

## Chapter 15. Cemetery Care Fund

### §1501. Payments to Perpetual Care Trust Fund

[Formerly §1301]

A. After establishment of the perpetual or endowed care trust fund when and as required by Title 8, the amount to be deposited in the trust fund shall be a minimum of 10 percent of the gross sales price received, less sales tax and interest or finance charges, if any, for the sale, transfer, or conveyance of any interment space or interment right.

B. In no event shall the deposit be less than 10 percent of the fair market value of each interment space or right conveyed. Such fair market value shall be the undiscounted price of a comparable right of interment or interment space in the same cemetery, unless otherwise provided in this Rule.

C. In addition to the minimum deposits required, a cemetery may require, within the cemetery's rules, additional deposits to the perpetual or endowed care trust fund. Such additional deposits shall not be withdrawn from the trust fund once deposited.

D. All perpetual or endowed care deposits shall be delivered to the trustee not later than the thirtieth day after the close of the month of the sale or transfer of the interment space or interment right by the cemetery authority or cemetery sales/management organization. However, if the sale or transfer is financed by the seller and payments are pursuant to an installment contract, then the deposits to the trust fund must be made either:

1. not later than the thirtieth day of the close of the month in which the contract is made; or
2. proportionally over the term of the contract, provided that the seller maintains adequate accounting records of the installment payments and the proportionate amounts due the trust fund.

E. If an installment contract is financed with or sold to a financial institution or entity other than the seller, the contract shall be considered paid in full, both as to time and amount, and the deposits shall be delivered to the trustee not later than the thirtieth day after the end of the calendar month in which the cemetery authority receives the funds.

F. In the event of a documented deposit overfunding error or when a contract for a cemetery space or interment right is cancelled, terminated, upgraded, or traded, the cemetery authority shall be entitled to a credit for the amount deposited and attributable to such space, provided that the cemetery authority can provide sufficient documentation, acceptable to the board, of the credit due.

G. No deposit to the perpetual or endowed care trust fund shall be required in those instances in which a cemetery authority uses or conveys an interment space for an indigent interment, provided the space so used or conveyed is contained within a special area or section of the cemetery set aside and used solely for indigent interments.

H. No deposit to the perpetual or endowed care trust fund shall be required on the discounts given on predevelopment or preconstruction interment spaces or rights of interment in a mausoleum, if the cemetery has filed with the board the required application and supporting documentation.

AUTHORITY NOTE: Promulgated in accordance with R.S. 8:67.

HISTORICAL NOTE: Promulgated by the Department of Commerce, Cemetery Board, LR 8:467 (September 1982), amended by the Office of the Governor, Cemetery Board, LR 39:2748 (October 2013), LR 43:2150 (November 2017).

### §1503. Remittance by the Trustee to the Cemetery Authority

[Formerly §1303]

A. The principal of the trust fund shall remain permanently intact and only the income shall be expended.

B. The net income, after the deduction of costs associated with the operation of the trust, may be remitted to the cemetery for care and maintenance of the cemetery as provided for by Title 8. A cemetery or cemetery authority may not charge the trust for administrative costs for the operation of the cemetery or trust funds.

C. All income received by the trustees of cemetery care funds, which is not remitted to the cemetery authority within 120 days after the end of the latest tax reporting year of the cemetery authority, owning or operating a cemetery for which the trust fund is maintained, shall become, for all purposes, part of and added to the corpus or principal of the trust, and may not be withdrawn or distributed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 8:67.

HISTORICAL NOTE: Promulgated by the Department of Commerce, Cemetery Board, LR 8:467 (September 1982), amended by the Office of the Governor, Cemetery Board, LR 39:2748 (October 2013).

#### **§1505. Annual Reports Required**

A. All perpetual or endowed care cemeteries shall submit a report to the board, on the forms prescribed by the board, within six months after the close of the cemetery authority's tax reporting year.

B. All trustees of perpetual or endowed care trust funds shall submit a report to the board, on the forms prescribed by the board, within 5 months after the close of the cemetery authority's tax reporting year, or within 60 days from resignation as trustee. The assets of the trust shall be reported on a cost basis.

1. All trustees of perpetual or endowed care trust funds shall amortize bond premiums and discounts and adjust the cost value accordingly over the life of the bond to ensure the cost of the bond will be equivalent to the value of the bond at acquisition.

C. If the trustee is unable to obtain the requisite signatures of the cemetery authority on the annual report as required by law, the trustee shall, nonetheless, submit the annual report to the board within the timeframe provided by law. Once the requisite signatures have been obtained, the trustee shall resubmit the completed report to the board and shall file the report with the clerk of court as required by the Louisiana Cemetery Act.

AUTHORITY NOTE: Promulgated in accordance with R.S. 8:67.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Cemetery Board, LR 39:2748 (October 2013), amended LR 43:2151 (November 2017).

#### **§1507. Administration and Investment of Perpetual Care Trust Funds**

A. The trustee of a perpetual care trust fund shall administer the trust assets in a prudent manner that takes into consideration of the long-term safety, stability and growth of the trust. Engaging in speculative investments for any reason, including for the purpose of generating distributable income, is strictly prohibited. It shall be unlawful for a trustee or an investment advisor acting on behalf of a trustee of a perpetual care trust fund to:

1. engage in derivative and hedge transactions or investments including, but not limited to, the buying and selling of options (calls and puts) with trust assets;
2. place a margin loan, pledge or other lien against any of the securities or assets held in a trust;
3. churn or excessively trade trust assets for the purpose of generating commissions or fees for the trustee and/or investment advisor. A series of transactions, even if suitable when viewed in isolation, may be considered excessive and unsuitable for the trust when taken together in consideration of the long-term safety, stability and growth of the trust.

B. Mutual funds which are listed on a national exchange are permissible investments under the Louisiana Cemetery Act or these rules.

1. If a mutual fund is not listed on a national exchange but all of its underlying assets are listed on a national exchange and otherwise comply with the Louisiana Cemetery Act or these rules, the mutual fund may be considered compliant.

AUTHORITY NOTE: Promulgated in accordance with R.S. 8:67.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Cemetery Board, LR 43:2151 (November 2017).

#### **§1509. Investment Advisors**

A. Nothing in these rules shall be construed as prohibiting the trustee or cemetery authority from utilizing the services of an investment advisor. However, the use of an investment advisor does not relieve the trustee of its obligations and fiduciary responsibilities to administer the trust under the provisions of the Louisiana Cemetery Act or these rules including, but not limited to, directing and oversight of all trust assets. At all times the assets of the trust must be held by the trustee.

AUTHORITY NOTE: Promulgated in accordance with R.S. 8:67.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Cemetery Board, LR 43:2151 (November 2017).