

Endowment and Perpetual Care Trust

*Current as of 3/16/2009

456.521-456.543 (1968 PA 251) (Cemetery Regulation Act)

- * Commissioner shall have free access to the books, papers, records and documents that relate to the business of the cemetery.
- * Each cemetery shall establish and maintain an irrevocable endowment and perpetual care trust fund.
- * Interest or income shall be perpetually devoted for endowment and perpetual care of that particular cemetery.
- * Annual reporting, certified by owner and trustee, to the Commissioner before July 1
- * Trust funds are irrevocable, and are to be held in perpetuity by the trustee, principal of funds may only be distributed to the cemetery by court order following a petition by the commissioner.
- * Bundling of funds held in trust for each cemetery or among cemeteries with common ownership is permissible if: separate records are maintained for each account and each cemetery, all cemetery trust or escrow funds are on deposit with 1 or more regulated financial institutions in this state, and the trustee holds title to the assets and promptly settles them back into their individual accounts.
- * Other comparable bundling or pooling methods may be used only if approved by the commissioner in advance.
- * No later than 1/1/2010, the trust funds must be established with 1 or more regulated financial institutions.
- * A trust agreement, approved by the commissioner, must be entered into with each trustee.
- * Prudent Investor Rule applies to all trust investments and agreements cannot provide for any lower standard than that found in 700.1501 et seq. (part 5 of 1998 PA 386) (Prudent Investor standard) and 700.7302 (Prudent Investor standard) (EPIC 1998 PA 386)
- * Fees and costs of trustee may be paid from principal of the trust.
- * The commissioner must be notified 14 days prior to any change in trustee.
- * The cemetery may reserve the right to hire a registered investment advisor, although the trustee is not required to heed the advice of the advisor.
- * If the cemetery obtains and proves to the commissioner the existence of fiduciary liability insurance, with the trust as named beneficiary, the cemetery may direct the investment of 100% of the insured fund amount; the trustee shall not be liable, or otherwise punishable, for such investments, except that the trustee must retain custody of all such investments.
- * Fund shall be created by the deposit of at least \$50,000 before any sale is made; this initial deposit is not to be construed as excess funds to be applied against future deposits.
- * Monthly additions of not less than 15% of all proceeds received during the previous month, no total less than \$20 for an adult burial.
- * Excess sums on deposit can be applied against future deposits, but shall not be withdrawn.
- * No portion of the funds required to be in the trusts shall be used for salaries or other payments, directly or indirectly, of the officers, directors, partners, members or managers of the entity owning the cemetery.
- * The earnings from endowment and perpetual care trust funds shall be used only for endowment and perpetual care, the trustee is not responsible for ascertaining the funds were used for this limited purpose.

R456.101-456.196 (Cemetery Admin Code – rules promulgated under 1968 PA 251)

- * Must have a written trust agreement specifying responsibilities of trustee and the trust must be administered by a trustee, no later than 1/1/2010 that trustee must be 1 or more regulated financial institutions.
- * Trust funds shall be kept separate from all other funds except where permitted bundling is allowed.
- * Net income of the fund paid only to entity in possession, management, operation and control of the grounds and structures for the sole purpose of endowment and perpetual care.
- * Capital gains are not to be considered part of the net income; they are excess that may be applied to future deposit requirements.
- * Deposited with a regulated financial institution located in Michigan
- * All trust fund records shall be available for inspection by the Commissioner in Michigan
- * Commissioner shall be immediately notified of any change in location of the records.
- * Governed by the laws and statutes of Michigan.

700.7401 – lists the specific powers of the trustee.