

§5–601.

In this subtitle, “perpetual care”:

- (1) means the maintenance, including the cutting of grass abutting memorials or monuments, administration, supervision, and embellishment of a cemetery and its grounds, roads, and paths; and
- (2) includes the repair and renewal of buildings, including columbaria and mausoleums, and the property of the cemetery.

§5–602.

- (a) This subtitle does not apply to a cemetery that:
 - (1) has less than 1 acre available for burial; or
 - (2) is owned and operated by:
 - (i) a county;
 - (ii) a municipal corporation;
 - (iii) a church;
 - (iv) a synagogue;
 - (v) a religious organization;
 - (vi) a nonprofit organization created before 1900 by an act of the General Assembly;
 - (vii) a family and does not conduct public sales; or
 - (viii) a State veterans agency.

(b) This subtitle does not apply to the sale of a below-ground earth-covered chamber.

(c) This subtitle does not amend a trust agreement covering a perpetual care fund that existed on or before July 1, 1973, except as to:

- (1) the appointment of a successor trustee or cotrustee;
- (2) deposits into the fund after July 1, 1973; and
- (3) the withdrawal from the fund of income on deposits made after July 1, 1973.

§5–603.

(a) In this section, “developed land area” means land in a cemetery:

- (1) that is available for burial;
- (2) where roads, paths, or buildings have been laid out or built; or
- (3) where burial lots have been outlined on a plat or in a record or sales brochure.

(b) (1) Each sole proprietor registered cemerterian, permit holder, or any other person subject to the registration or permit provisions of this title who sells or offers to sell to the public a burial lot or burial right in a cemetery as to which perpetual care is stated or implied shall have a perpetual care trust fund.

(2) A separate perpetual care trust fund shall be established for each cemetery to which this section applies.

(3) On the general price list, contract of sale of burial space, and any conveyance documents, all cemeteries subject to the provisions of this subtitle shall state in writing the following using 12 point or larger type font:

- (i) “The cemetery is a perpetual care cemetery.”; or
- (ii) “The cemetery is not a perpetual care cemetery.”

(4) A cemetery created in the State after October 1, 2001, that is not exempt under § 5–602 of this subtitle shall be required to establish a perpetual care trust fund.

(c) Each sole proprietor registered cemerterian, permit holder, or any other person subject to the trust requirements of this subtitle initially shall deposit in the perpetual care trust fund at least:

(1) \$10,000, if the developed land area of the cemetery is 10 acres or less and the cemetery is a nonprofit cemetery which does not sell burial goods;

(2) \$25,000, if the developed land area of the cemetery is more than 10 acres and the cemetery is a nonprofit cemetery which does not sell burial goods;

(3) \$25,000, if the developed land area of the cemetery is 10 acres or less and the cemetery is a for-profit cemetery or a nonprofit cemetery which sells burial goods; or

(4) \$50,000, if the developed land area of the cemetery is more than 10 acres and the cemetery is a for-profit cemetery or a nonprofit cemetery which sells burial goods.

(d) (1) The deposits required by this subsection are in addition to the deposits required by subsection (c) of this section.

(2) Except as provided in paragraph (4) of this subsection, within 30 days after the end of the month when the buyer of a right of interment in a burial lot, above-ground crypt, or niche makes a final payment, the registered cemeterian, permit holder, or any other person subject to the trust requirements of this subtitle shall pay in cash to the trustee for deposit in the perpetual care trust fund:

- (i) at least 10% of the actual selling price of each right of interment in a burial lot, above-ground crypt, or niche; or
- (ii) if the burial space is sold at a discount or at no cost, at least 10% of the imputed cost of the fair retail value.

(3) The amount of deposit to the perpetual care trust fund shall be deducted from the proceeds of the listed selling price of the right of interment in a burial lot, above-ground crypt, or niche, and may not be charged as an add-on to the purchaser.

(4) This subsection does not apply to the sale of a second right of interment or the resale of a right of interment in a burial lot, above-ground crypt, or niche for which the cemetery already has paid into the perpetual care trust fund the deposit required by this subsection.

(e) The income from the perpetual care trust fund:

(1) shall be used only for the perpetual care of the cemetery, including:

- (i) the maintenance, including the cutting of grass abutting memorials or monuments, administration, supervision, and embellishment of the cemetery and its grounds, roads, and paths; and
- (ii) the repair and renewal of buildings, including columbaria and mausoleums, and the property of the cemetery; and

(2) may not be used to care for memorials or monuments.

(f) Realized capital gains of a perpetual care trust fund are not income of the perpetual care trust fund and shall be deposited in the perpetual care trust fund as principal of the perpetual care trust fund.

(g) (1) The perpetual care trust fund authorized by this subsection shall be a single purpose trust fund.

(2) In the event of the bankruptcy or insolvency of, or assignment for the benefit of creditors by, or an adverse judgment against the sole proprietor registered cemeterian, permit holder, or any other person subject to the trust requirements of this subtitle, the perpetual care trust funds may not be made available to any creditor as assets of the sole proprietor registered cemeterian, permit holder, or any other person subject to the trust requirements of this subtitle or as payment for any expenses of any bankruptcy or similar proceedings, but shall be retained intact to provide for the future maintenance of the cemetery.

(3) The perpetual care trust fund is not subject to judgment, execution, garnishment, attachment, or other seizure by process in bankruptcy or otherwise, or to sale, pledge, mortgage, or other alienation and is not assignable.

(h) A sole proprietor registered cemeterian, permit holder, or any other person subject to the trust requirements of this subtitle shall maintain in the office of the cemetery a copy of the most recent trust report filed with the Office under § 5-606 of this subtitle and shall make the report available for inspection by an owner or a prospective purchaser of a right of interment in a burial lot, above-ground crypt, or niche.

§5-604.

(a) A trustee appointed under this subtitle must be:

- (1) a national banking association;
- (2) a bank, as defined in the Maryland Uniform Fiduciaries Act;
- (3) a savings bank insured by a unit of the federal government;
- (4) a savings and loan association insured by a unit of the federal government; or
- (5) a person who annually provides, with the trust report, the proof of a fidelity bond that meets the requirements of subsection (b) of this section from a recognized bonding institution authorized to do business in the State in an amount equal to the trust fund.

(b) The fidelity bond provided under subsection (a)(5) of this section shall be:

- (1) for the benefit of the trust account of the cemetery or its burial space owners or both;

(2) conditioned such that the applicant shall comply with all Maryland laws and regulations relating to trust accounts; and

(3) subject to the approval of the Director.

(c) A trustee may not use any perpetual care trust funds required to be held in trust in accordance with this subtitle to:

(1) purchase an interest in any contract or agreement to which the registrant, permit holder, or any other person subject to the trust requirements of this subtitle, or any entity owned or under the control of a registrant, permit holder, or any other person subject to the trust requirements of this subtitle, or a spouse, child, parent, or sibling of a registrant or any other person subject to the trust requirements of this subtitle is a party; or

(2) make any loan or direct or indirect investment of any kind:

(i) to any registrant, permit holder, or any other person subject to the trust requirements of this subtitle or to any spouse, child, parent, or sibling of a registrant or any other person subject to the trust requirements of this subtitle;

(ii) to or in any entity or business operations owned or under the control of a registrant, permit holder, or any other person subject to the trust requirements of this subtitle, or a spouse, child, parent, or sibling of a registrant or any other person subject to the trust requirements of this subtitle;

(iii) on or in any real property of a cemetery, or the buildings or structures appurtenant to the property; or

(iv) in any permanent improvements of a cemetery or its facilities.

§5–605.

(a) The terms of a trust to provide for perpetual care shall be designated in a written agreement between the registered cemeterian, permit holder, or any other person subject to the trust requirements of this subtitle and trustee.

(b) The terms of the trust agreement:

(1) shall conform to this subtitle; and

(2) may include provisions about:

(i) payment of income;

(ii) accumulation of income;

(iii) reinvestment of income;

(iv) administration of the trust fund; and

(v) powers of the trustee as to investments.

(c) (1) A trust agreement shall be irrevocable.

(2) However, a trust agreement may:

(i) give the registered cemeterian, permit holder, or other person subject to the trust requirements of this subtitle the right to remove the trustee and appoint another qualified trustee; and

(ii) provide for the appointment of individuals as cotrustees and successor cotrustees with a corporate trustee.

§5–606.

(a) (1) Each sole proprietor registered cemeterian, permit holder, or any other person subject to the trust requirements of this subtitle shall keep detailed records of all sales of burial lots or burial rights in a cemetery and money received.

(2) The records of each sole proprietor registered cemeterian, permit holder, or any other person subject to the trust requirements of this subtitle and of each trustee appointed by the sole proprietor registered cemeterian, permit holder, or any other person subject to the trust requirements of this subtitle are subject to examination by:

(i) the Director;

(ii) the Attorney General or an authorized representative of the Attorney General; and

(iii) the State’s Attorney for the county where the cemetery owner does business or where the cemetery is located.

(b) (1) Each sole proprietor registered cemeterian, permit holder, or any other person subject to the trust requirements of this subtitle shall submit a report to the Director within 150 days after the close of each calendar or other fiscal year chosen by the sole proprietor registered cemeterian, permit holder, or any other person subject to the trust requirements of this subtitle.

(2) The report shall:

(i) be on the form that the Director requires;

(ii) be certified as to correctness by a certified public accountant retained by the cemetery;

(iii) be accompanied by a trustee’s annual summary statement of assets for the reporting period that includes:

1. the amount of money in the perpetual care trust fund at the beginning of the reporting period;
 2. an investment portfolio summary describing the asset and the market value for each investment class;
 3. a transaction summary of the perpetual care trust fund containing:
 - A. trust account earnings, including interest, dividends, and realized gains or losses;
 - B. money deposited;
 - C. total receipts;
 - D. administrative expenses;
 - E. disbursements of income for cemetery care, maintenance, administration, and embellishment;
 - F. other disbursements; and
 - G. total disbursements; and
 4. the amount of money in the perpetual care trust fund at the end of the reporting period;
- (iv) be accompanied by a fee of \$25; and
- (v) include:

1. the name of the sole proprietor registered cemeterian, permit holder, or any other person subject to the trust requirements of this subtitle;
2. each location of the sole proprietor registered cemeterian, permit holder, or any other person subject to the trust requirements of this subtitle;
3. the amount of money in each perpetual care trust fund at the beginning of the calendar or other fiscal year chosen by the sole proprietor registered cemeterian, permit holder, or any other person subject to the trust requirements of this subtitle;
4. the amount of money that the sole proprietor registered cemeterian, permit holder, or any other person subject to the trust requirements of this subtitle received during that year that is subject to the trust requirements of this subtitle;
5. the amount of money actually deposited into each perpetual care trust fund in that year;
6. the amount of money spent during that year to provide care, maintenance, administration, and embellishment of each cemetery, except for money used for the care of monuments and memorials; and

7. the name and address of each trustee.

(3) If the Director determines, after a review of the report and annual summary statement of assets required by this subsection, that additional documentation is required, a sole proprietor registered cemeterian, permit holder, or any other person subject to the trust requirements of this subtitle shall provide the additional documentation to the Director.

(4) A sole proprietor registered cemeterian, permit holder, or any other person subject to the trust requirements of this subtitle who stops selling burial lots or burial rights in a cemetery as to which perpetual care is stated or implied shall notify the Director in the required report for the year in which sales stop.

(5) The Director may require a sole proprietor registered cemeterian, permit holder, or any other person subject to the trust requirements of this subtitle to correct any underfunding, including interest, due to the perpetual care trust fund.

(c) The Director may adopt regulations:

- (1) to administer subsection (b) of this section; and
- (2) for determining whether registered cemeterians, permit holders, or any other person subject to the trust requirements of this subtitle are complying with this subtitle.

§5–607.

(a) If the Director finds that a registered cemeterian, permit holder, or any other person subject to the trust requirements of this subtitle has violated this subtitle or a regulation adopted under this subtitle, the Director may refer the matter to:

- (1) the Attorney General for civil enforcement; or
- (2) the appropriate State’s Attorney for criminal prosecution.

(b) The Attorney General may sue for and a court may grant:

- (1) injunctive or other equitable relief;
- (2) imposition of a civil penalty not exceeding \$5,000; or
- (3) both.

§5–608.

A registered cemeterian, permit holder, or any other person subject to the trust requirements of this subtitle may not sell or offer to sell to a member of the public a burial lot or burial right in a cemetery and represent to the public in any way, express or implied, that the cemetery or the burial lot or burial right in the cemetery will have perpetual care unless the sole proprietor registered cemeterian, permit holder, or any other person subject to the trust requirements of this subtitle has provided adequately for that perpetual care.

(3) for a third or subsequent violation, a fine not exceeding \$20,000 or imprisonment not exceeding 3 years or both.

(c) A person who willfully misappropriates or intentionally and fraudulently converts perpetual care trust funds in excess of \$100 to that person's own use is guilty of a felony and, on conviction, is subject to a fine not exceeding \$25,000 or imprisonment not exceeding 10 years or both.

§5–609.

Except as provided in § 5–602 of this subtitle, a sole proprietor registered cemeterian, permit holder, or any other person subject to the permit or registration requirements of this title may not establish, operate, or allow a cemetery to be operated in violation of this subtitle.

§5–610.

(a) Except as otherwise provided in subsection (c) of this section, a sole proprietor registered cemeterian, permit holder, or any other person subject to the permit or registration requirements of this title who violates this subtitle is guilty of a misdemeanor and, on conviction, is subject to:

- (1) for a first violation, a fine not exceeding \$5,000 or imprisonment not exceeding 1 year or both;
- (2) for a second violation, a fine not exceeding \$10,000 or imprisonment not exceeding 2 years or both; and
- (3) for a third or subsequent violation, a fine not exceeding \$20,000 or imprisonment not exceeding 3 years or both.

(b) Except as otherwise provided in subsection (c) of this section, if a corporation violates this subtitle, each officer responsible for the violation is guilty of a misdemeanor and, on conviction, is subject to:

- (1) for a first violation, a fine not exceeding \$5,000 or imprisonment not exceeding 1 year or both;
- (2) for a second violation, a fine not exceeding \$10,000 or imprisonment not exceeding 2 years or both; and