

## CEMETERY BOARD | Guidance Document

Financial report and report prepared by independent certified public accountant (SB 1174, Chapter 344 of the 2015 Acts of Assembly)

July 1, 2015 (adopted June 16, 2015)

### PURPOSE

As a means of providing information or guidance of general applicability to the public, the Cemetery Board is issuing this guidance document in order to assist its licensees in understanding the Board's procedures for financial reporting required by §§ 54.1-2324 and 54.1-2333 of the *Code of Virginia*

### BACKGROUND

The following are relevant excerpts from the Cemetery Board statutes:

§ 54.1-2319. Deposit in perpetual care trust fund required upon sale of graves, etc.

Each cemetery company shall deposit a minimum of ten percent of the receipts from the sale of graves and above-ground crypts and niches, excluding below-ground burial vaults, in cash in the perpetual care trust fund within thirty days after the close of the month in which such receipts are paid to it. If the purchaser's payment is made on an installment or deferred payment basis, the cemetery company shall have the option of paying ten percent of the amount of principal in each payment received into the perpetual care trust fund. If the cemetery company provides a grave or an above-ground crypt or niche without compensation, ten percent of the retail sales price shall be deposited within thirty days after the close of the month in which the property is provided to the consumer.

§ 54.1-2320. Additional deposit not required upon subsequent sale of same grave, crypt or niche.

If ten percent of the sales price of a grave or above-ground crypt or niche has been deposited in a perpetual care trust fund, no deposit shall be required on subsequent sales of the same grave, crypt or niche.

§ 54.1-2321. Recovery of original perpetual care trust fund deposit.

Once the cemetery company has deposited in the perpetual care trust fund a sum equal to twice the amount of the original deposit, exclusive of the original deposit, the trustee shall allow the cemetery company to recover its original deposit by withholding the money that would otherwise be required to be deposited in the perpetual care trust fund until the amount of the original deposit is recovered. Once the cemetery company has recovered an amount equal to its original deposit, deposits to the perpetual care trust fund shall be resumed.

§ 54.1-2322. Use of income from perpetual care trust fund.

A. The income from the perpetual care trust fund shall be used solely and exclusively for the general care, maintenance, administration, and embellishment of the cemetery. Unless prior approval has been obtained from the Board or a court of competent jurisdiction, the principal of the perpetual care trust fund shall only be used for investment purposes.

B. No portion of the perpetual care trust fund shall be used to pay any personal obligation or debt of any officer or owner of the cemetery or any tax obligation incurred by the cemetery or for any purpose other than that expressly described in this section. Nothing in this section shall be construed to limit the ability of the perpetual care trust fund trustee from paying normal operating expenses and income taxes of the trust itself, the trust being a separate legal entity.

§ 54.1-2325. Deposit in preneed trust required upon sale of property or services not to be delivered within 120 days.

A. Each cemetery company shall deposit into a trust fund at least forty percent of the receipts from the sale of property or services purchased pursuant to a preneed burial contract, when the delivery thereof will be delayed more than 120 days from the initial payment on said contract. The cemetery company shall establish a special trust fund in a Virginia trust company or trust subsidiary or a federally insured bank or savings institution doing business in the Commonwealth. The trust shall bear the legend "Preneed Trust Account." Deposits are required to be made by the cemetery company within thirty days after the close of the month in which said receipts are paid to it.

B. If the purchaser's payment is made on an installment or deferred payment basis, the seller shall have the option of paying each payment received into the preneed trust account.

§ 54.1-2330. Specific funds and income to remain in preneed trust account; exception.

Specific funds shall remain intact until the property is delivered or services performed as specified in the contract. The net income from the preneed trust account, after payment of any appropriate trustee fees, commissions, and costs, shall remain in the account and be reinvested and compounded. Any trustee fees, commissions, and costs in excess of income shall be paid by the cemetery company and not from the trust. However, the trustee shall, as of the close of the cemetery company's fiscal year, upon written assurance to the trustee of a certified public accountant employed by the seller, return to the seller any income in the seller's account which, when added to the specific funds, is in excess of the current cost requirements for all undelivered property or services included in the seller's preneed burial contracts. The seller's cost requirements shall be certified in its records by an affidavit sworn by the compliance agent and shall be determined by the seller as of the close of the cemetery company's fiscal year.

§ 54.1-2331. Disbursement of trust funds upon performance of contract.

A. Upon performance of the preneed burial contract, the seller shall certify to the trustee by affidavit the amount of specific funds in the trust, identified to the contract performed, which the trustee shall pay to the seller. The seller may in its records itemize the property or services and the consideration paid or to be paid therefor, to which the deposit requirements of this chapter apply. In such case, the seller may, upon certification to the trustee of performance or delivery of such property or services and of the amount of specific trust funds identified in its records to such items, request disbursement of that portion of the specific funds deposited pursuant to the contract, which the trustee shall pay to the seller.

B. If the preneed contract provides for two or more persons, the seller may, at its option, designate in its records the consideration paid for each individual in the preneed burial contract. In such case, upon performance of that portion of the contract identified to a particular individual, the seller may request, by certification in the manner described above, the disbursement of trust funds applicable to that portion of the contract, which the trustee shall pay to the seller.

#### SUMMARY

##### Perpetual Care Trust Fund

A cemetery company shall engage a properly licensed certified public accountant to analyze the cemetery company's financial report, which shall be on the forms prescribed by the Board, in accordance with standards established by the AICPA to ensure the cemetery company complied with §§ 54.1-2319, 54.1-2320, 54.1-2321 and 54.1-2322 of the *Code of Virginia* concerning the perpetual care trust. When determining the total value of the perpetual care trust fund, value shall mean value determined by cost basis.

##### Preneed Trust Fund

A cemetery company shall engage a properly licensed certified public accountant to analyze the cemetery company's financial report, which shall be on the forms prescribed by the Board, in accordance with standards established by the AICPA to ensure the cemetery company complied with §§ 54.1-2325, 54.1-2330 and 54.1-2331 of the *Code of Virginia* concerning the preneed trust fund. When determining the total value of the preneed trust fund, value shall mean value determined by cost basis.