WEST VIRGINIA CODE CHAPTER 35

WV Legislature

§35-1-1. Validation of transfers for use or benefit of religious organizations.

Every conveyance, devise or dedication of land which has heretofore been made and has not been declared void in any suit, action or proceeding, or has not been treated and acted upon as void under the law heretofore existing, and every conveyance, devise or dedication of land hereafter made, if it does not conflict with the limitations of section eight of this article, for the use or benefit of any church, religious sect, society or denomination as a place for public worship, or as a burial place, or a residence for a minister, or for the use or benefit of any church, religious sect, society or denomination as a residence for a bishop or other clergyman or minister who, though not in special charge of a congregation is yet an officer of such church, religious sect, society or denomination, and employed under its authority and about its business; or as a location for a parish house or house for the meeting of societies or committees of the church, religious sect, society or denomination, or of others for the transaction of business connected therewith; or as a place of residence of a sexton or caretaker if the same is adjacent to or near by the land used for public worship or the other purposes aforesaid, shall be valid, and shall be construed to give the local parish, congregation or branch of such church, religious sect, society or denomination, to which any such land or property has been or shall be so conveyed, devised or dedicated, the control thereof, unless from the intent expressed in the conveyance, grant, will, gift or dedication, some other or larger body be given such control. Any land so conveyed, devised or dedicated shall be held and used for the purposes aforesaid and no other.

WV Legislature

§35-1-2. Equitable title in contiguous congregations.

Any conveyance, devise or dedication of land for the use of two or more contiguous congregations shall be construed to give such contiguous congregations the equitable title to such property.

WV Legislature

§35-1-3. Property not to be taken from a religious organization.

Notwithstanding the provisions of section one of this article, no lot of ground or property now used for religious purposes shall be taken from the members of the church, religious sect, society, or denomination, or of the individual church, parish, congregation or branch, that has heretofore purchased the same, or for whose use or benefit it was heretofore conveyed, devised or dedicated.

WV Legislature

§35-1-4. Insufficient designations of beneficiaries or objects not to cause failure of trust; acquisition, conveyance, etc., of property.

No conveyance, devise, dedication, gift or bequest if the same does not conflict with the limitations of section eight of this article, and no gift or bequest hereafter made to any church, religious sect, society, denomination, or to any individual church, congregation, parish or branch within this state, or to the trustee or trustees for either, shall fail or be declared void for insufficient designation of the beneficiaries in, or the objects of, any trust annexed to such conveyance, devise, dedication, gift or bequest in any case where a lawful trustee or trustees of such church, religious sect, society, denomination, or of any individual church, parish, congregation or branch, are in existence or where such church, religious sect, society, denomination, or any individual church, parish, congregation or branch, is capable of appointing such trustee or trustees as provided in this article; but such conveyance, devise, dedication, gift or bequest shall be valid; and whenever the object of such trust shall be undefined, or so uncertain as not to admit of enforcement by a court of chancery, then such conveyance, devise, dedication, gift or bequest shall inure and pass to the trustee or trustees of the beneficiary church, religious sect, society, denomination, individual church, parish, congregation or branch, to be held, managed, and the principal or income appropriated for the religious and benevolent uses of such church, religious sect, society, denomination, or individual church, parish, congregation, or branch, as such trustee or trustees may determine, by and with the approval of the bishop, vestry, board of deacons, board of stewards, official board, board of elders, board of consultors, or other authorities which, under the rules or usages of such church, religious sect, society, denomination, or individual church, parish, congregation or branch, have charge of the administration of the temporalities thereof.

Whenever the laws, rules or ecclesiastic polity of any church or religious sect, society or denomination commits to its duly elected or appointed bishop, minister or other ecclesiastical officer, authority to administer its affairs, such duly elected or appointed bishop, minister or other ecclesiastical officer shall have power to acquire by deed, devise, gift, purchase or otherwise, any real or personal property, for any purpose authorized and permitted by its laws, rules or ecclesiastic polity, and not prohibited by the laws of West Virginia, and the power to hold, improve, mortgage, sell and convey the same in accordance with such laws, rules and ecclesiastic polity, and in accordance with the laws of West Virginia. In the event of the transfer, removal, resignation or death of any such bishop, minister or other ecclesiastical officer, the title and all rights with respect to any such property shall pass to and become vested in his duly elected or appointed successor immediately upon election or appointment, and pending election or appointment of such successor, such title and rights shall be vested in such person or persons as shall be designated by the laws, rules or ecclesiastic polity of such church or religious sect, society or denomination.

All deeds, deeds of trust, mortgages, wills or other instruments heretofore made to or by a duly elected or appointed bishop, minister or other ecclesiastical officer, who, at the time of

WV Legislature

the making of any such deed, deed of trust, mortgage, will or other instrument, or thereafter, had authority to administer the affairs of any church or religious sect, society or denomination under its laws, rules or ecclesiastic polity, transferring property, real or personal, of any such church, or religious sect, society or denomination, are hereby ratified and declared valid. All transfers of title and rights with respect to property, prior to the effective date of the ratification of this section, from a predecessor bishop, minister or other ecclesiastical officer who had resigned or died, or has been transferred or removed, to his duly elected or appointed successor, by the laws, rules or ecclesiastic polity of any such church or religious sect, society or denomination, either by written instruments or solely by virtue of the election or appointment of such successor, are also hereby ratified and declared valid.

No gift, grant, bequest or devise hereafter made to any such church or religious sect, society or denomination, or the duly elected or appointed bishop, minister or other ecclesiastical officer authorized to administer its affairs, shall fail or be declared void for insufficient designation of the beneficiaries in, or the objects of, any trust annexed to such gift, grant, bequest or devise; but such gift, grant, bequest or devise shall be valid, provided that whenever the objects of any such trust shall be undefined, or so uncertain as not to admit of specific enforcement by the chancery courts of the state, such gift, grant, bequest or devise shall be held, managed, and the principal or income appropriated, for the religious and benevolent uses of such church or religious sect, society or denomination by its duly elected or appointed bishop, minister or other ecclesiastical officer authorized to administer its affairs.

This section shall not affect rights or litigation vested or pending on or before the day upon which this section becomes effective, nor shall it be so construed as to effect an implied repeal of any other provisions of this chapter.

The rights created and remedies provided herein shall be construed as cumulative and not exclusive.

WV Legislature

§35-1-5. Trustees for real and personal property -- How appointed and removed.

The conference, synod, presbytery, convention, association, consultors, official board, or other ecclesiastical body or individual representing any church, religious sect, society, or denomination within this state, as also any individual church, parish, congregation or branch, when holding any property separately from the church, denomination, society or sect as a whole, within this state, may from time to time, and whenever occasion may arise, appoint, in such manner as such ecclesiastical body or such individual church, parish, congregation or branch may deem proper, a trustee or trustees for its real and personal property. The body appointing may remove such trustee or trustees, or any of them, and fill all vacancies caused by death, removal or otherwise.

WV Legislature

§35-1-6. Same -- Recording order of appointment; recording fee.

The trustee or trustees heretofore appointed by the circuit court of any county to hold the title to the real and personal property of any church, religious sect, society, or denomination, or of any individual church, parish, congregation or branch, within this state, and who may be acting as such at the time this code goes into effect, or the proper authorities of such church, religious sect, society or denomination, or of any individual church, parish, congregation or branch, shall cause a certified copy of the order of appointment of such trustee or trustees to be recorded in the office of the clerk of the county court of the county where such appointment was made; and a certificate of every appointment of any trustee or trustees hereafter made by any conference, synod, presbytery, convention, association, consultors, official board, or other ecclesiastical body or individual representing any church, religious sect, society or denomination, or by any individual church, parish, congregation or branch, in accordance with the provisions of the preceding section signed by the secretary, clerk or other officer in charge of the records of the organization making such appointment, and verified by his affidavit, shall be recorded in the office of the clerk of the county court of each county wherein such church, religious sect, society or denomination, or the individual church, parish, congregation or branch, has any property. The county court of every county shall supply the clerk of the county court with a proper record book, to be labeled "Church Trustees," wherein all such certified copies of orders of appointment and such certificates of appointment shall be recorded. The fee for recording such certified copy or such certificate shall be $1.

WV Legislature

§35-1-7. Same -- May take and hold property.

The trustee or trustees of any church, religious sect, society or denomination, or of any individual church, parish, congregation or branch, within this state, shall have power to receive donations, gifts and bequests of personal property, and, subject to the limitations of section eight of this article, to take by devise, conveyance or dedication or to purchase and to hold, real property, in trust for such church, religious sect, society or denomination, or for any individual church, parish, congregation or branch; and in their own name or names to sue or be sued in all proper actions and suits, for or on account of the real or personal property so held or claimed, and for and on account of any matters relating thereto: Provided, That, in the absence of gross negligence, no trustee shall be personally liable for any tort arising from or growing out of the ownership of property as a trustee and no such action or suit shall abate because of the death, removal or resignation of any trustee, or the appointment of another trustee, but may be proceeded with in the name of the trustee or trustees by or against whom it was instituted, or in the name of the succeeding trustee or trustees. The trustee or trustees shall be accountable to that church, religious sect, society, or denomination, or to that individual church, parish, congregation or branch, for which he or they hold in trust, for the use and management of such property, and shall surrender it to any person or persons authorized to demand it.

WV Legislature

§35-1-8. Quantity of real estate trustee may take and hold.

[Repealed]

WV Legislature

§35-1-9. Power of trustee to sell, convey and encumber property.

The trustee or trustees of any church, religious sect, society, or denomination within this state, whenever directed by the ecclesiastical officer or the delegated or select body to whom the authority to administer the affairs of such church, religious sect, society, or denomination is committed by its rules and ecclesiastical polity, or the trustee or trustees of any individual church, parish, congregation or branch of any religious sect, society or denomination within this state, whenever directed by a majority of the members of such individual church, parish, congregation or branch who are over eighteen years of age, or by the ecclesiastical officer or the delegated or select body to whom the authority to administer the affairs of such church, parish, congregation or branch is committed by the rules and ecclesiastical polity of such church, religious sect, society or denomination, may sell and convey any property, real or personal owned by such church, religious sect, society or denomination, or by such individual church, parish, congregation or branch, as the case may be, or upon like direction, may borrow money and execute a lien upon the church property to secure the payment thereof; and all conveyances so made, or liens so executed, by the persons who appear from the records in the office of the county clerk to be the trustee or trustees of the religious body making such conveyances or executing such liens, shall be effective to pass from such trustee or trustees such title or interest in the property under his or their control as is purported to be conveyed or passed by such conveyances or instruments of lien, and shall not be invalidated or affected by any defect or informality in the proceedings for the selection or appointment of such person or persons as trustee or trustees, or by any want of authority or lack of power in such trustee or trustees.

WV Legislature

§35-1-10. Notice of conveyance or lien; proof thereof.

Before any such conveyance of real estate or instrument creating a lien thereon shall be made, the proper authorities of such church, religious sect, society, or denomination, or of any individual church, parish, congregation or branch, shall cause to be published a notice describing the real estate and stating that the same will be sold and conveyed, or subjected to a lien, as the case may be, on or following a designated date. Such notice shall be published as a 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 where the land is situated. In lieu of such publication, the notice may be read at the principal services of such church, parish, congregation or branch, on at least two separate occasions during a period of two weeks. No conveyance or instrument creating a lien shall be made or become effective until such notice shall be published or read, as aforesaid. An affidavit setting forth the facts regarding such publication or reading, shall accompany, and be recorded with, any deed of conveyance or instrument creating a lien, and shall be sufficient proof of the facts therein set forth.

WV Legislature

§35-1-11. Proceedings to prevent conveyances or creation of liens.

When any conveyance of, or any lien upon, the real estate of any church, religious sect, society, or denomination, or of any individual church, parish, congregation or branch, is proposed to be made or created by the trustee or trustees thereof, and such conveyance or the creation of such lien will, it is believed, violate or be inconsistent with the conditions or purposes of the trust under which the real estate is held, or the proper authorities or the requisite number of members do not desire, or have not directed, that a conveyance be made of or a lien be created upon such real estate, or the rights of other parties will thereby be affected, or for any other cause the making of such conveyance or the creation of such lien is improper; one fourth or more of the total number of members of the conference, synod, presbytery, convention, association, consultors or other ecclesiastical body representing any church, religious sect, society or denomination, when the property involved is that of the church, religious sect, society, or denomination as a whole; or one fourth or more of the total number of members who are over eighteen years of age of any individual church, parish, congregation or branch, when the property involved is that of such individual church, parish, congregation or branch, may, in the name of two or more of them, on behalf of themselves and the others similarly objecting, file their petition in the circuit court of the county where such real estate is situated, or before the judge of such court in vacation, against the trustee or trustees, or the surviving or remaining trustee or trustees, setting up the reasons why such conveyance should not be made or such lien should not be created. The court or judge, on the filing of such petition, shall fix a time and place for the hearing of the same, and direct a copy of such petition and a notice of the time and place of such hearing to be served on such trustee or trustees a reasonable time in advance thereof; and at the time and place so fixed the court or judge shall proceed to hear the objections to the making of such conveyance or creation of such lien, and make such order in reference thereto as may be right and proper.

WV Legislature

§35-1-12. Disposition of property of extinct or dissolved religious organization.

When any individual church, parish, congregation, or local branch of any religious sect, society, or denomination, has become extinct, or has dissolved, or has ceased to occupy and use its property for its religious and charitable purposes, or its property may be regarded as abandoned, a suit in chancery may be instituted in the county where the property of such individual church, parish, congregation, or local branch is situated, either by the trustee or trustees, or the surviving or remaining trustee or trustees, should there be any, or by any member of such individual church, parish, congregation, or local branch, should there be any, or by the ecclesiastical officer or religious body that by the laws of the church, religious sect, society, or denomination to which such individual church, parish, congregation, or local branch belongs, has the charge or custody of such property, or in whom or which it may be vested by the laws of such church, religious sect, society or denomination; and the court shall hear the matter and make such disposition of the property, or proceeds thereof, as is allowable under the terms of the conveyance, dedication, devise, gift or bequest of such property, and will be in accordance with the laws of such church, religious sect, society or denomination. The printed acts or laws of such church, religious sect, society or denomination, issued by its authority, embodied in book or pamphlet form, shall be taken and regarded as the laws and acts of such church, religious sect, society or denomination.

WV Legislature

§35-1-13. Validation of certain transactions.

Where any church, religious sect, society, or denomination, or where any individual church, parish, congregation or local branch of any religious sect, society, or denomination, has under its rules and ecclesiastical polity heretofore acquired, by purchase or otherwise, and held, sold or conveyed, church property, or property used for church purposes, by or in the name of its duly appointed bishop, minister, or other ecclesiastical officer, person, or board, such acquisition, purchase, holding, sale or conveyance, heretofore made, is hereby ratified and declared valid: Provided, however, That no such acquisition, purchase, holding, sale or conveyance heretofore made, which has been declared void in any suit or action, and that no rights of third parties who have treated any such acquisition, purchase, holding, sale or conveyance as void under the law as it heretofore existed, and acted accordingly, shall be affected hereby.

WV Legislature

§35-1A-1. Government limitations related to the exercise of religion.

(a) Notwithstanding any other provision of law, no state action may:

(1) Substantially burden a person's exercise of religion unless applying the burden to that person's exercise of religion in a particular situation is essential to further a compelling governmental interest; and is the least restrictive means of furthering that compelling governmental interest; nor

(2) Treat religious conduct more restrictively than any conduct of reasonably comparable risk; nor

(3) Treat religious conduct more restrictively than comparable conduct because of alleged economic need or benefit.

(b) (1) A person whose exercise of religion has been substantially burdened, or is likely to be substantially burdened, in violation of this article may assert such violation or impending violation, including against the state or its political subdivisions, as a claim or as a defense in any judicial or administrative proceeding: *Provided*, That relief is limited to injunctive or declaratory relief and reimbursement of costs and reasonable attorney fees.

(2) Nothing in this article may be construed to create a cause of action by an employee against a nongovernmental employer; nor may anything in this article be construed to constitute a defense to any claim based upon a refusal to provide emergency medical services as required by the Emergency Medical Treatment and Active Labor Act, 42 U.S.C. § 1395dd; nor may anything in this article be construed to protect actions or decisions to end the life of any human being, born or unborn, including, but limited to, any claim or defense arising out of a violation of §16-2F-1 *et seq*., §16-2I-1 *et seq*., §16-2M-1 *et seq*., §16-2O-1, §16-2P-1, §16-2Q-1, §16-2R-1 *et seq*., §16-5-22, §30-1-26, §33-42-8, or §61-2-8 of this code.

WV Legislature

§35-1B-1. Short title.

This article shall be known as the "Health Care Sharing Ministries Freedom to Share Act".

WV Legislature

§35-1B-2. Rule of Construction.

Nothing in this Article shall be construed to abrogate or reduce a right, privilege or protection reserved for or accruing to a religious organization pursuant to §35-1A-1 of this code.

WV Legislature

§35-1B-3. Exemption of Health Care Sharing Ministries from the Insurance Code

A health care sharing ministry may not be considered to be engaging in the business of insurance for purposes of chapter 33 of this code.

WV Legislature

§35-1B-4. Definition.

"Health care sharing ministry" for purposes of this article means a not for profit organization:

(a) Whose members are limited to those who share a common set of ethical or religious beliefs and share medical expenses among members in accordance with those beliefs without regard to the state in which a member resides or is employed;

(b) That provides for the financial or medical needs of a member through contributions from other members;

(c) Whose members retain membership even after they develop a medical condition;

(d) Provides amounts that members may contribute with no assumption of risk or promise to pay among the members and no assumption of risk or promise to pay by the health care sharing ministry to the members;

(e) Provides to the members annually the total dollar amount of qualified needs actually shared in the previous year in accordance with criteria established by the health care sharing ministry;

(f) Conducts an annual audit which is performed by an independent certified public accounting firm in accordance with generally accepted accounting principles and which is made available to the public by providing a copy upon request, or by posting on the organization’s website; and

(g) Provides a written disclaimer on or accompanying all applications and guideline materials distributed by or on behalf of the organization that is substantially similar to the following: Notice: The organization facilitating the sharing of medical expenses is not an insurance company, and neither its guidelines nor plan of operation is an insurance policy. Whether anyone chooses to assist you with your medical bills will be totally voluntary because no other participant will be compelled by law to contribute toward your medical bills. As such, participation in the organization or a subscription to any of its documents should never be considered to be insurance. Regardless of whether you receive any payments for medical expenses or whether this organization continues to operate, you are always personally responsible for the payment of your own medical bills. Complaints concerning this health care sharing ministry may be reported to the Attorney General of your state.

WV Legislature

§35-1B-5. Public Institutions of Higher Education.

If a public institution of higher education in this state requires a student to purchase health care insurance, the institution shall allow the student to satisfy this requirement through membership in a health care sharing ministry.

WV Legislature

§35-1B-6. Third-party Payers.

Health Care Sharing Ministries may not be considered third-party payers for any purposes where the term "Third Party Payer or Payers" occurs in any sections of law of this code, including financial assistance programs for hospitals, Medicaid, SCHIP, other safety net programs for health care, and chapter 33 of this code.

WV Legislature

§35-2-1. Validation of conveyances, devises, gifts and bequests to trustees.

Where any conveyance, dedication or devise of land, or transfer, gift or bequest of personal property, has been made or shall be made to trustees for the use of any university, college, academy, high school, seminary, or other institution of learning; or for the use of any benevolent, fraternal, patriotic, literary, temperance, or charitable society, order, lodge or association, or labor union or similar association or brotherhood of craftsmen or employees, or any local branch thereof, or for the use of any orphan asylum, children's home, house of refuge, hospital, or home or asylum for the aged or incurables, or the afflicted in mind or body, or for the use of any other benevolent or charitable institution, association or purpose; or if, without the intervention of trustees, such conveyance, dedication or devise of land, or transfer, gift or bequest of personal property, has been made and has not been declared void in any suit or action, or has not been treated and acted upon as void under the law heretofore existing, or shall be hereafter made for any such use or purpose, the same shall be valid and such land or property, as well as any subsequently acquired by purchase or otherwise in furtherance of such use or purpose, shall be held for such use or purpose only.

WV Legislature

§35-2-2. Validation of conveyances, devises, gifts and bequests to trustees -- Appointment of trustee; designation of beneficiaries and objects; administration by chancery court cy pres.

No conveyance, devise, dedication, gift, grant or bequest hereafter made for any of the uses set forth in the preceding section shall fail or be declared void for insufficient designation of the beneficiaries in, or the objects of, any trust annexed to such conveyance, devise, dedication, gift, grant, or bequest, or for any failure to name or appoint a trustee for the execution of the trust; but such conveyance, devise, dedication, gift, grant, or bequest shall be valid; and whenever the objects of any such trust shall be undefined, or be so uncertain as not to admit of specific enforcement, or literal execution, or no trustee shall have been named or appointed to execute the trust, or there is no trustee or trustees in existence having authority to take the property, a suit in chancery may be instituted, by any party interested, in the circuit court of the county where the trust subject, or any part thereof is, in the case of a conveyance, dedication, gift or grant, or in which the will was probated, in the case of a devise or bequest, for the appointment or designation of a trustee or trustees to execute the trust, or for the designation of the beneficiaries in, or the objects of, any such trust, or, where such trust does not admit of specific enforcement or literal execution, for the carrying into effect as near as may be the intent and purposes of the person creating such trust; and thereupon such court shall have full power to appoint or designate a trustee or trustees to execute the trust, or to designate the beneficiaries in, or the objects of, any such trust, or where such trust does not admit of specific enforcement or literal execution, to carry into effect as near as may be the intent and purposes of the person creating such trust.

WV Legislature

§35-2-3. Trustees for unincorporated benevolent, fraternal, etc., organizations.

Any unincorporated benevolent, fraternal, patriotic, literary, temperance, or charitable society, order, lodge or association, or any labor union, or similar association or brotherhood of craftsmen or employees, or any local branch thereof, to which, or for the use of which, any property, real or personal, is conveyed, dedicated, devised, transferred, given or bequeathed, may from time to time, and whenever occasion may arise, appoint, in such manner as any such society, order, lodge, association, or union, may deem proper, a suitable number of persons as trustees for such society, order, lodge, association or union, and may remove such trustees or any of them, and fill all vacancies caused by death or otherwise.

WV Legislature

§35-2-4. Trustees for educational or charitable institutions.

The authorities of any university, college, academy, high school, seminary, or other institution of learning, or the authorities of any orphan asylum, children's home, house of refuge, hospital, or home or asylum for the aged or incurables or the afflicted in mind or body, or other benevolent or charitable institution or association, to which, or for the use of which, any property, real or personal, is conveyed, dedicated, devised, transferred, given or bequeathed, may from time to time, and whenever occasion may arise, appoint in such manner as any such authorities may deem proper, a suitable number of persons as trustees for any such institution or association, and may remove such trustees or any of them, and fill all vacancies caused by death or otherwise. Where there are no such authorities to make the appointment, the trustees in office shall have the power of removal, to appoint new members, and to fill vacancies, and if there be no such authorities and no trustees in office, then, on application of any one or more persons interested therein, or of the prosecuting attorney, the circuit court of the county where the trust subject, or any part thereof is, in the case of a conveyance, dedication, gift or grant, or in which the will was probated in the case of a devise or bequest, shall appoint such trustees.

WV Legislature

§35-2-5. Record of appointment of trustees; recording fee.

The trustees heretofore appointed by the circuit court of any county to hold the title to the real and personal property of any society, order, lodge, association, union or brotherhood, or of any institution of learning, or of any benevolent or charitable institution or association, in this article mentioned, and who are still occupying such positions at the time this code goes into effect, or the proper authorities of such society, order, lodge, association, union or brotherhood, or of any institution of learning, or of any benevolent or charitable institution or association, shall cause a certified copy of the order of appointment of such trustees to be recorded in the office of the clerk of the county court of the county where such trustees were appointed; and a certificate of every appointment of any trustees hereafter made in accordance with the provisions of this article, signed by the secretary, clerk or other officer in charge of the records of the organization, authorities or trustees making such appointment, and verified by his affidavit, or, if such appointment is made by the circuit court, a certified copy of the order of appointment, shall be recorded in the office of the clerk of the county court of the county wherein such society, order, lodge, association, union or brotherhood, or such institution of learning, or such benevolent or charitable institution or association, has any real or personal property. The county court of every county shall supply the clerk of the county court with a proper record book, to be labeled "Trustees of Institutions," wherein all such certified copies of orders of appointments and such certificates of appointments shall be recorded. The fee for recording such certified copy or such certificate of appointment shall be $1.

WV Legislature

§35-2-6. Trustees of certain organizations to be corporations; powers.

The trustees of every institution, society, order, organization, or association in this article mentioned (except trustees for any labor union or similar association or brotherhood of craftsmen or employees), or any local branch thereof, whether named in the conveyance, dedication, devise, gift or bequest, or appointed as provided in this article, shall be a corporation by the name and style of "Board of Trustees of ..... University," (or college, academy, etc., as the case may be), and as such corporation they shall be governed by all the provisions of law relating to, and have and exercise all the privileges and powers of, nonstock corporations, including the power to take and hold real and personal property, to borrow money for any legitimate purpose in the execution of the trust and to execute a lien on the trust property as security therefor, and to do and perform any and all acts and business pertaining to the trust created by any conveyance, dedication, devise, gift or bequest to such institution, society, order, organization, or association.

WV Legislature

§35-2-7. Certain provisions of article one applicable to property of labor unions.

Sections seven, nine, ten, eleven and twelve of article one of this chapter, relating to the property of religious organizations and the powers of the trustees and the rights of members of such organizations, shall apply to and govern labor unions, or similar associations, or brotherhoods of craftsmen or employees, or any local branches thereof, and the trustees and members thereof; and nothing in this chapter contained shall make any such labor union, association or brotherhood, or the trustees thereof, a corporation.

WV Legislature

§35-2-8. Quantity of real estate certain organizations may hold.

Except as may otherwise be allowed by law, the trustees of any society, order, lodge, association, union or brotherhood mentioned in this article may take and hold at any one time not exceeding two acres of land to be used as a place of meeting for such society, order, lodge, association, union or brotherhood, for the education and maintenance of children charitably provided for by them.

WV Legislature

§35-2-9. Distribution of income by trust which is deemed a private foundation; prohibitions as to trusts which are private foundations or split-interest trusts; definition of terms.

(a) Distribution of income by trust which is deemed a private foundation; prohibitions as to such private foundation. -- Every trust, receiving a gift, grant, devise or bequest, which is deemed to be a private foundation as defined in section 509 of the Internal Revenue Code of 1954, unless its governing instrument expressly includes specific provisions to the contrary, shall distribute its income for each taxable year at such time and in such manner as not to subject such trust to tax under section 4942 of the Internal Revenue Code, and such trust shall not engage in any act of self-dealing as defined in section 4941 (d) of the Internal Revenue Code, retain any excess business holdings as defined in section 4943 (c) of the Internal Revenue Code, make any investments in such manner as to subject the trust to tax under section 4944 of the Internal Revenue Code, or make any taxable expenditures as defined in section 4945 (d) of the Internal Revenue Code. This subsection shall apply to any charitable trust established after December 31, 1969, and to any charitable trust established before January 1, 1970, only for its taxable years beginning on and after January 1, 1972.

(b) Prohibitions as to trust which is deemed a split-interest trust. -- Every trust, receiving a gift, grant, devise or bequest, to the extent that such trust is deemed to be a split-interest trust subject to the provisions of section 4947 (a) (2) of the Internal Revenue Code of 1954, unless its governing instrument expressly includes specific provisions to the contrary, shall not:

(1) Engage in any act of self-dealing, as defined in section 4941(d) of the Internal Revenue Code;

(2) Retain any excess business holdings, as defined in section 4943 (c) of the Internal Revenue Code;

(3) Make any investments in such manner as to subject the foundation to tax under section 4944 of the Internal Revenue Code; or

(4) Make any taxable expenditures as defined in section 4945 (d) of the Internal Revenue Code.

Subparagraphs (2) and (3) of this subsection shall not apply to a split-interest trust if:

(1) All the income interest (and none of the remainder interest) of such trust is devoted solely to one or more of the purposes described in section 170 (c) (2) (B) of the Internal Revenue Code, and all amounts in such trust for which a deduction was allowed under section 170, 545 (b) (2), 556 (b) (2), 642 (c), 2055, 2106 (a) (2), or section 2522 of the Internal Revenue Code have an aggregate fair market value not more than sixty percent of the aggregate fair market value of all amounts in such trust, or

WV Legislature

(2) A deduction was allowed under section 170, 545 (b) (2), 556 (b) (2), 642 (c), 2055, 2106 (a) (2), or section 2522 of the Internal Revenue Code for amounts payable under the terms of such trust to every remainder beneficiary but not to any income beneficiary.

(c) Definitions; meaning of terms. -- Any term used in this section nine shall have the same meaning as when used in a comparable context in the laws of the United States relating to federal income taxes and any reference in this section to the Internal Revenue Code or to the Internal Revenue Code of 1954 or to any section or provision thereof shall mean the provisions of the laws of the United States as relate to the determination of income for federal income tax purposes, including all amendments made to the laws of the United States prior to January 1, 1971, but no amendment to the laws of the United States made on or after January 1, 1971, shall be given effect.

WV Legislature

§35-3-1. Acquisition of real estate by unincorporated grand lodges; maximum quantity; exemption from taxation.

It shall be lawful for the grand lodges of the Knights of Pythias, Independent Order of Odd Fellows, Ancient Free and Accepted Masons, Junior Order United American Mechanics, Improved Order of Red Men, and other organizations of like character, to acquire by purchase, devise or gift, and hold the same for the purpose of establishing, erecting, and maintaining thereon homes or asylums for the care and support of orphans and widows of deceased members, and of disabled and aged members of said organizations in indigent circumstances, respectively, such quantity of real estate within this state, as shall be necessary, not exceeding five hundred acres of land in the aggregate, upon which to erect, construct and maintain such buildings as may be necessary to care for and maintain therein and thereon all such persons as may be eligible to admission thereto; and all of such land to be cultivated, or otherwise utilized, for the benefit and support of such homes or asylums. The real estate thus acquired together with such personal property as may be needed in the administration of the affairs of said homes or asylums shall be exempt from every species of taxation as long as used for the purpose of such homes or asylums.

WV Legislature

§35-3-2. Regulations and boards for government.

Any such grand lodge desiring to establish a home or asylum shall adopt and prescribe such rules and regulations for the government and control thereof as may be deemed wise by such grand body; and it shall appoint a board of directors, trustees, regents or commissioners, composed of a specified number of persons from its own membership, not fewer than seven nor more than eleven, to serve for definite periods; and any such grand lodge may select for each of such boards two members from the associate branches of the orders, known as Pythian Sisters, Rebekahs, Eastern Star, or other like organizations, as the case may be. Such board shall have the management and control of the home or asylum for which it is appointed, under the prescribed rules and regulations adopted by said body for the government thereof. Such board of directors, trustees, regents or commissioners shall organize by the election of a president, secretary and treasurer, and, if necessary or expedient, an executive committee, all from its own membership.

WV Legislature

§35-3-3. Boards to be corporations; powers.

Such boards shall be corporate bodies; and as such shall be governed by all the provisions of law relating to, and have and exercise all the privileges and powers of, nonstock corporations.

WV Legislature

§35-3-4. Corporate name.

Each board of directors, trustees, regents, or commissioners, appointed under the provisions of this article, shall be styled and known by such corporate name as may be designated and bestowed thereon by the grand body appointing or creating such board.

WV Legislature

§35-3-5. Incorporated grand lodges may establish homes or asylums.

Any grand lodge enumerated in this article, or any similar grand lodge, heretofore or hereafter incorporated as such grand lodge under the laws of this state, shall be authorized and empowered to take by purchase, gift, devise or otherwise, land not to exceed five hundred acres for the purpose of establishing and maintaining homes or asylums for orphans, widows, aged and indigent members and dependents, and in and under its corporate name may hold or dispose of such land under such regulations and restrictions as said grand lodge may prescribe.

WV Legislature

§35-3-6. Provisions of article not to apply to organizations connected with churches.

Nothing in this article contained shall authorize the incorporation of any society or organization connected directly or indirectly with any church, religious sect or denomination, and nothing in this article contained shall authorize any society or organization, connected directly or indirectly with any church, religious sect, society, or denomination to have or acquire any real estate.

WV Legislature

§35-3-7. Enticement of residents away from fraternal home; harboring or influencing inmate to violate rules; improper intercourse with female resident of home.

Any person who shall entice or attempt to entice away from any home maintained or kept by any of the fraternal organizations specified in section one of this article, or any other organization of like character, any resident of any such home; or shall aid or abet any resident of any such home to leave the same without proper authority; or shall harbor, conceal or aid or abet in harboring or concealing any resident of any such home who shall have left such home without proper authority; or shall in any way knowingly cause or influence or knowingly attempt to cause or influence any resident in any such home to violate any rule of the home, or to rebel against the government of the home in any particular; or shall have or attempt to have any improper or unlawful communication or intercourse with any female resident of such home, knowing her to be a resident thereof, shall be guilty of a misdemeanor, and, on conviction thereof, shall be fined not less than $10 nor more than $500, or imprisoned not exceeding one year, or, in the discretion of the court, both fined and imprisoned.

If any person shall aid or abet the commission of any of the offenses named in this section, or aid or abet an attempt to commit the same, he shall be punished as herein provided the same as if he were the principal. In the trial of any indictment for committing any of the offenses named in this section, the accused may be found guilty of an attempt to commit the same, or of aiding or abetting another in committing or attempting to commit the same.

WV Legislature

§35-4-1. Disposition of property of subordinate lodge of Odd Fellows, Knights of Pythias or Order of Eagles.

If any subordinate lodge of the Independent Order of Odd Fellows, the Order Knights of Pythias or Fraternal Order of Eagles, in this state, working under the respective jurisdiction of the parent grand lodge of said respective orders, for this state, shall disband, surrender or forfeit its charter and cease to work, all its property, real and personal, shall, immediately upon such disbanding, surrender or forfeiture, vest in the said respective parent grand lodge, having jurisdiction over said subordinate lodge, to be held by that body for the charitable uses of the said respective parent grand lodge, in this state, according to the rules, regulations and policy of the grand lodge concerned, and said respective parent grand lodge is authorized in its corporate name, to sue for and recover such property, real and personal.

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.

WV Legislature

§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.

WV Legislature

§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.

WV Legislature

§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.

WV Legislature

§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.

WV Legislature

§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.

WV Legislature

§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.

WV Legislature

§35-5A-1. Definitions.

The following words and phrases as used in this article, unless a different meaning is clearly indicated by the context, shall have the following meanings:

(a) "Person" means any corporation, company, partnership, individual, association or other entity owning or operating a cemetery for the disposition of human remains.

(b) "Perpetual care cemetery" means a cemetery which advertises or represents to the public in any manner that it provides perpetual care or maintenance for burial grounds, mausoleums or columbaria and the fixtures attached thereto or which sells or offers to sell any interment right which is to be perpetually cared for or maintained.

(c) "Interment" means the disposition of human remains by earth burial, entombment or inurnment.

(d) "Burial right" means the right of earth interment.

(e) "Entombment right" means the right of entombment in a mausoleum.

(f) "Columbarium right" means the right of inurnment in a columbarium for cremated remains.

(g) "Permanent endowment care fund" means a fund held in an irrevocable trust separate and apart from all other assets of the cemetery and dedicated for the exclusive use of perpetual care and maintenance of such cemetery.

WV Legislature

§35-5A-2. Objects and purposes.

No person shall operate or continue to operate a perpetual care cemetery in West Virginia unless a permanent endowment care fund has been established, maintained and administered as required by this article. The income from the permanent endowment care fund so established shall be used only as permitted by this article.

WV Legislature

§35-5A-3. Establishment of permanent endowment care funds.

No person desiring to organize, develop and operate a perpetual care cemetery in West Virginia after July 1, 1973, shall offer to sell or sell any burial lot, burial right, entombment right or columbarium right in such cemetery, without first establishing a permanent endowment trust fund, segregated from all other assets, and placing therein a minimum of $10,000 in cash, or in bonds of the United States government or of the State of West Virginia.

Whenever any such person has placed an additional $10,000 in the permanent endowment care fund out of gross sales proceeds or from any other source, such person after submitting satisfactory proof of this fact to its trustee may withdraw the original sum of $10,000 from the permanent endowment care fund.

No person operating an established perpetual care cemetery in West Virginia on or before July 1, 1973, shall continue to operate such cemetery without creating a permanent endowment fund and making regular deposits to such fund as required in section four of this article and entrusting the administration of such fund as required in section five of this article.

WV Legislature

§35-5A-4. Additional funding of permanent endowment care funds.

No person shall operate or continue to operate any perpetual care cemetery in the State of West Virginia after July 1, 1973, without placing into a permanent endowment care fund $10 or ten percent of the gross sales proceeds, whichever is greater, received from the sale of any burial right or lot and not less than five percent of the gross sales proceeds from the sale of any entombment right or columbarium right. This sum shall be placed in the permanent endowment care fund not later than thirty days following the month in which the entire gross sales proceeds are received.

WV Legislature

§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.

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

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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.

WV Legislature

§35-5A-6. Cemeteries exempted.

This article does not apply to any private or family cemetery wherein lots or spaces are not offered for public sale or to any cemetery which is owned and operated entirely and exclusively by churches, religious societies, established fraternal organizations, municipalities or other subdivisions of the state or a national cemetery.

WV Legislature

§35-5A-7. Inconsistent provisions.

The provisions and requirements of this article shall take precedence over and shall supersede any other provisions of this code which may be inconsistent therewith.

WV Legislature

§35-5A-8. Penalties for violation.

Any person and any officer, director, agent or employee of such person who violates or participates in the violation of this article shall be guilty of a misdemeanor, and, upon conviction thereof, shall be fined not more than $1,000, or imprisoned in the county jail not more than one year, or both fined and imprisoned.

WV Legislature

§35-5B-1. Definitions.

The following words and phrases as used in this article, unless a different meaning is clearly indicated by the context, have the following meanings:

(1) "Burial vault" means a protective container for a casket which is used to prevent a grave from sinking.

(2) "Cemetery" means and includes all land and appurtenances including roadways, office buildings, outbuildings and other structures used or intended to be used for or in connection with the interment of human remains. The sprinkling of ashes or their burial in a biodegradable container on church grounds or their placement in a columbarium on church property does not constitute the creation of a cemetery.

(3) "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, where delivery of the property or goods or performance of the service may be delayed later than one hundred twenty days after receipt of the initial payment on account of such sale. Such property, goods or services include, but are not limited to, burial vaults, mausoleum crypts, lawn crypts, memorials, marker bases and opening and closing and/or interment services, but do not include graves or incidental additions such as dates, scrolls or other supplementary matter representing not more than ten percent of the total contract price.

(4) "Commissioner" or "Tax Commissioner" means the secretary of the West Virginia Department of Tax and Revenue.

(5) "Compliance agent" means a natural person who owns or is employed by a cemetery company to assure the compliance of the cemetery company with the provisions of this article.

(6) "Cost requirement" means the total cost to the seller of the property, goods or services subject to the deposit requirements of section four of this article required by that seller's total contracts.

(7) "Delivery" means that the seller has transferred physical possession of the identified goods, has attached or installed such goods at the designated interment space or has actually furnished preneed cemetery company contract services. In the case of preneed goods which are identified with the name of the buyer or other contract beneficiary, "delivery" may also occur when: (A) The seller pays for and stores the goods at the cemetery where they are intended to be used; or (B) the seller has paid the supplier of such goods and the supplier has caused such merchandise to be manufactured and stored, has caused title to such merchandise to be transferred to the buyer or other contract beneficiary and has agreed to ship such merchandise upon his or her request.

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(8) "Grave" means a below-ground right of interment.

(9) "Interment" means the disposition of human remains by earth burial, entombment or inurnment.

(10) "Lawn crypt" means a burial receptacle, usually constructed of reinforced concrete, installed underground in quantity on gravel or tile underlay. Each crypt becomes an integral part of the given garden area and is considered real property.

(11) "Marker base" means the visible part of the base or foundation upon which the memorial, marker or monument rests and is considered personal property.

(12) "Mausoleum crypt" means a burial receptacle usually constructed of reinforced concrete and usually constructed or assembled above the ground and is considered real property.

(13) "Memorials, markers or monuments" means the object used to identify the deceased including the base and is considered personal property.

(14) "Opening and closing or interment service" means any service associated with the excavation and filling in of a grave in a manner which will not disturb or invade adjacent grave sites.

(15) "Preneed" means at any time other than either at the time of death or while death is imminent.

(16) "Preneed 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, where delivery of the property or performance of the service may be delayed for more than one hundred twenty days after the receipt of initial payment on account of such sale. Such property, goods or services include, but are not limited to, burial vaults, mausoleum crypts, lawn crypts, memorials, marker bases and opening and closing and/or interment services, but do not include graves or incidental additions such as dates, scrolls or other supplementary matter representing not more than ten percent of the total contract price.

(17) "Seller's trust account" means the total specific funds deposited from all of a specific seller's contracts, plus income on such funds allotted to that seller.

(18) "Specific trust funds" means funds identified with a certain preneed cemetery company contract for personal property, goods or services.

(19) "Trustee" means any natural person, partnership or corporation, including any bank, trust company, broker-dealer, foreign state charter trust, savings and loan association or credit union which receives money in trust pursuant to any agreement or contract made pursuant to the provisions of this article.

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§35-5B-2. Information filing; fees, compliance agent.

On or after July 1, 1993, no person, partnership, firm or corporation may engage in the business of operating a cemetery company in this state without having first paid an annual registration fee established by the Tax Commissioner in an amount not to exceed $400, and filing with the Tax Commissioner certain information which shall include the name and addresses of all officers, owners and directors of the cemetery company and the name of the designated compliance agent. The cemetery company shall notify the Tax Commissioner of any changes in the information required to be filed within ninety days of the date on which the change occurs. A new filing shall also be required if there is a change in the ownership of the cemetery company or if there is a change in the name of the compliance agent designated by the cemetery company. The cemetery company shall pay an additional fee as established by the commissioner in connection with the reporting of such changes, not to exceed $100. There is hereby created in the State Treasury a special account to be known as the "cemetery company account" into which all fees collected under this article shall be deposited: Provided, That amounts collected which are found from time to time to exceed funds needed for the purposes set forth in this article may be transferred to other accounts or funds and redesignated for other purposes by appropriation of the Legislature. Funds in this account shall be expended upon appropriation of the Legislature by the secretary of tax and revenue in connection with the administration of this article.

WV Legislature

§35-5B-3. Exemptions.

The provisions of this article do not apply to:

(1) Sales of property, goods and services subject to the provisions of article fourteen, chapter forty-seven of this code;

(2) Sales of services by perpetual care cemeteries subject to the provisions of article five-a of this chapter;

(3) Sales of property, goods and services by cemeteries owned and operated by a county, municipal corporation, by a church or by a nonstock corporation not operated for profit if the cemetery: (A) Does not compensate any officer or director except for reimbursement of reasonable expenses incurred in the performance of official duties; (B) does not sell or construct or directly or indirectly contract for the sale or construction of vaults or lawn or mausoleum crypts; and (C) uses proceeds from the sale of all graves and entombment rights for the sole purpose of defraying the direct expenses of maintaining the cemetery;

(4) Sales of property, goods and services by community cemeteries not operated for profit if the cemetery: (A) Does not compensate any officer, owner or director except for reimbursement of reasonable expenses incurred in the performance of official duties; and (B) uses the proceeds from the sale of the graves for the sole purpose of defraying the direct expenses of maintaining its facilities; and

(5) Sales of property, goods and services by family cemeteries wherein lots or spaces are not offered for public sale.

WV Legislature

§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

§35-5B-5. Requirements for preneed cemetery company contracts.

A preneed 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, 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 price of the property, goods or services bought is guaranteed;

(5) Provide that if 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 and 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.

WV Legislature

§35-5B-6. Identification of funds.

Any funds deposited in the trust account as required by section four of this article shall be identified in the records of the seller by the contract number and by the name of the buyer. The trustee may commingle the deposits in any preneed trust account for the purposes of the management thereof and the investment of funds therein.

WV Legislature

§35-5B-7. Corpus of trust account and income to remain in preneed trust account; exception.

The corpus of the trust account shall remain intact until the property or goods are delivered or services performed as specified in the contract: Provided, That the net income from the preneed trust account may be used to pay any appropriate trustee and Auditor fees, commissions and costs. The net income from the preneed trust account, after payment of any appropriate trustee and Auditor fees, commissions and costs, shall remain in the account and be reinvested and compounded. Any trustee fees, commissions and costs in excess of income shall be paid by the cemetery company and not from the trust. However, the trustee shall, as of the close of the cemetery company's fiscal year, upon the written assurance to the trustee by a certified public accountant employed by the seller, return to the seller any income in the seller's account which, when added to the corpus of the trust account is in excess of the current cost requirements for all undelivered property, goods or services included in the seller's preneed cemetery company contracts including all outstanding preneed cemetery company contracts entered into prior to July 1, 1993. The seller's cost requirements shall be based upon wholesale cost and certified in its records by a sworn affidavit by the compliance agent and shall be determined by the seller as of the close of the cemetery company's fiscal year.

WV Legislature

§35-5B-8. Disbursement of trust funds upon performance of contract; mausoleum construction required.

(a) Upon performance of the preneed cemetery company contract, the seller shall certify to the trustee by affidavit the amount of specific funds in the trust, identified with the contract performed, which the trustee shall pay to the seller. The seller may in its records itemize the property, goods or services and the consideration paid or to be paid therefor, to which the deposit requirements of this article apply. In such case the seller may, upon certification to the trustee of performance or delivery of such property, goods or services and of the amount of specific trust funds identified in its records with such items, request disbursement of that portion of the specific funds deposited pursuant to the contract, which the trustee shall pay to the seller.

(b) If the preneed contract provides for two or more persons, the seller may, at its option, designate in its records the consideration paid for each individual in the preneed cemetery company contract. In such case, upon performance of that portion of the contract identified with a particular individual, the seller may request, by certification in the manner described above, the disbursement of trust funds applicable to that portion of the contract, which the trustee shall pay to the seller.

(c) Any cemetery company that sells space in an unconstructed mausoleum must commence construction within seven years from the date of the first sale or when eighty percent of the spaces in the original mausoleum plan are sold, whichever occurs first.

WV Legislature

§35-5B-9. Seller required to keep records.

Each seller of a preneed cemetery company contract shall record and keep detailed accounts of all contracts and transactions regarding preneed cemetery company contracts and the records shall be subject to examination by the Tax Commissioner.

WV Legislature

§35-5B-10. Financial report and written assurance required.

(a) The cemetery company shall report the following information to the Tax Commissioner within four months following the close of the cemetery company's fiscal year:

(1) The total amount of principal in the preneed trust account;

(2) The securities in which the preneed trust account is invested;

(3) The income received from the trust and the source of that income during the preceding fiscal year;

(4) An affidavit executed by the compliance agent that all provisions of this article applicable to the seller relating to preneed trust accounts have been complied with;

(5) The total receipts required to be deposited in the preneed trust account;

(6) All expenditures from the preneed trust account; and

(7) If the trustee is other than a bank, savings and loan or other federally insured investment banking institution, proof, in a manner determined by the Tax Commissioner, that the fidelity bond required by the provisions of section four of this article has been secured and that it is in effect.

(b) The cemetery company shall employ an independent certified public accountant who is to audit the account and provide assurance, which assurance shall be forwarded with the report required by subsection (a) of this section, that forty percent of the cash receipts from the sale of preneed property, goods or services which will not be delivered or performed within one hundred twenty days after receipt of the initial payment on account has been deposited in the account within thirty days after the close of the month in which the payment was received.

WV Legislature

§35-5B-11. Inclusion of property, goods and services to be delivered within one hundred twenty days.

Nothing in this article prohibits the sale within the contract of preneed property, goods or services to be delivered within one hundred twenty days after the receipt of the initial payment on account of such sale. Contracts may specify separately the total consideration paid or to be paid for preneed property, goods or services not to be delivered or provided within one hundred twenty days after receipt of initial payment. If a contract does not so specify, the seller shall deposit forty percent of the total consideration for the entire contract.

WV Legislature

§35-5B-12. Breach of contract by seller; trust to be single purpose trust.

(a) If, after a written request, the seller fails to perform its contractual duties, the purchaser, executor or administrator of the estate, or heirs, or assigns or duly authorized representative of the purchaser shall be entitled to maintain a proper legal or equitable action in any court of competent jurisdiction. No other purchaser need be made a party to or receive notice of any proceeding brought pursuant to this section relating to the performance of any other contract.

(b) The trust shall be a single purpose trust, and the trust funds are not available to any creditors as assets of the seller, nor may the seller encumber the trust funds.

WV Legislature

§35-5B-13. Trustee may rely on certifications and affidavits.

The trustee may rely upon all certifications and affidavits which have been made pursuant to the provisions of this article and is not liable to any person for such reasonable reliance.

WV Legislature

§35-5B-14. Transfer of trust funds to another trustee.

The seller may, upon notification in writing to the trustee, and upon such other terms and conditions as the agreement between them may specify, transfer its account funds to another trustee qualified under the provisions of this article. The trustee may, upon notification in writing to the seller, and upon such other terms and conditions as the agreement between them may specify, transfer the trust funds to another trustee qualified under the provisions of this article.

WV Legislature

§35-5B-15. Use of trustee's name in advertisements.

No person subject to the provisions of this article may use the name of the trustee in any advertisement or other public solicitation without written permission of the trustee.

WV Legislature

§35-5B-16. Cemetery property maintained by cemetery company.

With respect to cemetery property maintained by a cemetery company, the cemetery company is responsible for the performance of:

(1) The care and maintenance of the cemetery property it owns; and

(2) The opening and closing of all graves, crypts or niches for human remains in any cemetery property it owns.

WV Legislature

§35-5B-17. Waiver of article void.

Any provision of any contract which purports to waive any provision of this article is void.

WV Legislature

§35-5B-18. Violation a misdemeanor.

Any person who violates any of the provisions of this article is guilty of a misdemeanor, and, upon conviction thereof, shall be fined not less than one hundred nor more than $1,000 for each occurrence, or incarcerated in the county or regional jail for a term not to exceed one year, or both fined and incarcerated. Any person who violates any of the provisions of this article shall for a second offense be guilty of a felony and, upon conviction thereof, shall be fined not less than five hundred nor more than $3,000, or incarcerated in the penitentiary not less than one nor more than three years, or, in the discretion of the court, be incarcerated in the county jail for a term not to exceed one year.

WV Legislature

§35-5B-19. Abandoned interment rights.

(a) A preneed 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 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 the 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.

WV Legislature