governed by the provisions of this Title, including those organized before and after August 1, 1962, at the following time or times:

(1) Once every three years.

(2) Whenever the board determines there is good cause to believe that a violation of this Chapter has occurred.

(3) Whenever the cemetery authority or trustee in charge of endowment or perpetual care funds fails to file the reports required by this Chapter.

(4) Whenever the board is requested by verified petition signed by twenty-five individual interment space owners, alleging that the endowment or perpetual care funds are not in compliance with this title, in which case the examination shall be at the expense of the petitioners.

B. The expense of the examination as provided in Subsection A of this Section shall not exceed two hundred fifty dollars per day for each examiner engaged in the examination, but when the examination requires more than two days, the cost shall be paid by the cemetery authority in an amount not to exceed a total of five hundred dollars, unless irregularities are found, in which case the cemetery authority shall pay the full cost of the examination. The examination shall be privately conducted in the principal office of the cemetery authority or trustee.

Acts 1974, No. 417, § 1. Amended by Acts 2015, No. 222, § 1. Amended by Acts 2022, No. 574, § 1. Amended by Acts 2023, No. 381 § 1.

§ 462. Examination expense; effect of refusal to pay; disposition

If a cemetery authority refuses to pay examination expenses, the board may refuse it a certificate of authority and may revoke any existing certificate of authority.

Acts 1974, No. 417, § 1. Amended by Acts 2015, No. 222, § 1.

§ 463. Powers, duties, records, concerning examination of funds

In making such examination, the board shall:

A. Have reasonable access to the books and records relating to the endowment or perpetual care funds, their collection and investment, and the number of interment spaces under endowment or perpetual care. Such books and records shall be made available for examination in the principal office of the cemetery authority or trustee located within the state of Louisiana. Any request for access to books and records, which the trustee or cemetery authority objects to as being unreasonable, irrelevant, arbitrary, or capricious, shall be produced only after the objections are ruled upon by the board after notice and hearing.

B. Inspect and examine the endowment or perpetual care funds to determine their condition and the existence of the investments.

C. Ascertain if the cemetery authority has complied with all laws applicable to endowment or perpetual care funds.

Acts 1974, No. 417, § 1. Amended by Acts 1997, No. 921, § 1. Amended by Acts 2023, No. 381 § 1.

§ 464. Action required when authority fails to deposit minimum endowment or perpetual funds

A. If an examination made by the board, or any report filed with it, shows that there has not been collected and deposited in the endowment or perpetual care fund the minimum amounts required by this Title, the board shall require such cemetery authority to comply immediately with such requirement.

B. (1) Upon the failure of a cemetery authority to meet the requirements of this Chapter, the board shall have the authority to institute legal proceedings in district court in the parish where the cemetery is physically located for the purpose of recovering from the cemetery authority, and any other responsible party, the amounts necessary to satisfy the deficiencies in the endowment or perpetual care funds.

(2) The board may, in the same or other legal proceedings, recover from the cemetery authority and any other responsible party all reasonable costs, fees, and expenses incurred by the board, including but not limited to the costs of all examinations, audits, accountant and attorney's fees, cost of administrative proceedings and hearings, and any other cost incurred by the board in the enforcement of the provisions of this Title, any other provisions of law notwithstanding.

(3) Notwithstanding any other provisions of law, if the board fails to prove that the cemetery authority or other responsible party is not in compliance with the requirements of this Section or the alleged violation is de minimis, then the board shall not recover any costs, fees, or any expenses incurred by it and shall be responsible for paying all reasonable costs, legal and accounting fees, or expenses incurred by the cemetery authority or responsible party who was accused of not being in compliance.

Acts 1974, No. 417, § 1. Amended by Acts 1991, No. 430, § 1. Amended by Acts 2023, No. 381 § 1.

§465. Order requiring reinvestment in compliance with law; actions for preservation and protection

A. All funds held in trust for perpetual care purposes shall be administered by the trustee in compliance with this Chapter and the Louisiana Trust Code with such skill and care as a person of ordinary prudence, discretion, and intelligence would exercise in the management of his own affairs, not in regard to speculation but in regard to the permanent disposition of his funds, considering the probable income as well as the probable safety of his capital, subject to the following restrictions:

(1) No such funds shall, directly or indirectly, be loaned to or invested with any of the following:

(a) Any officer, director, or employee of the cemetery authority.

(b) Any trustee of the funds.

(c) Anyone related by blood, adoption, or marriage to any individuals included in Subparagraphs (a) and (b) of this Paragraph.

(d) The cemetery authority itself.

(e) Any business entity of which a controlling interest is held, directly or indirectly, by any of the foregoing persons or legal entities.

(f) Any other cemetery authority, or mortuary or funeral establishment.

(2) An affidavit from the borrower that, to the best of the borrower's knowledge and belief, the subject loan is not in violation of these restrictions, shall suffice to establish for the trustee a conclusive presumption that such is the case.

(3) It shall be prohibited for:

(a) An endowment or perpetual care trust to make one or more loans to any person or entity the cumulative value of which would constitute more than twenty-five percent of the total investment portfolio of the lending care fund, or to have more than two-thirds of the total assets of such funds invested in loans as described in Subparagraph (h) of Paragraph (4) of this Subsection.

(b) Any person or entity listed in Paragraph (A)(1) of this Section to pay or receive a commission, bonus, rebate, or other thing of value in connection with the loan or investment of such funds.

(4) Investment of such funds shall only be made in any of the following:

(a) Bonds, certificates, notes, or other evidences of indebtedness of the United States, or of the state of Louisiana.

(b) General obligations of any state or political subdivision of a state.

(c) Debentures issued by land banks and federal intermediate credit banks and debentures issued by banks for cooperatives.

(d) The bonds, certificates, notes, and other evidence of indebtedness of any municipality, parish, road, drainage, subdrainage, sewerage, gravity drainage, or school district, or of any authorized public board or commission of Louisiana.

(e) Paving certificates issued by any municipality in Louisiana.

(f) Any other form of security as permitted by R.S. 8:454.

(g) Repealed by Acts 2004, No. 68, § 1.

(h) Loans secured by a mortgage or mortgages on improved immovable property situated exclusively in this state for not more than an aggregate of seventy-five percent of the appraised value of the property and for a term amortized over a period not exceeding thirty years, and unless otherwise provided by regulation of the Louisiana Cemetery Board shall bear interest at not less than the maximum rate permitted at the time of

investment by the Federal Housing Administration for loans to be insured.

(5) Whenever any of the funds of an endowment or perpetual care trust are invested in or secured by a mortgage or whenever such a mortgage represents part of the assets of such a fund, the trustee shall retain in its own or constructive custody and furnish the cemetery authority with the following documents:

(a) The face and reverse side of the mortgage note or notes.

(b) A certified copy of the mortgage and of any corporate resolution or power of attorney authorizing its execution, and evidencing the recordation thereof.

(c) A copy of a survey of the property and its improvements.

(d) An original, or photocopy, of an appraisal current at the time of the mortgage, which shall be made by an appraiser meeting the qualifications of the board, as provided by rule and regulation.

(e) A title opinion of a licensed Louisiana attorney or mortgagee title insurance policy issued by an insurer authorized to do and doing business in Louisiana, on a standard form approved by either the Federal National Mortgage Association or by the American Land Title Association, in an amount not less than the original indebtedness, certifying or insuring the title to be good and merchantable and free of all prior liens and encumbrances.

(f) Policies or certificates of casualty and property insurance by an insurer admitted to and doing business in Louisiana, in such kinds and amounts as required by a financial institution trustee investing or loaning its own funds, covering the current year.

(g) Certificates from the tax collector showing payment of all ad valorem taxes and assessments against the property mortgaged, for the last year for which such taxes were payable and for at least two years prior thereto.

B. Whenever the board finds, after notice and hearing, that any endowment or perpetual care funds have been invested in violation of this Title, it shall, by written order mailed to the trustee and to the cemetery authority, require the reinvestment of the funds in conformity with this Title within the period specified by it, which shall not be more than six months. Such period may be extended by the board in its discretion.

C. The board may bring actions for the preservation and protection of endowment or perpetual care funds in the district court of the parish in which the cemetery is located, and the court may appoint a substitute trustee or trustees and make any other order necessary for the preservation, protection, and recovery of endowment or perpetual care funds whenever a cemetery authority or the trustee of such funds has done any of the following:

(1) Transferred or attempted to transfer any property to or make any loan from or investment with the endowment or perpetual care funds in violation of Subsection A of this Section.

(2) Failed to reinvest endowment or perpetual care funds in accordance with a board order issued pursuant to the authority of Subsection B of this Section.

(3) Invested endowment or perpetual care funds in violation of this Title.

(4) Taken action or failed to take action to preserve and protect the endowment or perpetual care funds, evidencing a lack of concern therefor.

(5) Become financially irresponsible or transferred control of the cemetery authority to any person who, or business entity which, is financially irresponsible.

(6) Become in danger of insolvency or has gone into bankruptcy or receivership.

(7) Taken any action in violation of this Title or failed to take action required by this Title or has failed to comply with lawful rules, regulations, and orders of the board.

D. Whenever the board, by a vote of the majority of its members, has determined that due to a violation of this Chapter, endowment or perpetual care funds are in danger of being lost or dissipated during the time required for notice and hearing, it may immediately apply to the district court of the parish in which the cemetery is located for any order which appears necessary for the preservation and protection of endowment or perpetual care funds, including but not limited to immediate substitution of trustees. Notwithstanding any other provisions of law, if the board fails to prove that due to a violation of this Chapter, endowment or perpetual care funds were in danger of being lost or dissipated, it shall be responsible for paying all reasonable costs, legal and accounting fees, and expenses incurred by the cemetery authority or responsible party who was accused of not being in compliance.

Acts 1974, No. 417, § 1. Amended by Acts 1980, No. 428, § 1; Acts 1983, No. 525, § 1. Amended by Acts 2001, No. 468, § 1. Amended by Acts 2004, No. 68, § 1. Amended by Acts 2022, No. 574, § 1. Amended by Acts 2023, No. 381 § 1.

§ 466. Annual report of cemetery authority; contents; fees

A. Each cemetery authority that has sold interment space subject to endowment or perpetual care, including those cemetery authorities organized before and after August 1, 1962, shall file with the board annually, on or before the thirtieth day of June, a written report on a form prescribed by the board setting forth all of the following:

(1) The number of contracts written in the reporting period for the sale of interment spaces or interment rights.

(2) The amount of gross sales or receipts from contracts of sales of all interment spaces or interment rights and the amount of any discounts.

(3) The amount of gross sales or receipts from perpetual care contracts, if any, sold separately from interment spaces or interment rights.

(4) The fair market value of interment spaces or interment rights provided without charge.

(5) The amount of deposits due the endowment or perpetual care trust fund for the reporting period and the dates the funds were deposited with the trustee.

B. The report shall be verified by the president or vice president and one other officer of the cemetery authority and shall be certified by the accountant or auditor preparing the same.

C. The cemetery authority shall pay to the board a report filing fee of not more than five dollars for each contract subject to endowment or perpetual care entered into in the annual report period, as specified in Subsection A of this Section. Report filing fees shall be due and payable at the time of filing the report and shall be used to cover the board's reasonable and ordinary expenses. Failure to pay report filing fees within six months after the close of the business year shall result in a late charge assessed by the board to the cemetery authority in the amount of one hundred dollars.

Acts 1974, No. 417, § 1. Amended by Acts 2015, No. 222, § 1.

§ 467. Examination of reports

The board shall examine the reports filed with it as to their compliance with the requirements of the law. Any formal hearing, court proceeding, or other cause of action against a cemetery authority or trustee based on any report filed by it shall be commenced within the limitations of R.S. 37:21.

Acts 1974, No. 417, § 1. Amended by Acts 2023, No. 381 § 1.