WEST VIRGINIA CODE: §35-5A-5

§35-5A-5. Trustee of the permanent endowment care funds.

The trustee of the permanent endowment care fund shall be a federally insured trust company or a federally insured banking institution with fiduciary powers authorized and qualified to exercise trust powers under and subject to the provisions of article four, chapter thirty-one-a of this code, or of the corresponding law of another state. A nonresident federally insured trust company or nonresident federally insured banking institution so authorized and qualified may become a trustee of a permanent endowment care fund notwithstanding the provision of section seven, article eight-a, chapter thirty-one-a of this code. When a nonresident trust company or nonresident banking institution becomes a trustee of a permanent endowment care fund for a perpetual care cemetery in this state, said nonresident trust company or nonresident banking institution thereby constitutes the Secretary of State as its true and lawful attorney-in-fact upon whom service of notice and process in any action or proceeding against it as trustee, and acceptance of such trust by said nonresident trust company or nonresident banking institution shall be a manifestation of agreement that any notice or process, which is served in the manner hereinafter provided in this section, shall be of the same legal force and validity as though such nonresident trust company or nonresident banking institution was personally served with notice and process within this state. Service of such notice and process and the manner of acceptance of the same by the Secretary of State shall be in accordance with the provisions of section fifteen, article one, chapter thirty-one of this code.

Any nonresident trust company or nonresident banking institution appointed as trustee of a permanent endowment care fund shall immediately upon acceptance of the trust give bond in accordance with the provisions of section five, article five, chapter thirty-five of this code.

The trustee shall invest such permanent endowment care funds for the purpose of providing an income to be used for the maintenance, improvement and preservation of the grounds, lots, buildings, equipment, records, statuary, and other real and personal property of the cemetery, and shall acquire, invest, reinvest, exchange, retain, sell and manage all property now or hereafter coming into such trustee's care or control.

The trustee shall exercise the judgment and care under the circumstances then prevailing, which men of prudence, discretion and intelligence, exercise in the management of their own affairs, not in regard to speculation, but in regard to the permanent disposition of their funds, considering the probable income as well as the probable safety of their capital.

Within the limitations of the foregoing standard, any such trustee is authorized to acquire and retain without any order of any court, every kind of property, real, personal or mixed, and every kind of investment, specifically including, but not by way of limitation, bonds, debentures and other corporate obligations, and stocks, preferred or common, which men of prudence, discretion and intelligence acquire or retain for their own account.

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The trustee shall prepare an annual report of all of the assets and investments of the permanent endowment care fund. One copy shall be maintained at the office of the cemetery and shall be available for inspection at reasonable times by owners of interment rights in the cemetery.

The trustee shall pay over to the cemetery all income derived from the permanent endowment care fund semiannually to be expended only for the maintenance, improvement and preservation of the grounds, lots, buildings, equipment, records, statuary and other real and personal property of the cemetery.

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