# WEST VIRGINIA CODE: §35-5B-4

**§35-5B-4. Deposit in preneed trust required; who may serve as trustee.**

(a) Each cemetery company shall deposit into an interest bearing trust fund forty percent of the receipts from the sale of property, goods or services purchased pursuant to a preneed cemetery company contract including sales of opening and closing or interment services, when the delivery thereof will be delayed more than one hundred twenty days from the initial payment on said contract. However, should the proceeds from the sale be financed through a lending institution, it shall be considered a cash sale. Deposits are required to be made by the cemetery company within thirty days after the close of the month in which said receipts are paid to it.

(b) If payment is made on an installment or deferred payment basis, the seller shall have the option of depositing into the trust fund forty percent of the amount of the principal initially, or alternatively, depositing forty percent of the principal of each payment within thirty days after the close of the month in which said receipts are paid to it.

(c) (1) The trustee of the trust fund shall be appointed by the person owning, operating, or developing a cemetery company. If the trustee is other than a bank, savings and loan or other federally insured investment banking institution, the trustee shall be approved by the Tax Commissioner. A trustee that is not a bank, savings and loan or other federally insured investment banking institution shall apply to the Tax Commissioner for approval, and the Tax Commissioner shall approve the trustee when satisfied that:

(A) The applicant employs and is directed by persons who are qualified by character, experience, and financial responsibility to care for and invest the funds of others; and

(B) The applicant will perform its duties in a proper and legal manner and the trust funds and interest of the public generally will not be jeopardized.

(2) If the trustee is other than a bank, savings and loan or other federally insured investment banking institution, the trustee shall furnish a fidelity bond with corporate surety thereon, payable to the trust established, in a sum equal to but not less than one hundred percent of the value of the principal of the trust estate at the beginning of each calendar year, which bond shall be deposited with the Tax Commissioner.

(3) If the trustee is other than a bank, savings and loan or other federally insured investment banking institution, and if it appears that an officer, director or employee of the trustee is dishonest, incompetent or reckless in the management of a trust fund required by the provisions of this article, the Tax Commissioner may bring an action in the circuit courts of this state to remove the trustee and to impound the property and business of the trustee as may be reasonably necessary to protect the trust funds.

WV Legislature