

**CHAPTER 35. PROPERTY OF RELIGIOUS, EDUCATIONAL
AND CHARITABLE ORGANIZATIONS.
ARTICLE 5A. PERPETUAL CARE OF AND TRUST FUNDS FOR CEMETERIES.**

§35-5A-1. Definitions.

The following words and phrases as used in this article, unless a different meaning is clearly indicated by the context, shall have the following meanings:

- (a) "Person" means any corporation, company, partnership, individual, association or other entity owning or operating a cemetery for the disposition of human remains.
- (b) "Perpetual care cemetery" means a cemetery which advertises or represents to the public in any manner that it provides perpetual care or maintenance for burial grounds, mausoleums or columbaria and the fixtures attached thereto or which sells or offers to sell any interment right which is to be perpetually cared for or maintained.
- (c) "Interment" means the disposition of human remains by earth burial, entombment or inurnment.
- (d) "Burial right" means the right of earth interment.
- (e) "Entombment right" means the right of entombment in a mausoleum.
- (f) "Columbarium right" means the right of inurnment in a columbarium for cremated remains.
- (g) "Permanent endowment care fund" means a fund held in an irrevocable trust separate and apart from all other assets of the cemetery and dedicated for the exclusive use of perpetual care and maintenance of such cemetery.

§35-5A-2. Objects and purposes.

No person shall operate or continue to operate a perpetual care cemetery in West Virginia unless a permanent endowment care fund has been established, maintained and administered as required by this article. The income from the permanent endowment care fund so established shall be used only as permitted by this article.

§35-5A-3. Establishment of permanent endowment care funds.

No person desiring to organize, develop and operate a perpetual care cemetery in West Virginia after the first day of July, one thousand nine hundred seventy-three, shall offer to sell or sell any burial lot, burial right, entombment right or columbarium right in such cemetery, without first establishing a permanent endowment trust fund, segregated from all other assets, and placing therein a minimum of ten thousand dollars in cash, or in bonds of the United States government or of the state of West Virginia.

Whenever any such person has placed an additional ten thousand dollars in the permanent endowment care fund out of gross sales proceeds or from any other source, such person after submitting satisfactory proof of this fact to its trustee may withdraw the original sum of ten thousand dollars from the permanent endowment care fund.

No person operating an established perpetual care cemetery in West Virginia on or before the first day of July, one thousand nine hundred seventy-three, shall continue to operate such cemetery without creating a permanent endowment fund and making regular deposits to such fund as required in section four of this article and entrusting the administration of such fund as required in section five of this article.

§35-5A-4. Additional funding of permanent endowment care funds.

No person shall operate or continue to operate any perpetual care cemetery in the state of West Virginia after the first day of July, one thousand nine hundred seventy-three, without placing into a permanent endowment care fund ten dollars or ten percent of the gross sales proceeds, whichever is greater, received from the sale of any burial right or lot and not less than five percent of the gross sales proceeds from the sale of any entombment right or columbarium right. This sum shall be placed in the permanent endowment care fund not later than thirty days following the month in which the entire gross sales proceeds are received.

§35-5A-5. Trustee of the permanent endowment care funds.

The trustee of the permanent endowment care fund shall be a federally insured trust company or a federally insured banking institution with fiduciary powers authorized and qualified to exercise trust powers under and subject to the provisions of article four, chapter thirty-one-a of this code, or of the corresponding law of another state. A nonresident federally insured trust company or nonresident federally insured banking institution so authorized and qualified may become a trustee of a permanent endowment care fund notwithstanding the provision of section seven, article eight-a, chapter thirty-one-a of this code. When a nonresident trust company or nonresident banking institution becomes a trustee of a permanent endowment care fund for a perpetual care cemetery in this state, said nonresident trust company or nonresident banking institution thereby constitutes the secretary of state as its true and lawful attorney-in-fact upon whom service of notice and process in any action or proceeding against it as trustee, and acceptance of such trust by said nonresident trust company or nonresident banking institution shall be a manifestation of agreement that any notice or process, which is served in the manner hereinafter provided in this section, shall be of the same legal force and validity as though such nonresident trust company or nonresident banking institution was personally served with notice and process within this state. Service of such notice and process and the manner of acceptance of the same by the secretary of state shall be in accordance with the provisions of section fifteen, article one, chapter thirty-one of this code.

Any nonresident trust company or nonresident banking institution appointed as trustee of a permanent endowment care fund shall immediately upon acceptance of the trust give bond in accordance with the provisions of section five, article five, chapter thirty-five of this code.

The trustee shall invest such permanent endowment care funds for the purpose of providing an income to be used for the maintenance, improvement and preservation of the grounds, lots, buildings, equipment, records, statuary, and other real and personal property of the cemetery, and shall acquire, invest, reinvest, exchange, retain, sell and manage all property now or hereafter coming into such trustee's care or control.

The trustee shall exercise the judgment and care under the circumstances then prevailing, which men of prudence, discretion and intelligence, exercise in the management of their own affairs, not in regard to speculation, but in regard to the permanent disposition of their funds, considering the probable income as well as the probable safety of their capital.

Within the limitations of the foregoing standard, any such trustee is authorized to acquire and retain without any order of any court, every kind of property, real, personal or mixed, and every kind of investment, specifically including, but not by way of limitation, bonds, debentures and other corporate obligations, and stocks, preferred or common, which men of prudence, discretion and intelligence acquire or retain for their own account.

The trustee shall prepare an annual report of all of the assets and investments of the permanent endowment care fund. One copy shall be maintained at the office of the cemetery and shall be available for inspection at reasonable times by owners of interment rights in the cemetery.

The trustee shall pay over to the cemetery all income derived from the permanent endowment care fund semiannually to be expended only for the maintenance, improvement and preservation of the grounds, lots, buildings, equipment, records, statuary and other real and personal property of the cemetery.

§35-5A-6. Cemeteries exempted.

This article does not apply to any private or family cemetery wherein lots or spaces are not offered for public sale or to any cemetery which is owned and operated entirely and exclusively by churches, religious societies, established fraternal organizations, municipalities or other subdivisions of the state or a national cemetery.

§35-5A-7. Inconsistent provisions.

The provisions and requirements of this article shall take precedence over and shall supersede any other provisions of this code which may be inconsistent therewith.

§35-5A-8. Penalties for violation.

Any person and any officer, director, agent or employee of such person who violates or participates in the violation of this article shall be guilty of a misdemeanor, and, upon conviction thereof, shall be fined not more than one thousand dollars, or imprisoned in the county jail not more than one year, or both fined and imprisoned.