

CEMETERY BOARD MEETING

MINUTES

May 13, 2024

The Cemetery Board met on May 13, 2024 at the Department of Professional and Occupational Regulation (DPOR), 9960 Mayland Drive, Richmond, Virginia.

The following members were present:

Susan Mini, Chair  
Caroline Smyth, Vice-Chair  
Donald Wilson  
James Young

Board members absent from the meeting:

Judy S. Lyttle  
James “Jim” Meadows  
Dr. Charletta Barringer-Brown

DPOR staff present for all or part of the meeting included:

Kishore S. Thota, Director  
Brian Wolford, Chief Deputy Director  
Stephen Kirschner, LRPD Deputy Director  
Anika Coleman, Executive Director  
Breanne Lindsey, Regulatory Operations Administrator  
Lee Bryant, CIC and Cemetery Board Administrator  
Gezelle Glasgow, Administrative Coordinator

Elizabeth Peay, Senior Assistant Attorney General, with the Office of the Attorney General was present.

Ms. Mini, determined a quorum was present and called the meeting to order at 10:00 A.M. **Call to Order**

Ms. Coleman informed the Board of the emergency evacuation procedures. **Emergency Evacuation Procedures**

Mr. Young moved to approve the agenda. Mr. Wilson seconded the motion which was unanimously approved by members: Mini, Smyth, Wilson, and Young. **Approval of Agenda**

Mr. Young moved to approve the minutes from the March 05, 2024, Board meeting. Mr. Wilson seconded the motion which was unanimously approved by members: Mini, Smyth, Wilson, and Young. Mr. Wilson to approve the minutes from the March 05, 2024, Total Return Distribution Committee meeting. Mr. Young seconded the motion which was unanimously approved by members: Mini, Smyth, Wilson, and Young. **Approval of the Minutes**

There was no public comment. **Public Comment**

**New Business**

Ms. Coleman informed the Board that the Trustee Approval Application will need to go for an Informal Fact Finding (IFF) Conference before being heard by the Board.

**Trustee Approval Application**

Ms. Coleman informed the Board of the expiration of the temporary fee reduction adopted by the Board effective April 30, 2024. Accordingly, the cemetery renewal and reinstatement application fees have reverted to their original amounts as of May 1, 2024. Ms. Coleman informed the Board of a recent financial analysis conducted by DPOR's Finance Division that indicated that the Board's current revenue exceeds the threshold set by Section 54.1-113 of the Code of Virginia, also known as the Callahan Act. This Act mandates a review and adjustment of fees if revenue surpasses \$100,000 or 20% of total expenses allocated to the regulatory board for the past biennium, whichever is greater. Ms. Coleman noted that given the present financial state, it's clear that additional temporary fee reductions are necessary to ensure ongoing compliance with the Callahan Act.

**Temporary Fee Reduction**

The Board reviewed the Cemetery Revenue Comparison, which offers a comprehensive overview of the Board's financial position, including current and projected figures. Ms. Coleman informed the Board that the proposed fee reduction amounts requiring the Board's approval are specifically for the 2024-2026 biennium. However, it's evident from the analysis that further fee reductions will be needed in subsequent years to maintain compliance with the Callahan Act.

Additionally, Ms. Coleman noted that the Board is taking on \$110,000 in addition to their share of the EPICx cost. This will also help in keeping us in compliance with the Callahan Act.

Mr. Young moved to approve the temporary fee reduction, in accordance with the provisions outlined in the statute. Ms. Smyth seconded the motion which was unanimously approved by members: Mini, Smyth, Wilson, and Young.

**Discussion of §54.1-2313.1**

Ms. Coleman noted that the Board is actively working to ensure the protection of preneed burial and perpetual care trust funds, as well as addressing cases where cemetery companies violate laws or regulations. Board staff consulted with subject matter experts, like Mr. Mike Doherty for guidance on legal matters and procedures.

The consideration of establishing a recovery fund to cover the financial aspect of appointing a receiver is a proactive approach to handling cases where cemetery companies may not have the resources to cover such costs. This demonstrates a commitment to addressing potential challenges in enforcing regulations and protecting consumers' interests. Internal discussions will continue, and no further Board action is required at this time. Ms. Coleman informed the Board that Board staff will determine if cemeteries can become non-profit when placed under receivership. Mr. Kirschner informed the Board that Board staff will put together the

language for the statute for the recovery fund.

## **Other Board Business**

Ms. Mini informed the Board that the financial statement was provided for their review. No action was taken by the Board.

## **Board Financial Statement**

Ms. Coleman informed the Board of Section 2.2-4023.1 of the Code of Virginia that enables a party to submit a petition seeking reconsideration of a final decision made by an agency pursuant to section 2.2-4020. Upon receipt of such petition, the agency is mandated to issue a written decision within 30 days. In instances where reconsideration pertains to a decision made by a policy-making board within an agency, the board possesses various avenues to address the petition. These include the option to delegate authority for considering the petition to the board chair, a designated subcommittee, or the agency's director responsible for administrative support to the board, typically the Executive Director. To adhere to the statutory timeframe for addressing reconsiderations, it's respectfully requested that the Board delegate responsibility of addressing reconsiderations to the Board's Executive Director, in accordance with the provisions outlined in the statute.

## **Reconsideration Case Decision**

Ms. Smyth moved to delegate the responsibility for addressing case reconsiderations to the Executive Director of the Board, in accordance with the provisions outlined in the statute. Mr. Young seconded the motion which was unanimously approved by members: Mini, Smyth, Wilson, and Young.

Ms. Coleman informed the Board that Board Counsel provided feedback regarding principal withdrawals.

## **Discussion of Principal Withdrawals**

Ms. Peay informed the Board of Va. Code 54.1-2322(A) that states "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." The Code sections referenced in the McGuire Woods letter were repealed in 2022 (Va. Code Section 64.2-1024(1), (2) and 64.2-1025). Va. Code Section 64.2-1069 addresses the payment of income tax for a Trust and states that:

A. A tax required to be paid by a fiduciary that is based on receipts allocated to income must be paid from income.

B. A tax required to be paid by a fiduciary that is based on receipts allocated to principal must be paid from principal, even if the tax is called an income tax by the taxing authority."

Sections 54.1-2322(A) and 64.2-1069 are in conflict with one another but the Board has authority to remedy this through the prior approval language in 54.1-2322(A).

The October 3, 2023, request from Calvary to the board states that capital gains is

considered principal and not ordinary income. The interpretation is correct given Section 64.2-1069. If the capital gains are allocated to principal, the income tax resulting from that gain should be paid from the principal of the trust. This does not negate that Cemeteries must get prior approval from the Board to use principal to pay income tax based on the law, but the Board is not improperly using their authority by allowing a cemetery to pay taxes out of principal if it is shown that the taxes result from income generated out of the principal.

Ms. Mini reminded the Board that the Board Member Training Conference will take place October 10-11, 2024, at Great Wolf Lodge in Williamsburg.

**Board Member  
Training Conference**

There being no further business, the meeting adjourned at 11:05 A.M.

**Adjourn**

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Susan Mini, Chair

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Kishore S. Thota, Secretary

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