

## CHAPTER 7. CEMETERY CARE FUND

### § 451. Corporate operation

It shall be unlawful to operate a perpetual or endowed care cemetery in this state except by means of a corporation organized under the laws of this state. This Section, however, shall not apply to any person, firm or corporation which, prior to August 1, 1962, owned and operated a cemetery in which said persons, firm or corporation had sold or contracted to sell interment spaces with a provision for perpetual or endowed care, if said person, firm or corporation has complied with the provisions of R.S. 8:457.

*Acts 1974, No. 417, § 1. Amended by Acts 2001, No. 468, § 1.*

### § 452. Certification of trust fund in articles of incorporation; amendments

No certificate of authority shall be issued to a corporation organized for the purpose of maintaining and operating a perpetual or endowed care cemetery unless its articles of incorporation provide for the establishment of a trust fund for such care in accordance with the provisions of this Chapter. Prior to commencing business, the corporation shall execute a written instrument establishing the trust fund and the trustee therein designated shall acknowledge in writing receipt of the minimum deposit required by this Chapter. The trust agreement shall be open for inspection and a copy of such agreement and any amendments thereto, as well as the receipt of the trustee, shall be filed with the board for approval within thirty days of execution.

*Acts 1974, No. 417, § 1. Amended by Acts 1980, No. 428, § 1. Amended by Acts 1997, No. 921, § 1.*

### § 453. Cemeteries in existence on August 1, 1962; acts prohibited

No owner of a cemetery in existence on August 1, 1962 who previously to such date has not sold or contracted to sell any interment space in said cemetery with a provision for perpetual or endowed care shall thereafter advertise or otherwise hold out to the public that said cemetery or any individual interment space therein is entitled to perpetual or endowed care unless the owner has established a trust fund for perpetual or endowed care as provided by this chapter.

*Acts 1974, No. 417, § 1.*

### § 454. Trust funds required; master trust fund

A. No corporation hereafter organized for the operation of a perpetual or endowed care cemetery and no cemetery authority not operating prior to August 1, 1962 as a perpetual or endowed care cemetery shall advertise or sell interment spaces in the cemetery under the representation that such cemetery or any individual interment space therein is entitled to perpetual or endowed care, until there has been established a trust fund to provide for such care in the sum of fifty thousand dollars in cash, or in lieu thereof securities listed upon a national exchange or obligations of the United States government, any state, parish, county or municipality, having a fair market value equal to said amount of cash on the date of deposit.

B. The trust fund so created shall be evidenced by an instrument in writing and shall be placed with a designated trustee which shall be a federally insured financial institution or trust company located in Louisiana and authorized to exercise trust or fiduciary powers under the laws of Louisiana or the United States.

C.(1) Notwithstanding any provision of law to the contrary, for the purposes of collective investment and administration and with written consent of each participant in a master trust fund, a designated trustee of two or more trust funds may apply to the board to establish a master trust fund in which deposits are made pursuant to the provisions of this Title.

(2) The master trust fund shall be subject to the following requirements:

(a) It shall include only trust funds with a principal balance of less than two hundred fifty thousand dollars. Upon a determination that a trust fund made a part of a master trust fund has a principal sum exceeding two hundred fifty thousand dollars at the end of a reporting period, such trust fund shall no longer be subject to the collective investment and administration of the master trust fund and shall be removed from the master trust fund within ninety days.

(b) The designated trustee of a master trust fund shall maintain separate records of principal and income for each participant in the master trust fund.

(c) The income and associated expenses of the master trust fund shall be divided among the participants in the master trust fund based on the proportion that each participant contributes to the balance of the master trust fund.

(d) The annual report by the designated trustee of the master trust fund shall include an itemized separate accounting for each participant in the master trust fund. Such annual report shall comply with the provisions of R.S. 8:456.

(e) The operation of the master trust fund shall be subject to the provisions of this Title and the rules and regulations of the board.

*Amended by Acts 2001, No. 468, § 1. Amended by Acts 2003, No. 501, § 1. Amended by Acts 2018, No. 391 § 1.*

#### **§ 454.1 Administration of trust funds; maintenance; exemption from seizure**

A. The principal of the trust fund shall remain permanently intact and only the income therefrom shall be expended. The income shall be used solely for the care of those portions of the cemetery in which interment spaces have been sold with a provision for perpetual or endowed care. It is the intent of this Section that the income of said fund shall be used solely for the care of interment spaces sold with a provision for perpetual or endowed care and for the care of other portions of the cemetery immediately surrounding said spaces as may be necessary to preserve the beauty and dignity of the spaces sold. The fund or its income shall never be used for the development, improvement or embellishment of unsold portions of the cemetery so as to relieve the cemetery authority of the ordinary cost incurred in preparing such property for sale.

B. The cemetery shall be maintained in a reasonable condition which shall include but not be limited to leveling of grounds where interments have been made, removal of all debris, mowing and edging, resulting in a well-kept appearance at all times.

C. After the establishment of the trust fund, a minimum of ten percent of the gross sales price received for any interment space sold or transferred under the representation that such interment space shall receive perpetual or endowed care shall be deposited in the trust fund; however, in computing the amount to be deposited therein for property sold after the creation of the fund, the cemetery authority shall be entitled to credit for the amount originally deposited upon creation of the trust fund. For each interment space provided without charge, the deposit shall in no event be less than ten percent of the fair market value of said interment space.

D. Notwithstanding any provision of law to the contrary, the principal of the trust fund and all income therefrom shall be exempt from seizure, under any writ, mandate, or process whatsoever, by the creditors of the beneficiaries, the trustee, and the cemetery authority or any person owning, operating, managing, conducting or providing perpetual or endowed care to or for, the cemetery for which the trust fund was created.

*Added by Acts 2001, No. 468, § 1.*

#### **§ 455. Annual report by cemeteries**

All cemeteries subject to the provisions of this chapter shall file with the trustee, as defined herein, not later than ninety days after the close of the business year, a report setting forth the volume and the gross selling price of sales upon which a deposit with the trustee is required by this chapter.

*Acts 1974, No. 417, § 1.*

#### **§456. Annual report by trustee; final accounting by trustee required**

A.(1) Not later than sixty days after the receipt of the report required by R.S. 8:455, the trustee shall file with the board an annual report on a form prescribed by the board setting forth all of the following:

(a) All receipts and disbursements of cash, all receipts and deliveries of other trust property during the regular business year of the cemetery authority, and a detailed list of all items of trust property in the trust at the end of each year.

(b) A statement showing the total amount of the endowment and perpetual care trust funds invested in each of the investments authorized by law, and the amount of cash on hand not invested.

(2) The report shall be verified by the president or vice president and one other officer of the cemetery authority.

B. Within sixty days of the resignation of a trustee and transfer of the trust fund to the successor trustee, the resigning trustee shall file with the board a final accounting showing in detail all receipts and disbursements of cash and all receipts and deliveries of other trust property, and set forth a detailed list of all items of trust property in the trust from the last reporting period through the date of resignation and transfer of the trust fund to the successor trustee.

C. Notwithstanding any provision of law to the contrary, the annual report and final accounting shall be open for public inspection and upon request, a copy of the annual report and final accounting shall be made available.

*Acts 1974, No. 417, § 1. Amended by Acts 1997, No. 921, § 1. Amended by Acts 2014, No. 88, § 1. Amended by Acts 2015, No. 222, § 1. Amended by Acts 2018, No. 391 § 1.*

### **§456.1. Resignation of trustee; orderly transfer of trust fund**

Whenever a trustee resigns, the following documentation shall be filed with the board to insure an orderly transfer of the trust fund from the resigning trustee to the successor trustee:

(1) A written statement from the cemetery authority to the present trustee, requesting it resign as trustee of the trust fund, if the trust agreement permits, or a written statement from the cemetery authority accepting the resigning trustee's resignation.

(2) A written statement from the present trustee stating it will resign as trustee of the trust fund for the cemetery authority or a written statement from the present trustee advising it wishes to resign as trustee of a trust fund, if the trust agreement permits.

(3) A written statement from the successor trustee, qualified under R.S. 8:454(B)(1), accepting the trust fund.

(4) A final accounting from the resigning trustee, and a copy of the transmittal letter forwarding the assets of the trust fund to the successor trustee.

(5) A written statement from the successor trustee acknowledging receipt of the assets of the trust fund. A list of the assets should be contained in the statement.

*Added by Acts 1997, No. 921, § 1.*

### **§ 457. Application of Chapter**

A. Any cemetery in existence on August 1, 1962, which, prior to such date, sold or contracted to sell interment spaces with a provision for perpetual or endowed care, qualifies for the exceptions set forth in this Chapter if the owner of said cemetery filed in the office of the recorder of mortgages for the parish in which said cemetery is located, a sworn affidavit executed by said owner, or its principal officer, setting forth the following:

(1) That a care fund was in existence for said cemetery, the principal of which was equal to a minimum of ten percent of the gross sales of interment spaces made by said cemetery since its inception or since January 1, 1961, whichever date is later.

(2) The nature and character of the assets comprising such care fund.

(3) The name of the financial institution or trustees or other entity which had custody and control of such fund.

B. A like affidavit shall be filed with the board at the end of each fiscal year thereafter for the operation of such cemetery.

C. No cemetery in existence on August 1, 1962, which prior to such date had sold or contracted to sell lots in said cemetery with a provision for perpetual or endowed care shall thereafter continue to operate as a perpetual or endowed care cemetery without having filed and without hereafter filing the affidavits required by this section. However, an affidavit filed by a cemetery before July 31, 1974 and recorded in the mortgage records of the parish of its domicile, setting forth that the perpetual care or endowed care fund has been properly and continually maintained since January 1, 1961, shall be considered conclusive proof that the provisions of this section have been complied with and shall place said cemetery authority within the excepted cemeteries.

*Acts 1974, No. 417, § 1. Amended by Acts 1983, No. 525, § 1. Amended by Acts 2001, No. 468, § 1. Amended by Acts 2018, No. 391 § 1.*

#### **§ 458. Prohibited acts; injunctions**

No person or cemetery authority shall offer for sale or sell any interment space in any cemetery with a provision for perpetual or endowed care, or in any manner represent, advertise, or hold out to the public that said cemetery, or any portion thereof, is entitled to perpetual or endowed care unless and until such person or authority has complied with the provisions of this Chapter. The board may institute legal proceedings to enjoin any person or cemetery authority from violating the provisions of this Section.

*Acts 1974, No. 417, § 1. Amended by Acts 1980, No. 428, § 1.*

#### **§ 459. Cemeteries exempt**

The provisions of this chapter shall not apply to any family burial ground or religious, fraternal, municipal, state or federal cemetery.

*Acts 1974, No. 417, § 1.*

### **§ 459.1. Trust fund transfers**

A. The provisions of R.S. 8:459 notwithstanding, whenever the ownership or management of a cemetery is transferred and by virtue of such transfer becomes a family burial ground or a religious, fraternal, municipal, state, or federal cemetery, the existing perpetual care trust fund of such transferred cemetery shall remain permanently intact and only the income therefrom shall be expended. The income shall be used solely for the upkeep and maintenance of said cemetery.

B. The trustee of any such perpetual care trust fund shall be a federally insured financial institution or trust company located in Louisiana and authorized to exercise trust or fiduciary powers under the laws of Louisiana or the United States.

C. No further contributions to such fund shall be required except for payments on those contracts in existence at the time of such transfer.

D. The provisions of this Chapter shall apply to the use and administration of such funds.

E. The provisions of this Section shall not apply to the transfer of ownership or management of a cemetery from one religious, fraternal, municipal, state, or federal cemetery authority to another religious, fraternal, municipal, state, or federal cemetery authority, where both transferor and transferee are exempt from the provisions of this Chapter as provided in R.S. 8:459.

*Added by Acts 1986, No. 113, § 1. Amended by Acts 2001, No. 468, § 1. Amended by Acts 2004, No. 67, § 1.*

### **§ 460. Penalties**

Whoever violates any of the provisions of this chapter, shall, upon conviction, be fined not more than one thousand dollars, or imprisoned for not more than six months, or both.

*Acts 1974, No. 417, § 1.*

### **§461. Examination of endowment funds; expenses**

A. The board shall examine the endowment care funds of each cemetery authority governed by the provisions of this Title, including those organized before and after August 1, 1962, at the following time or times:

(1) Whenever it deems necessary but at least once every three years.

(2) Whenever the cemetery authority or trustee in charge of endowment or perpetual care funds fails to file the reports required by this Chapter.

(3) Whenever the board is requested by verified petition signed by twenty-five individual interment space owners, alleging that the endowment or perpetual care funds are not in compliance with this title, in which case the examination shall be at the expense of the petitioners.

B. The expense of the examination as provided herein shall not exceed two hundred fifty dollars per day for each examiner engaged in the examination, but when the examination requires more than two days, the

cost shall be paid by the cemetery authority in an amount not to exceed a total of five hundred dollars, unless irregularities are found, in which case the cemetery authority shall pay the full cost of the examination. The examination shall be privately conducted in the principal office of the cemetery authority or trustee.

*Acts 1974, No. 417, § 1. Amended by Acts 2015, No. 222, § 1.*

#### **§ 462. Examination expense; effect of refusal to pay; disposition**

If a cemetery authority refuses to pay examination expenses, the board may refuse it a certificate of authority and may revoke any existing certificate of authority.

*Acts 1974, No. 417, § 1. Amended by Acts 2015, No. 222, § 1.*

#### **§ 463. Powers, duties, records, concerning examination of funds**

In making such examination, the board shall:

(1) Have free access to the books and records relating to the endowment or perpetual care funds, their collection and investment, and the number of interment spaces under endowment or perpetual care. Such books and records shall be made available for examination in the principal office of the cemetery authority or trustee located within the state of Louisiana;

(2) Inspect and examine the endowment or perpetual care funds to determine their condition and the existence of the investments; and

(3) Ascertain if the cemetery authority has complied with all laws applicable to endowment or perpetual care funds.

*Acts 1974, No. 417, § 1. Amended by Acts 1997, No. 921, § 1.*

#### **§ 464. Action required when authority fails to deposit minimum endowment or perpetual funds**

A. If an examination made by the board, or any report filed with it, shows that there has not been collected and deposited in the endowment or perpetual care fund the minimum amounts required by this Title, the board shall require such cemetery authority to comply immediately with such requirement.

B. (1) Upon the failure of a cemetery authority to meet the requirements of this Chapter, the board shall have the authority to institute legal proceedings in district court in the parish where the cemetery is physically located for the purpose of recovering from the cemetery authority, and any other responsible party, the amounts necessary to satisfy the deficiencies in the endowment or perpetual care funds.

(2) The board may, in the same or other legal proceedings, recover from the cemetery authority and any other responsible party all reasonable costs, fees, and expenses incurred by the board, including but not limited to the costs of all examinations, audits, accountant and attorney's fees, cost of administrative proceedings and hearings, and any other cost incurred by the board in the enforcement of the provisions of this Title, any other provisions of law notwithstanding.

(3) Notwithstanding any other provisions of law, if the board fails to prove that the cemetery authority or other responsible party is not in compliance with the requirements of this Section, then the board shall not recover any costs, fees, or any expenses incurred by it and shall be responsible for paying all reasonable costs, fees, or expenses incurred by the cemetery authority or responsible party who was accused of not being in compliance.

*Acts 1974, No. 417, § 1. Amended by Acts 1991, No. 430, § 1.*

#### **§465. Order requiring reinvestment in compliance with law; actions for preservation and protection**

A. All funds held in trust for perpetual care purposes shall be administered by the trustee with such skill and care as a man of ordinary prudence, discretion, and intelligence would exercise in the management of his own affairs, not in regard to speculation but in regard to the permanent disposition of his funds, considering the probable income as well as the probable safety of his capital, subject to the following restrictions:

(1) No such funds shall hereafter, directly or indirectly, be loaned to or invested with any of the following:

(a) Any officer, director, or employee of the cemetery authority.

(b) Any trustee of said funds.

(c) Anyone related by blood, adoption, or marriage to any individuals included in (a) and (b) above.

(d) The cemetery authority itself.

(e) Any business entity of which a controlling interest is held, directly or indirectly, by any of the foregoing persons or legal entities.

(f) Any other cemetery authority, or mortuary or funeral establishment.

(2) An affidavit from the borrower that, to the best of said borrower's knowledge and belief, the subject loan is not in violation of these restrictions, shall suffice to establish for the trustee a conclusive presumption that such is the case.

(3) It shall be prohibited for:

(a) An endowment or perpetual care trust to make one or more loans to any person or entity the cumulative value of which would constitute more than twenty-five percent of the total investment portfolio of the lending care fund, or to have more than two-thirds of the total assets of such funds invested in loans as described in Subparagraph (h) of Paragraph (4) of this Subsection.

(b) Any person or entity listed in Paragraph (A)(1) of this Section to pay or receive a commission, bonus, rebate, or other thing of value in connection with the loan or investment of such funds.

(4) Investment of such funds shall only be made in any of the following:

(a) Bonds, certificates, notes, or other evidences of indebtedness of the United States, or of the state of Louisiana.

(b) General obligations of any state or political subdivision of a state.

(c) Debentures issued by land banks and federal intermediate credit banks and debentures issued by banks for cooperatives.

(d) The bonds, certificates, notes, and other evidence of indebtedness of any municipality, parish, road, drainage, subdrainage, sewerage, gravity drainage, or school district, or of any authorized public board or commission of Louisiana.

(e) Paving certificates issued by any municipality in Louisiana.

(f) Any other form of security as permitted by R.S. 8:454.

(g) Repealed by Acts 2004, No. 68, § 1.

(h) Loans secured by a mortgage or mortgages on improved immovable property situated exclusively in the state of Louisiana for not more than an aggregate of seventy-five percent of the appraised value of the property and for a term amortized over a period not exceeding thirty years; and unless otherwise provided by regulation of the Louisiana Cemetery Board must bear interest at not less than the maximum rate permitted at the time of investment by the Federal Housing Administration for loans to be insured.

(5) Whenever any of the funds of an endowment or perpetual care trust are invested in or secured by a mortgage or whenever such a mortgage represents part of the assets of such a fund, the trustee shall retain in its own or constructive custody and furnish the cemetery authority with the following documents:

(a) The face and reverse side of the mortgage note or notes.

(b) A certified copy of the mortgage and of any corporate resolution or power of attorney authorizing its execution, and evidencing the recordation thereof.

(c) A copy of a survey of the property and its improvements.

(d) An original, or photo copy, of an appraisal current at the time of the mortgage, said appraisal to be made by an appraiser meeting the qualifications of the board, as provided by rule and regulation.

(e) A title opinion of a licensed Louisiana attorney or mortgagee title insurance policy issued by an insurer authorized to do and doing business in Louisiana, on a standard form approved by either the Federal National Mortgage Association or by the American Land Title Association, in an amount not less than the original indebtedness, certifying or insuring the title to be good and merchantable and free of all prior liens and encumbrances.

(f) Policies or certificates of casualty and property insurance by an insurer admitted to and doing business in Louisiana, in such kinds and amounts as required by a financial institution trustee investing or loaning its own funds, covering the current year.

(g) Certificates from the tax collector showing payment of all ad valorem taxes and assessments against the property mortgaged, for the last year for which such taxes were payable and for at least two years prior thereto.

B. Whenever the board finds, after notice and hearing, that any endowment or perpetual care funds have been invested in violation of this title, it shall, by written order mailed to the trustee and to the cemetery authority, require the reinvestment of the funds in conformity with this title within the period specified by it, which shall not be more than six months. Such period may be extended by the board in its discretion.

C. The board may bring actions for the preservation and protection of endowment or perpetual care funds in the district court of the parish in which the cemetery is located, and the court may appoint a substitute trustee or trustees and make any other order necessary for the preservation, protection and recovery of endowment or perpetual care funds whenever a cemetery authority or the trustee of such funds has:

(1) Transferred or attempted to transfer any property to or make any loan from or investment with the endowment or perpetual care funds in violation of Subsection A of this Section.

(2) failed to reinvest endowment or perpetual care funds in accordance with a board order issued under authority of Subsection B of this Section; or,

(3) invested endowment or perpetual care funds in violation of this title; or,

(4) taken action or failed to take action to preserve and protect the endowment or perpetual care funds, evidencing a lack of concern therefor; or,

(5) become financially irresponsible or transferred control of the cemetery authority to any person who, or business entity which, is financially irresponsible; or,

(6) become in danger of insolvency or has gone into bankruptcy or receivership; or,

(7) taken any action in violation of this title or failed to take action required by this title or has failed to comply with lawful rules, regulations and orders of the board.

D. Whenever the board has reason to believe that endowment or perpetual care funds are in danger of being lost or dissipated during the time required for notice and hearing, it may immediately apply to the district court of the parish in which the cemetery is located for any order which appears necessary for the preservation and protection of endowment or perpetual care funds, including but not limited to immediate substitution of trustees.

*Acts 1974, No. 417, § 1. Amended by Acts 1980, No. 428, § 1; Acts 1983, No. 525, § 1. Amended by Acts 2001, No. 468, § 1. Amended by Acts 2004, No. 68, § 1.*

## **§ 466. Annual report of cemetery authority; contents; fees**

A. Each cemetery authority that has sold interment space subject to endowment or perpetual care, including those cemetery authorities organized before and after August 1, 1962, shall file with the board annually, on or before the thirtieth day of June, a written report on a form prescribed by the board setting forth all of the following:

(1) The number of contracts written in the reporting period for the sale of interment spaces or interment rights.

(2) The amount of gross sales or receipts from contracts of sales of all interment spaces or interment rights and the amount of any discounts.

(3) The amount of gross sales or receipts from perpetual care contracts, if any, sold separately from interment spaces or interment rights.

(4) The fair market value of interment spaces or interment rights provided without charge.

(5) The amount of deposits due the endowment or perpetual care trust fund for the reporting period and the dates the funds were deposited with the trustee.

B. The report shall be verified by the president or vice president and one other officer of the cemetery authority and shall be certified by the accountant or auditor preparing the same.

C. The cemetery authority shall pay to the board a report filing fee of not more than five dollars for each contract subject to endowment or perpetual care entered into in the annual report period, as specified in Subsection A of this Section. Report filing fees shall be due and payable at the time of filing the report and shall be used to cover the board's reasonable and ordinary expenses. Failure to pay report filing fees within six months after the close of the business year shall result in a late charge assessed by the board to the cemetery authority in the amount of one hundred dollars.

*Acts 1974, No. 417, § 1. Amended by Acts 2015, No. 222, § 1.*

## **§ 467. Examination of reports**

The board shall examine the reports filed with it as to their compliance with the requirements of the law.

*Acts 1974, No. 417, § 1.*