WEST VIRGINIA CODE CHAPTER 35 ARTICLE 5

WV Legislature

§35-5-1. Appointment of new trustees for burial grounds.

Where any conveyance, dedication or devise was made of land for burial grounds, to any church, religious sect, society, congregation or denomination, or to any benevolent, fraternal, patriotic, literary, temperance, or charitable society, order, lodge or association, that has dissolved or become extinct in the county and vicinity where such burial grounds are situated, and the trustees of same have removed or died, the circuit court of such county, upon the application of five or more persons having relatives buried in such burial grounds, shall appoint five trustees, who for the time being and their successors shall be invested with all the powers necessary to promote and carry out the object and purposes named in such conveyance, dedication or devise.

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§35-5-2. Sale of part of cemetery; prohibitions

The trustees of any burial grounds, or any incorporated cemetery association whenever it is deemed advisable by such trustees or association, and is not prohibited by the terms of the conveyance, dedication or devise of such grounds, may sell and convey any part of such burial grounds or land of such association, without restriction as to its use, if such sale and conveyance will not render any lot previously sold for burial purposes inaccessible for such purposes, or detach it from the main body of the cemetery. But no such sale shall be made by such trustees or such association unless authorized by a majority of the lot owners present and voting at a general meeting or special meeting, of which meeting and its object previous notice shall be given by advertising the same as Class II legal advertisement in compliance with the provisions of article three, chapter fifty-nine of this code, and the publication area for such publication shall be the county in which the cemetery is situated. No desecration shall be made of any grave or monument, or any of the walks, drives, trees, or shrubbery within the enclosure of any burial grounds; nor shall any shaft or entry be made within the enclosure of such burial grounds, or any building be erected therein for any purpose whatever other than cemetery purposes.

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§35-5-3. Permanent endowment funds for cemetery associations -- How created.

There is hereby authorized the creation of permanent endowment funds for cemetery associations to be known as "permanent endowment funds," the income from which is to be annually spent by such cemetery associations, or their successors, in beautifying and maintaining cemeteries owned or controlled by such associations. The "permanent endowment funds" are to be created by depositing in such funds all permanent funds derived from all sources set apart by the board of directors of such associations, and by donations, gifts and bequests made to such cemetery associations for such purpose.

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§35-5-4. Same — How invested; report of trustee; disposition of income.

The principal of such permanent endowment fund shall be invested in some safe securities, including government bonds, and corporate bonds that have been rated A or above to be approved by the board of directors of such cemetery association, or its successors, in the name of a trustee appointed as hereinafter provided. Such trustee shall make an annual report to the board of directors of such cemetery association showing the amount of the permanent endowment fund at the beginning of each year, the names of the donors, if any, and the amounts contributed by each during the year in which the report is made, the income derived from such fund during the year, and the amount on hand at the end of the year; and a copy of such report shall be filed with the clerk of the county court of the county in which such cemetery association is located. The trustee during the year, or at the end thereof, shall turn over to such cemetery association, or its successor, all income derived from such permanent endowment fund during the year, which shall be expended in accordance with this article.

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§35-5-5. Permanent endowment funds for cemetery associations -- Trustee therefor; appointment; bond; compensation; vacancy.

The board of directors of any such cemetery association shall appoint a trustee, who shall be a responsible businessman or some solvent federally insured banking institution, to act as such trustee for a period of two years, or until his or its, successor is appointed. Such trustee shall be known as the trustee of the permanent endowment fund of such cemetery association, and shall immediately upon his or its, appointment and acceptance of the trust, give bond to the said cemetery association, with some solvent and reliable bonding company authorized to do business in this state, in a sum equal to the amount which may come into the hands of such trustee, which bond shall be increased or diminished from time to time so as always to equal at least the amount of the trust funds in the hands of such trustee; and the premium upon such bond shall be paid out of the income of the trust funds in the trustee's hands and as part of the cost of the administration of the trust fund. No trustee appointed under this section shall enter upon the discharge of his or its, duties until such bond is given and approved by the board of directors of such cemetery association: Provided, That if the trustee so appointed by any such cemetery association be a federally insured banking institution authorized and qualified to exercise trust powers under and subject to the provisions of article four, chapter thirty-one-a of the Code of West Virginia, 1931, as amended, it shall not be required to give the bond hereinbefore provided, excepting and unless required by the provisions of section eighteen, article four, chapter thirty-one-a of said code. The board of directors of such cemetery association shall allow such trustee, for service as such, a negotiable, reasonable fee to be paid from such trust funds. In the event of a vacancy in such trusteeship, or failure of the board of directors of any such cemetery association to appoint such trustee, after being requested so to do by any stockholder of any such cemetery association, or its successor, or any citizen interested, application may be made to the circuit court of the county wherein such cemetery association is located, and it shall be the duty of the circuit court of such county to appoint a trustee, who, when so appointed and qualified, shall have all the powers and perform all the duties of such trustee as provided in this section.

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§35-5-6. Express trusts for perpetual care of cemeteries or burial lots.

Express trusts may hereafter be created for the perpetual care, preservation, maintenance, improvement and/or embellishment of any cemetery or burial lot, public or private, and of the appurtenances of any such lot including the erection, repair, preservation and/or removal of mausoleums, tombs, monuments, gravestones, fences, railings, walks, and/or other structure or structures thereon, and the planting, trimming, watering and/or removing of any tree, shrub or other plant or plants thereon. Any such trust heretofore created shall be valid. Any such trust whether created heretofore or hereafter, may provide for the accumulation of income for any of the aforesaid purposes, but if and when the accumulations so authorized exceed the replacement cost of all structures upon such lot, the trustee of such trust may, either with or without authorization of any court having jurisdiction in the premises, divert the excess thereover to the general upkeep of the cemetery. Any person or any association of persons or corporation authorized by the laws of this state to act as trustee, may serve as trustee of any such trust. The funds in any such trust shall be invested in the manner provided in the instrument creating same, but, in the absence of any such provisions, in the manner provided by article six, chapter forty- four of the Code of West Virginia, 1931.

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§35-5-7. Requirements for cemetery company contracts.

(a) Any cemetery company contract shall:

(1) Be written in clear understandable language and printed in easy-to-read type, size and style;

(2) Include the name and address of the seller, the contract buyer and the person for whom the contract is bought if other than the contract buyer;

(3) Contain a complete description of the property, goods or services bought, including an itemization of the retail price of the property, goods or services bought and, specifically, the retail price of the monument, marker, installation, foundation, the opening and closing of the grave site and any other charges. Failure to provide this information is a violation of subsection (f), section one hundred two, article six, chapter forty-six-a of this code, relating to unfair methods of competition and unfair or deceptive acts or practices;

(4) Clearly disclose whether the retail price of the property, goods or services bought is guaranteed;

(5) Provide that when the particular property, goods or services specified in the contract are unavailable at the time of delivery, the seller shall furnish property, goods or services similar in size, style and equal in quality of material and workmanship, and that the representative of the deceased has the right to reasonably choose the property, goods or services to be substituted; and

(6) Be executed in duplicate and a signed copy given to the buyer.

(b) For purposes of this article, the following words and phrases have the following meanings:

(1) "Cemetery company" or "seller" means any person, partnership, firm or corporation engaged in the business of operating a cemetery or selling property, goods or services used in connection with interring or disposing of the remains or commemorating the memory of a deceased human being.

(2) "Cemetery company contract" means a contract for the sale of real and personal property, goods or services used in connection with interring or disposing of the remains or commemorating the memory of a deceased human being.

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§35-5-8. Abandoned interment rights.

(a) A cemetery company contract may include a provision whereby interment rights that are not used for a period of seventy-five years or more shall be deemed abandoned if unclaimed and shall revert to the cemetery company if the procedures in subsection (b) are followed.

(b) (1) Prior to deeming an owner's interment rights abandoned, a cemetery company shall send notice of such intent to the owner of record, his or her heirs or assigns or any next of kin, by a registered letter, return receipt requested, at the owner's last known address requesting the owner's current address or the names and addresses of the heirs or assigns of the owner of record. If a written response is received, then the records of the cemetery company shall be amended accordingly and the interment rights shall be maintained for seventy-five years from the date the written response was received by the cemetery company.

(2) If the registered letter is undeliverable or if no response is received within thirty days after the registered letter was sent, then the cemetery company shall advertise a notice of its intent to declare the interment rights abandoned in a newspaper of general circulation in the county where the cemetery is located and also in the county of the last known address of the owner of record, which notice shall contain the name and business address of the cemetery and the name of the last owner of record. If no response to the newspaper notice is made on behalf of the owner of record or his or her heirs or assigns within one hundred twenty days, then the interment rights shall be deemed abandoned and shall revert to the cemetery company. Upon the reversion of interment rights to the cemetery company, the cemetery company shall amend its records accordingly and maintain these records for thirty years. If a written response is received, then the records of the cemetery company shall be amended accordingly and the interment rights shall be maintained for seventy-five years from the date the written response was received by the cemetery company.

(c) If, within thirty years after the interment rights have been declared abandoned, the owner of record or his or her heirs or assigns can prove to a cemetery company or a court of competent jurisdiction that he or she would be entitled to the interment rights of the owner of record if those rights had not reverted to the cemetery company as provided for by this section, then the cemetery company shall, at no cost, provide a right of interment similar to the one that was deemed abandoned.

(d) The provisions of this section shall take effect on July 1, 1999, and shall not be construed to apply retroactively.

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